



DECISION (EU) 2016/245 OF THE EUROPEAN CENTRAL BANK

of 9 February 2016

laying down the rules on procurement (ECB/2016/2)

(recast)

THE EXECUTIVE BOARD OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 11.6 thereof,

Having regard to Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the European Central Bank ⁽¹⁾, and in particular Article 19 thereof,

Whereas:

- (1) Decision ECB/2007/5 ⁽²⁾ has been amended several times and changed considerably in substance. Since further amendments are to be made, it should be recast in the interests of clarity.
- (2) The European Central Bank (ECB) is committed to the principle of cost-efficiency and seeks the best value for money from the procurement of products, services and works.
- (3) Directive 2004/18/EC of the European Parliament and of the Council ⁽³⁾ has been replaced by Directive 2014/24/EU of the European Parliament and of the Council ⁽⁴⁾. Neither this Directive nor Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ⁽⁵⁾ applies to the ECB.
- (4) The ECB respects the general principles of procurement law as reflected in Directive 2014/24/EU and Regulation (EU, Euratom) No 966/2012.
- (5) Article 6 of Council Regulation No 1 determining the languages to be used by the European Economic Community ⁽⁶⁾ provides that the institutions of the Union may stipulate in their rules of procedure which of the official languages are to be used in specific cases.

⁽¹⁾ OJ L 80, 18.3.2004, p. 33.

⁽²⁾ Decision ECB/2007/5 of 3 July 2007 laying down the Rules on Procurement (OJ L 184, 14.7.2007, p. 34).

⁽³⁾ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).

⁽⁴⁾ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

⁽⁵⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

⁽⁶⁾ Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58).

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- (6) Decision ECB/2008/17 ⁽¹⁾ lays down the framework for joint Eurosystem procurement,

HAS ADOPTED THIS DECISION:

CHAPTER I

GENERAL RULES

*Article 1***Definitions**

For the purposes of this Decision, the following definitions apply:

- (1) ‘contracts’ means contracts for pecuniary interest concluded in writing between the ECB and one or more suppliers and having as their subject matter the execution of works, the supply of products or the provision of services;
- (2) ‘supply contracts’ means contracts having as their subject matter the purchase, lease, rental or hire purchase, with or without an option to buy, of products. A contract having as its subject matter the supply of products and which also covers, as an incidental matter, siting and installation operations shall be considered a supply contract;
- (3) ‘service contracts’ means contracts, other than those referred to in point (2), having as their subject matter the provision of services. A contract having as its subject matter the provision of services including activities related to works that are only incidental to the principal subject matter of the contract shall be considered a service contract;
- (4) ‘works contracts’ means contracts, other than those referred to in points (2) and (3), having as their subject matter either the execution, or both the design and execution, of works. A ‘work’ means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;
- (5) ‘concession contracts’ means contracts having as their subject matter either the provision of services or the execution of works, whose reward mainly consists of a permission granted by the ECB to exploit these works or to provide services to others;
- (6) ‘deliverables’ means the works to be executed, services to be provided or products to be supplied under a contract;
- (7) ‘innovation partnership’ means a procedure in which any supplier may request to participate and where the ECB sets up a partnership with one or more candidates admitted to that procedure with the aim of developing and purchasing innovative products, services or works;
- (8) ‘dynamic purchasing system’ means a completely electronic process for purchasing commonly used products, the characteristics of which, as generally available on the market, meet the ECB’s requirements;

⁽¹⁾ Decision ECB/2008/17 of 17 November 2008 laying down the framework for joint Eurosystem procurement (OJ L 319, 29.11.2008, p. 76).

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- (9) ‘framework agreement’ means an agreement between the ECB and one or more suppliers, the purpose of which is to establish the terms governing the specific contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged;
- (10) ‘supplier’ means any natural or legal person or public entity or group of such persons and/or entities which offers on the market the execution of works, the supply of products or the provision of services;
- (11) ‘candidate’ means a supplier that has submitted an application to participate in a restricted or negotiated procedure, a competitive dialogue or an innovation partnership;
- (12) ‘tenderer’ means a supplier that has submitted a tender;
- (13) ‘research and development contracts in the field of banknote security’ means contracts related to theoretical work or practical experimentation, analysis or research carried out under controlled conditions either:
- for acquiring new knowledge or developing new or improved materials, manufacturing processes or devices for the origination, production, transport, issuance, authentication or destruction of euro banknotes, including the origination materials thereof, or
 - for initiating the manufacture of new or improved materials, products or devices for the origination, production, transport, issuance, authentication and destruction of euro banknotes, including the origination materials thereof.
- Research and development contracts in the field of banknote security do not include contracts for the pilot printing of euro banknotes;
- (14) ‘open procedure’ means a procedure in which any interested supplier may submit a tender;
- (15) ‘restricted procedure’ means a procedure in which any supplier may request to participate but only those candidates invited by the ECB may submit a tender;
- (16) ‘negotiated procedure’ means a procedure in which the ECB consults the suppliers of its choice and negotiates the terms of any contract with one or more of them;
- (17) ‘competitive dialogue’ means a procedure in which any supplier may request to participate and where the ECB conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements;
- (18) ‘electronic auction’ means a repetitive process involving an electronic system in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented, which occurs after an initial full evaluation of the tenders, and which enables them to be ranked using automatic evaluation methods;
- (19) ‘invitation to tender’ means the invitation sent to candidates or suppliers to submit a tender and specifying the procedure, the ECB’s requirements and the contractual terms and conditions;

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- (20) ‘days’ means calendar days;
- (21) ‘written’ or ‘in writing’ means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means;
- (22) ‘call for expression of interest’ means a procedure to establish a list of suitable suppliers that may be invited to participate in procurement procedures.

*Article 2***Scope**

1. The ECB shall award supply, service, works and concession contracts for its own account in accordance with this Decision.

2. The ECB may also carry out in accordance with this Decision joint tender procedures for its own account and on behalf of one or more national central banks (NCBs), national supervisory authorities, Union institutions and bodies and/or international organisations. In such cases, the ECB shall specify in the procurement documents: (a) the other participating contracting authorities; and (b) the envisaged structure of the contractual relationships.

3. This Decision shall not apply to:

(a) cooperation agreements:

- (i) that serve the fulfilment of the public tasks of the Eurosystem or the European System of Central Banks, which are entered into by the ECB and NCBs; or
- (ii) that serve the fulfilment of public tasks, which are entered into by the ECB and other Union institutions and bodies, international organisations or public authorities;

where the cooperation is governed solely by considerations relating to the public interest, in particular the achievement of common, non-commercial objectives and the parties perform less than 20 % of the relevant activities on the open market;

- (b) procurement procedures in which the ECB participates organised by any of the following: (i) Union institutions and bodies; (ii) international organisations; or (iii) public authorities, in each case provided that the rules governing these procurement procedures are in line with the general principles of Union procurement law;
- (c) the procurement of banknotes, which is governed by Guideline (EU) 2015/280 of the European Central Bank (ECB/2014/44) ⁽¹⁾;
- (d) the issue, sale, purchase or transfer of securities or other financial instruments and financial services in connection with these transactions;

⁽¹⁾ Guideline (EU) 2015/280 of the European Central Bank of 13 November 2014 on the establishment of the Eurosystem Production and Procurement System (ECB/2014/44) (OJ L 47, 20.2.2015, p. 29).

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- (e) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;
- (f) employment contracts between the ECB and its staff concluded in accordance with the ECB's Conditions of Employment;
- (g) arbitration and conciliation services;
- (h) research and development services unless the benefits related to the services accrue exclusively to the ECB for its own use and the services provided are remunerated by the ECB;
- (i) contracts for broadcasting time or programme provision that are awarded to audiovisual or radio media services providers;
- (j) contracts relating to the legal representation of the ECB during or in preparation for court or arbitration proceedings and contracts for the exclusive services of notaries, trustees and court officials;
- (k) public passenger transport services by rail or metro.

4. This Decision shall not apply to contracts between the ECB and a legal person governed by private or public law over which the ECB exercises control similar to that which it exercises over its own business units, where more than 80 % of the legal person's activities are carried out in the performance of tasks entrusted to it by the ECB and there is no direct private capital participation that ensures a controlling interest in that legal person.

5. In exceptional cases, the ECB may conduct procedures for the selection of natural persons to serve as members on high-level advisory boards assisting the ECB in the fulfilment of its tasks. Such experts shall receive a fixed allowance set in advance, which shall not exceed per expert the threshold set in Article 4(3)(a). They shall be selected on the basis of their professional expertise, using selection criteria that follow the general principles outlined in Article 3. The ECB may adopt a specific decision that sets out in greater detail the procedure and conditions for selection.

6. This Decision shall apply to the following contracts subsidised directly by the ECB by more than 50 %:

- (a) works contracts the estimated value of which, net of VAT, is equal to or exceeds the threshold amount set out in Article 4(3) for works contracts, and which have as their subject matter civil engineering activities or building work for facilities intended to be used for administrative, sports, health, recreation and leisure or school and university purposes;
- (b) service contracts which are connected to a works contract referred to in point (a) the estimated value of which, net of VAT, is equal to or exceeds the threshold amount set out in Article 4(3) for service contracts.

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The ECB shall ensure that such contracts are awarded in accordance with this Decision, even if such contracts are awarded by another entity or if the ECB awards such contracts on behalf of another entity.

7. Mixed contracts whose scope comprises deliverables attributable to different types of contracts shall be awarded in accordance with the rules and provisions applicable to the deliverable that forms the main subject matter of the contract. The main subject matter of a mixed contract shall be determined by the deliverable with the highest estimated value, unless there are exceptional circumstances requiring that another deliverable, due to its specific qualities, should form the main subject matter of the contract.

*Article 3***General principles**

1. Procurement procedures shall be carried out in accordance with the general principles of transparency and publicity, proportionality, equal access and equal treatment, non-discrimination and fair competition.

2. The ECB shall conduct procurement procedures in English, unless there are exceptional circumstances relating to the procedure or the subject matter of the contract that require the use of different languages. The ECB shall document any such circumstances.

*Article 4***Contract value thresholds**

1. Contracts the estimated value of which, net of VAT, equals or exceeds the threshold amounts set out in paragraph 3, shall be awarded in accordance with the procedures laid down in Chapter II.

2. Contracts the estimated value of which, net of VAT, is below the threshold amounts set out in paragraph 3 shall be awarded in accordance with the procedures laid down in Chapter III. Contracts with an estimated value of less than EUR 20 000 shall be awarded in line with Article 37.

3. The following threshold amounts shall apply:

- (a) EUR 209 000 for supply contracts and service contracts;
- (b) EUR 5 225 000 for works contracts and concession contracts.

*Article 5***Calculation of the estimated value of a contract**

1. The calculation of the estimated value of a contract shall be based on the total amount payable, net of VAT, as estimated by the ECB, including for any form of option and renewals specified in the contract notice. The calculation shall include ancillary costs, in particular premium payments, fees, interest, commission, travel and accommodation costs and prizes, payments and any other form of remuneration to be made to candidates or tenderers.

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2. The estimate shall be valid at the time at which the ECB decides on the type of procurement procedure to use.
3. No procurement may be subdivided with the intention of avoiding the application of the procedures set out in this Decision. The calculation of the estimated value of a contract shall not be made with the intention of excluding it from the application of the procedures set out in Chapter II or Article 35.
4. The calculation of the estimated value of works contracts shall take account of the total costs related to the execution of the works including the value of products necessary for executing the works and placed at the contractor's disposal by the ECB. The costs related to the design and planning of the works shall also be included if they form part of the works contract.
5. With regard to contracts for the continuous supply of products and services, the value to be taken as a basis for calculating the estimated contract value shall, where appropriate, be the following:
 - (a) in the case of fixed-term contracts: the total value for the full term;
 - (b) in the case of contracts without a fixed term: the monthly value multiplied by 48.
6. In the case of successive supply, service or works contracts of the same type the calculation of the estimated contract value shall be based on the total actual value of the successive contracts awarded during the preceding 12 months. The estimate shall take account of any changes in quantity or value which are expected to occur in the course of the 12 months following the completion of the initial contract.
7. If a contract is divided into several lots, or if several contracts to be awarded are strictly interrelated and have the same objective, the combined value of all lots or individual contracts shall be considered. If the combined value is equal to or exceeds the threshold amounts set out in Article 4(3), the procedures laid down in Chapter II of this Decision shall apply to all lots and contracts. The ECB may, however, apply the procedure laid down in Article 35 or, if applicable, in Article 37 in respect of individual lots and contracts the estimated value of which is less than EUR 80 000, net of VAT, for supply and service contracts and less than EUR 1 million, net of VAT, for works contracts, provided that the total estimated value of all lots awarded pursuant to the procedures laid down in Articles 35 and 37 does not exceed 20 % of the total estimated value of all lots.
8. The value of an innovation partnership shall be calculated taking into account the maximum estimated value net of VAT of the research and development activities to take place during all stages of the envisaged partnership as well as of the products, services or works to be developed and procured at the end of the envisaged partnership.
9. The value of framework agreements and dynamic purchasing systems shall be calculated on the basis of the maximum estimated value net of VAT of all the contracts envisaged for the total term of the framework agreement or the dynamic purchasing system.



Article 6

Exceptions

1. In the following cases the ECB may deviate from specific procedural requirements or award a contract directly to one supplier:

- (a) where, for mandatory reasons and in accordance with objective criteria, the contract can be awarded only to one particular supplier. These reasons may be of a technical, artistic or legal nature, including the exercise of exclusive rights established in accordance with applicable law, but not of an economic nature;
- (b) where, for reasons of extreme urgency brought about by events unforeseeable to the ECB, the time limits for a procurement procedure cannot be complied with;
- (c) where the ECB has classified the contract as secret or where the performance of the contract must be accompanied by special security measures, in accordance with the ECB's rules on security or where protection of the ECB's essential interests so requires. Research and development contracts in the field of banknote security require special security measures and are therefore exempt from the requirements laid down in this Decision;
- (d) in the case of supply contracts where the products involved are manufactured purely for the purpose of research, experimentation, study or development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;
- (e) where deliverables are purchased on particularly advantageous terms from either a supplier which is definitively winding up its business activities or the receivers or liquidators appointed following a bankruptcy, an arrangement with creditors, or a similar procedure under national laws or regulations;
- (f) in the case of additional products acquired under a supply contract that replace or extend the initial products or installations, where a change of supplier would lead to disproportionate difficulties in operation and maintenance. The duration of contracts relating to such additional products shall not exceed 3 years; and
- (g) in other cases expressly provided for in this Decision.

In all the cases set out in the first subparagraph the ECB shall maintain competition between several suitable suppliers whenever possible.

2. Irrespective of the contract value, the ECB may award a contract in accordance with Article 35 if the main subject matter of the contract is one of the services listed in Annex I.

Article 7

Duration and extension of contracts

1. The term of a contract including any extensions shall not exceed 4 years, except to the extent that its subject matter or another legitimate reason justifies a longer duration.

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2. If a contract is concluded for a fixed term, its term may be extended beyond that initial term under the following conditions:
- (a) the contract notice or, in the case of a procedure under Chapter III, the request for a proposal, provided for the possibility of extension;
 - (b) the extension is duly justified; and
 - (c) the extensions were taken into consideration when determining the applicable procedure in accordance with Article 4.
3. Otherwise, the term of a fixed-term contract may only be extended in the situations described in Article 6(1).

*Article 8***Additional products, services and works**

1. The ECB may order from the initial contractor additional products, services or works, irrespective of their value, provided that:
- (a) the procurement documents include clear and precise review or option clauses that provide for additional products, services or works; and
 - (b) the additional products, services or works were taken into account when calculating the value of the contract in accordance with Article 5.

The clauses shall state the scope and nature of possible reviews or options and the conditions under which they may be used. They shall not provide for reviews or options that would alter the overall nature of the initial contract.

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2. The ECB may order from the initial contractor additional products, services or works, irrespective of their value, provided that the necessary amendments to the initial contract are not substantial.

Amendments shall be considered substantial if they change the overall nature of the contract, in particular where one or more of the following conditions are met:

- (a) the amendment introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of candidates other than those initially selected, or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the procurement procedure;
- (b) the amendment changes the economic balance of the contract in favour of the contractor in a manner which was not provided for in the initial contract;
- (c) the amendment extends the scope of the contract considerably;
- (d) a new contractor replaces the one to which the initial contract was awarded in cases other than those provided for in paragraph 4.

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Amendments shall be considered not to be substantial in any circumstances if their cumulative value remains below (a) the relevant threshold set out in Article 4(3), and (b) 10 % of the initial contract value for supply and service contracts or 15 % of the initial contract value for works contracts.

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3. In addition, the ECB may order from the initial contractor additional products, services or works:

- (a) if the additional products, services or works become necessary due to circumstances which the ECB, acting diligently, could not have foreseen, provided that the amendment does not alter the overall nature of the initial contract; or
- (b) if the additional products, services or works that have become necessary cannot be technically or economically separated from the initial contract without significant inconvenience or substantial duplication of costs.

However, the value of additional products, services or works shall in each single case not exceed 50 % of the initial value of the contract.

4. A contract may be amended by replacing the contractor to which it was awarded with another contractor, as a consequence of either:

- (a) an unequivocal, clear and precise review or option clause;
- (b) the universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another supplier that fulfils the same criteria as were initially applied for the selection of the initial contractor, provided that this does not entail other substantial amendments to the contract and is not aimed at circumventing the application of this Decision; or
- (c) the ECB assuming the obligations towards the contractor's subcontractors including the obligation to make payments directly to the subcontractors, where this is provided for in the contract.

5. In connection with initial contracts awarded in accordance with Chapter II, the ECB shall publish a notice in the Official Journal concerning any order of additional products, services or works in accordance with paragraph 3 if the total value of additional products, services or works ordered under such a contract exceeds 50 % of the initial contract value.

6. If none of the conditions set out in paragraphs 1 to 4 are met, contracts for additional products, services or works may only be awarded in accordance with Articles 4 and 6 of this Decision.

CHAPTER II

PUBLIC TENDER PROCEDURES

*Article 9***Overview**

1. The ECB shall award contracts of which the estimated value equals or exceeds the threshold amounts set out in Article 4(3) by open procedure. In justified cases the ECB may apply a restricted procedure, a negotiated procedure, a competitive dialogue or an innovation partnership, under the conditions set out in Articles 11 to 14.

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2. The ECB may establish framework agreements or dynamic purchasing systems and award contracts on that basis in accordance with the conditions set out in Articles 18 and 19 respectively.
3. The procedures set out in paragraphs 1 and 2 may be supplemented by an electronic auction as described in Article 16.
4. The ECB may carry out design contests. The procedure for a design contest shall be laid down in the contest notice published in the Official Journal. It shall comply with the general principles for design contests, including publicity, transparency and non-discrimination, and the integrity and independence of the contest jury. The criteria to be used in design contests may include, in particular, criteria relating to the artistic value of a design concept and its budget compliance.
5. The ECB shall award concession contracts in line with Article 20 and the general principles set out in Article 3. The award procedure shall be laid down in the contract notice.

*SECTION 1****Types of procedure and conduct of the procedure****Article 10***Open procedure**

1. On publication of a contract notice, all interested suppliers may request the invitation to tender if not made available by electronic means. The ECB shall provide the invitation to tender within 6 days of receipt of the request, provided that the request was made in good time before the time limit for the submission of tenders.
2. Interested suppliers shall submit their tender within the time limit set by the ECB and include all documentation requested by the ECB.
3. The ECB shall award the contract to the tenderer whose tender best meets the award criteria set out in the contract notice or invitation to tender.

*Article 11***Restricted procedure**

1. The ECB may apply the restricted procedure if:
 - (a) the ECB's requirements can be defined in such detail that tenders can be compared against each other and the contract can be awarded without negotiations with the tenderers; and
 - (b) it is necessary to restrict the number of tenders for administrative reasons or because of the nature of the procurement.
2. On publication of a contract notice, interested suppliers may apply for participation in the restricted procedure. They shall submit their application within the time limit specified in the contract notice and provide the documentation requested by the ECB.

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3. The ECB shall verify the eligibility of candidates and evaluate the applications against the selection criteria set out in the contract notice. The ECB shall invite at least five eligible candidates that satisfy the selection criteria to submit a tender, provided that a sufficient number of candidates meeting the selection criteria are available.

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4. The candidates invited shall submit their tender within the time limit set by the ECB and include all documentation requested by the ECB.

5. The ECB shall award the contract to the tenderer whose tender best meets the award criteria set out in the contract notice or invitation to tender.

Article 12

Negotiated procedure

1. The ECB may apply a negotiated procedure if:

- (a) the ECB's needs cannot be met without the adaptation of readily available solutions, or require design or innovative solutions;
- (b) the contract cannot be awarded without prior negotiations because of the deliverables' specific nature, complexity, legal and financial character and the corresponding risks; or
- (c) the technical specifications cannot be established with sufficient precision with reference to a technical standard or reference.

2. The ECB may also use the negotiated procedure if only irregular or unacceptable tenders have been obtained in response to an open or restricted procedure or a competitive dialogue. The ECB may refrain from publishing a new contract notice if it includes in the negotiated procedure all of, and only, the tenderers that participated in the initial procedure, were eligible, met the selection criteria and submitted their tenders in accordance with the formal tender requirements. If no tenders or no suitable tenders have been obtained, the ECB may also start a negotiated procedure in accordance with Article 35 without publication of a notice. In all cases, the original terms of the contract to be awarded shall not be substantially altered.

3. On publication of a contract notice interested suppliers may apply to participate in the negotiated procedure. They shall submit their application within the time limit specified in the contract notice and provide the documentation requested by the ECB.

4. The ECB shall verify the eligibility of candidates and evaluate the applications against the selection criteria set out in the contract notice. It shall invite at least three eligible candidates satisfying the selection criteria to submit a tender, provided that a sufficient number of candidates meeting the selection criteria are available. ► **M1** ————— ◀

5. Following the evaluation of the tenders, the ECB may negotiate with tenderers in order to bring their tenders in line with the ECB's requirements. The ECB may start negotiations either:

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- (a) with the best-ranked tenderer. If the negotiations with the best-ranked tenderer fail, the ECB may take up negotiations with the next-ranked tenderer; or
- (b) simultaneously with several tenderers whose tenders best meet the award criteria. The number of tenderers admitted to the negotiations may be reduced in successive stages by applying the award criteria set out in the contract notice or the invitation to tender.

Before starting negotiations, the ECB shall inform all tenderers eligible to participate in negotiations on how the negotiations will be conducted.

6. The scope of the negotiations may include the tenderers' technical offers, financial offers and the contractual terms and conditions provided that the scope of the tender procedure is not substantially altered. The ECB may also invite tenderers to submit a revised tender. During the negotiations, the ECB shall ensure equal treatment of all tenderers invited to participate in negotiations.

7. Once the negotiations are closed, the ECB shall award the contract to the tenderer whose tender best meets the award criteria set out in the contract notice or invitation to tender.

*Article 13***Competitive dialogue**

1. The ECB may carry out a competitive dialogue in the cases outlined in Article 12(1).

2. On publication of a contract notice interested suppliers may apply for participation in the dialogue. They shall submit their application within the time limit specified in the contract notice and provide the documentation requested by the ECB.

3. The ECB shall verify the eligibility of candidates and evaluate the applications against the selection criteria set out in the contract notice. The ECB shall invite at least three eligible candidates to participate in the dialogue and provide them with a request for a proposal setting out the ECB's needs. The aim of the dialogue is to identify and define the solution that is best suited to meet the ECB's needs. The ECB may discuss all aspects of the contract with the candidates. The number of candidates invited shall be sufficient to ensure genuine competition. If the number is below the minimum number, the ECB may continue the procedure with all candidates meeting the selection criteria.

4. The dialogue shall be carried out within the timeframe set out in the contract notice. During the dialogue, the ECB shall ensure equal treatment of all participants. The ECB may not provide any information which may give some participants an advantage over others or reveal to other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without their specific written agreement thereto.

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5. If the contract notice so provides, the ECB may carry out the dialogue in successive stages to reduce the number of solutions to be discussed during the dialogue stage. The ECB shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs. The ECB shall select the solutions to be considered by applying the award criteria set out in the contract notice or the request for a proposal.
6. Having declared that the dialogue is concluded, the ECB shall ask the candidates participating in the dialogue to submit their final tenders on the basis of the solutions presented and specified during the dialogue. The ECB may request the tenderers to clarify, specify or optimise certain aspects of their tenders or to confirm commitments contained in the tender provided that this does not have the effect of modifying substantial aspects of the tender and does not risk distorting competition or causing discrimination.
7. The ECB shall evaluate the tenders received against the award criteria laid down in the contract notice or the request for a proposal. Once the evaluation is completed, the ECB shall award the contract to the tenderer whose tender best meets the award criteria, which must include quality aspects.

*Article 14***Innovation partnership**

1. The ECB may apply an innovation partnership procedure for the development of innovative products, services or works not available on the market and their subsequent purchase, provided that they comply with the performance level and maximum costs agreed between the ECB and the participants in the partnership.
2. On publication of a contract notice, interested suppliers may apply to participate in the innovation partnership. They shall submit their application within the time limit specified in the contract notice and provide the documentation requested by the ECB.
3. The ECB shall verify the eligibility of candidates and evaluate the applications against the selection criteria set out in the contract notice. The ECB shall invite at least three eligible candidates to participate in the procedure and provide them with a request for a proposal setting out the ECB's needs. The number of candidates invited shall be sufficient to ensure genuine competition. If the number is below the minimum number, the ECB may continue the procedure with all candidates meeting the selection criteria.
4. The ECB may decide to set up an innovation partnership with one partner or with several partners conducting separate research and development activities.
5. The innovation partnership shall be structured in successive phases following the sequence of steps in the research and innovation process, which may include manufacturing of products, provision of services or completion of works. The innovation partnership shall set intermediate targets to be attained by the partners and provide for payment in instalments. If the procurement documents so provide, after each phase the ECB may either terminate the innovation partnership or, in the case of an innovation partnership with several partners, reduce the number of partners by terminating individual contracts.

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6. If the procurement documents so provide, negotiations during innovation partnership procedures may take place in successive stages, applying the award criteria specified, in order to reduce the number of tenders to be negotiated. The ECB shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender, and changes to the technical specifications shall be communicated to tenderers to allow them to modify and re-submit amended tenders. Minimum requirements and award criteria shall not be subject to negotiations.

7. Article 13(4) shall apply accordingly.

*SECTION 2****Electronic procurement****Article 15***Electronic tender procedures**

The ECB may carry out electronic tender procedures in line with the general requirements for electronic procurement set out in Article 22 of Directive 2014/24/EU in conjunction with Annex IV thereto. In such cases, the contract notice shall specify in particular the formal requirements to be observed by the candidates or tenderers and how to access the electronic platform. The ECB may determine that it will accept only electronic applications and tenders unless there are technical reasons relating to equal access, operability, or security which make this impracticable.

*Article 16***Electronic auctions**

1. For open, restricted and negotiated procedures, the ECB may use an electronic auction, provided that the specifications can be established with precision.

The electronic auction shall be based either:

- (a) solely on prices where the contract is awarded on the basis of price only; or
- (b) on prices and/or on the new values of the features of the tenders indicated in the specification, where the contract is awarded on the basis of the best price-quality ratio.

2. If the ECB intends to carry out an electronic auction it shall state so in the contract notice. The procurement documents shall include, inter alia, the following details:

- (a) the features and the values that shall be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
- (b) any limits on the values which may be submitted resulting from the specifications;
- (c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;

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- (d) any relevant information concerning the electronic auction process;

- (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding; and

- (f) any relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

3. The electronic auction shall only be initiated after the submission and initial evaluation of the tenders. All eligible tenderers that meet the selection criteria and whose tenders are in conformity with the technical specifications and are not irregular, unacceptable or unsuitable shall be invited simultaneously to submit new prices and/or new values.

4. The invitation shall be accompanied by the outcome of a full evaluation of the relevant tender. It shall state the date and time of the start of the electronic auction and set out instructions for individual connection to the electronic equipment. The electronic auction shall not start sooner than 2 working days after the date on which invitations are sent out. The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices and/or new values submitted. Except where the most economically advantageous offer is identified on the basis of price alone, that formula shall incorporate the weighting of all of the criteria established to determine the most economically advantageous tender, as indicated in the contract notice or in the procurement documents. For that purpose, any ranges shall, however, be reduced beforehand to a specified value. Where variants are authorised, a separate formula shall be provided for each variant.

5. The electronic auction may take place in successive phases. Throughout each phase the ECB shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any time. It may also communicate other information concerning other prices or values submitted, provided that that is stated in the procurement documents. It may also at any time announce the number of participants in that phase of the auction. The ECB shall, however, not disclose the identities of the tenderers during any phase of an electronic auction.

6. The ECB shall close an electronic auction at the expiry of the time limit indicated in the invitation to participate in the auction. The time limit may be expressed as a specific date and time or as a period that has to elapse after submission of the last offer with new prices or values. The ECB shall specify in the invitation the timetable for any auctions carried out in phases.

7. After closing an electronic auction, the ECB shall award the contract on the basis of the results of the electronic auction.

▼B*Article 17***Electronic catalogues**

1. Where the use of electronic means of communication is required, the ECB may require tenders to be presented in the form of an electronic catalogue or to include an electronic catalogue.
2. Where the presentation of tenders in the form of an electronic catalogue is accepted or required, the ECB shall:
 - (a) state this in the contract notice;
 - (b) indicate in the procurement documents all the necessary information pursuant to Article 22(6) of Directive 2014/24/EU concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.
3. Electronic catalogues shall be established by the candidates or tenderers with a view to participating in a given procurement procedure, in accordance with the technical specifications and format established by the ECB, and in compliance with the requirements for electronic communication tools and any additional requirements set by the ECB in line with Article 22 of Directive 2014/24/EU.
4. Where a framework agreement has been concluded with more than one supplier by means of electronic catalogues, a reopening of competition for specific contracts may take place on the basis of updated catalogues. In such a case the ECB may:
 - (a) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the contract in question; or
 - (b) if the procurement documents so provide, notify tenderers that the ECB intends to collect from the electronic catalogues which have already been submitted the information needed to compile tenders for the contract in question.

Where competition is reopened in accordance with point (b), the ECB shall notify tenderers of the date and time at which the information will be collected and give them the option of refusing such collection of information. The ECB shall allow for an adequate period between the notification and the actual collection of information. Before the ECB awards the contract, the tenderer concerned shall have the opportunity to confirm that the tender thus compiled does not contain any material errors.

5. Where a dynamic purchasing system is used, the ECB may require that a request for participation is accompanied by an electronic catalogue on the basis of which specific contracts may be awarded, with tenders constituted in accordance with point (b) of paragraph 4. In this case, the ECB shall inform the candidates of its intention to constitute tenders by means of that procedure and candidates shall complete the electronic catalogues submitted. Alternatively, the ECB may require that the tenders for a specific contract are presented in the format of an electronic catalogue.

*SECTION 3**Special rules for certain types of contracts**Article 18***Framework agreements**

1. The ECB may use framework agreements in cases where it regularly concludes contracts for similar products, services or works without being able to define the exact quantities, delivery times or the detailed requirements.

2. For the purpose of concluding a framework agreement, the ECB shall follow the procedures set out in Articles 10 to 12 for all phases up to the award of the framework agreement. If the ECB intends to conclude a framework agreement with several suppliers, it shall award at least three agreements, provided that a sufficient number of suppliers meet the selection and award criteria. The contract notice shall specify the scope and number of framework agreements to be awarded.

Specific contracts based on the framework agreement shall be awarded in accordance with the procedures laid down in this Article.

3. Where a framework agreement is concluded with a single supplier, specific contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement. Insofar as necessary, the ECB may request the supplier in writing to supplement its initial tender. Such supplementary offers shall not entail substantial changes to the terms and conditions laid down in the framework agreement.

4. Where framework agreements are concluded with several suppliers, specific contracts may be awarded either:

- (a) by application of the criteria laid down in the framework agreements without reopening a competition;
- (b) where no such criteria are defined, by reopening a competition among the suppliers with which a framework agreement exists; or
- (c) by applying in some cases the criteria laid down in the framework agreements without reopening competition as specified in point (a) and in other cases reopening a competition among the suppliers with which a framework agreement exists as specified in point (b), provided that the procurement documents for the framework agreement provide for the possibility to choose between the two options, contain binding objective criteria governing this choice and specify the provisions which may be subject to reopening of competition.

If a competition is reopened in accordance with point (b), the ECB shall award a specific contract in accordance with the following procedure:

- the ECB shall invite the suppliers in writing to submit a tender within the time limit specified in the request for a proposal. The procurement documents for the framework agreement shall specify the criteria on the basis of which the specific contract will be awarded, supplemented, where necessary, by greater detail in the request for a proposal;

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- the suppliers shall submit their tenders in writing within the time limit set by the ECB; and
- the ECB shall award the specific contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the request for a proposal.

Whenever competition is reopened in accordance with points (b) or (c), Article 36(1) and (2) shall apply accordingly.

*Article 19***Dynamic purchasing systems**

1. The ECB may procure standardised, readily available products, services and works through dynamic purchasing systems. These systems shall be fully electronic, freely accessible and free of charge to suppliers. Unless specified otherwise in this Article, the procedure shall follow the rules for restricted procedures laid down in Article 11.

2. For the purposes of setting up a dynamic purchasing system, the ECB shall:

- (a) publish a contract notice stating that a dynamic purchasing system is being used, indicating the nature of the purchases envisaged under the system, its validity period, the selection and award criteria, and all necessary information concerning the electronic equipment used and the technical connection arrangements and specifications. The notice shall specify a time limit of no less than 30 days within which suppliers may apply to participate; and
- (b) offer by electronic means, starting from publication of the notice and up to the expiry of the system, unrestricted, direct and full access to the tender conditions and to any additional documents.

3. The system shall be open throughout its duration to any supplier that satisfies the selection criteria and has submitted an application complying with the tender conditions. No further time limits for receipt of applications shall apply. Tenderers may improve their applications at any time provided that they continue to comply with the tender conditions. They shall inform the ECB without undue delay of any changes affecting their eligibility or capacity to perform the contract. The ECB may request tenderers to submit updated evidence regarding their eligibility.

4. The ECB shall verify within 10 days of receipt the tenderers' eligibility and compliance with the selection criteria on the basis of their applications. It shall also check whether the applications meet the tender conditions. The ECB shall inform tenderers at the earliest possible opportunity whether or not they have been admitted to the dynamic purchasing system.

5. Each specific contract the value of which is equal to or exceeds the thresholds set out in Article 4(3) shall be the subject of a separate invitation to tender. The ECB shall invite all tenderers admitted to the system to submit a tender within a reasonable time limit which shall be not less than 15 days. The ECB shall award the contract to the tenderer that submitted the best tender on the basis of the award criteria set out in the contract notice. Those criteria may, if appropriate, be formulated more precisely in the invitation to tender.

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6. If the value of a specific contract is below the thresholds set out in Article 4(3), the ECB may invite three or five tenderers admitted to the system to submit a tender in accordance with the procedure set out in Article 35.

7. A dynamic purchasing system may not last for more than 4 years, except where a longer duration is duly justified and was provided for in the contract notice.

*Article 20***Concession contracts**

The award procedure for concession contracts shall be governed by this Decision subject to the following modifications:

- (a) the calculation of the estimated value of concession contracts shall take account of the estimated total turnover, net of VAT, generated by the contractor through the performance of the concession contract during its term;
- (b) concession contracts shall always be limited in term. The duration shall not exceed the period that a concessionaire could reasonably be expected to take to recoup the investments made and to obtain a financial return.

*SECTION 4****Launching the procurement procedure****Article 21***Publication of procurement opportunities**

1. If the ECB decides to carry out a tender procedure in accordance with the rules laid down in this Chapter, it shall publish a contract notice in the Official Journal and on the ECB's website. Whenever appropriate, the ECB may place advertisements in other relevant media. Announcements on the ECB's website and other media shall not precede publication of the notice in the Official Journal. In the case of discrepancies between different versions of the notice, the version published in the Official Journal shall be considered authentic and take precedence over other versions.

2. The ECB may publish a prior information notice indicating the estimated total value of contracts, by category of service or groups of products, and the essential characteristics of works contracts, which it intends to award during a budgetary year.

3. Notwithstanding any other provision of this Decision, any notice published in the Official Journal shall contain at least the information specified in the relevant part of Annex V to Directive 2014/24/EU. Contract notices shall state whether or not the contract will be awarded according to the lowest price.

*Article 22***Call for expression of interest**

1. The ECB may apply a call for expression of interest if it intends to award several contracts which cover the same or a similar subject matter. Unless specified otherwise in this Article, the procedure shall follow the rules for restricted procedures under Article 11.

2. For the purpose of establishing a list of suitable suppliers, the ECB shall publish a contract notice in the Official Journal specifying as a minimum the subject matter of the contracts to be awarded, the duration, the eligibility and selection criteria and the deadline for receipt of applications to be considered for the establishment of a list of suitable suppliers.

3. The list shall be valid for no more than 4 years from the date on which the contract notice is sent to the Official Journal. A supplier may apply to be included in the list at any time until 3 months before its expiry. The application shall be accompanied by the documentation specified in the contract notice. Suppliers shall submit their application within the time limit specified in the contract notice.

4. Following the receipt of applications, the ECB shall verify the eligibility of candidates and evaluate the applications against the selection criteria set out in the contract notice. The ECB shall include in the list all candidates meeting the eligibility and selection criteria. The ECB shall inform candidates at the earliest possible opportunity whether or not they have been included in the list.

5. Suppliers included in the list shall inform the ECB without undue delay of any changes affecting their eligibility or capacity to perform the contract. Moreover, such suppliers may provide the ECB with updated or additional documentation if they deem it necessary.

6. If the ECB intends to award a contract the estimated value of which is below the thresholds laid down in Article 4(3), it shall invite the required number of suppliers included in the list, if available, to submit a tender, in accordance with the procedure set out in Article 35. The ECB shall invite the suppliers whose tenders best meet the selection criteria set out in the contract notice having regard to the contract to be awarded.

7. If the ECB intends to award a contract the estimated value of which is equal to or exceeds the thresholds laid down in Article 4(3), it shall publish a simplified contract notice in the Official Journal describing the scope of this specific contract. Interested suppliers not yet included in the list may submit an application to be included in the list within the time limit specified in the simplified contract notice, which shall be not less than 15 days from the date on which the simplified contract notice is sent for publication. Following evaluation of the applications received, the ECB shall invite at least five suitable suppliers included in the list to submit a tender provided that a sufficient number of suppliers are available. The ECB shall select the suppliers whose tenders best meet the selection criteria set out in the contract notice having regard to the contract to be awarded. Article 11(4) and (5) shall apply accordingly.

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8. In the cases described in paragraphs 6 and 7, the ECB may request the suppliers included in the list to provide updated information and documentation relevant to the fulfilment of the eligibility and selection criteria.

*Article 23***Time limits for receipt of applications and tenders**

1. When fixing the time limits for the receipt of applications and tenders, the ECB shall take account in particular of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set by this Article.

2. In the case of open procedures, the minimum time limit for the receipt of tenders shall be 35 days from the date on which the contract notice was sent to the Official Journal.

3. In the case of restricted procedures, negotiated procedures, competitive dialogues, innovation partnerships and design contests:

(a) the minimum time limit for receipt of applications shall be 30 days from the date on which the contract notice was sent to the Official Journal; and

(b) the minimum time limit for the receipt of tenders shall be 30 days from the date on which the invitation to tender was sent to the tenderers.

4. When a prior information notice has been published in the Official Journal containing the information set out in Article 48(2) of Directive 2014/24/EU, which was sent between 35 days and 12 months before the contract notice, the minimum time limit for the receipt of tenders may, as a general rule, be shortened to 15 days for open and 10 days for restricted procedures.

5. The time limits for the receipt of applications and tenders may be shortened by 5 days when fully electronic procurement is used, unless paragraph 4 applies.

6. In the case of open procedures, restricted procedures and negotiated procedures, the ECB may apply an accelerated procedure, where duly substantiated urgency renders impracticable the time limits laid down in this Article. In this case the following minimum time limits shall apply:

(a) for open procedures a time limit for the receipt of tenders which is not less than 15 days from the date on which the contract notice was sent; and

(b) for restricted procedures and negotiated procedures a time limit for the receipt of applications which shall be not less than 15 days from the date on which the contract notice was sent, and a time limit for the receipt of tenders which shall be not less than 10 days from the date on which the invitation to tender was sent to the tenderers.

7. Prior to the expiry date, the ECB may extend the time limits set out in the contract notice or procurement documents if it significantly modifies the procurement documents or in other duly justified cases, subject to the principle of equal treatment.

▼B*Article 24***Invitation to tender****▼M1****▼B**

2. An invitation to tender shall contain at least:
 - (a) a reference to the contract notice;
 - (b) full information, where applicable, on the electronic availability of, and access to, the procurement documents;
 - (c) the formal tender requirements, in particular the time limit for the receipt of the tenders, the address to which the tenders must be sent, the language or languages in which the tenders must be drawn up, the format in which the tender must be submitted and the period during which a tender must remain valid;
 - (d) options concerning additional products, services and works, as well as the number of possible renewals and extensions to the contract, if any;
 - (e) the list of documents to be submitted by the tenderers; and
 - (f) the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, if they are not specified in the contract notice.
3. The invitation to tender shall also include:
 - (a) a copy of the specifications defining the ECB's requirements or, in the case of a competitive dialogue or innovation partnership, a copy of the request for a proposal defining the ECB's needs;
 - (b) a copy of the draft contract, of the ECB's general terms and conditions or of the document specifying the key features of the contract; and
 - (c) any other documentation which the ECB considers to be of relevance.

*Article 25***Specifications**

1. The ECB shall lay down its technical specifications in the procurement documents in line with applicable law and technical standards.
2. Specifications may only prescribe a specific product, source or production process where a sufficiently precise general description of the subject matter of the contract is not possible, and where candidates may offer other, equivalent products.
3. The ECB shall specify the evidence, such as labels, certificates, and conformity assessments, in particular any environmental certificates, that it requests from the candidates to demonstrate compliance with the specifications. Such evidence must be obtainable in a transparent manner. Other evidence shall be accepted where it is technically equivalent.

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4. The specifications and the requested evidence shall be necessary and proportionate to meet the objectives of the procurement, and based on objective and non-discriminatory considerations that avoid any unjustified obstacle to competition.

5. The ECB may allow the submission of variants that deviate from the specifications. If so, it shall provide clear information on the permitted scope of variants, on the formal and substantive requirements for variants, and on the methodology by which the merits of main offers and variants will be compared.

*SECTION 5**Information exchange**Article 26***Communication with candidates and tenderers**

1. During the tender procedure, candidates and tenderers shall communicate only with the contact person(s) indicated by the ECB. The means of communication shall be generally available and non-discriminatory.

2. Candidates and tenderers shall submit their applications and tenders in writing in accordance with the requirements set out in the contract notice or invitation to tender.

3. Candidates or tenderers may submit in writing questions concerning the contract notice, the invitation to tender or the supporting documents to the ECB in accordance with the procedure laid down in the contract notice or the invitation to tender. The ECB shall reply to such questions within reasonable time limits, and shall communicate the answers to all candidates or tenderers on an anonymous basis if they are of relevance to all of them.

4. The ECB shall ensure that the information provided by candidates and tenderers is treated and stored in accordance with the principles of confidentiality and integrity and, to the extent personal data is provided, with Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁾.

*Article 27***Requests for additional documentation and clarification**

After the ECB has opened applications or tenders, it may request candidates or tenderers to submit, supplement, clarify or complete information or documentation which is or appears to be missing, incomplete or erroneous within an appropriate time limit. Such requests shall be made in full compliance with the principles of equal treatment and transparency; in particular, they shall not lead to any preferential treatment, give a competitive advantage, or change the terms of an application or tender.

⁽¹⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

*Article 28***Rectification of procurement documents**

1. If the ECB discovers, before the expiry of the time limit for the submission of applications or tenders, a lack of precision, an omission or any other type of error in the text of the contract notice, invitation to tender or supporting documents, it shall rectify the error and inform all candidates or tenderers in writing.

2. If candidates or tenderers consider that the ECB's requirements laid down in the contract notice, the invitation to tender or supporting documents are incomplete, inconsistent or illegal or that the ECB or another candidate or tenderer has infringed the applicable procurement rules, they shall notify their objections to the ECB within 15 days after they become aware of such an irregularity. If the irregularity affects the invitation to tender or other documents sent by the ECB, the time limit shall start to run from the date of receipt of the documents. In other cases, the time limit shall start to run from the time the candidates or tenderers become aware or could reasonably have become aware of the irregularity. The ECB may then either correct or supplement the requirements or remedy the irregularity, or reject the request indicating the reasons for doing so. Objections which are not communicated to the ECB within the time limit may not be raised at a later stage.

*SECTION 6****Evaluation****Article 29***General principles**

1. Applications and tenders shall not be opened before the expiry of the date for submission. The applications and tenders shall be opened in the presence of at least two members of ECB staff and the opening shall be minuted. Unless specified otherwise, candidates or tenderers may not attend the opening.

2. The ECB shall evaluate all tenders against the award criteria set out in Article 32 after having:
 - verified compliance with the formal tender requirements,

 - verified the eligibility of tenderers in line with Article 30, and

 - assessed the fulfilment of the selection criteria in line with Article 31.

3. The ECB shall award the contract to the tenderer whose tender best meets the award criteria.

4. The evaluation process and outcome shall be documented in an evaluation report.

*Article 30***Eligibility of candidates and tenderers**

1. Subject to the following paragraphs, all natural and legal persons resident or established in the Union are eligible to participate in tender procedures. Tender procedures shall also be open on equal terms to all natural and legal persons resident or located in a country that has ratified the World Trade Organisation Agreement on Government Procurement, or has concluded with the Union a bilateral agreement on procurement, under the conditions laid down in these agreements. Suppliers from other countries may be admitted to participate at the ECB's sole discretion.

2. Temporary groupings of suppliers may participate in tender procedures under the conditions set out in the contract notice or the invitation to tender. The ECB may require temporary groupings to adopt a specific legal form if the contract is awarded to them, where this form is necessary for the proper performance of the contract. The participants in a temporary grouping shall be jointly and severally liable to perform the contract.

3. Candidates and tenderers shall submit only one application or tender. The ECB may exclude from participation any candidates or tenderers that submit a separate application or tender and which:

- (a) are members of the same group of affiliated undertakings as another candidate or tenderer;
- (b) are members of a temporary grouping together with other candidates or tenderers; or
- (c) offer a substantial part of the contract to be awarded to another candidate or tenderer as subcontractor,

if there are indications that they have received information regarding the application or tender prepared by another candidate or tenderer or if the submission of multiple applications or tenders otherwise distorts free competition among candidates or tenderers.

4. The ECB shall exclude candidates or tenderers from participation if they, or their management bodies, have been convicted by a final judgment of participation in a criminal organisation, corruption, fraud, terrorist offences or financing, money laundering, child labour or human trafficking, as referred to in Article 57(1) of Directive 2014/24/EU, or of any other illegal activity detrimental to the financial interests of the Union, the ECB or the NCBs.

5. The ECB may exclude candidates or tenderers from participation at any time if:

- (a) they are bankrupt, being wound up, subject to administration or in any similar situation provided for in national legislation or regulations;
- (b) they are guilty of grave professional misconduct, which renders their integrity questionable;

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- (c) they are in breach of obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or where the contract is to be performed;
- (d) they have shown significant or persistent deficiencies in the performance of another public contract, or with their obligations under environmental, social and labour law;
- (e) they or their management, staff or agents are subject to a conflict of interest that cannot be remedied by less intrusive means;
- (f) they are guilty of serious misrepresentation in supplying the information required by the ECB; or
- (g) they contact other candidates or tenderers with the purpose of restraining competition, or try to unduly influence the decision-making process in the procurement procedure.

6. Candidates or tenderers shall certify that they are not in one of the situations listed in paragraphs 4 and 5 and provide the evidence specified in the contract notice or invitation to tender. If such circumstances arise in the course of the procedure the candidate or tenderer concerned shall inform the ECB thereof without undue delay. Candidates or tenderers may submit evidence to demonstrate their eligibility despite the existence of grounds for exclusion.

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7. Where a candidate or tenderer, or an undertaking related to a candidate or tenderer, has been involved in the preparation of a procurement procedure, for example by advising on the procurement strategy or developing specifications, the ECB shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer. The ECB may exclude the candidate or tenderer concerned from the procedure, if this is necessary for that purpose. Prior to exclusion, the candidate or tenderer shall be given the opportunity to prove that their previous involvement does not distort competition.

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8. The ECB may exclude a candidate or tenderer that is in one of the situations described in paragraphs 4 and 5 from participation in any future tender procedure for a reasonable period of time. The ECB shall decide on the exclusion and determine the period of its duration applying the principle of proportionality, taking into account in particular: (a) the seriousness of the offence, conduct, breach or act of bankruptcy; (b) the time which has elapsed since the offence, conduct, breach or act of bankruptcy was committed or occurred; (c) the duration and any recurrence of the offence, conduct, breach or act of bankruptcy; (d) the intention or degree of negligence of the supplier concerned; and (e) the measures taken by the supplier to avoid similar offences, conduct, breaches or acts of bankruptcy in the future. The period of exclusion shall not exceed 10 years from the date notice thereof is delivered to the supplier. Prior to taking a decision to exclude a supplier, the ECB shall give the supplier an opportunity to express its views unless the facts justifying the exclusion are laid down in a final judgment. The ECB shall notify the supplier in writing of its decision and the main reasons for doing so.

▼B*Article 31***Selection criteria**

1. The ECB shall specify in the contract notice the selection criteria for assessing a candidate's or tenderer's capacity to perform the contract. The selection criteria shall relate to the candidate's or tenderer's authorisation and suitability to carry out the relevant professional activity, their economic and financial standing, and their technical or professional ability. The selection criteria shall be necessary and proportionate to ensure fair competition and achieve the contract objectives.
2. The ECB may lay down minimum requirements below which it cannot select candidates or tenderers. These minimum requirements shall be specified in the contract notice.
3. The ECB shall specify in the contract notice the documents to be submitted by candidates or tenderers as proof of their financial, economic, technical and professional capacity. It may require, in particular, submission of a European Single Procurement Document as specified in Article 59 of Directive 2014/24/EU, documents held in eCertis, or certificates issued by national databases of approved suppliers. The documentation requested shall not go beyond the subject of the contract and shall take account of the legitimate interests of the suppliers as regards in particular the protection of their technical and business secrets.
4. If, for some exceptional reason which the ECB considers justified, a tenderer or candidate is unable to provide the documents requested, it may prove its capacity by any other means which the ECB considers appropriate and equivalent.
5. A supplier may, where appropriate and for a particular contract, rely on the capacities of another entity, regardless of the legal nature of the links which it has with them. It shall in that case prove to the ECB that it will have the resources necessary for performance of the contract at its disposal, and that the entity itself is eligible to participate in tender procedures in accordance with Article 30. Under the same conditions, a temporary grouping of suppliers may rely on the capacities of participants in the group.

*Article 32***Award criteria**

1. The ECB shall award the contract to the tenderer that submitted the most economically advantageous tender.
2. Unless otherwise provided in this Decision, the most economically advantageous tender is identified on the basis of one of the following options:
 - the price or costs only,
 - the best price-quality ratio, or
 - quality only, the relevant price or cost for the products, works and services tendered being fixed.

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3. The price or cost element shall, to the extent relevant, take account of life-cycle costs such as costs relating to acquisition, use, maintenance and end-of-life of products, works and services. Costs relating to environmental externalities linked to products, works and services during their life cycle may also be considered. Prices and costs shall be considered only if they can be determined and verified.
4. The best price-quality ratio shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects linked to the subject matter of the contract, such as:
 - (a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and the conditions thereof;
 - (b) organisational structure, qualifications and experience of staff assigned to perform the contract, where staff quality can have a significant impact on the level of performance of the contract; or
 - (c) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period, or period of completion.
5. All of the award criteria shall be linked to the subject matter of the contract which may include the different stages involved in the life cycle of the products, works or services tendered such as the processes of production, provision or trading thereof.
6. The contract notice or the invitation to tender or, in the case of a competitive dialogue, the request for a proposal, shall specify how the most economically advantageous tender shall be identified pursuant to paragraph 2.

*Article 33***Abnormally low tenders**

1. The ECB shall request in writing explanations of prices or costs proposed in tenders that appear to be abnormally low in relation to the products, works or services tendered. The request may relate in particular to:
 - (a) the economics of the manufacturing process, of the provision of services or of the construction method;
 - (b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer;
 - (c) the originality of the deliverables proposed in the tender;
 - (d) compliance with the provisions of environmental, social security and labour law in force at the place where the deliverables are to be executed, provided or supplied; and
 - (e) the tenderer's possibility to obtain State aid.

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2. Following a review of the information submitted by the tenderer, the ECB may reject abnormally low tenders, in particular in the following cases:

- where the information provided by the tenderer does not sufficiently account for the low level of the price or costs,
- where the tender and the additional information provided do not provide sufficient assurance of proper contract performance, or
- where the tenderer has obtained State aid, unless the tenderer proves, within a reasonable time limit fixed by the ECB, that the aid was granted legally in accordance with the procedures and decisions specified in the Union rules on State aid.

3. The ECB shall reject tenders that are abnormally low due to breaches of any of the provisions referred to in paragraph 1(d).

*SECTION 7**Communication of the outcome**Article 34***Notification of selection and award decisions**

1. The ECB shall notify its decision in writing and without undue delay to all candidates or tenderers whose applications or tenders are rejected.

2. The notification of the award decision shall be sent at least 10 days prior to the signature of the contract by the ECB if the notification is sent by fax or electronic means, or at least 15 days prior to the signature of the contract if other means of communication are used.

3. Candidates and tenderers may, within 15 days of receipt of the notification, request the ECB to provide the reasons for rejecting their application or their tender and to provide copies of all documents relating to the evaluation of their application or tender. Unsuccessful tenderers whose tender was admissible may also ask for the name of the successful tenderer as well as the key characteristics and relative advantages of its tender. They may also request copies of all documents relating to the evaluation of the successful tender, subject to paragraph 4.

4. The ECB may decide to withhold certain information where its release would affect other suppliers' legitimate commercial interests, would hinder the application of the law, might prejudice fair competition between suppliers or would otherwise be contrary to the public interest.

5. The ECB shall publish a contract award notice in line with the requirements of Directive 2014/24/EU in the Official Journal. The notice shall be sent to the Official Journal within 30 days following signature of the contract.

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CHAPTER III

PROCUREMENT PROCEDURE FOR CONTRACTS BELOW THE THRESHOLDS AND SERVICE CONTRACTS REFERRED TO IN ARTICLE 6(2)*Article 35***Conduct of the procedure**

Contracts the estimated value of which is below the thresholds specified in Article 4(3) and service contracts referred to in Article 6(2) shall be awarded in accordance with the following procedure.

1. If the value of the contract net of VAT exceeds or is equal to EUR 50 000 for products and services or EUR 500 000 for works, the ECB shall invite at least five suitable suppliers, if available, to submit a tender.
2. If the value of contract net of VAT is below these thresholds but equal to or above EUR 20 000, the ECB shall invite at least three suitable suppliers, if available, to submit a tender.

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3. The ECB shall select the suppliers invited to participate in the tender procedure either from among the tenderers admitted to a dynamic purchasing system or, where no such system is in place, from a list of suitable suppliers drawn up following a call for expression of interest. Where no such list is established, the ECB shall select the suppliers to be invited at its own discretion, on the basis of a proper market analysis, taking account of any possible cross-border interest, confirming the suppliers' suitability and their interest in participating in the procedure. The market analysis may include a publication of the contract opportunity in an electronic procurement system. Alternatively, the ECB may publish a contract notice on its website or using other appropriate media. In that case, the suppliers invited to participate in the tender procedure shall be selected on the basis of the responses received. Other suppliers that meet the same criteria may also be invited to participate in the tender procedure.
4. If the value of a service contract referred to in Article 6(2) net of VAT exceeds or is equal to EUR 750 000, the ECB shall publish a contract notice in the Official Journal. The suppliers invited to participate in the tender procedure shall be selected on the basis of the responses received. Other suppliers that meet the same criteria may also be invited to participate in the tender procedure.

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5. The ECB shall provide the suppliers invited to participate in the tender procedure with a request for a proposal specifying the ECB's requirements, the submission process and the criteria for the award of the contract. When fixing the time limit for the submission of tenders, the ECB shall take account of the complexity of the contract and the time required to prepare a tender.
6. The tenders received shall be evaluated against the formal requirements and the selection and award criteria set out in the request for a proposal. Following the evaluation of the written tenders, the ECB may enter into negotiations with the tenderers if

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that possibility was mentioned in the request for a proposal. The negotiations may be carried out as consecutive negotiations in the order of the tenderers' ranking or as parallel negotiations with several tenderers whose tenders best meet the award criteria.

7. The ECB shall award the contract to the tenderer whose tender best meets the award criteria set out in the request for a proposal.
8. The procedure shall be carried out in accordance with the general principles set out in Article 3. Article 13(5) and (6) and Articles 26, 27, 28, 30 and 33 shall apply accordingly.

*Article 36***Notification of award decision and list of contractors**

1. Following the award decision, the ECB shall inform the tenderers in writing and without undue delay of the results of the tender procedure.
2. Tenderers may, within 15 days of receipt of the notification, request the ECB to provide the reasons for rejecting their tender and to provide copies of all documents relating to the evaluation of their tender.
3. The ECB shall publish annually a list of contracts with a value in excess of EUR 50 000 that were awarded in accordance with Article 35 or subject to an exception in accordance with Article 6(1). The list shall specify the names of the contractors to whom contracts were awarded, the subject matter and the value of the contracts. For contracts covered by Article 6(2) whose value exceeds EUR 750 000, the ECB shall publish a contract award notice in the Official Journal.

*Article 37***Direct award**

The ECB may award contracts on the basis of a single offer if the estimated value of the contract is less than EUR 20 000, net of VAT.

CHAPTER IV

FINAL PROVISIONS*Article 38***Cancellation of tender procedures**

1. The ECB may cancel a tender procedure at any time before the contract is signed without the candidates or tenderers being entitled to any compensation.
2. The ECB's decision to cancel shall comply with the general principles set out in Article 3(1).

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3. The ECB shall substantiate the decision and bring it to the attention of the candidates or tenderers.

*Article 39***Appeal procedure**

1. In public tender procedures under Chapter II, candidates and tenderers may challenge in writing the ECB's decision to reject their application or tender within 15 days of receipt of the information specified in Article 34(3) or, if no information is requested, within 15 days of receipt of notification in accordance with Article 34(1). The appeal shall include all supporting information and reasoned objections.

2. The appeal shall be addressed by the ECB's Procurement Review Body (PRB). If the PRB considers that the decision to reject the appellant's application or tender infringes this Decision or general principles of procurement law it shall either order that the tender procedure or parts of it are repeated or take a final decision. Otherwise the appeal shall be rejected. The PRB shall notify the appellant in writing of its decision within 1 month following the receipt of the appeal. The decision shall state the reasons on which it is based.

3. The appeal shall not have suspensive effect. If deemed appropriate, the PRB may suspend the procurement procedure or the award of the contract.

*Article 40***Jurisdiction**

The Court of Justice of the European Union shall have exclusive jurisdiction in any dispute between the ECB and a supplier relating to this Decision or a specific procurement procedure. If an appeal procedure is available under Article 39, the appellant shall await the ECB's decision on the appeal before bringing the matter to the Court of Justice. The time limits set out in the Treaty on the Functioning of the European Union shall begin to run from receipt of the appeal decision by the supplier.

*Article 41***Entry into force**

1. This Decision shall enter into force on 15 April 2016 and shall repeal and replace Decision ECB/2007/5.

2. ►**M1** Tender procedures that were started before the entry into force of this Decision shall be completed in accordance with Decision ECB/2007/5. ◀ For the purpose of this provision a tender procedure is deemed to be started on the day on which the contract notice was sent to the Official Journal or, in cases where no such notice is required, on the day when the ECB invited one or more suppliers to submit a tender or a proposal.

3. References to the repealed Decision shall be construed as references to this Decision and be read in accordance with the correlation table set out in Annex II.



ANNEX I

SERVICES SUBJECT TO ARTICLE 6(2)

CPV Code	Description
75200000-8; 75231200-6; 75231240-8; 79611000-0; 79622000-0 [Supply services of domestic help personnel]; 79624000-4 [Supply services of nursing personnel] and 79625000-1 [Supply services of medical personnel] from 85000000-9 to 85323000-9; 98133100-5, 98133000-4; 98200000-5; 98500000-8 [Private households with employed persons] and 98513000-2 to 98514000-9 [Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services]	Health, social and related services
85321000-5 and 85322000-2, 75000000-6 [Administration, defence and social security services], 75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 Education and training services to 80660000-8; from 92000000-1 to 92700000-8 79950000-8 [Exhibition, fair and congress organisation services], 79951000-5 [Seminar organisation services], 79952000-2 [Event services], 79952100-3 [Cultural event organisation services], 79953000-9 [Festival organisation services], 79954000-6 [Party organisation services], 79955000-3 [Fashion shows organisation services], 79956000-0 [Fair and exhibition organisation services]	Administrative social, educational, healthcare and cultural services
75300000-9	Compulsory social security services
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services
98000000-3; 98120000-0; 98132000-7; 98133110-8 and 98130000-3	Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services.
98131000-0	Religious services
55100000-1 to 55410000-7; 55521000-8 to 55521200-0 [55521000-8 Catering services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service] 55520000-1 Catering services, 55522000-5 Catering services for transport enterprises, 55523000-2 Catering services for other enterprises or other institutions, 55524000-9 School catering services 55510000-8 Canteen services, 55511000-5 Canteen and other restricted-clientele cafeteria services, 55512000-2 Canteen management services, 55523100-3 School-meal services	Hotel and restaurant services
79100000-5 to 79140000-7; 75231100-5;	Legal services, to the extent not excluded pursuant to Article 2(3)(j)
75100000-7 to 75120000-3; 75123000-4; 75125000-8 to 75131000-3	Other administrative services and government services
75200000-8 to 75231000-4	Provision of services to the community
75231210-9 to 75231230-5; 75240000-0 to 75252000-7; 79430000-7; 98113100-9	Prison related services, public security and rescue services

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CPV Code	Description
79700000-1 to 79721000-4 [Investigation and security services, Security services, Alarm-monitoring services, Guard services, Surveillance services, Tracing system services, Absconder-tracing services, Patrol services, Identification badge release services, Investigation services and Detective agency services] 79722000-1 [Graphology services], 79723000-8 [Waste analysis services]	Investigation and security services
98900000-2 [Services provided by extra-territorial organisations and bodies] and 98910000-5 [Services specific to international organisations and bodies]	International services
64000000-6 [Postal and telecommunications services], 64100000-7 [Post and courier services], 64110000-0 [Postal services], 64111000-7 [Postal services related to newspapers and periodicals], 64112000-4 [Postal services related to letters], 64113000-1 [Postal services related to parcels], 64114000-8 [Post office counter services], 64115000-5 [Mailbox rental], 64116000-2 [Post-restante services], 64122000-7 [Internal office mail and messenger services]	Postal services
50116510-9 [Tyre-remoulding services], 71550000-8 [Blacksmith services]	Miscellaneous services



ANNEX II

CORRELATION TABLE

Decision ECB/2007/5	This Decision
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6	Article 6
Article 7	Article 7
Article 8	Article 8
Article 9	Article 9
Article 10	Article 21
Article 11	Article 10
Article 12	Article 11
Article 13	Article 12
Article 14	Article 13
Article 15	Article 18
Article 16	Article 19
Article 16a	Article 22
Article 17	Article 16
Article 18	Article 23
Article 19(3)	Article 15
Article 19(1), (2), (4) and (5)	Article 26
Article 20	Article 27
Article 21	Article 28
Article 22	Article 24
Article 23	Article 29
Article 24	Article 30
Article 25	Article 31
Article 26	Article 32
Article 27	Article 33
Article 28	Article 34
Article 29	Article 35
Article 30	Article 36
Article 31	Article 37
Article 32	Article 38
Article 33	Article 39
Article 34	Article 40
Article 35	Article 41