Proposal for a European Parliament and Council Directive amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors

95/C 138/02)

(Text with EEA relevance)

COM(95) 107 final — 95/0080(COD)

(Submitted by the Commission on 27 April 1995)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular the last sentence of Articles 57 (2), 66 and 100a thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure referred to in Article 189b of the Treaty,

1. Whereas by its Decision 94/800/EC concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994) [1], the Council approved on behalf of the European Union *inter alia* the Agreement on Government Procurement, hereinafter referred to as 'the Agreement', the purpose of which is to establish an international framework of balanced rights and obligations with respect to government procurement with a view to achieving liberalization and expansion of world trade;

2. Whereas Directive 93/38/EEC coordinated the national procedures relating to the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, in order to introduce equal conditions of competition for such contracts in all the Member States;

3. Whereas, in view of the international rights and commitments devolving on the Union as a result of the acceptance of the Agreement, the arrangements to be applied to tenderers and products from signatory third countries are those defined by that Agreement;

4. Whereas, certain provisions of the Agreement introduce more favourable conditions for tenderers than those laid down in Directive 93/38/EEC;

5. Whereas, when contracts are awarded by contracting entities within the meaning of the agreement, the opportunities for access to public supplies, works and service contracts available under the Treaty to undertakings and products from the Member States must be at least as favourable as the conditions of access to public contracts within the Union accorded under the arrangements contained in the Agreement to undertakings and products from third countries which are signatories to the Agreement;

6. Whereas it is therefore necessary to adapt and supplement the provisions of Directive 93/38/EEC;

7. Whereas the need to ensure a real opening-up of the market and a fair balance in the application of procurement rules in these sectors continues to require that the entities to be covered must be identified on a different basis than by reference to their legal status;

8. Whereas the extension of the benefits of the provisions of Council Directive 93/38/EEC to third countries must be granted in such a way that equal treatment between private and public entities is ensured;

9. Whereas it must be ensured that the rules in Member States governing the system of property ownership shall not be prejudiced (Article 222 of the Treaty);

10. Whereas the application of the Directive must be simplified and the equilibrium, which has been reached in the current Community legislation in the

[1] OJ No L 336, 23. 12. 1994, p. 1.
[2] OJ No L 199, 9. 8. 1993, p. 84.

field of public procurement in these sectors, must be maintained;

11. Whereas it is therefore necessary to extend the applicability of the adaptations of the Directive to all the contracting entities and sectors covered by Directive 93/38/EEC;

12. Whereas the opening-up of contracts in the sectors covered by this Directive might have an adverse effect upon the economy of the Kingdom of Spain; whereas the economies of the Hellenic Republic and the Portuguese Republic will have to sustain even greater efforts; whereas it is appropriate that these Member States be granted adequate additional periods to implement this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Council Directive 93/38/EEC is hereby amended as follows:

1. Article 14 (1), (2) and (3) are replaced by the following:

'1. This Directive shall apply to contracts awarded by entities carrying out an activity defined in Article 2 (2) (d), provided that the estimated value, net of VAT, is not less than:

(a) ECU 600 000 in the case of supply and service contracts;

(b) ECU 5 000 000 in the case of works contracts.

2. This Directive shall apply to contracts awarded by entities carrying out an activity defined in Article 2 (2) (a), (b) and (c) provided that the estimated value, net of VAT, is not less than:

(a) the equivalent in ecu of 400 000 SDR for supply and service contracts;

(b) the equivalent in ecu of 5 000 000 SDR for works contracts.

3. For the purposes of calculating the estimated amount of a service contract, the contracting entity shall include the total remuneration of the service provider, taking account of the elements specified in paragraphs 4 to 14'.

2. Article 14 (10) and (11) are replaced by the following:

'11. The basis for calculating the value of a works contract for the purposes of paragraphs 1 or 2 shall be the total value of the work. 'Work' shall mean the result of building and civil engineering activities, taken as a whole, which are intended to fulfil an economic and technical function by themselves. In particular, where a supply, work or service is the subject of several lots, the value of each lot shall be taken into account when assessing the value referred to in paragraphs 1 or 2. Where the aggregate value of the lots equals or exceeds the value laid down in paragraphs 1 or 2, that paragraph shall apply to all the lots. However, in the case of works contracts, contracting entities may derogate from paragraphs 1 or 2 in respect of lots the estimated value net of VAT for which is less than ECU 1 million, provided that the aggregate value of those lots does not exceed 20 % of the overall value of the lots.

12. For the purposes of paragraphs 1 or 2, contracting entities shall include in the estimated value of a works contract the value of any supplies or services necessary for the execution of the contracts which they make available to the contractor.'

3. The current paragraphs 3 to 9, 12 and 13 of Article 14 are renumbered as paragraphs 4 to 10, 13 and 14.

4. The following paragraphs are added to Article 14:

'15. The value in national currencies of the thresholds specified in paragraphs 1 and 2 shall, in principle, be revised every two years with effect from the date provided for in Directive 93/36/EEC as far as the thresholds for supply and service contracts are concerned and from the date provided for in Directive 93/37/EEC as far as the thresholds for works contracts are concerned. The calculation of such value shall be based on the average daily values of those currencies expressed in ecus over the 24 months terminating on the last day of August preceding the revision with effect from 1 January. The values shall be published in the *Official Journal of the European Communities* at the beginning of November.

16. The thresholds of the GATT Agreement expressed in ecus shall in principle be revised every two years with effect from 1 January 1996. The calculation of these values shall be based on the average daily value of the ecu expressed in SDRs

over the 24 months terminating on the last day of August preceding the revision with effect from 1 January. These values shall be published as provided for in paragraph 15.

17. The method of calculation laid down in paragraphs 15 or 16 shall be examined pursuant to the provisions of Directive 93/36/EEC.'

5. The following paragraph 9 is added to Article 18:

'9. Contracting entities shall not seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from anyone that may have a commercial interest in the procurement.'

6. Article 20 (2) (f) is replaced by the following:

'(f) for additional works or services not included in the project initially awarded or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the execution of the contract, on condition that the award is made to the contractor or service provider executing the original contract:

— when such additional works or services cannot be technically or economically separated from the main contract without great inconvenience to the contracting entities,

— or when such additional works or services, although separable from the execution of the original contract, are strictly necessary to its later stages,

however, the aggregate value of contracts awarded for additional works or services may not exceed 50 % of the amount of the main contract;'

7. Article 21 (2) (c) is replaced by the following:

'(c) contracting entities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations. The information must be at least as detailed as that required in Annex XII B or Annex XII C.'

8. Article 22 (1) (b) is replaced by the following:

'(b) in the case of works contracts, the essential characteristics of the works contracts which the contracting entities intend to award, the estimated value of which is not less than:

— the threshold laid down in Article 14 (1) as regards contracts intended to be awarded by entities carrying out an activity defined in Article 2 (2) (d), or

— the threshold laid down in Article 14 (2) as regards contracts intended to be awarded by contracting entities carrying out an activity defined in Article 2 (2) (a), (b) and (c).'

9. Article 22 (3) is replaced by the following:

'3. Where the notice is used as a means of calling for competition in accordance with Article 21 (1) (b), it must have been published not more than 12 months prior to the date on which the invitation referred to in Article 21 (2) (c) is sent. Moreover, the contracting entity shall meet the deadlines laid down in Article 26 (2) or (3).'

10. Article 23 (1) and (2) are replaced by the following:

'1. This Article shall apply to design contests organized as part of a procedure leading to the award of a service contract the estimated value net of VAT for which is not less than:

— the value referred to in Article 14 (1) as regards entities carrying out an activity defined in Article 2 (2) (d), or

— the value referred to in Article 14 (2) as regards contracting entities carrying out an activity defined in Article 2 (2) (a), (b) and (c).

2. This Article shall apply to all design contests where the total amount of contest prizes and payments to participants is not less than the threshold laid down in Article 14 (2) for design contests organized by entities exercising an activity referred to in Article 2 (2) (a), (b) and (c) and ECU 600 000 for design contests organized by entities exercising an activity referred to in Article 2 (2) (d).'

11. Article 26 (1) is replaced by the following:

'1. In open procedures the time limit for the receipt of tenders shall be fixed by contracting entities at not less than 52 days from the date of dispatch of the notice. This time limit may be shortened to 36 days where contracting entities have published a notice in accordance with Article 22 (2), provided that, in addition to the information required in Part I of Annex XIV, this notice contains at least as much of the information required in notices established in

conformity to Annex XII A as is available at the time of publication of the notice referred to in Article 22 (1). This notice must furthermore have been published not less than 40 days and not more than 12 months before the publication of the notice provided for in Article 21 (1).'

12. Article 26 (2) is replaced by the following:

'2. In restricted procedures and in negotiated procedures with a prior call for competition, the time limit for receipt of requests to participate, in response to a notice published in accordance with Article 21 (1) (a) or in response to an invitation from a contracting entity in accordance with Article 21 (2) (c), shall, as a general rule, be at least 37 days from the date of dispatch of the notice or invitation and shall in any case not be less than the time limit for publication laid down in Article 25 (3), plus 10 days.

3. In restricted procedures and in negotiated procedures with a prior call for competition, the time limit for receipt of tenders shall be not less than 40 days from the date of the invitation to tender. However, this time limit may:

(a) be shortened to 24 days as a general rule and in any case not less than 10 days where contracting entities have published a notice in accordance with Article 22 (1), provided that, in addition to the information required in Part I of Annex XIV, this notice contains at least as much of the information required in notices established in conformity to Annex XII B or C as is available at the time of publication of the notice referred to in Article 22 (1). This notice must furthermore have been published not less than 40 days and not more than 12 months before the publication of the notice provided for in Article 21 (1); or

(b) be fixed by mutual agreement between the contracting entity and the selected candidates, provided that all tenderers are given equal time to prepare and submit tenders. Where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall, as a general rule, be at least 24 days and shall in any case not be less than 10 days from the date of the invitation to tender; the time allowed shall be sufficiently long to take account in particular of the factors mentioned in Article 28 (3).'

13. Article 28 (5) is replaced by the following:

'5. Requests for participation in contracts and invitations to tender must be made by the most rapid means of communication possible. When requests to participate are made by telegram, telex, telephone or any electronic means, they must, except when transmitted by electronic mail, be confirmed by letter dispatched before the expiry of the time limit referred to in Article 26 (2).'

14. The following paragraph 6 is added to Article 28:

'6. Tenders shall normally be submitted in writing directly or by mail. Where tenders by telex, telegram, telecopy or any electronic means are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender; in open or restricted procedures, this information must in particular include the definitive price proposed by the tenderer and a statement that the tenderer agrees to all terms, conditions and provisions of the invitation to tender. Where tenders are submitted by such means, they must, except when transmitted by electronic mail, be confirmed by letter dispatched before the expiry of the time limits referred to in Article 26 (1) or Article 26 (3). Tenders presented by telephone shall not be permitted.'

15. Article 30 (1) is replaced by the following:

'1. Contracting entities which so wish may establish and operate a system of qualification of suppliers, contractors or service providers. Contracting entities establishing or operating a qualification system shall ensure that suppliers, contractors and service providers may apply for qualification at any time.'

16. Article 35 (1) is replaced by the following:

'1. Article 34 (1) shall not apply where a Member State bases the award of contracts on other criteria, within the framework of rules in force at the time of adoption of this Directive, the aim of which is to give preference to certain tenderers, provided that the rules invoked are compatible with the Treaty.'

17. Article 28 is deleted.

18. Article 41 is replaced by the following:

'*Article 41*

1. The contracting entity shall, within 15 days of the date on which the request is received, inform any

eliminated candidate or tenderer who so requests in writing of the reasons for rejection of his application or his tender, and, in the case of a tender, of the characteristics and relevant advantages of the tender selected as well as the name of the successful tenderer.

However, contracting entities may decide that certain information on the contract award, referred to in the first subparagraph of this paragraph, be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers, contractors or service providers.

2. The contracting authority shall inform candidates or tenderers who so request in writing of the grounds on which it decided not to award a contract in respect of which a prior call for competition was made, or to recommence the procedure. It shall also inform the Office for Official Publications of the European Communities of that decision.

3. Contracting entities shall keep appropriate information on each contract which shall be sufficient to permit them at a later date to justify decisions taken in connection with:

(a) the qualification and selection of contractors, suppliers or service providers and award of contracts;

(b) recourse to derogations from the use of European specifications in accordance with Article 18 (6);

(c) use of procedures without prior call for competition in accordance with Article 20 (2);

(d) non-application of Titles II, III and IV in accordance with the derogations provided for in Title I.

4. The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission if the latter so requests'.

19. The following paragraph is inserted in Article 42:

'2. With respect to the activities to which Annexes, I, II, VII, VIII and IX refer, Member States shall, in accordance with the arrangements to be laid down under the procedure provided for in Article 40 (4) to (8), ensure that, by 31 October 1997 at the latest for the preceding year and thereafter by 31 October of every year, the Commission receives a statistical report. This report shall contain the following information:

(a) statistics on estimated value of contracts awarded above the threshold values provided for in Article 14 (2), broken down by category of activity and categories of works, products and services;

(b) statistics on the total value of contracts awarded above the threshold values provided for in Article 14 (2), broken down by category of activity, under each of the cases of Article 20 (2);

(c) statistics, broken down by category of activity, on the total value of contracts awarded under derogations to the GPA; and

(d) other information, to be determined pursuant to the procedure provided for in Article 40 (4) to (8), which is necessary to satisfy the obligations under the GPA regarding statistical reports, in particular as regards statistics on the country of origin of products and services.

The statistical information required under this provision shall not include information concerning contracts having as their object services listed in category 8 of Annex XVI A or in Annex XVI B.

20. The current paragraph 2 of Article 42 is renumbered as paragraph 3.

21. The following Article 42a is inserted, reading as follows:

'Article 42a

For the purposes of the award of contracts by the contracting entities, Member States shall apply in their relations conditions as favourable as those which they grant to third countries in implementation of the GATT Agreement. The Member States shall to this end consult each other within the Advisory Committee for Public Contracts on the measure to be taken pursuant to the Agreement.'

22. Annexes XII, XIII, XIV and XV to Directive 93/38/EEC are replaced by the Annex to this Directive.

Article 2

1. Member States shall adopt the measures necessary to comply with the provisions of this Directive and shall apply them by 1 January 1996. They shall forthwith inform the Commission thereof.

2. Nevertheless, the Kingdom of Spain may provide that the measures referred to in paragraph 1 shall apply from 1 January 1997 only and the Hellenic Republic and the Portuguese Republic may provide that the measures referred to in paragraph 1 shall apply from 1 January 1998 only.

Article 3

When Member States adopt the provisions referred to in Article 2, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 4

Member States shall communicate to the Commission the main provisions of national law, whether laws, regulations or administrative provisions, which they adopt in the field covered by this Directive together with a correlation table between this Directive and the national measures adopted.

Article 5

This Directive is addressed to the Member States.

ANNEX

'ANNEX XII

A. OPEN PROCEDURES

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.

2. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement). Category of service within the sense of Annex XVI A or XVI B and description (CPC classification).

   Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or more than one of these.

3. Place of delivery, site or place of performance of service.

4. For supplies and works:

   (a) — nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurrent contracts, see Article 14 (8), also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured, or

   — nature and extent of the services to be provided and general nature of the work;

   (b) indication of whether the suppliers can tender for some and/or all the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

   (c) for works contracts:

   information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

5. For services:

   (a) nature and quantity of the services to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurrent contracts, see Article 14 (8), also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;

   (b) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;

   (c) reference of the law, regulation or administrative provision;

   (d) indication whether legal persons should indicate the names and professional qualification of the staff to be responsible for the execution of the services;

   (e) indication whether suppliers can tender for a part of the services concerned.

6. Authorization to submit variants.

7. Derogation from the use of European specifications, in accordance with Article 18 (6).

8. Time limits for starting, delivery or completion or duration of service contract.

9. (a) Address from which the contract documents and additional documents may be requested.

   (b) Where appropriate, the amount and terms of payment of the sum to be paid to obtain such documents.

10. (a) Final date for receipt of tenders.

    (b) Address to which they must be sent.

    (c) Language or languages in which they must be drawn up.

11. (a) Where appropriate, the persons authorized to be present at the opening of tenders.

    (b) Date, hour and place of such opening.

12. Where appropriate, any deposits and guarantees required.

13. Main terms concerning financing and payment and/or references to the provisions in which they are contained.

14. Where appropriate, the legal form to be taken by the grouping of suppliers, contractors or service providers to whom the contract is awarded.

15. Minimum economic and technical conditions required of the supplier, contractor or provider to whom the contract is awarded.

16. Period during which the tenderer is bound to keep open his tender.

17. Criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned where they do not appear in the contract documents.

18. Other information.

19. Where appropriate the reference to publication of the periodic information notice in the *Official Journal of the European Communities* to which the contract refers.

20. Date of dispatch of the notice by the contracting entities.

21. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

B. RESTRICTED PROCEDURES

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.

2. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement). Category of service within the sense of Annex XVI A or XVI B and description (CPC classification).

   Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or more than one of these.

3. Place of delivery, site or place of performance of service.

4. For supplies and works:

   (a) — nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurrent contracts, see Article 14 (8), also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured, or

   — nature and extent of the services to be provided and general nature of the work;

   (b) indication of whether the suppliers can tender for some and/or all the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

   (c) for works contracts:

   information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

5. For services:

   (a) nature and quantity of the services to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurrent contracts, see Article 14 (8), also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;

   (b) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;

   (c) reference of the law, regulation or administrative provision;

   (d) indication whether legal persons should indicate the names and professional qualification of the staff to be responsible for the execution of the services;

   (e) indication whether suppliers can tender for a part of the services concerned.

6. Authorization to submit variants.

7. Derogation from the use of European specifications, in accordance with Article 18 (6).

8. Time limits for starting, delivery or completion or duration of service contract.

9. Where appropriate, the legal form to be taken by the grouping of suppliers, contractors or providers to whom the contract is awarded.

10. (a) Final date for receipt of requests to participate.

    (b) Address to which they must be sent.

    (c) Language or languages in which they must be drawn up.

11. Final date for dispatch of invitations to tender.

12. Where appropriate, any deposits and guarantees required.

13. Main terms concerning financing and payment and/or references to the texts in which these are contained.

14. Information concerning the supplier's, contractor's or provider's position and minimum economic and technical conditions required of him.

15. Criteria for the award of the contract where they are not mentioned in the invitation to tender.

16. Other information.

17. Where appropriate the reference to publication of the periodic information notice in the *Official Journal of the European Communities* to which the contract refers.

18. Date of dispatch of the notice by the contacting entities.

19. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

C. NEGOTIATED PROCEDURES

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.

2. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement). Category of service within the sense of Annex XVI A or XVI B and description (CPC classification).

   Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or more than one of these.

3. Place of delivery, site or place of performance of service.

4. For supplies and works:

   (a) — nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurrent contracts, see Article 14 (8), also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured, or

   — nature and extent of the services to be provided and general nature of the work;

   (b) indication of whether the suppliers can tender for some and/or all the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

   (c) for works contracts:

   information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

5. For services:

   (a) nature and quantity of the services to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurrent contracts, see Article 14 (8), also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;

   (b) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;

   (c) reference of the law, regulation or administrative provision;

   (d) indication whether legal persons should indicate the names and professional qualification of the staff to be responsible for the execution of the services;

   (e) indication whether suppliers can tender for a part of the services concerned.

6. Authorization to submit variants.

7. Derogation from the use of European specifications, in accordance with Article 18 (6).

8. Time limits for starting, delivery or completion or duration of service contract.

9. Where appropriate, the legal form to be taken by the grouping of suppliers, contractors or providers to whom the contract is awarded.

10. (a) Final date for receipt of requests to participate.

    (b) Address to which they must be sent.

    (c) Language or languages in which they must be drawn up.

11. Where appropriate, any deposits and guarantees required.

12. Main terms concerning financing and payment and/or references to the texts in which these are contained.

13. Information concerning the supplier's, contractor's or provider's position and minimum economic and technical conditions required of him.

14. Criteria for the award of the contract where they are not mentioned in the invitation to tender (or the contract documents).

15. Where appropriate, the names and addresses of suppliers, contractors or providers already selected by the contracting entity.

16. Where applicable, date(s) of previous publications in the *Official Journal of the European Communities*.

17. Other information.

18. Where appropriate, the reference to publication of the periodic information notice in the *Official Journal of the European Communities* to which the contract refers.

19. Date of dispatch of the notice by the contracting entities.

20. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

ANNEX XIII

NOTICE ON THE EXISTENCE OF A QUALIFICATION SYSTEM

I. NOTICES NOT USED AS A MEANS OF CALLING FOR COMPETITION

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.

2. Purpose of the qualification system (description of the goods, services or works or categories thereof to be procured through the system).

3. Conditions to be fulfilled by suppliers, contractors and service providers in view of their qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of such conditions and verification methods is voluminous and based on documents available to interested suppliers, contractors and service providers, a summary of the main conditions and methods and a reference to those documents shall be sufficient.

4. Address where further information and documentation (e. g. the documents mentioned under point 3 concerning the qualification system can be obtained (if different from the address mentioned under point 1).

5. Period of validity of the qualification system and the formalities for its renewal.

6. (a) Estimated date of the commencement of the procedures of the award of the contract(s) (if known).

   (b) Type of award procedure to be used (if known).

7. Date of dispatch of the notice by the contracting entities.

8. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

II. NOTICES USED AS A MEANS OF CALLING FOR COMPETITION

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.

2. Nature of the contract or contracts (supply, works or service, where appropriate, state if framework agreement(s) are envisaged). Category of service within the sense of Annex XVI A or XVI B and description (CPC classification).

   Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or more than one of these.

3. For supplies and works:

   (a) — nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurrent contracts, see Article 14 (8), also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured, or

   — nature and extent of the services to be provided and general nature of the work;

   b) indication of whether the suppliers can tender for some and/or all the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

   (c) for works contracts:

   information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

4. For services:

   (a) nature and quantity of the services to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurrent contracts, see Article 14 (8), also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;

   (b) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;

   (c) reference of the law, regulation or administrative provision;

   (d) indication whether legal persons should indicate the names and professional qualification of the staff to be responsible for the execution of the services;

   (e) indication whether suppliers can tender for a part of the services concerned;

5. Conditions to be fulfilled by suppliers, contractors and service providers in view of their qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of such conditions and verification methods is voluminous and based on documents available to interested suppliers, contractors and service providers, a summary of the main conditions and methods and a reference to those documents shall be sufficient.

6. Address where further information and documentation (e. g. the documents mentioned under point 5) concerning the qualification system can be obtained (if different from the address mentioned under point 1).

7. Period of validity of the qualification system and the formalities for its renewal.

8. (a) Estimated date of the commencement of the selection of candidates regarding specific contract(s) (if known).

   (b) Type of award procedure to be used (if known).

9. Date of dispatch of the notice by the contracting entities.

10. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

ANNEX XIV

PERIODIC INFORMATION NOTICE

I. NOTICES NOT USED AS A MEANS OF CALLING FOR COMPETITION

A. *For supply contracts*

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity or the service from which additional information may be obtained.

2. Nature and quantity or value of the services or products to be supplied.

3. (a) Estimated date of the commencement of the procedures of the award of the contract(s) (if known).

   (b) Type of award procedure to be used.

4. Other information.

5. Date of dispatch of the notice by the contracting entities.

6. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

B. *For works contracts*

1. Name, address, telegraphic address, telephone, telex and telecopier number of the contracting entity.

2. (a) Site.

   (b) Nature and extent of the services to be provided, the main characteristics of the work or of the lots by reference to the work.

   (c) An estimate of the cost of the service to be provided.

3. (a) Type of award procedure to be used.

   (b) Date scheduled for initiating the award procedures in respect of the contract or contracts.

   (c) Date scheduled for the start of the work.

   (d) Planned timetable for completion of the work.

4. Terms of financing of the work and of price revision.

5. Other information.

6. Date of dispatch of the notice by the contracting entities.

7. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

C. *For service contracts*

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity or the service from which additional information may be obtained.

2. Intended total procurement in each of the service categories listed in Annex XVI A.

3. (a) Estimated date of the commencement of the procedures of the award of the contract(s) (if known).

   (b) Type of award procedure to be used.

4. Other information.

5. Date of dispatch of the notice by the contracting entities.

6. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

II. NOTICES USED AS A MEANS OF CALLING FOR COMPETITION

Contracting entities shall supply as much of the below information as is available, including in any case the information requested under points 1, 2, 4 or 5 as appropriate, 10 and 11.

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.

2. Nature of the contract or contracts (supply, works or service, where appropriate, state if framework agreement(s) are envisaged). Category of service within the sense of Annex XVI A or XVI B and description (CPC classification).

   Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or more than one of these.

3. Place of delivery, site or place of performance of service.

4. For supplies and works:

   (a) — nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurrent contracts, see Article 14 (8), also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured, or

   — nature and extent of the services to be provided and general nature of the work;

   (b) indication of whether the suppliers can tender for some and/or all the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

   (c) for works contracts:

   information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

5. For services:

   (a) nature and quantity of the services to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurrent contracts, see Article 14 (8), also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;

   (b) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;

   (c) reference of the law, regulation or administrative provision;

   (d) indication whether legal persons should indicate the names and professional qualification of the staff to be responsible for the execution of the services;

   (e) indication whether suppliers can tender for a part of the services concerned.

6. Authorization to submit variants.

7. Derogation from the use of European specifications, in accordance with Article 18 (6).

8. Time limits for starting, delivery or completion or duration of service contract.

9. Where appropriate, the legal form to be taken by the grouping of suppliers, contractors or providers to whom the contract is awarded.

10. The address to which interested undertakings must express their interest in writing. If different, also the address from which documents relating to the contract may be requested.

11. Type of award procedure to be used (restricted or negotiated). No further notices calling for competition will be published.

12. (a) Final date for receipt of requests to participate.

    (b) Address to which they must be sent.

    (c) Language or languages in which they must be drawn up.

13. Where appropriate, any deposits and guarantees required.

14. Main terms concerning financing and payment and/or references to the texts in which these are contained.

15. Information concerning the supplier's, contractor's or provider's position and minimum economic and technical conditions required of him.

16. Criteria for the award of the contract where they are not mentioned in the invitation to tender.

17. Other information.

18. Where appropriate the reference to publication of the periodic information notice in the *Official Journal of the European Communities* to which the contract refers.

19. Date of dispatch of the notice by the contracting entities.

20. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

ANNEX XV

NOTICE ON CONTRACTS AWARDED

I. **Information for publication in the *Official Journal of the European Communities***

1. Name and address of the contracting entity.

2. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement.

3. At least a summary indication of the nature and quantity of the products, works or services provided.

4. (a) Form of the call for competition (notice on the existence of a qualification procedure; periodic information notice; call for tenders).

   (b) Reference of publication of the notice in the *Official Journal of the European Communities.*

   (c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of Article 20 (2), or Article 16.

5. Award procedure (open, restricted or negotiated).

6. Number of tenders received.

7. Date of award of the contract.

8. Price paid for bargain purchases pursuant to Article 20 (2) (j).

9. Name and address of successful supplier(s), contractor(s) or service provider(s).

10. State, where appropriate, whether the contract has been, or may be, subcontracted.

11. Price paid (or range of prices).

12. Optional information:

   — value and share of the contract which may be subcontracted to third parties,

   — award criteria.

II. **Information not intended for publication**

13. Number of contracts awarded (where an award has been split between more than one supplier).

14. Value of each contract awarded.

15. Country of origin of the product or service (EEC origin or non-Community origin; if the latter, broken down by third country).

16. Was recourse made to the exceptions to the use of European specifications provided for under Article 18 (6). If so, which?

17. Which award citeria was used (most economically advantageous; lowest price; criteria permitted pursuant to Article 35)?

18. Was the contract awarded to a bidder who submitted a variant, in accordance with Article 34 (3)?

19. Were any tenders excluded on the grounds that they were abnormally low, in accordance with Article 34 (5)?

20. Date of transmission of the notice by the contracting entities.

21. In the case of contracts for services listed in Annex XVI B, agreement by the contracting entity to publication of the notice (Article 24 (3)).'