

THE BUILD-FOR-ALL REFERENCE MANUAL

GOOD INTENTIONS ARE NOT ENOUGH

A guide to the implementation of accessibility to the built environment through Public Procurement

This Reference Manual is produced by:

The Architects' Council of Europe (ACE); Cooperative Integrate Onlus (CO.IN); The Council of European Municipalities and Regions (CEMR): EUROCITIES; The European Committee for Standardization (CEN); The European Construction Industry Federation (FIEC); The European Disability Forum (EDF); The European Institute for Design and Disability (EIDD); The European Lifts Association (ELA); AGE - The European Older People's Platform; The National Disability Council of Luxembourg (Info-Handicap); NEUMANNCONSULT; ProASolutions; The City of Gdynia

supported by the European Commission

Pilot project on actions to mainstream disability policies submitted under the open call for proposals for transnational projects VP/2004/008



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DRAFT PUBLIC CONSULTATION DOCUMENT, January 2006



Build for All is a Pilot Project to mainstream disability policies, supported by the European Commission promoting Accessibility to the built environment through the implementation of Design for All.

The Expert Group of the European Commission on Full Accessibility delivered its conclusions at the end of 2003, the European Year of People with Disabilities. The report, entitled “**2010, a Europe Accessible to All**”¹, identified a lack of awareness in the professional sector, as one of the most important obstacles to achieving accessibility in the built environment. The report also identified the key role that public authorities play in changing attitudes and practices relating to accessibility and the leverage that they can exert when calling for tenders for public Works and services.

The Build for All project gives guidance on three main areas:

1. The need to provide public authorities with guidance in the establishment of essential accessibility criteria, and a methodology for step-by-step implementation of accessibility as provided for by the EU Public Procurement Directives.
2. The need to inform private sector and professional stakeholders about how to meet the demands of the accessibility criteria.
3. The need to bring together the representatives of disability organisations and older people’s organisations at European, national and local level together with their counterparts from the other professional and stakeholder groups - the local and regional authorities, the construction industry, the lift manufacturers and architects - in order to promote and create lasting and ongoing constructive dialogue.

www.build-for-all.net

This is a Public Consultation Document.

Build-for-All Reference Manual for the inclusion of accessibility criteria in public calls for tender under the Public Procurement Directives of the European Union.

Part 1. Handbook

Part 2. Toolkit

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Please visit [www-build-for-all.net](http://www.build-for-all.net) for updates

¹ “2010 A Europe Accessible for All” - available from the Internet at <http://www.eca.lu/upload/egafin.pdf>

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1. Introduction

This Reference Manual is a product of work carried out by the partners of the European funded project known as *Build-for-All*. The principal objectives of the project are to raise awareness of accessibility to the built environment (buildings, outdoor spaces and facilities), and to provide practical guidance to those who prepare calls for tender for design and construction Works under the Public Procurement Directives of the European Union. It consists of two documents - a Handbook and a Toolkit:

1. The Handbook provides background information for raising the awareness of decision makers and public servants about the importance of accessibility in the built environment for all citizens and the supporting role which Public Procurement can play in achieving this.

2. The Toolkit gives a practical approach for contracting authorities to include certain procedures and technical requirements in procurement, so as to ensure that accessibility criteria are met in design and construction work.

Target Audience

The Reference Manual is intended for those whose work brings them into contact with the Public Procurement process – either directly or indirectly. These include:

- **Legislators at National and Regional Levels**, officially responsible for the transposition of the EU Directives to national and regional law;
- **National, Regional and Local Governments across Europe**, in their specific role as procurers, owners and managers of public infrastructure, including buildings;
- **Public Authorities and entities**, including all publicly funded bodies and agencies that procure Works through the use of the Public Procurement procedures established by European Law²;
- **Economic Operators**, as a source of information to them on how Contracting Authorities approach the making of calls for tender.

The motivation for preparing this Reference Manual arises from the introduction of revised European Union Directives on Public Procurement³ that (when transposed

² Annex IV of the Directives names all central public entities in each Member State that will have to meet the requirements of the Directive, in addition to public authorities at all levels.



into national law), must be respected by Contracting Authorities when tendering for public Works. These Directives offer scope to Contracting Authorities **to promote full accessibility for all, including disabled persons, older persons and others, to the built environment** - both to public buildings, the outdoor environment of streets, pavements, roads and to any Works procured by the public sector.

The goal of full accessibility to the built environment was recognised internationally as long ago as 1993 in The United Nations Standard Rules on the Equalisation of Opportunities for Disabled Persons⁴. Despite almost every country in the world signing up to the Standard Rules, the issue of access, which is dealt with in Rule number 5, remains a major technical and societal problem.

The revised Public Procurement Directives offer scope for contracting authorities to consider social and accessibility issues. Public authorities, at all levels, are being encouraged to positively implement these provisions as far as the new rules allow.

The Directive provides for

- criteria for qualitative selection (Art. 45-52),
- contract award criteria (Art. 53),
- technical specifications (Art. 23 and Ann. VI) and, finally,
- conditions of performance of contracts (Art. 26).

These categories, each in a different way, allow public authorities to include accessibility aspects in the procurement process.

While the Public Procurement Directives do not oblige Contracting Authorities to include accessibility criteria in calls for tender, there are significant benefits from the adoption of this approach. National Legislation may, in certain countries, require this obligation and this is strongly welcomed by the Build-for-All partners, but the aim of the work of the project is to encourage the voluntary adoption of accessibility requirements in procurement by public authorities in all European Union Member States.

3 DIRECTIVE 2004/17/EC

Of the European Parliament and of the Council, 31st March 2004

Coordinating the Procurement procedures of entities operating in the water, energy, transport and postal services sectors.

and

DIRECTIVE 2004/18/EC

Of the European Parliament and of Council of the of 31st March 2004

Coordinating the procedures for the award of public works contracts, Public supply contracts and public service contracts

⁴ United Nations. Standard Rules on the Equalization of Opportunities for Persons with Disabilities. A/RES/48/96. 85th plenary meeting. 20 December 1993. The full document can be read online at: <http://www.un.org/documents/ga/res/48/a48r096.htm>



Fundamentally, the Build-for-All partners believe that by following the principles and advice presented in this Reference Manual, Public Procurement can lead to better functioning, more comfortable and safer environments for **all** people in society.

THE BUILD-FOR-ALL HANDBOOK

GOOD INTENTIONS ARE NOT ENOUGH

Background information for raising the awareness of decision makers and public servants about the importance of accessibility in the built environment for all citizens.

By
The **Build-For-All** Partnership.
Info-Handicap, Luxembourg

supported by the European Commission

Pilot project on actions to mainstream disability policies submitted under the open call for proposals for transnational projects VP/2004/008



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DRAFT PUBLIC CONSULTATION DOCUMENT, January 2006

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2. Handbook Introduction

This Handbook provides background information for raising the awareness of decision makers and public servants about the importance of accessibility in the built environment for all citizens, and the supporting role which Public Procurement can play in achieving this.

The Handbook is specifically aimed at those who wish to know about the provisions of the European Union Directives on Public Procurement Procedures, and the importance of accessibility and the “Design for All”⁵ approach.

In particular, the partners in the Build-for-All project believe that the Handbook will be especially useful to elected members of Local, Regional and National government and to managers who have to weigh up whether or not to include a particular set of criteria in a call for tender or to adopt new policies within their administration, reflecting equal opportunities in society.

This Handbook therefore addresses a wide range of issues, which administrations might take into account to bring accessibility issues into focus. Further reference material is listed in the Appendixes and in the Bibliography.

Motivation:

Did you know that by including accessibility in Public Procurement tenders, you will promote social inclusion, contribute to full employment, save public money and ultimately foster economic growth?

Did you know that disabled people, older people and other persons with temporary reduced mobility together make up 40% of the population of Europe?

Did you know that, according to UN figures, 34.5% of the European population will be aged 60+ in 2050 compared to 20.3% in 2000?

Did you know that European and national legislation are increasingly requiring disability access to the built environment and to public Works?

Did you know that Public Procurement transactions account for approximately 16% of the European Union's GDP, equivalent to 1500 billion Euros per year?

Did you know that Public Procurement rules have a direct impact on the daily lives of European citizens?

⁵ For a description of the “Design for All” approach, please see section (3).



3. The Importance of Full Accessibility and “Design for All”

This section of the Handbook concerns “full accessibility”, a term which indicates the growing demand for full participation and equal opportunities for all people in society.

The goal of full accessibility to the built environment was recognised internationally as long ago as 1993 in The United Nations Standard Rules on the Equalisation of Opportunities for Disabled Persons⁶. Despite almost every country in the world signing up to the Standard Rules, the issue of access, which is dealt with in Rule number 5, remains a major technical and societal problem.

In recent years, European planners, designers and proponents of accessibility, have laid particular emphasis on the practice of “Design for All” as an approach to design and construction that can contribute to full accessibility.

“Design for All” means designing developing and marketing mainstream products, services, systems and environments to be accessible and usable by as broad a range of users as possible.⁷

This can be achieved in three ways:

- *by designing products, services and applications that are readily usable by most potential users without any modifications*
- *by designing products that are easily adaptable to different users (e.g. by adapting their user interfaces)*
- *by standardising interfaces of products to be compatible with specialised equipment (e.g. technological aids for disabled persons).*

Through supporting the application of design for all to all areas of life – home, education, work, leisure, transport, etc. – it is possible to make significant progress towards avoiding access barriers which currently prevent citizens with disabilities from participating fully and on equal terms with non-disabled people”.

Source: Background Document of the European Conference “Discrimination by Design” held on the European Day of Disabled People, 3rd December 2001.

⁶ United Nations. Standard Rules on the Equalization of Opportunities for Persons with Disabilities. A/RES/48/96. 85th plenary meeting. 20 December 1993. The full document can be read online at: <http://www.un.org/documents/ga/res/48/a48r096.htm>

⁷ This definition of “Design for All” is also quoted in: Treffers, B. (2004) *Design for All: a history of discrimination by design, future cities for all* available at: <http://www.eca.lu/upload/History%20of%20Discrimination%20by%20Design.pdf>



Who benefits from the Design for All approach?

People with disabilities and older people are the most obvious beneficiaries of a fully accessible environment, but it must be emphasised that people of all ages and abilities appreciate the advantages of accessible surroundings and facilities.

Design for All is recognised as an important tool for ensuring *physical accessibility* for people with physical disabilities, but there are many other types of accessibility which depend on mental and social factors. If our surroundings have been designed to take into account the diversity of human dimensions, perceptual, motor and cognitive abilities, they can better support human functioning.

“... dimensional, perceptual, motor and cognitive diversity have to be taken into account when developing environments because everybody has the WISH, the NEED and the RIGHT to be independent, to choose his/her way of life and to live it without the environment putting barriers in his/her way” .

Source: ECA- European Concept of Accessibility 2003- Technical Assistance Manual, 2003

During the human life cycle, changes are inevitable. Everybody happens, at some point in their lives, to have temporary problems interacting with the environment. Some changes may be brought forward or postponed as a result of an individual's attitude to their surroundings: what they feel is possible or not. It is also the case that accidents, illnesses or personal choices also affect ways of relating to the environment, especially when it is not possible to avoid certain places or to choose when to be there.

The importance of promoting Design for All in the context of Public Procurement is that it can help to raise the quality of life in society and in our surroundings, by ensuring more accessible environments, products, services and communications. Furthermore, a fully accessible environment contributes in a fundamental way to social solidarity by facilitating interaction between people.



4. The social model of disability within the concepts of Design for All and Corporate Social Responsibility

Design for All, a European development of the 1990's, recognizes that "Inclusion" equals "Accessibility" and applies to Social, Cultural, Intellectual and Environmental conditions. Thus it challenges decision makers to ensure accessibility to the built environment, transport facilities and public spaces.

EIDD (European Institute for Design and Disability), on the occasion of its Annual General Meeting in **Stockholm** on 9 May 2004, adopted the following Declaration:

Across Europe, human diversity in age, culture and ability is greater than ever. We now survive illness and injury and live with disability as never before. Although today's world is a complex place, it is one of our own making, one in which we therefore have the possibility – and the responsibility – to base our designs on the principle of inclusion.

Design for All is design for human diversity, social inclusion and equality. This holistic and innovative approach constitutes a creative and ethical challenge for all planners, designers, entrepreneurs, administrators and political leaders.

Design for All aims to enable all people to have equal opportunities to participate in every aspect of society. To achieve this, the built environment, everyday objects, services, culture and information – in short, everything that is designed and made by people to be used by people – must be accessible, convenient for everyone in society to use and responsive to evolving human diversity.

Based on the **social model of disability**, Design for All is design for human diversity, social inclusion and equality.

The social model of disability recognises that when a person loses the use of a particular function they employ alternative functions to cope with living situations. For example, a blind person uses touch and sound, a deaf person uses touch and sight, a person who cannot walk uses a wheelchair operated by hand, to become mobile. The problem then arises when the environment does not permit them to use that function. For example, a blind person uses non-visual means to obtain information and becomes disabled from *reading* when books are only available in print. A blind person is disabled when traffic signals are given silently by means of coloured lights. Similarly, a deaf person operates through tactile and visual means and is disabled when fire alarms are only given by means of a ringing bell or howling siren. A person who cannot walk overcomes the problem of immobility by using a wheelchair to allow



him or her to move around but becomes disabled when presented with a step at the entrance to a building or a door that is too narrow.

“The disadvantage or restriction of activity caused by a contemporary social organisation which takes little or no account of people who have a physical, sensory, learning, mental health or emotional impairment and thus excludes them from participation in the mainstream of social activities.”

As quoted in Fundamental Principles of Disability, Union of Physically Impaired Against Segregation (UPIAS) London, 1976.

The concept of **Corporate Social Responsibility**⁸ is increasingly pressed for by political decision makers at all levels of Government and, as a result, is increasingly being highlighted as an important criterion in Public Procurement decisions. That is to say that there is a growing tendency to require that companies who are entrusted with the execution of large public Works contracts are actively engaged in pursuing Corporate Social Responsibility within their structures.

Corporate Social Responsibility

- is a concept of business ethics based on the principle that companies have stakeholders who are broadly defined as any person or group affected by the activities of the company. The idea of Corporate Social Responsibility is that a company should be accountable to its stakeholders for all of its actions. For this reason the Corporate Social Responsibility focuses on how companies should identify and “engage” stakeholders and how they should determine, measure and report the impact of their activities on others.

www.ethicaltrade.org/Z/ethtrd/gloss/index.shtml

- highlights the voluntary role of business in contributing to a better society and a cleaner environment beyond its financial and capital commitments.

www.smallbusinessseurope.org/Glossary/

- is concerned with treating the stakeholders of the firm ethically or in a socially responsible manner. Stakeholders exist both within a firm and outside it. Consequently, socially responsible behaviour will increase the human development of stakeholders both within and outside the corporation.

Source: Michael Hopkins: A Planetary Bargain: Corporate Social Responsibility Comes of Age (Macmillan, UK, 1998)

⁸ Corporate Social Responsibility is defined by the European Commission as “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis” Source: <http://europa.eu.int/scadplus/leg/en/vb/n26034.htm>



Corporate Social Responsibility recognises that the problems preventing social inclusion are structural in essence and result neither solely nor primarily from an individual's disabilities but from economic, social and technological changes occurring throughout human society. This is the same concept that is expressed in the social model of disability on which Design for All is based.

The European Commission⁹ recognizes that *"Within a business, Corporate Social Responsibility relates to quality employment, lifelong learning, information, consultation and participation of workers, equal opportunities, integration of people with disabilities, anticipation of industrial change and restructuring."*

Preventing and combating exclusion demands effort and the involvement of the persons experiencing exclusion together with national, regional and local authorities, welfare associations, non-governmental organisations, social partners and businesses.

Leading business corporations understand that exclusion constitutes a waste of human resources and a threat to social cohesion; it is a contributory factor in the rise in collective costs and financial burdens for businesses. Companies are also involved in Corporate Social Responsibility for ethical reasons and, in particular, to demonstrate their awareness of the twin concepts of progress and responsibility.

'...Corporate Social Responsibility becomes both business and stakeholder-led, to open the discussion to all people, and all groups concerned. Employers, trade unions, consumers and investors finding common solutions and agreements that respond to their diverse needs...'

Anna Diamantopoulou, former European Commissioner for Employment and Social Affairs. Source: <http://europa.eu.int/rapid/pressReleasesAction.do?reference=SPEECH/02/485&format=HTML&aged=0&language=EN&guiLanguage=en>

⁹ Communication from the Commission concerning Corporate Social Responsibility: A business contribution to Sustainable Development COM(2002) 347 final



5. Design for All Considerations in Public Procurement

There are significant benefits and advantages to be gained by the adoption of a Design for All approach in the preparation of calls for tender for public Works. These benefits and advantages accrue in many different ways, to many of the affected actors in the process. Not least of these is the Contracting Authority itself, whose standing in the community is certain to be improved and whose overall budget will benefit as the advantages of accessible, friendly environments pay dividends in encouraging more involvement by more people in the use of public facilities.

The inclusion of Design for All principles in the Procurement of public Works will:

1. Take account of human diversity, social inclusion and equal opportunity
2. Enable all people to have equal opportunities to participate in every aspect of society
3. Act as an instrument for obtaining sustainable development and social cohesion
4. Assist in facing the challenges concerning the increasing cultural and functional diversity of the population in Europe
5. Create a win-win situation by providing an environment that everybody can enjoy
6. Create environments that can be adapted to different requirements both spatially and over time
7. Copes with interesting and new market consequences, generates an increased number of consumers and greater commercial opportunities

Alongside the principal advantages and benefits listed above, there are other benefits that arise from the adoption of the Design for All philosophy:

- **Social Impacts and Opportunities**

The population of the European Union is a diverse population. It is made up of people of different social, historical, economical, cultural and religious backgrounds. This diversity will increase as new countries join the Union. Accordingly, there is a need to create environments which are accessible for all and which bring economic and social opportunities to all. The Design for All approach is one of the most important solutions for the future of Europe and offers opportunities to advance social inclusion and economic development within the community. These new opportunities apply to society as a whole, as well to businesses and individual persons.



To achieve social effects and equal opportunities, the built environment, everyday objects, services, culture and information, everything that is designed and made by people to be used by people, must be accessible, convenient for everyone in society to use and responsive to evolving human diversity.

- **Demographic Change in Europe**

Europe is facing an important demographic change¹⁰. The most significant impact will be the ageing population in Europe. By 2050 34.5 % will be over the age of 60 years old. Since there is a strong correlation between getting older and increasing prevalence of functional impairments, an accessible environment is imperative for maintaining an active ageing population.

Environments designed and built according to Design for All and accessibility principles will ensure that also older persons and disabled persons are able to enjoy their independence over the longer term. These possibilities for being independent also offer an important service to society. Older people are knowledgeable, they have many years of experience, and above all they have the desire to go on being useful and the need to continue their chosen way of life on their own terms.

An accessible building stock and built environment allows full social participation and offers the opportunity for a:

- Safer and healthier use
- More comfortable use
- More efficient use

Thus, the adoption of this approach increases the demonstrable factors that allow a Contracting Authority to show to its constituency that it is taking its public duties seriously.

- **Economic Impacts and Opportunities**

Disabled persons and older persons represent a significant consumer market that is both insufficiently catered for at the present time and under-exploited. When it is realised that applying accessibility criteria has no negative effects on other groups in the population, there is no reason why their use should be limited or curtailed.

There are strong socio-economic and market incentives to apply the Design for All, accessibility and usability approaches that should go hand in hand with everyday development and evolution of the built environment.

¹⁰ 2005 EU Green Paper on demographic change:
http://europa.eu.int/comm/employment_social/social_situation/green_paper_en.html

**Example:** Study on Accessibility in the tourism industry

A study on the behaviour of disabled travellers and other travellers with activity limitations in Germany has shown that:

- 36 % did not travel because the service proposed was not accessible
- 48 % would travel more often if the service provided was more accessible
- 62 % would spend more to pay for accessible services
- 17 % travelled abroad because of more accessible offers

(Source: Federal Ministry of Economics and Labour, 2004)



6. About the EU Public Procurement Directives

The revised Public Procurement Directives¹¹ offer scope for contracting authorities to consider social and accessibility issues. Public authorities, at all levels, are being encouraged to positively implement these provisions as far as the new rules allow.

The Directive provides for

- criteria for qualitative selection (Art. 45-52),
- contract award criteria (Art. 53),
- technical specifications (Art. 23 and Ann. VI) and, finally,
- conditions of performance of contracts (Art. 26).

These categories, each in a different way, allow to include accessibility aspects

In this way the Directives can positively influence the inclusion and employment of people with disabilities and unemployed people, the safety of the workplace or even social care fiscal obligations

General Description of the Directives

The principal aim of the Directives coordinating the award procedures of Public Procurement is to ensure that the taxpayers' money is spent in a way to have "best value for money", respecting, at the same time, the principles of equal treatment, non-discrimination and transparency.

Accessibility criteria can be introduced as technical specifications or performance conditions in both, the "lowest-price" and the "most economically advantageous" tender procedure, however, accessibility issues, as award criteria, can only be considered in the case of the most economically advantageous offer

A Public Procurement procedure consists of several successive phases, each of which allows, to a varying degree, taking environmental and social criteria (of which accessibility criteria are a part) into consideration. In any case, the basic principles of equal treatment, non-discrimination and transparency remain to be respected throughout all phases.

11 DIRECTIVE 2004/17/EC

Of the European Parliament and of the Council, 31st March 2004

Coordinating the Procurement procedures of entities operating in the water, energy, transport and postal services sectors.

and

DIRECTIVE 2004/18/EC

Of the European Parliament and of Council of the of 31st March 2004

Coordinating the procedures for the award of public works contracts, Public supply contracts and public service contracts

**PHASE 1: Identification of the needs, preparation of the tender notice**

The public client has to identify its needs. This consists of defining the subject-matter of the contract, as well as drafting the contract notice, including technical specifications and contract performance conditions (refer also to PHASE 4). Only if all of these have been published can Tenderers be expected to correctly respond to a call for tender.

Accessibility criteria, of a technical nature, can be included in the technical specifications, where appropriate with references to technical standards. This defines the characteristics of the building or goods to be purchased.

PHASE 2: Selection of the qualified contractors

Once the public client has received the tenders, they have to evaluate the Tenderers on the basis of the so-called "selection criteria". The selection phase serves to exclude those Tenderers who are not qualified for the job. Tenderers who do not satisfy the selection criteria, will be excluded from the further procedure.

The "classical" Directive (2004/18/EC) deals with the "criteria for qualitative selection" in Articles 45 to 52. Tenderers that have been convicted ("final judgment") for organised crime, corruption, fraud or money laundering **shall** be excluded from participation in the procedure.

Tenderers having been convicted ("final judgment") for a list of other things **may** be excluded. In this list, there is reference to offences concerning professional conduct¹² and not fulfilling obligations relating to payment of social security or taxes.

At the selection stage, accessibility criteria can be introduced under the heading of "technical and/or professional ability" (see 2004/18/EC, Art. 48). For example, a list of accessible Works carried out over the past five years, an indication of the specialised accessibility technicians or technical bodies involved, a description of the technical facilities and measures for ensuring quality and respect of accessibility criteria, the educational and professional qualifications of the persons who will be chosen to deliver the expertise required in the execution of the contract.

¹² Recital 43: Non-observance of national provisions implementing the Council Directives 2000/78/EC (1) and 76/207/EEC (2) concerning equal treatment of workers, which has been the subject of a final judgment or a decision having equivalent effect may be considered an offence concerning the professional conduct of the economic operator concerned or grave misconduct.

**PHASE 3: Evaluation of the tenders, award of the contract**

Once the unqualified Tenderers are eliminated from the procedure, the public client is left with the tenders submitted by qualified Tenderers and can now proceed to the material evaluation of the tenders. This evaluation is based on the so-called "award criteria" (2004/18/EC, Art. 53).

In the case of the award being made to the most economically advantageous tender, from the point of view of the Contracting Authority, such award criteria must be linked to the subject matter of the public contract in question. The Directive gives the following examples: quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales service and technical assistance, delivery date and delivery period or period to completion.

Based on the examples given, it is also possible to specifically mention accessibility criteria in the award criteria. This would allow the evaluation of the Tenderers' specific track record on accessibility including experience, references, know how etc.

PHASE 4: Execution and performance of the contract

Once the public client has awarded and signed the contract, they should monitor the correct implementation of the contract and all obligations deriving there from, including the "contract performance clauses" mentioned above and described at the Contract Notice stage of the procedure.

It should be noted that the Public Procurement Directives do not set out procedures or conditions for this stage of the Procurement of a work. This is because the procedures set out in the Directives will have been fulfilled at this point.

Social criteria can be included as contract performance conditions.

For example:

- to recruit more disabled persons than are required under national legislation
- to favour on-site vocational training
- the employment of people experiencing particular difficulty in achieving integration
- the fight against unemployment
- to recruit long-term job-seekers



- to implement training measures for the unemployed or young persons
- to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions, assuming that such provisions have not been implemented in national law

As these contract performance conditions are part of the contract, they have to be respected by the appointed contractor (the “winner” of the procedure) during the execution of the contract, but not earlier. Each Tenderer is deemed to have based their tender on the published conditions. Consequently, respect of such performance conditions is an integral part of the contract and must not be used as a selection or award criterion.

Key elements of the Directive from an Accessibility Perspective

- When drawing up a call for tender, public authorities are required to identify all of the characteristics that the product, Works or service will have to meet. Rules and an outline of the kind of characteristics that can be included are specified in the Articles and Annexes of the Directives that relate to technical specifications of a tender. In particular, the EU Directives refer specifically to technical specifications relating to accessibility for disabled people and Design for All requirements.
- Public authorities can also decide to impose contract performance conditions on the company that wins a call for tender. These may range from environmental requirements to accessibility requirements to the obligation to employ a certain percentage of disabled people to do the job. However, any such conditions must be set out in the call for tender so as to allow Tenderers to take account of them in their offers.
- The Directives also include rules on the possibility to **reserve contracts** for certain kinds of companies, which benefit undertakings such as sheltered Workshops¹³ that employ a majority of people with disabilities.
- Social considerations such as accessibility and employment of disabled people can be a selection criterion to the extent that a firm does not respect a statutory obligation to employ disabled persons or engages discrimination and is convicted. It can also be a "contract performance condition", to be respected by the successful Tenderer. These must be specified in the call for tender.
- When making the final choice for a tender, according to the most economically advantageous tender, public authorities can take accessibility and social considerations into account under some conditions.

¹³ Under certain conditions, and concerning accessibility criteria, there is a partial exception to some of these principles, called a "special arrangement" in the classical Directive (2004/18). In fact, Art. 19 (explained in recital 28) gives the possibility to reserve the right to participate in a Public Procurement procedure to "sheltered workshops" or to programmes in which most of the employees concerned are disabled persons who "cannot carry on occupation under normal conditions".



7. Points to consider

In this section the main points that should be considered in following the procedures presented in the Public Procurement Directives for the preparation of a call for tenders are set out.

The most important point to consider is the fact that the Public Procurement Directives allow for the inclusion of social and environmental criteria and that it specifically mentions "accessibility criteria for people with disabilities" and "design for all users" as being valid criteria that should, wherever possible, be taken into account when defining technical specifications (Article 23, §1). Although this means that the inclusion of social and environmental (Article 53 §1a) considerations is optional in the text of the European Union Directives, it is clearly a strongly expressed wish of the European Union that they be included, as stated in the first two introductory recitals. It is therefore essential that in transposing the requirements of the EU Directives into the national law, these are studied and understood by those preparing calls for tender.

In cases where the national law does not require the inclusion of social and environmental considerations or criteria and where there is no other law requiring the implementation of a Design for All approach (such as Disability Acts), a Contracting Authority can still include accessibility and Design for All in the criteria for the realisation of public Works contracts.

Having studied the text of the Directives, the Build-for-All partners wish to highlight the main points that need to be considered as being desirable for inclusion in the calls for tender and in the procedures that surround the award of contracts for the execution of public Works contracts.

1. Accessibility as part of social and environmental considerations.

Relevant Articles and Recitals:

Article 2 – Recitals 1 &2

Recitals 1 and 2, which between them, set out the general background for the Directives, support the inclusion of social and environmental considerations in the awarding phase of contracts. These recitals are to be read in conjunction with Article 2 which states unequivocally that Contracting Authorities shall treat economic operators equally and non-discriminatorily and in a transparent manner, and article 53 on the award criteria.

These provisions therefore allow for the full inclusion of accessibility and Design for All approaches.



2. Design for all and Accessibility in the technical specifications of a contract

Relevant Articles and Recitals:
Article 23, §1- Recital 29 & Annex VI

Article 23, §1, as mentioned in the introductory text specifically mentions the inclusion of accessibility and Design for All principles in the context of the technical specifications that a Contracting Authority can include in the call for tenders.

These specifications are further detailed in Annex VI.

3. All electronic means of communication and all documents used in the procedures must, in accordance with the principles of equal treatment and non-discrimination, be available in accessible formats.

Relevant Articles and Recitals:
Article 23 & Recital 29
Article 28
Article 29
Article 38
Article 39
Article 40
Article 41
Article 42
Article 44
Article 54 & Recitals 12, 13, 14

The large numbers of references relevant to this point are the Articles that describe the procedures that are open to Contracting Authorities to choose in deciding on how to structure a call for tender. It is important to realise that many economic operators that will receive the documents may employ disabled persons and so it is essential, to achieve the non-discrimination and transparency requirements of the Directive, to ensure that they are accessible to all persons. For example, this means that calls for tender cannot be available in print alone and that any electronic means used, including equipment, is in compliance with WAI¹⁴ guidelines or similar national guidelines.

The same principles must be applied to the procedures adopted for possible "technical dialogues" before launching an award procedure (Recital 8) with economic entities so that all participating persons have full access to all relevant information.

¹⁴ The Web Accessibility Initiative (WAI) works with organizations around the world to develop strategies, guidelines, and resources to help make the Web accessible to people with disabilities. Source: <http://www.w3.org/WAI/>



4. The Directives permit, under certain conditions the reservation of contracts to sheltered Workshops.

Relevant Articles and Recitals:

Article 19

Recital 28

These provisions of the Directive are aimed at guaranteeing equal opportunities for all and they contribute to integration into society of people with disabilities. Contracting Authorities should consider the possibility of taking up this option as often as it can reasonably be pursued as it demonstrates a clear commitment to corporate social responsibility.

5. The inclusion of Design for All and accessibility principles in the various criteria and conditions for the performance of contracts is encouraged by some of the provisions of the Directives.

Relevant Articles and Recitals

Article 26 & Recitals 33, 44

Article 27 & Recitals 34, 43 (at the end)

Article 34

The various contract performance clauses can, in particular, relate to social and environmental matters and, therefore, to accessibility and they should be disability-proofed in order that they are non-discriminatory.

Some provisions also allow for the exclusion of Tenderers, in the selection phase, that have been convicted for breach of social and employment legislation, including of measures fighting discrimination of disabled people in employment.

The inclusion of these principles will assist Contracting Authorities to define and demonstrate non-discriminatory criteria in consultation with people with disabilities.

6. The Directive allows for the assessment of the technical and/or professional ability of Tenderers to be undertaken.

Relevant Articles

Article 48

Article 52

Recital 45

These provisions of the Directives are very important to the potential to successfully introduce and implement accessibility and Design for All criteria and relate to the power of the Contracting Authority to assess the expertise on offer from an economic operator and to use this as a criterion for selection. It is therefore particularly



important to ensure that Tenderers are requested to demonstrate the level and quality of skills that they can bring to the project in the field of accessibility and Design for All. Furthermore they will allow the Contracting Authority to require that specific expertise and successful experience in the field of accessibility and Design for All is proven.

7. Only using the "most economically advantageous" approach to the choice of contractor allows the weighted evaluation of Design for All and accessibility criteria for the award of the contract.

Relevant Article

Article 53 & recital 1,2, 5, 6

Recitals 46, 47

In deciding on the criteria to use for the award of a contract, the Build-for-All partners recommend that Contracting Authorities use the option open to them to include Design for All and accessibility criteria: by making the award to the tender most economically advantageous from the point of view of the contracting authority.

If the decision to do so is taken, then this must be stated in the Contract Notice.



8. Briefing Note on the use of Quality/Price Tender Evaluation Models

Tenders may be evaluated on the basis of the most economically advantageous tender (quality based approach) or on the basis of price alone (lowest price approach). In the former case a range of non-price based criteria might be included as legitimate evaluation criteria of the best tender and the partners of the Build-for-All project consider this to be the best way to evaluate tenders in the Procurement of public Works as it allows the Contracting Authority to take accessibility fully into account. Factors relating to access to facilities of people with disabilities, may be legitimately included as award criteria.

The extent to which quality issues may be taken into account in the evaluation of tenders may vary. It is for the selection panel to agree the quality factors, and their impact on the evaluation process, in advance of inviting tenders. However, in certain circumstances, it might be appropriate to increase the balance further in favour of quality, and an evaluation based entirely on quality might sometimes be legitimate.

Key steps are:

- Form a Panel of experts for the award phase;
- Clarify your award criteria (key success factors), including the relative importance of accessibility and all other criteria;
- Ensure tender invitation documents include a full explanation of the evaluation process;
- Compile robust evaluation and scoring methodologies and keep to them;
- Pay adequate attention to how presentations and interviews are to be structured;
- Fully record each stage of the evaluation process;
- Debrief unsuccessful candidates immediately after having identified the successful tender and sufficiently prior to effectively awarding the contract.

THE BUILD-FOR-ALL TOOLKIT

Practical approach for contracting authorities to include certain procedures and technical requirements in procurement, so as to ensure that accessibility criteria are met in design and construction work

By
The **Build-For-All** Partnership.
Info-Handicap, Luxembourg

supported by the European Commission

Pilot project on actions to mainstream disability policies submitted under the open call for proposals for transnational projects VP/2004/008



Sole responsibility lies with the authors and the Commission is not responsible for any use that may be made of the information contained.

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Please visit www-build-for-all.net for updates



9. Toolkit Introduction

This **Toolkit** concentrates on delivering the means by which Contracting Authorities can ensure that, in their procurement procedures, they take adequate account of the accessibility issue which is so fundamentally important.

If you are unfamiliar with the concepts of accessibility and Design for All, or with the content and objectives of the Public Procurement Directives, you are advised to read the **Handbook**, which is Part 1 of this Reference Manual. If these matters are familiar to you, then you should find the tools in this short Toolkit useful when planning and carrying out public Calls for Tender.

The Toolkit is specifically aimed at the procurement officers who work, on a daily basis to write calls for tender for public Works and who are familiar with the provisions of the European Union Directives on Public Procurement Procedures and/or the equivalent national legislation. It will also be informative to those who respond to calls for tender, as it gives an insight into how such calls are structured, at least as far as the inclusion of accessibility criteria is concerned.

As the Public Procurement Directives do not oblige Contracting Authorities to include accessibility criteria in calls for tender, it is worth noting that there are significant benefits from the adoption of this practice. National Legislation may, in certain countries, require this obligation and this is strongly welcomed by the Build-for-All partners, but the aim of the work of the project is to encourage the adoption of such inclusions in all European Union Member States in all design and construction of the built environment.



10. The Benefits and Advantages of Design for All

As stated in the Handbook, there are significant benefits and advantages to be gained by the adoption of a Design for All approach in the preparation of calls for tender for public Works. These benefits and advantages can affect many actors in the process. Not least of these is the Contracting Authority itself, whose standing in the community is certain to be improved and whose overall budget will benefit as the advantages of accessible, friendly environments pay dividends in encouraging more involvement by more people in the use of public facilities.



11. Technical Guidance

Introduction

This chapter does not contain the full description of the process of preparing the tender documents, a process that is familiar to all those who regularly prepare calls for tender. Rather it shows only the moments where the inclusion of accessibility issues make a difference in the specific steps undertaken.

It should be noted that the accessibility guidelines are only part of the “big picture”. The other parts consists of employment issues as well as transportation, customer services and communications. These are addressed in a general way in the chapters of the Handbook.

The description of the step-by-step procedure is set out in accordance with the relevant phases of preparing the tender documents by procurement officers for the purposes of preparing tenders for buildings and outdoor environment facilities, funded with the use of public financing and procured by the public sector. The relevant items are described in the light of EU Directive on Public Procurement, Directive 2004/18/EC and all Article references below are from that Directive.

General Conditions on Scope of Application

In principle the whole procedure applies in cases where the value of the contract exceeds EUR 5,923,000 (Art.7 § (c)). For public Works contracts of lower value the tender procedure described in this Toolkit can refer to the national Public Procurement legislation in force in each Member State of the European Union. However, in all cases the basic principles of the European Treaties have to be respected, namely transparency, equal treatment/non-discrimination and best value for money. Consequently, the guidance provided by this Toolkit is equally useful for projects below the thresholds.

In Art. 1. § (2/b) a “work” is defined as “...*the outcome of building or civil engineering Works taken as a whole to fulfil an economic or technical function...*”

This means that buildings and outdoor environment facilities belong to the term “Works” in the meaning of this Directive.

The simplest method to get the desired result is to realise the differences in the approach of making a given facility and built environment accessible right at the beginning of both the design Works and the procurement procedures. The three main areas of concern to make the environment accessible to all can be considered as, firstly, eliminating barriers in existing facilities, secondly, issues associated with alterations and, thirdly issues associated with new construction.

Therefore it is helpful to consider the following division of the Works, all of which are



relevant to the guidance in this reference manual:

- New public buildings for general use (with the exclusions contained in the legislation of the Member States such as, for example, military facilities)
- New residential buildings (single-family houses excluded)
- Alterations and additions in existing buildings of any functional use including historical buildings, which are not classified as historical monuments, on the occasion of every renovation, modernisation adaptation or revitalisation Works
- Alterations and additions in existing buildings of any functional use, classified as historical monuments on the occasion of every renovation, modernisation, adaptation or revitalisation Works
- New outdoor facilities
- Alterations to existing outdoor facilities and existing outdoor spaces, not classified as historical monuments on the occasion of every renovation, modernisation, adaptation or revitalisation Works
- Alterations to existing outdoor facilities, classified as historical monuments on the occasion of every renovation, modernisation, adaptation or revitalisation Works
- For the buildings, facilities and outdoor spaces classified as historical monuments the relevant legislation concerning the historical heritage and culture protection in force in every Member State shall be applied

For the buildings, facilities and outdoor spaces classified as historical monuments the relevant legislation concerning the historical heritage and culture protection in force in every Member State shall be applied

The principal aim of the Directive coordinating the award procedures of Public Procurement is to ensure that the taxpayers' money is spent in a way to have "best value for money", respecting, at the same time, the principles of equal treatment, non-discrimination and transparency.

Accessibility criteria can be introduced as technical specifications or as contract performance conditions in both, the "lowest-price" and the "most economically advantageous" tender procedures. However, accessibility issues, as award criteria, can only be considered in the case of the most economically advantageous tender and this fact needs to be signalled at the time of the publishing the contract notice.

The text that follows gives a series of guidance notes set out in accordance with the phases described in the Handbook.

PHASE 1: Identification of the needs, preparation of the tender notice

The public client has to identify its needs. This consists of defining the subject matter of the contract, as well as drafting the tender notice, including technical specifications and contract performance conditions. Only if all of these have



been published can Tenderers be expected to correctly respond to a call for tender.

Accessibility criteria of a technical nature, can be included in the technical specifications, where appropriate, with references to technical standards. These define the characteristics of the building or goods to be purchased.

4.01 Tender Notice and Notice of Invitation to pre-qualify

The contracting authority in preparing the Tender Notice and the Invitation to Pre-qualify should state that **accessibility and Design for All criteria will be included in the selection and award criteria**. The Notice must indicate the relative weighting that will be assigned to each of the award criteria (refer to Art. 23)

4.02 Issue and Submission of Pre-qualification Documents

The Tenderers will have to respond to the published requirements. To this extent Art. 23 states that: *"...The technical specifications, as defined in point 1 of Annex VI, shall be set out in the contract documentation, such as contract notice, contract documents or additional documents. Whenever possible these technical specifications should be defined so as to take into account accessibility criteria for people with disabilities or Design for All users"*.

PHASE 2: Selection of the qualified contractors

The selection phase serves to exclude those Tenderers who are not qualified for the job. Tenderers who do not satisfy the so-called "selection criteria", will be excluded from the subsequent stages of the procedure.

The "classical" Directive (2004/18/EC) deals with the "criteria for qualitative selection" in Articles 45 to 52. Tenderers that have been convicted ("final judgment") for organised crime, corruption, fraud or money laundering **shall** be excluded from participation in the procedure.

Tenderers having been convicted ("final judgment") for a list of other things **may** be excluded. In this list, there is reference to offences concerning professional conduct¹⁵ and not fulfilling obligations relating to payment of social security or taxes.

At the selection stage, accessibility criteria can be introduced under the heading of "technical and/or professional ability" (see Art. 48). For example, a list of accessible Works carried out over the past five years, an indication of the

¹⁵ Recital 43: Non-observance of national provisions implementing the Council Directives 2000/78/EC (1) and 76/207/EEC (2) concerning equal treatment of workers, which has been the subject of a final judgment or a decision having equivalent effect may be considered an offence concerning the professional conduct of the economic operator concerned or grave misconduct.



specialised accessibility technicians or technical bodies involved, a description of the technical facilities and measures for ensuring quality and respect of accessibility criteria, the educational and professional qualifications of the persons who will be chosen to deliver the expertise required in the execution of the contract.

4.03 The contracting authorities must establish the selection and award criteria, respecting the provisions of the Directives, and they can indicate which proof of (pre-) qualification they will accept in selecting the Economic Operator to take part in the tender. This can be done according to the following steps (4.04 to 4.08):

4.04 The team. The procurement officer should point to the fact that the composition of the technical staff of the Economic Operator should be composed so that:

- the role of every professional is specified, especially showing the expertise related to accessibility and Design for All,
- a staff organisation chart is included, specifying the role of every professional
- their educational and professional qualifications, their technical expertise related to the accessibility and Design for All, shall be included.

4.05 There should be a **Clause** that the Tenderers (Economic Operators) will be asked to describe their entrepreneurial history with special regard to the correspondence of the described Works to accessibility and Design for All criteria. Also there should be a statement that a declaration that the Tenderer is not the subject of a judgement, of bankruptcy procedures and judgement which has the force of res judicata (see Art. 45), for example that they are not subject to an exclusion.

4.06 Certifications – Internal Experts: The procurement officer should point to the fact that the possession of quality certifications and membership of qualification lists (assessed by certification bodies established under national public or private law) of approved Economic Operators undertaking public Works, is needed. This includes certifications in the field of accessibility. If, in a given Member State, the figure of an Accessibility Expert is not recognised or identified then the Procurement Officer should ask the bidders to show the personal training and professional experience which could be referred to as the basis to assess the knowledge and competencies pertaining to accessible design (see Art. 48)

4.07 Certifications – External Experts: There is a possibility of using an external expert on accessibility – The procurement officer should point to the fact that the Economic Operator may rely on the economical and technical capabilities of other external operators - this guarantees that at least one of the Economic Operators involved in the Public Procurement, can prove possession of the required accessibility certifications. (see Art. 48 § 3)



4.08 Exclusions – the reasons for the exclusion of a Tenderer are set out in Art. 45. The Procurement Officer should point out these reasons for exclusion from participation in a Public Procurement process which include: involvement in criminal organisations, the re-use of revenues from illegal acts, corruption, fraud/tax evasion and failure to comply with non-discrimination legislation. (see Art. 45)

PHASE 3: Evaluation of the tenders, award of the contract

Once the unqualified Tenderers are eliminated from the procedure, the public client invites the qualified Tenderers to submit their offers and it then proceeds to the material evaluation of the tenders. This evaluation is based on the "award criteria" set out in Art. 53.

In the case of the award being made to the most economically advantageous tender, from the point of view of the Contracting Authority, the award criteria must be linked to the subject matter of the public contract in question. The Directive gives the following examples: quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales service and technical assistance, delivery date and delivery period or period to completion.

Based on the examples given, it is also possible to specifically mention accessibility criteria in the award criteria. This allows for the evaluation of the Tenderers' specific track record on accessibility including experience, references, know how etc.

4.09 In this phase of the tender procedure, in the part concerning the **technical specifications** the Procurement Officer should again point to the fact that the **relevant special conditions** taking into account accessibility criteria for people with disabilities and Design for All users will be imposed. **The special conditions will be described in Technical Specifications part of the tender documentation** (see Art.23).

4.10 It is recommended that contracting authorities should always decide to use the most economically advantageous tender procedure so that accessibility criteria can be a **part of the Contract Award Criteria**. The fact must be signalled from the outset of the procedure and the relative weighting that will be given to the criteria published. The objective should be that the proposals prepared with Design for All solutions in mind will be given a high weighting and therefore a high importance in the awarding of the contract.

Explanation: (The first part of Art. 53 is relevant: "...Contract award criteria: Without prejudice to national laws, regulations or administrative provisions



concerning the remuneration of certain services, the criteria on which the contracting authorities shall base the award of public contracts shall be either:

*...when the award is made to the most economically advantageous tender from the point of view of the contracting authority, various criteria linked to the subject-matter of the public contract in question, for example, **quality**, price, technical merit, **aesthetic and functional characteristics**, **environmental characteristics**, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion, or...*

4.11 As the call for tender should describe the scope of the Works, the quality of the materials and the standards of workmanship that the successful Tenderer will be called upon to provide in carrying out the Works it should also convey other essential information having a bearing on the performance of the Works. Therefore it should be clearly stated that:

The building legislation mandatory in every Member State is obligatory for every Tenderer (Economic Operator) in the given Member State and it is not the intention of the document to make any kind of compilation of legislation in order to get specific standards. All the provisions described above are to comply with the Member State legislation being in force with regard to the superiority of European Union law.

PHASE 4: Execution and performance of the contract

Once the public client has awarded and signed the contract, it should monitor the correct implementation of the contract and all obligations deriving there from, including the "contract performance clauses" mentioned above and described at the Contract Notice stage of the procedure.

It should be noted that the Public Procurement Directives do not set out procedures or conditions for this stage of the procurement of a work. This is because the procedures set out in the Directives will have been fulfilled at this point.

4.12 The Procurement Officer can prescribe, as contract performance conditions, the test, inspection and acceptance conditions of the finished Works. Any such conditions must be clearly set out in the contract notice and the invitation to tender and may include items such as:



- **audit** of the finished Works undertaken by independent experts from professional associations and public or private accessibility centres, if available in a given Member State
- **the end users' involvement** in prototypes analysis, virtual use, interviews etc. in a way complying with the legislation in force in a given Member State.

In case of alterations and/or additions to existing buildings and outdoor spaces, historically classified or not classified,, the Procurement Officer can additionally require the preparation of a survey identifying existing accessibility barriers.

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NO, logically impossible to make a preparatory study party of the performance conditions (i.e. to be respected only by the successful tenderer after he has signed the contract.)



12. Examples of Good Procedural Practice in Public Procurement

The project partners were invited to submit examples of good procedural practice in Public Procurement projects. These have been compiled and are presented below without critical appraisal, for the information of the reader.

The following are examples of projects where good procedural approaches were adopted to the procurement of Works or services by Contracting Authorities. They are given so as to encourage the uptake of similar good and best practices across Europe.

It is essential that the accessibility issues to be solved are defined as early as possible in the process. Very recent (bad) examples abound of large public projects, where the most evident needs for accessibility have not been taken into account despite the billions of € and the large numbers of professionals involved.

A primary school for 500 pupils aged between 4 and 11 (case A) needs to accommodate pupils with permanent and temporary disabilities. A pupil with a broken leg requiring weeks or months using wheelchair or crutches is only too frequent.

In the much larger and farther-reaching examples of the metropolitan transport organization in Barcelona – Spain (cases B and C), the ambition to transport millions of people per year from door to door, requires an extensive study of passenger traffic flows, of commuting walking distances, of smooth levelling between all interconnecting areas and means of transport, of accessibility of all levels by lifts, escalators and moving walks. Buses, trams and trains need to provide full accessibility to all, without any discrimination. Platforms for buses, trams and trains should be at the exact level of the carriage. In the case of buses, a projecting platform and partial lowering of the bus are available solutions which are widely used around the world – but only where these requirements are specified. In other words, it means a clear understanding of the needs of the visually impaired, the persons with limited mobility, limited hearing and users with other disabilities. Technological solutions exist and their relative need should be identified early on in the Public Procurement process by experts in the field. All types of public buildings must be easily accessible to all.

In some cases, the social commitment of the administrative bodies involved, guarantees a good analysis of the needs and the level of accessibility requested, but in most cases, it is highly recommended to consult experts in the field of disabilities, who will clearly identify the accessibility issues to be covered by the project. In all cases, Design for All is an excellent tool for the companies to improve their business opportunities and their reputation.



All cases presented are related to a geographical region, showing that a local snowball effect can appear, through which more actors wish to be involved in the bettering of the built environment and improvement of social relations.

Case A: Bleak Hill Primary School, St Helens, Lancashire

The Bleak Hill project, a partnering contract between St Helens Metropolitan Borough Council and contractors Willmott Dixon, was the first example of a local authority awarding a partnering contract for a building based purely on the basis of quality with no mention of price.

Context

Bleak Hill is a 500-pupil county primary school for 4-11 year olds. Existing buildings occupied about 25% of the school grounds. The new school with infants and junior playgrounds was built in the playing fields, giving complete segregation of construction from school activity. The main 40-week construction period was followed by one week to transfer pupils and staff and a further 12 weeks for demolition of the old school and creation of a new multi-use sports field and running track, new main entrance and car park.

Key Achievements

- The production of a bigger school for a smaller budget.
- Some aspects, such as the M&E (IT, lighting control, energy saving), above average quality.
- Higher level of cost certainty than normal for the Council.
- 11% cost savings against traditional approaches.
- 32% faster construction than original programme.

Key Drivers

- **The People Factor** - Key officers at St. Helens believed that partnering could help them break out of the 'worst value' scenario often produced by traditional contracting.
- **Central Government** – Began linking adoption of 'Rethinking Construction' and Asset Management to local authority cash allocations. Treasury looking for annual savings of 2% under Best Value as a whole.

Essential Success Factors

- **Corporate Commitment** – St Helens ensured that they had contracts sub-committee buy in and because the change was driven from the top they did not have the difficulties with their standing orders that are sometimes encountered in local authority partnering.
- **Involvement of Stakeholders** – As well as the authority's building professionals and senior management, all stakeholders attended the final interviews. Local



councillors, head teacher, school governors, political leaders, education, audit and legal officers – some 30 people in all.

- **Trust** – In each other as well as in themselves to be able to deliver something different. The team had a total open book approach.

The Process

Following its initial advertisement St Helens issued 52 copies of its comprehensive information pack on the project. This explained the partnering ethos and requested method statements for eight quality assessment criteria (not including price). The 26 responses were scored and the four best performing firms were invited for interview.

The decision at the interview to appoint Willmott Dixon was unanimous and at this stage they had not mentioned figures. Their proposal was based around experience in partnering and in schools, management team and added value they thought that they could bring to the project. The first of the key subcontractors, M&E contractor Drake & Scull, was then jointly appointed by both parties, using a scoring system weighted 70% quality and 30% price. Other subcontractors and suppliers were then brought into the partnership on a similar basis.

Shared Savings and Risk

The form of contract used was the ACA Standard Form of Contract for Project Partnering, written by Trowers & Hamblins, with the cost plan figure used as both a target price and a guaranteed maximum price (GMP). The contractors agreed to include profit and on-cost recovery within the cost plan, however if savings during construction were achieved they were shared 50:50. There was a 5% cap on extras over the GMP which meant that the Council's risk was identified in the agreement at 2.5%, half of the 5%, as was Willmott Dixon's. Beyond that shared risk, except for pre-defined areas, Willmott Dixon picked up all the risk.

Cost Plan within Budget

This was done through a series of Value Engineering (VE) Workshops over an eight month period. The cost plan was revised 12 times to identify approximately £300,000-worth of savings and efficiency gains. The school was fully involved and everything was done on a completely open-book basis. Each item identified in the VE Workshops as a potential saving was championed by one or more members of the team, who took responsibility for bringing forward a workable solution to the next meeting.

Open Book

Open book means that the actual accounts are the balance sheet for that project, and can therefore be inspected by the client. They include the fee structures for the design teams, the contractor and subcontractors on that particular scheme. The actual contract price is built up in a joint manner, so that the contractor's team is satisfied that the prices in it are correct, and the Quantity Surveyors are likewise satisfied that everything is correct. Adjustments are made in the Value Engineering



process, by the team together. Once the GMP is agreed and the work proceeds on site, the open-book approach means that if the client's representatives want to make sure that there is not a huge profit being generated from the scheme, or if, say, there are some extras and they want to justify them, the books are there to be examined, and to reveal how the calculations have been arrived at.

'We've been listened to and we've argued sensibly for the good of the pupils. We think we've got the best deal possible because of the expertise of the Partnership.' - Peter Isaac, Headmaster, Bleak Hill School

Case B

In 2005 the Entitat Metropolitana del Transport (transport authority of the metropolitan area of Barcelona-Spain) distributed among related administrative bodies and NGOs a draft of a call for tenders aiming to procure the service provision of door to door transport in Barcelona.

The Design for All Foundation answered to the invitation to comment the draft proposing several suggestions. The majority of these suggestions focused in to guarantee the quality of the service provision, like to adjust the number of vehicles to the demand, to inform about public accessible transport (as well as to foreigners), including interviews to the users in the quality assessment method, etc.

Another suggestion also accepted by the Transport Authority was to include CSR aspects in the awarding criteria. That is, it was suggested that 5% of the total score were related to social policies like employment of people with disabilities, balance in gender among employees, involvement in the community NGOs, etc.

Comments

It is innovative and a good tool for administrations not experienced in to include Design for All and disability issues in calls for tenders to distribute a draft of the call among related administrative bodies and NGOs that will help to improve the contents of the calls in these aspects.

It is also remarkable the inclusion of social aspects in the award criteria. A cheaper offer of a company lacking social responsibility would be more costly for society.

Case C

Since 1992, with the collaboration of experts and user organisations, Transports Metropolitans de Barcelona (Barcelona's public transport company) has been updating and improving throughout the years the technical description in the calls for tenders that they launch when purchasing buses. The technical requirements include detailed definitions, technical drawings and all the necessary elements (including the accessibility ones) to avoid mistakes in the construction process.

Comments



To produce well defined technical requirements not only helps to prevent mistakes and to purchase exactly what is intended but to facilitate the comparison between offers.

Case D

Applus Corporation is a multinational company with more than 6000 employees and present in 25 countries in three continents. The main business is certification, testing and audit in fields like automotive, safety, food, building, electronics, chemist, quality assurance, etc.

In 2004 the company decided that, due to the fact that their business guarantees the quality of products and services for the consumers, they decided to enlarge the concept of consumers including children, elderly and people with activity limitations.

As a consequence, the company developed the Corporate Social Responsibility policy based on the Design for All criteria. In practise that droved them to develop a plan to make their facilities accessible, to offer their clients a system to certify the accessibility of their premises, means of transport, and services and to use the income generated to disseminate the Design for All concepts through publications, conferences, etc.

Comments

The ethical approach of Applus has increased the reputation of the company among clients, companies, administrations and users facilitating their relationship with them.

But another unexpected outcome is that the employees realized in a very tangible way that the company is not only seeking for profit but also pursuing social ends.

Bearing in mind that, in Europe, one family out of four have a member with disability (and that also happens among the company's employees), the human resources of the corporation feel more involved to the philosophy of the company.

Case E

According to Spanish law companies with more than 50 employees have to employ at least 2% of its workforce with people with disabilities.

This law exists since 1982 but the companies didn't paid attention to and the administrative bodies didn't check up on this process.

In the last years, thanks to the pressure of NGOs, this question has been put in the social agenda. Beginning by requesting for a certificate of people with disability employment to have the right to participate in a call for tenders, nowadays to be candidate to be selected for any kind of administration's economical support (including Research & Development (R+D)) the company should demonstrate the fulfilment of this law.

**Comments**

Although it was hard for the companies in the beginning, throughout this process many companies realized that they already have employees with disability not being aware of the advantages in taxes that the company was losing and, on the other hand, by contracting new employees with disability, the attitudes of the human resources also improved regarding respect to diversity.

Regarding R+D initiatives it should be said that, since the 4th R+D Framework Program of the European Commission, when the projects associated with the improvement of quality of life, sustainable growth and information technologies include aspects related to Design for All, the elderly and people with disability tend to have more opportunities to achieve a better score in the calls for proposals.

Case F

In 2000, the Government of the Autonomous Region of Extremadura (Spain) passed the 202 Decree offering SMEs based in the region subsidies to cover up to 50% of the investments made by the companies implementing Design for All in their products and services.

This initiative supported by the regional Chamber of Commerce caused several companies from the food, transport and building sectors to develop plans in that respect.

Comments

In the past the belief was that the only way for administrative bodies to promote changes was through legislation, nowadays, both the Public Procurement considering social issues and economical support have become important tools for bringing out changes.



THE BUILD-FOR-ALL APPENDICES

By
The **Build-For-All** Partnership.
Info-Handicap, Luxembourg

supported by the European Commission

Pilot project on actions to mainstream disability policies submitted under the open call for proposals for transnational projects VP/2004/008



Sole responsibility lies with the authors and the Commission is not responsible for any use that may be made of the information contained.

DRAFT PUBLIC CONSULTATION DOCUMENT, January 2006

Please visit www-build-for-all.net for updates



Appendix 1 - List of accessibility relevant European standards (CEN norms)

The following CEN standards should be the support documents for the officers writing the invitations to tender as well as for the Tenderers:

ISO TC 59: Building construction

ISO TR 9527:1994 *"Building construction – needs of disabled persons in buildings – design guidelines"* has been elaborated to give guidelines on the subject.

Sub Committee 16 "Accessibility and usability of the built environment", is currently drafting the ISO/CD 21542 *"Building construction — Accessibility and usability of the built environment"*

CEN/TC 178 "Paving units and kerbs"

A specific standard for those with limited visual capacities is under development. It regards prEN 15209 *"Accessibility and usability of the built environment"*

CEN/TC 10 "Lifts, escalators and moving walks"

EN 81-70:2003 *"Safety rules for the construction and installations of lifts - Particular applications for passenger and good passengers lifts - Part 70: Accessibility to lifts for persons including persons with disability"*

EN 115:1995 and its Amendments *"Safety rules for the construction and installation of escalators and passenger conveyors"*

Following standards are under preparation:

prEN 81-40 *"Safety rules for the construction and installation of lifts - Special lifts for the transport of persons and goods - Part 40: Stairlifts and inclined lifting platforms intended for persons with impaired mobility"*

prEN 81-41 *"Safety rules for the construction and installation of lifts - Special lifts for the transport of persons and goods - Part 41: Vertical lifting platforms intended for use by persons with impaired mobility"*

CEN TC293: Technical aids for disabled persons

The primary objectives of this TC are:

- to produce standards on technical aids for persons with disabilities, including follow-up activities and revisions;
- to contribute to the development of mandates, the 'design for all' concept, and other centrally-located activities of importance to the field of technical aids for persons with disabilities;
- to inform about the CEN/TC 293 standards production and other activities.



TC293 is currently working, inter alia, on standards for hoists, walking aids, wheelchairs and prosthetics.

ISO TC 159: Ergonomics

A specific ad hoc group “ergonomics for people with special requirements” has been set up. A new standard on usability of everyday products is under development. It regards:

ISO/DIS 20282-1 *“Ease of operation of everyday products – Part 1: Context of use and user characteristics”*

ISO/CD TS 20282-2 *“Ease of operation of everyday products -- Part 2: Test method”*

Also, the following project is under development:

ISO/AWI TR 22411 *“Ergonomic data and guidelines for the application of ISO/IEC Guide 71 in standards related to products and services to address the needs of older persons and persons with disabilities”*

ISO TC 22: Road vehicles

Sub Committee 26 “Accessibility of vehicles to the physically handicapped” is preparing ISO/AWI 23688 *“Vehicles for the transport of people with reduced mobility with a maximum capacity of 8 seated passengers, driver not included”*

CEN/CENELEC Guide 6: *“Guidelines for standards developers to address the needs of older persons and persons with disabilities”*

This guide is primarily addressed to the standard’s writers and helps them to take into account the needs of older persons and persons with disabilities. But it is also a good tool for gathering information on the specific topic. The CEN/CENELEC Guide 6 is technically identical to the ISO/IEC Guide 71 and can be downloaded – free of charge – at following webpage:

<http://www.cenorm.be/boss/supporting/reference+documents/reference+documents.asp#8>

CEN Workshop: Design for All and Assistive Technologies in ICT.

Two CWAs were elaborated:

- CWA 14661: 2003 containing guidelines to standardisers of ICT products and services in the CEN ICT domain (aimed to be a kind of ICT-sector guide, complementing CEN/CENELEC Guide 6)
- CWA 14835: 2003 containing guidelines for making information accessible through sign language on the web

Both CWAs reach the end of their 3 year life time during 2006. Unless resources are available for a major update to both of them, their validity will not be prolonged beyond 2006.

CEN/CENELEC Workshop: Accessibility in Collective Transport Systems (ACTS)

This Workshop has drafted a CEN/CENELEC Workshop Agreement to provide guidance – to writers of relevant standards relating to collective transport systems -



how to take account of the needs of potential passengers with functional limitations, especially older persons and persons with disabilities.

The CWA 45546-1:2004 “*Guidelines to standardisers of Collective Transport Systems - Needs of older people and persons with disabilities - Part 1: Basic Guidelines*” can be considered as a sector specific supplement to CEN/CENELEC Guide 6.

Note: the development of standards is an ongoing process. For getting the latest information on the state of play, consult the website of CEN (www.cenorm.be), CENELEC (www.cenelec.org) or ISO (www.iso.org).



Appendix 2 - Implementing Accessibility Criteria in Practice

The ideas and statements of the lift, escalator and moving walks industry, drawing on the work of the Report of the Expert Group of the European Commission under the title of: *“Europe, accessible to all by 2010”* (2003), chapters 1.2, 1.3 and 2 are summarized below. They indicate numerous aspects of accessibility which should be taken into consideration in order to ensure that accessibility of the built environment is achieved by Contracting Authorities:

- The built environment must be fully accessible to all, keeping the mobility chain unimpaired and applying state-of-the-art safety
- All buildings should have horizontal and vertical easy access, to all floors or other spaces, suitable to all people.
- Where circumstances dictate, all main entrance and exit building doors will be powered
- No public building should be built without a lift if it has more than one floor.
- Level differences should be compensated by ramps or preferably lifting platforms. No step(s) up or down will hamper the access if no ramp is provided.
- All lifts should be equipped with audio and visual signals & controls which are designed for ease of use by every user and positioned at the right height in the lift car and on landings.
- Sanitary facilities should be accessible to all and will satisfy local requirements in terms of size and organisation
- Buildings signage must be integrated and displayed so that they will fulfil their function without being visually-discriminating, including the clear identification of glass areas for people with impaired vision.
- Lighting of public spaces should be sufficient to read signage in all conditions
- Every public building must provide means for the evacuation of ALL present in the building at all floors, in case of a fire or other emergency. The accessibility of fire-fighters and the evacuation of people with disabilities are priorities for officers writing public tenders.
- External connections of buildings with the public transport infrastructure will be optimized, with the necessary means, taking distance into account, avoiding level differences and enabling access to all able and less-able citizens.

Further Measures that can be taken by Procurement bodies to achieve accessibility include:

- Identification of the main issues affecting accessibility and inclusion



- Establishment of consultation groups
- Cooperation with representative organisations of and for disabled people
- Bringing accessibility expertise into construction projects
- Consulting or checking the accordance with pertinent CEN standards, related to specific areas (car parks), equipment (lifts, escalators & moving walks for ex.) and materials (tactile floors for ex.) (See list in Annex 1)
- Operating Disability proofing decision making to generate practical and pragmatic recommendations for accessible environments
- Conducting case studies in accessibility that demonstrate what can be achieved with careful thought and willingness to compromise



Appendix 3 - Accessibility rules related to design

The fundamental accessibility criteria understood as **rules relating to design** are as following:

- Providing means for achieving equal spatial orientation to all users by the means of adequate spatial layout of the outdoor space and the spaces inside buildings, including the use of accessible signage, adequate way-finding and information systems.
- Providing means for achieving equal and unrestricted mobility to all users, outside and inside buildings, especially in terms of vertical circulation, horizontal circulation, spatial parameters of the spaces and facilities, having regard to site topography seen in the broader context, to the adequate illumination levels; mobility seen as elimination of hazardous elements, providing necessary infrastructure, selection of the adequate finishing materials and all necessary state-of- the art solutions.
- Providing means for achieving safe evacuation conditions from the buildings and from the outdoor facilities for everybody, having regard to their mobility possibilities.
- Providing means for assuring everyone's dignity in terms of creating the adequate conditions for personal hygiene in the inner spaces and in the use of the outdoor facilities.

This should be achieved by incorporating the requirements of Design for All in all groups of design and construction Works as specified in the Tender, according to the Member State Law, and according to the competencies of the Economic Operator. Compliance with these fundamental accessibility criteria should be clearly pointed out in the design and technical description of all kinds of Works by the Economic Operator .



Appendix 4 - How to demonstrate Social Commitment

Having studied the range of issues and options open to an organisation in the field of adopting better practice approaches to disability and accessibility issues, it will be desirable to find ways of openly demonstrating this commitment to Corporate Social Responsibility¹⁶ to the outside world. This can be done by adopting one or more of the following actions:

- Actively promoting diversity in your work force;
- Practicing equal opportunities recruitment;
- Undertaking positive action towards disabled persons (such as providing traineeships for disabled persons, targeted outreach towards disability organisations in the recruitment process; recruitment of disabled persons to the work force);
- Undertaking systematic disability awareness training for all company staff;
- Providing regular training of company staff in accessibility and Design for All;
- Undertaking specific initiatives to raise awareness about the benefits of accessibility and Design for All approaches;
- Ensuring the work place is accessible for disabled persons (both disabled clientele and disabled staff);
- Using new technologies to the advantage of people with disabilities, who stand to gain from more flexible forms of work and work organisation.
- Ensuring the provision of accessible goods and services
- Adopting a seamless approach to accessibility: implementation of this approach throughout all stages of the project from conception and design to implementation, construction and maintenance.
- Involving representative disability and older people's organisations in the design and implementation of project work

¹⁶ Corporate Social Responsibility is defined by the European Commission as "a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis"

**Good practice examples**

The Schindler Award for Architecture "Access for All": to raise awareness and promote training of architecture students on the issue of accessibility in built environment design.

Adecco is implementing a Corporate Social Responsibility program: "Disability & Skills" is currently being spread throughout the Adecco network to have all business units compliant in terms of employment of people with disabilities at Adecco's clients and for internal recruitment focusing on skills.

Hewlett-Packard Products and Services accessibility information - accessibility database to inform customers of how HP products meet accessibility requirements.



Appendix 5 - Resources for training

A series of national training Workshops will be organised in 2006

Target audience will be public authorities, professional organisations and disability organisations from national and local level.

The outcome of these events – to be included in the final version of this document at the end of 2006 - will contribute to improve the content of the present Reference Manual in order that it can be adapted to the particular national, regional or local situations in the Member States.

Supplemental appendixes are being prepared, i.e.:

- How to ensure Public Procurement Results in Accessibility
- Disability proof decision making

In the meantime all interested persons should refer to the project Website www.build-for-all.net, that will be updated always when new materials will be available.



Appendix 6 - Glossary

'Built Environment' The "European Concept for Accessibility" mentions two types of environment: natural and built.

Natural environments: their development depends solely on the action of natural elements (rain, wind). As soon as natural environments like for example forests are modified in order to be used by people, they become part of the built environment.

Built environments: these are environments created or modified by people so that people may live in them. Examples of built environments: buildings, squares, vehicles (transport), parking spaces, streets, children's play areas, monuments, water/gas installations, etc. natural parks - in which plant life is protected, and designated paths and different services are provided and beaches - with equipment (ramps, walkways on the sand, etc.) that facilitates access to them and the various services they offer, and which provides specific assistance in terms of bathing (floats for children, floating chairs for people with mobility problems, or buoys to indicate safe areas).

Thus, the built environment refers to any space or facility designed by people for people, whether public or private...

'Disabled people' Disability is a "general term denoting the negative aspects of the (WHO, 2001) interaction between a person (with a health condition) and that person's contextual factors, i.e. environmental and personal. This term is only used when reference to the three dimensions of the 2001 WHO International Classification of Functioning, Disability and Health (ICF) - **Body Functions & Structures, Activity and Participation** - is intended." (Source: Sustainable Design International Ltd. 2000-2002: Harmonized E.U. Vocabulary - Useful Terms & Definitions Relating to 'Disability & Human Perception')

'People with Reduced Mobility' As quoted in the EDF response to the European Commission Staff Working Paper : Rights of Persons with Reduced Mobility when Travelling by Air - DOC EDF 04/08 EN June 2004 The term "person with reduced mobility" has been widely used in European Community and European Civil Aviation conference (ECAC) documents. Some concerns have been raised by disability organisations that the term "persons with reduced mobility" is not sufficiently clear. There has been some concern that the term does not, in an explicit-enough way, relate to those individuals who are blind, partially sighted, deaf, hard of hearing, or those who have an intellectual disability as such individuals do not necessarily experience limited "mobility" when travelling.

Therefore, EDF stresses that the diversity of disability must be recognised in the draft Regulation and that the term "person with reduced mobility" should be interpreted broadly

For the purposes of Directives 2004/18/EC and 2004/17/EC, the following definitions shall apply.

(Source: L 134/128 EN Official Journal of the European Union 30.4.2004)

'Public contracts' are contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of Works, the supply of products or the provision of services within the meaning of this Directive.

'Public Works contracts' are public contracts having as their object either the execution, or both the design and execution, of Works related to one of the activities within the meaning of Annex I or a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority.

A **'work'** means the outcome of building or civil engineering Works taken as a whole which is sufficient of itself to fulfill an economic or technical function.

'Public supply contracts' are public contracts having as their object the purchase, lease, rental or hire purchase, with or without option to buy, of products. A public contract having as its object the supply of



products and which also covers, as an incidental matter, siting and installation operations shall be considered to be a 'public supply contract'.

'Public service contracts' are public contracts having as their object the provision of services referred to in Annex II. A public contract having as its object both products and services within the meaning of Annex II shall be considered to be a 'public service contract' if the value of the services in question exceeds that of the products covered by the contract.

A public contract having as its object services within the meaning of Annex II and including activities within the meaning of Annex I that are only incidental to the principal object of the contract shall be considered to be a public service contract.

'Public Works concession' is a contract of the same type as a public Works contract except for the fact that the consideration for the Works to be carried out consists either solely in the right to exploit the work or in this right together with payment.

'Service concession' is a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment.

A **'framework agreement'** is an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

A **'dynamic purchasing system'** is a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting authority, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.

An **'electronic auction'** is a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods. Consequently, certain service contracts and certain Works contracts having as their subject-matter intellectual performances, such as the design of Works, may not be the object of electronic auctions.

The terms **'contractor'**, **'supplier'** and **'service provider'** mean any natural or legal person or public entity or group of such persons and/or bodies which offers on the market, respectively, the execution of Works and/or a work, products or services.

The term **'economic operator'** shall cover equally the concepts of contractor, supplier and service provider. It is used merely in the interest of simplification.

An economic operator who has submitted a tender shall be designated a **'Tenderer'**. One which has sought an invitation to take part in a restricted or negotiated procedure or a competitive dialogue shall be designated a **'candidate'**.

'Contracting authorities' means the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or one or several of such bodies governed by public law.

A **'body governed by public law'** means any body:

- (a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- (b) having legal personality; and
- (c) financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.

Non exhaustive lists of bodies and categories of bodies governed by public law which fulfill the criteria referred to in (a), (b) and (c) of the second subparagraph are set out in Annex III. Member States shall periodically notify the Commission of any changes to their lists of bodies and categories of



bodies.

A **'central purchasing body'** is a contracting authority which:

- acquires supplies and/or services intended for contracting authorities, or
- awards public contracts or concludes framework agreements for Works, supplies or services intended for contracting authorities.

'Open procedures' means those procedures whereby any interested economic operator may submit a tender.

'Restricted procedures' means those procedures in which any economic operator may request to participate and whereby only those economic operators invited by the contracting authority may submit a tender.

'Competitive dialogue' is a procedure in which any economic operator may request to participate and whereby the contracting authority 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, and on the basis of which the candidates chosen are invited to tender.

For the purpose of recourse to the procedure mentioned in the first subparagraph, a public contract is considered to be **'particularly complex'** where the contracting authorities:

- are not objectively able to define the technical means in accordance with Article 23(3)(b), (c) or (d), capable of satisfying their needs or objectives, and/or
- are not objectively able to specify the legal and/or financial make-up of a project.

'Negotiated procedures' means those procedures whereby the contracting authorities consult the economic operators of their choice and negotiate the terms of contract with one or more of these.

'Design contests' means those procedures which enable the contracting authority to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.

'Written' or **'in writing'** means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means.

'Electronic means' means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

The **'Common Procurement Vocabulary (CPV)'** shall designate the reference nomenclature applicable to public contracts as adopted by Regulation (EC) No 2195/2002, while ensuring equivalence with the other existing nomenclatures.

In the event of varying interpretations of the scope of this Directive, owing to possible differences between the CPV and NACE nomenclatures listed in Annex I, or between the CPV and CPC (provisional version) nomenclatures listed in Annex II, the NACE or the CPC nomenclature respectively shall take precedence.

'public telecommunications network' means the public telecommunications infrastructure which enables signals to be conveyed between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means;

a **'network termination point'** means all physical connections and their technical access specifications which form part of the public telecommunications network and are necessary for access to, and efficient communication through, that public network;

'public telecommunications services' means telecommunications services the provision of which the Member States have specifically assigned, in particular, to one or more telecommunications entities;



'telecommunications services' means services the provision of which consists wholly or partly in the transmission and routing of signals on the public telecommunications network by means of telecommunications processes, with the exception of broadcasting and television.

... to be continued



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... to be continued