

14 November 2000

**COMMENT ON AND PROPOSALS FOR CHANGES TO THE DRAFT
REVISED PUBLIC PURCHASING CLASSICAL [COM(2000) 275 FINAL]
AND UTILITIES [COM(2000) 276 FINAL] DIRECTIVES
[BOTH DATED 10 MAY 2000]**

1. UNICE welcomes the proposed revision of the classical sector directives. The elimination of unnecessarily ambiguous wording, the logical structure, the addition of titles, and the introduction of provisions aiming to permit Contracting Authorities to conduct their purchasing in line with the best of modern commercial practice, are especially applauded. UNICE wishes to pay tribute to all who have contributed to the content of the new draft over the two years since the publication of the Commission's Communication.
2. That being said, UNICE believes that there are some areas where the new draft Classical directive can be improved, and one in particular - complex contracts - where modification is essential for the directive to function as it is intended.
3. UNICE also welcomes the revisions to the Utilities directive, especially the provisions for exclusion of those that are subject to a fully competitive environment. Once again, however, there are areas where improvement is possible and, in some cases, most desirable for the directive to function as intended.
4. Two main areas are discussed in detail later in this paper:
 - ?? Complex contracts – Classical sector *Section 9*
 - ?? Electronic tendering – both sectors *Section 10*
5. Two areas not discussed here in detail will be the subject of future UNICE papers:
 - 5.1 **Public-Private Partnerships (PPPs)** – both sectors
The use of Public-Private Partnerships is growing throughout Europe, injecting private skill and capital into a variety of activities. The EU public purchasing framework needs to be updated to some extent in order to take this evolution into consideration.
 - 5.2 **Affiliated undertakings** – both sectors *Classical Article 78 (2); Utilities Article 26*

Economic operators which are themselves controlled by public authorities are free to compete in public procurement. That raises a number of concerns, some of which go beyond the scope of public procurement.

6. Utilities Article 26 (“*Service contracts awarded to an affiliated undertaking or to a contracting entity forming part of a joint venture*”) has not been changed despite representations from various quarters. UNICE recognises the difficulties but recommends strongly that this area should be revisited in consultation with all parties.

7. UNICE proposes some minor improvements to six other areas:

7.1 Framework agreements – Classical sector Article 32

UNICE has concerns that false pricing in the first stage may distort the market; that dominant contracting authorities may exert undue price pressure in the second stage; and that the concept of effectively two award procedures for one contract is not satisfactory. UNICE, having considered the working document prepared by the French Presidency (SN 4075/00 [MAP] OF 19 OCTOBER 2000) follows with interest the further drafting of Art.32. UNICE supports the intention to introduce framework agreements into the classical sectors. We strongly recommend that the EU simply adopts the provisions on framework agreements in the existing utilities directive (Art.1 para 5 and Art.5.) The huge advantage of importing the rules from the utilities sector into the classical sector is that we know they will work. Purchasers and suppliers have good experience of operating under these rules and indeed the Commission is clearly satisfied that they are effective since it has incorporated them unchanged into the new Utilities directive.

7.2 Exclusion of Utilities – Utilities sector Articles 2(3) and 29

The provisions of Article 29 are most welcome; they should help substantially in achieving the objectives of the directive. There is, however, concern that the process may take too long and thought should be given to a mechanism whereby a Utility could initiate the procedure if it believed that it would qualify.

7.3 Use of standards – both sectors Classical Article 24; Utilities Article 34

The possibility that a specification can contain a mixture of functional requirements and standards – contemplated in the Explanatory Memorandum – should be made clear. Where safety considerations are involved, a contracting entity should be permitted to insist that specific standards be met. Any such mandatory standards must be identified in the call for tenders and accompanied by a brief explanation of the reasons therefore.

7.4 **Purchase of primary fuels** - Utilities sector *Article 27*

The old directive exempted the purchase of primary fuel and water from the directive; the new version exempts only primary water.

The principle is sound: with competitive sellers in the fuel market, the directive should apply. But the need to publish information about future plans could play into the hands of the fuel cartels. There is a balance to be struck between a sound principle and harsh reality.

UNICE recommends that primary fuel should continue to be included in Article 27.

7.5 **Social aspects** – both sectors *Classical Recital 22; Utilities Recital 32*

Whilst UNICE endorses social measures, it is convinced that the public purchasing directives are the wrong place to pursue them. Social aspects unrelated to economic value to the purchaser can all too easily distort competition and become tools for discriminatory purchasing.

7.6 **Nomination of subcontractors** – both sectors *Classical Article 26; Utilities Article 37*

Past experience has shown that a requirement to nominate subcontractors is, except in special cases, unsatisfactory, and does nothing to help SMEs. The circumstances in which it is of benefit relate to crucial elements of the work, when it is reasonable that the contracting entity will want to know who will be responsible for it. UNICE recommends that the directives should restrict nomination to such justifiable elements.

8. It would be of benefit - especially to SMEs - if the plethora of timescales could be simplified without, of course, reducing them. UNICE has presently not addressed this point in its suggested amendments to the text of the directive.

Detailed discussions

Being in agreement with most of the text, UNICE has concentrated in this paper on those parts where there are issues of substance. Each section in the rest of this paper consists of an explanation followed by suggested amendments to the text of the directive.

9. **Complex contracts** - Classical sector *Article 30*

- 9.1 UNICE supports the intention to permit negotiation between a contracting authority and candidates in complex contracts. But some aspects of the procedure make UNICE's support for the proposal in its present form impossible. Those aspects are the present proposals for outline solutions prior to selection and those implied for the final stage: neither of them will work. UNICE feels that the complexity, cost – both for the contracting authority and for the candidates – and skill required in negotiating complex contracts have been underestimated.

- 9.2 The structure and wording of Article 30 make it difficult to understand; a clearer text may remove the unsatisfactory aspects. Furthermore, the Explanatory Memorandum (paragraph 3.8) is not wholly consistent with the wording of the directive itself and needs to be changed; some of the concerns expressed in this paper flow from that inconsistency.
- 9.3 The directive contemplates a call for expressions of interest followed by a selection process to reduce the candidates to a manageable number. As part of that process, a contracting authority can seek outline solutions before preparing the short-list of selected candidates. The cost of preparing an outline solution can be significant, and it is generally unrealistic to ask candidates to incur that expense as a preliminary to selection. Such work must be reserved for the negotiation phase after selection, thereby maintaining the separation between criteria for selection and those for contract award.
- 9.4 The directive – and, in particular, the Explanatory Memorandum - then contemplates that, once all the technical and commercial proposals have been submitted, the contracting authority will produce a final requirement specification based on one - or an amalgam of - the submitted proposals, before asking the candidates to quote against that.
- 9.5 That will not work.
- 9.6 There are two reasons why not:
- 9.6.1 in complex projects, it is unrealistic to expect one supplier to quote for a solution based on another's techniques. Such a tactic is, in any case, already prevented in other procedures by the prohibition of specifications which include proprietary products.
- 9.6.2 candidates submit their technical and commercial proposals under conditions of confidentiality, prohibiting their disclosure in whole or in part without the candidate's express consent.
- 9.7 Although not explicitly provided in Article 30, any suggestion (see the Explanatory Memorandum section 3.8, last paragraph but two) that proprietary parts of candidates' solutions should be combined or used as a basis for tenders by other participants must be expressly excluded. Performance-based requirement specifications are the way in which that is achieved.

- 9.8 If a contracting authority is genuinely unable to state its requirements with sufficient clarity to permit relevant proposals to be formulated, then it should carry out appropriate studies – at its own expense - so that it can do so. By the same token, contracting authorities should provide adequate compensation to the selected candidates for the additional costs involved in this procedure.
- 9.9 UNICE is aware of the misgivings of the construction industry.
- 9.10 UNICE's concept for the procedure can be summarised thus:
- Step 1: The contracting authority sets out its requirements clearly so that candidates will be able, with the aid of the negotiations, to respond technically and commercially. The contracting authority should aim for clarity, not detail. At the same time it sets out the selection and award criteria.
- Step 2: A limited number of candidates for the negotiation phase is selected using the selection criteria already established, but without the imposition of a requirement for costly outline solutions. A two-stage selection process for limiting the number of candidates may be used if necessary.
- Step 3: The selected candidates work up their technical and commercial proposals, negotiating with the contracting authority as required to be sure that their proposals would in principle be acceptable.
- Step 4: The contracting authority confirms the original award criteria or, if it has become apparent that changes are necessary, advises the candidates accordingly, giving the reasons for the changes, and affording them adequate opportunity to revise their proposals in the light of those changes
- Step 5: All the participants in the negotiation phase – but no others – are invited to submit a formal “best and final” offers based on their own proposals at the end of that phase.
- 9.11 Once the best and final offers have been invited, there must be no more negotiation – on price or on any material matter.
- 9.12 Absolute confidentiality must be maintained throughout the procedure and afterwards; no candidate's or tenderer's (as the case may be) technical or commercial information may ever be disclosed, in whole or in part, to anyone else without the candidate's or tenderer's express consent. Information which must be disclosed by law is, of course, an exception to this rule.

<u>PROPOSED TEXT REVISIONS TO PROPOSAL COM (2000) 275 FINAL/2 OF 30.8.2000</u>	
<i>Existing text</i> <i>Deleted words are <u>underlined</u></i>	<i>UNICE proposal</i> <i>New words are <u>bold underlined</u></i>
<i>Article 30</i>	<i>Article 30</i>
<i>Specific rules on particularly complex public contracts</i>	<i>Specific rules on particularly complex public contracts</i>
<p>1. In the cases referred to in point (b) of Article 29(1), the contracting authorities shall publish a contract notice, <u>choose</u> the candidates and negotiate with them the means and the solutions best suited to meeting their needs. They shall <u>then draw up the contract documents, check that the candidates' capacity is appropriate to the retained technical solution and invite all the candidates or a restricted number thereof</u> to submit <u>a tender and</u> they shall assess the tenders, without negotiation, on the basis of the criteria established to determine the most economically advantageous tender.</p>	<p>1. In the cases referred to in point (b) of Article 29(1), the contracting authorities shall publish a contract notice, <u>setting out their requirements as clearly as possible, select</u> the candidates and negotiate with them the means and the solutions best suited to meeting their needs. <u>Finally, they shall invite all the candidates which participated in the negotiation to submit their best and final offers on the basis of their own proposals developed during the negotiation phase.</u> They shall assess the tenders, without negotiation, on the basis of the criteria <u>normally established at the outset</u> to determine the most economically advantageous tender.</p>
<p>2. The contracting authorities shall state in the contract notice all the conditions which the economic operators must fulfil in order to be admitted to the award procedure. These conditions shall consist</p>	<p>2. The contracting authorities shall state in the contract notice all the conditions which the economic operators must fulfil in order to be admitted to the award procedure. These conditions shall consist</p>
<p>(a) <u>either of only</u> the information specified in accordance with the provisions of Article 44 and those on qualitative selection criteria referred to in Articles 46 to 52</p>	<p>of the information specified in accordance with the provisions of Article 44 and those on qualitative selection criteria referred to in Articles 46 to 52</p>
<p>(b) <u>or of this information and the obligation to present an outline solution and, if necessary, an estimate of the costs of its implementation.</u></p>	
<p>The <u>qualitative</u> selection criteria defined in the contract notice shall remain unchanged throughout the award procedure.</p>	<p>The selection criteria defined in the contract notice shall remain unchanged throughout the award procedure.</p>
<p>Under Article 45(2) the contracting authorities may decide to invite a restricted number of candidates meeting the selection criteria to negotiate. In this case, they shall announce this in the contract notice and reduce the number of invited candidates objectively on the basis of <u>the</u> selection criteria set out in the same notice.</p>	<p>Under Article 45(2) the contracting authorities may decide to invite a restricted number of candidates meeting the selection criteria to negotiate. In this case, they shall announce this in the contract notice and reduce the number of invited candidates objectively on the basis of selection criteria set out in the same notice.</p>

<p><u>When an outline solution is requested, the contracting authorities may define their requirements concerning the economic operators' financial and economic standing, as provided for in Article 48, in terms of percentages of the estimated value of the outline solutions to be presented by the various candidates, and the requirements concerning their technical capability and experience, as provided for in Article 49, according to the skills and experience required to compile the outline solutions.</u></p>	<p><u>No outline solution may be required from the candidates prior to their selection for participation in the negotiation phase.</u></p>
<p>3. Contracting authorities shall set out their needs and requirements in terms of objectives to be achieved and, if necessary, in terms of performance or functional requirements. These needs shall be set out <u>in the most detailed manner possible.</u></p>	<p>3. Contracting authorities shall set out their needs and requirements in terms of objectives to be achieved and, if necessary, in terms of performance or functional requirements. These needs shall be set out <u>as clearly as possible.</u></p>
<p>The requirements thus defined shall serve as a basis <u>for the formulation of the outline solutions and the cost estimates, where requested, and</u> for the negotiation.</p>	<p>The requirements thus defined shall serve as a basis for the negotiation.</p>
	<p><u>If, exceptionally, the contracting authority intends that there should be any matters to be negotiated after selection of a preferred candidate or after the award of the contract, the contracting authority shall negotiate agreement on the list of such matters with all the selected candidates immediately after their selection.</u></p>
	<p><u>The candidates shall work up their technical proposals, negotiating with the contracting authority as required to be sure that their proposals would be, in principle, acceptable, and, separately from these negotiations, their commercial proposals.</u></p>
<p>4. The award criteria shall be established in accordance with point (b) of Article 29(1) and with Article 53, and may not be amended in the course of the procedure <u>unless they</u> are no longer appropriate to the subject-matter of the contract as defined in the contract documents <u>after the negotiation phase.</u> Article 54 concerning abnormally low tenders shall be applicable.</p>	<p>4. The award criteria shall be established in accordance with point (b) of Article 29(1) and with Article 53, and may, <u>as a general rule,</u> not be amended in the course of the procedure.</p> <p><u>If, in very exceptional cases the award criteria</u> are no longer wholly appropriate to the subject-matter of the contract as defined in the contract documents, <u>then the contracting authority shall advise all participants in the negotiation phase accordingly, giving the reasons for the amendments and affording the candidates adequate opportunity to revise their proposals</u> Article 54 concerning abnormally low tenders shall be applicable.</p>

<p><u>The conditions shall be set out in the contract notice or in the document specifying the authority's requirements; however, if an outline solution is not required, they may be specified in the invitations to participate in the negotiation phase.</u></p>	
<p>5. <u>Contracting authorities which have not required the request to participate to be accompanied by an outline solution may, in the invitations to be negotiated, ask that an outline solution be submitted. The time-limit for this submission shall be appropriate to the complexity of the needs which outline solutions are invited to meet and, in any case, may not be less than 25 days from the date of dispatch of the invitations.</u></p>	
<p>6. The purpose of negotiation with the selected candidates shall be solely to discuss and define the means best suited to meeting the needs of the contracting authority.</p>	<p>6. The purpose of negotiation with the selected candidates shall be solely to discuss and define the means best suited to meeting the needs of the contracting authority.</p>
<p><u>During negotiation,</u> the contracting authorities may not disclose to the other participants the solutions proposed or any other confidential information given by a participant.</p>	<p>The contracting authorities may not <u>at any time</u> disclose to the other participants <u>or elsewhere,</u> <u>except to such minimum extent as may be required by law,</u> the solutions proposed or any other confidential information given by a participant <u>without the express consent in writing of that participant.</u></p>
<p>7. After announcing the end of negotiations and informing all the participants thereof, the contracting authorities shall <u>check, by applying the selection criteria already set in accordance with paragraph 2, whether the candidates' economic, financial and technical capacity is appropriate to the technical solution specified in the final contract documents. Where the economic, financial or technical capacity of one or more candidates, as proven at the request to participate in negotiations, is not appropriate to the technical solution, contracting authorities shall make a written request to the candidates concerned to present the necessary documentation to allow a check to be carried out, on the basis of the above mentioned criteria, as to whether they have the capacity adapted to the retained technical solution. Article 44(5) shall apply.</u></p>	<p>7. After announcing the end of negotiations and informing all the participants thereof, the contracting authorities shall <u>send out invitations to all the selected participants, but to no others, to submit tenders</u></p>
<p>The invitations to submit a tender shall be drawn up in accordance with Article 40 and sent in writing. <u>They shall be accompanied by the definitive contract documents setting out the technical specifications in accordance with Article 24.</u></p>	<p>The invitations to submit a tender shall be drawn up in accordance with Article 40 and sent in writing.</p> <p><i>[UNICE note: Article 40 may need to be amended.]</i></p>
<p>In accordance with Article 45(2), the number of candidates invited to <u>submit bids</u> may not be less than three, provided that there is a</p>	<p>In accordance with Article 45(2), the number of candidates invited to <u>negotiate</u> may not be less than three, provided that there is a sufficient</p>

sufficient number of suitable candidates meeting the selection criteria specified by the contracting authority.	number of suitable candidates meeting the selection criteria specified by the contracting authority.
8. Time periods for receipt of tenders shall be fixed in accordance with Article 37.	8. Time periods for receipt of tenders shall be fixed in accordance with Article 37.
9. The contracting authorities <u>may</u> specify prices and payments to the participants. Such prices and payments shall be taken into consideration for the application of Article 8.	9. The contracting authorities <u>shall</u> specify prices and payments to the participants <u>in respect of their work in participating in the negotiation and preparing proposals</u> Such prices and payments shall be taken into consideration for the application of Article 8.

9.13. UNICE is aware of the Commission's new proposal for complex contracts annexed to this paper (see Annex I). This proposal widely meets the requests under para 9.1 to 9.12 above. UNICE would therefore support to further discuss the rules for complex contracts on the basis of this new proposal.

10 **Electronic tendering** – Both sectors *Classical Articles 37, 42 and 61; Utilities Articles 44, 47 and 62*

10.1 Clearly, electronic procurement is rapidly becoming a reality. Public authorities, public utilities and their suppliers must not be left out, and the proposals in the directive are welcome. Once the necessary legal provisions are in place to permit contracts without a hand-written signature but carrying the same level of authentication, the market will provide the infrastructure to carry out the processes without the need for EU or state assistance.

10.2 There is an urgency about this; the legal provisions and legislation enabling electronic public purchasing need to be introduced without waiting for the whole directive.

10.3 The techniques and practices of electronic procurement will no doubt continue to develop and the regime provided by the directives must be capable of adapting accordingly.

10.4 But UNICE is seriously concerned over confidentiality where electronic procurement procedures are used. There are two areas of vulnerability:

10.4.1 transmission

10.4.2 storage.

10.5 The underlying principle is that all information must at all times be safeguarded by appropriate means.

10.6 Transmission can be protected by encryption – provided that member and other states permit “strong” encryption – and concerns over the timing of tender opening can be addressed with time locks (electronic transmission) or escrow arrangements (fax transmission). That, whilst not trivial, can well be handled by technical or operational means.

10.7 The greater area of concern is storage of electronic information once it is in the possession of the public authority. Whilst most public authorities and utilities doubtless have well tried procedures to safeguard paper-based information, that stored in computers has proven to be much more vulnerable.

Suppliers must have confidence in the ability of public authorities to protect the confidentiality of their information .

- 10.8 UNICE proposes that there should be an express obligation, with provision for proof of effectiveness, on the contracting authority to protect information stored electronically at all times.
- 10.9 UNICE is also concerned over the use of the time saved by the use of electronic procurement. Whilst it may justifiably be said that, if all the benefit goes to the purchaser, the candidate is no worse off, there have been and remain concerns that the time limits are sometimes unduly short. Granted, there is an obligation on contracting authorities to provide sufficient time, but all too often the minimum becomes the norm.
- 10.10 UNICE therefore proposes that the time saving should be shared fairly between the candidates and the contracting authority

<u>PROPOSED TEXT REVISIONS</u>	
<i>Only the Classical sector directive is shown; the Utilities directive should be amended in the same way</i>	
<u>Existing text</u> <i>Deleted words are <u>underlined</u></i>	<u>UNICE proposal</u> <i>New words are <u>bold underlined</u></i>
<p><i>Communication</i></p> <p><i>Article 42</i></p> <p><i>Means of communication</i></p> <p>2 Communication and information exchange shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and of all information supplied by economic operators are preserved, and that the contracting authorities only examine the content of tenders after the time-limit set for submitting them has expired.</p>	<p><i>Communication</i></p> <p><i>Article 42</i></p> <p><i>Means of communication</i></p> <p>2 <u>Communication and information exchange as well as storage of data shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and of all information supplied by economic operators are at all times preserved, and that the contracting authorities only examine the content of tenders after the time-limit set for submitting them has expired.</u></p> <p style="text-align: right;">./..</p>

<p>4. Whichever means is chosen for submitting tenders may not have the effect of hampering the proper functioning of the internal market.</p> <p style="text-align: center;"><i>Time-limits</i></p> <p style="text-align: center;"><i>Article 37</i></p> <p style="text-align: center;"><i>Requests to participate and receipt of tenders</i></p> <p>5. Where notices are drawn up and transmitted by electronic means in accordance with Annex VIII, the time-limits for the receipt of tenders referred to in paragraph 2 and in the first subparagraph of paragraph 4 in open procedures, and the time-limit for the receipt of the requests to participate referred to in the first phrase of point (a) of paragraph 3, in restricted and negotiated procedures, may be shortened by <u>seven</u> days.</p> <p>6. The time-limits for receipt of tenders in open, restricted and negotiated procedures referred to in paragraph 2, point (b) of paragraph 3 and paragraph 4 may be reduced by <u>five</u> days where the contracting authority offers free direct access to the entire contract documents and any supporting documents by electronic means as from the date on which the notice is sent, in accordance with Annex VIII.</p> <p>This reduction may be aggregated with the reduction referred to in paragraph 5.</p>	<p>4. Contracting authorities shall provide to tenders on request a certificate from an accredited third party certifying that they have in place adequate measures to safeguard the confidentiality of tenders' information during transmission and after receipt.</p> <p>5. Whichever means is chosen for submitting tenders may not have the effect of hampering the proper functioning of the internal market.</p> <p style="text-align: center;"><i>Time-limits</i></p> <p style="text-align: center;"><i>Article 37</i></p> <p style="text-align: center;"><i>Requests to participate and receipt of tenders</i></p> <p>5. Where notices are drawn up and transmitted by electronic means in accordance with Annex VIII, the time-limits for the receipt of tenders referred to in paragraph 2 and in the first subparagraph of paragraph 4 in open procedures, and the time-limit for the receipt of the requests to participate referred to in the first phrase of point (a) of paragraph 3, in restricted and negotiated procedures, may be shortened by <u>four</u> days.</p> <p>6. The time-limits for receipt of tenders in open, restricted and negotiated procedures referred to in paragraph 2, point (b) of paragraph 3 and paragraph 4 may be reduced by <u>three</u> days where the contracting authority offers free direct access to the entire contract documents and any supporting documents by electronic means as from the date on which the notice is sent, in accordance with Annex VIII.</p> <p>This reduction may be aggregated with the reduction referred to in paragraph 5.</p>
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11 Agenda for further discussion

	<u>Ref</u>
1. Public-Private Partnerships (PPPs) – forthcoming UNICE paper	5.1
2. Affiliated undertakings/In-house procurement – forthcoming UNICE paper	5.2

**PROPOSALS SUBMITTED BY THE COMMISSION ON 9.10.2000 REGARDING
THE ISSUE OF COMPLEX CONTRACTS**

Recital 18

For certain particularly complex contracts, such as contracts relating to the creation of important integrated transport infrastructure projects, or creation of large computer networks, or creation of large projects involving particular technical, financial or legal constraints, contracting authorities may find it objectively impossible to define the tools likely to meet their needs or assess what the contract can offer in terms of technical or financial solutions without this being attributable to a lack of information or deficiencies on their part. Provision should therefore be made for a negotiated procedure, with a call for competition which is sufficiently flexible to deal with these situations. In these cases, the sole aim of consultation should be to permit the contracting authority, through dialogue with the candidates, to explain its requirements and define them with the necessary precision so that tenders can be formulated and assessed objectively so as to ascertain the most advantageous tender in economic terms. This consultation should therefore be limited to the phase of the procedure which ends with the drawing-up of the definitive contract documents: tenders drawn up on the basis of those contract documents cannot therefore be open to negotiation. Contracting authorities may not use this procedure improperly or in such a way as to restrict or distort competition.

Article 29

Cases justifying use of the negotiated procedure with publication of contract notice

Contracting authorities may award their public contracts by negotiated procedure after publication of a contract notice, in the following cases:

- 1) In respect of public supply contracts, public service contracts and public works contracts:
 - (a) ...
 - (b) where the contracting authority is not objectively able to define the technical or other means of meeting its requirements, or is not objectively in a position to assess what the market can offer in terms of technical or financial solutions.
- 2) ...
- 3) ...
- 4) ...

Article 30

Specific rules on public contracts referred to in Article 29 point 1 b

1. Contracting authorities shall consult the selected candidates in conformity with the provisions of sections 1 and 2 of Chapter VII. The sole purpose of the consultation is to discuss and define appropriate ways of best satisfying the contracting authority's requirements so as to allow it to draw up the contract documents.

During the consultation, contracting authorities may not disclose to other participants, proposed solutions or other confidential information provided by a participant.

2. Once contracting authorities have declared the consultation at an end and have informed the participants of this, they shall invite all candidates who have proposed a solution during the consultation to submit tenders based on contract documents produced in conformity with Article 23 (1) first sub paragraph and transmitted to those candidates. Contracting authorities shall evaluate the tenders without negotiation according to criteria fixed to determine the most economically advantageous tender.
3. Contracting authorities may provide for prizes and payments to candidates. Such prizes and payments shall be taken into account to determine the thresholds in conformity with Article 8.
