

Public procurement, service and works contracts: coordination of procedures for the award, classical directive

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The Conciliation Committee reached agreement on a joint text for the directive. The main elements of the compromise can be summarised as follows: - the directive is based on the principle of awarding the contracts to the most economically advantageous tender. However, the contracting authorities may apply environmental and social criteria in a transparent manner in line with the case-law of the Court of Justice. The criteria have to be linked to the subject-matter of the contract in question; - Member States shall ensure the implementation of the directive by effective and transparent mechanisms. For this purpose they may appoint or establish an independent body; - the text stipulates that the award of contracts on behalf of the state, regional or local authorities and other bodies governed by public law is subject to observance of the principles laid down in the Treaty, both below and above the thresholds specified in the directive; - electronic auctions may not be used for some service or works contracts covering the provision of intellectual services, such as the design of works; - the directive promotes the use of electronic signature, in particular advanced electronic signature, in order to ensure confidentiality in case of electronic tendering. The text states that Member States may, in accordance with legislation in force, stipulate that tenders may be submitted by electronic means only if an advanced electronic signature is used; - the contracting authorities are urged to take into account the accessibility criteria for people with disabilities or design for all users in the technical specifications. Member States may reserve the right to participate in public contract award procedures to sheltered workshops or provide for such contracts to be executed in the context of sheltered employment programmes; - school books will be within the scope of the directive but the Member States may keep a system of fixed pricing. If this is the case, the contracting authority will assess tenders on criteria other than price; - as regards the prior information notice for contracts, in the case of services and works contracts the contracting authority will be required to provide details of the services, e.g. the relevant governmental Internet site, from which information can be obtained concerning the general regulatory framework for taxes, environmental and employment questions.