Index

abnormally low tenders
- Public Sector Directive 170, 268, 286, 287
- Utilities Directive 366

accelerated negotiated award procedures
- Public Sector Directive 242

accelerated restricted award procedures
- Public Sector Directive 232

advertisement
- competition, notices used as call for
  Public Sector Directive 326

contract award notices
- generally 66
  Public Sector Directive 112, 113, 114, 120
  Utilities Directive 323, 324, 325, 328, 335

contract notices, under Public Sector Directive 112, 113, 114, 120
- generally 66
- restricted award procedures 232, 233

Public Sector Directive, under
- contract award notices 118
  contract notices 113, 114, 115, 116, 117, 118
- public works concessions 270

Utilities Directive, under
- periodic indicative notices, under
  Utilities Directive 323
- prior information notices 112, 113

Utilities Directive, under competition,
- notices used as call for 326
- contract award notices 331
- periodic indicative notices 323
- qualification system, notices on existence of 325

affiliated undertakings, contracts to
- exclusions, under Utilities Directive 295, 296, 311, 312
- utilities procurement, in 44, 45

AGP see GATT Agreement on Government Procurement

Airports
- Utilities Directive, applicability of
  294, 309, 318
- annulment of contracting authorities’ acts 381–97
- annulment of decisions
  see also set aside; set aside of contracting authorities’ acts 419–27

anti-trust dimension 5–10

award criteria
- ecological criteria 277, 278
- environmental considerations 107, 108, 276, 277, 278
- generally 79, 80

lowest offer, disqualification 286, 287

Public Sector Directive, under
- abnormally low tenders 286
- electronic auctions 100, 101
- generally informing candidates and tenderers 66
- lowest price 286
- most economically advantageous tender 103, 104, 274

public sector procurement, in
- social considerations as 105, 106, 274, 275, 276
- subject matter of contract and 281, 282

Utilities Directive, under
- abnormally low tenders 366
- in dynamic purchasing systems 357, 358
- in electronic auctions 359, 360, 361
- lowest price 366
- most economically advantageous tender 365
- variants in 280, 281

award of contract
- Public Sector Directive, under
  generally 273–86

473
award of contract (cont.):
Utilities Directive, under
dynamic purchasing systems 357, 358
          generally 305, 306
award procedures application of
competitive dialogue 95–7
          award of contract 240–41
          closure of 240
          conduct of 237, 238
          generally 95, 96
          opening of 238, 239
          submission of final tenders 240
design contests
          communications between
          participants and jury 259
          composition of 258, 259
          conduct of 256, 257, 258
          decisions of jury 259, 260
          generally 256
          scope 256
          thresholds 256
dynamic purchasing systems
          award of contracts under 264, 265
          conduct of 263, 264
          generally 99–100
          indicative tenders 262–3
          setting up 261, 262, 263
electronic auctions
          award criteria in 267, 268
          closure of 266, 267
          generally 100, 101
          organization of 266
framework agreements
          conduct of 259
          contracts-based 260
          generally 97, 98
negotiated
          accelerated 242
          causality of condition justifying
          use of 250
          conduct of 243, 244
          extreme urgency as justification
          for 251, 252
          generally 75, 76
          grounds for use 241, 242
          invitation to negotiate 242, 243
          justification for use 247, 248, 249, 250
          for technical reasons 250, 251
without prior publicity 253, 255
open
          additional documents 233
          generally 74, 75, 229
          participants in, choice of 228
          specifications 230
          time limits, extension of 230, 231
public housing schemes
          award of 268, 269
          conduct of 268
          generally 268
public works concessions
          additional works awarded in 272
          advertisement of 270, 271
          award procedures for 271
          concessionaire, nature of 269, 270
          remit 269
          scope 269
          subcontracting in 271, 272
          repetition of similar works within
          three years 252, 253
restricted
          accelerated 232
          generally 75, 76, 231
          invitation to tender under 232, 233
          time limits, extension of 232
          weighting of criteria 234, 235, 236
bodies governed by public law
          commerciality 198, 199, 200
          as contracting authorities 64, 65, 191, 192
          definition of 195–205
          dependency test 195, 196
          dual capacity 204, 205
          general needs 201, 202
          management supervision of 198
CANS see contract award notices
categorization of contracts
          Public Sector Directive 157, 158–63
          Utilities Directive 298–301
central purchasing bodies
          exclusions under Utilities Directive
          315
          centralized procurement
          public sector, in 94
          closure
          of competitive dialogue 240
Index

commerciality of contracting authorities 198, 199, 200
Common European Defence Policy 470
common market concept of 1–4
public procurement in context of 5–10
Common Procurement Vocabulary (CPV) 125
Common Product Classification 124–5
communications in design contests 259
compensation approach generally 177, 178
quid pro quo approach and 178–82
competition
Commission Decisions on establishing 316, 317
direct exposure to, in utilities contracts 297
generally 296–8
notification by member states 316
publicity requirements 317, 318
competitive dialogue
award of contract 240, 241
closure of 237, 238
generally 95, 96
opening of 238, 239
submission of final tenders 240
competitive markets
in utilities procurement 297, 298
complaints to European Commission under Remedies Directives 402, 403, 441
Compliance Directives
damages award under 376–9
enactment of 38, 39
European Commission’s role under 379–81
generally 367
scope of 38, 39, 40
composition of jury in design contests
Public Sector Directive, under 258, 259
concession contracts 158, 159–64
conciliation procedure for utilities contracts 442
consortia members, substitution of 150–56
contract award notices (CANs)
advertisement of generally 65
Public Sector Directive, under 118
Utilities Directive, under 331
contract notices
advertisement of, under Public Sector Directive 113, 114
contract award notices generally 66
Public Sector Directive 112, 113, 114, 120
Utilities Directive 323, 324, 325, 328, 335
contract notices, under Public Sector Directive 112, 113, 114, 120
generally 66
Public Sector Directive, under contract award notices 118
contract notices 113, 114, 115, 116, 117, 118
public works concessions 270
restricted award procedures, 232, 233
Utilities Directive, under periodic indicative notices, under Utilities Directive 323
prior information notices 112, 113
Utilities Directive, under competition, notices used as call for 326
contract award notices 331
periodic indicative notices 323
qualification system, notices on existence of 325
contracting authorities
bodies governed by public law 195
commerciality 198–200
dependency test 195, 196
dual capacity of 204, 205
entities meeting needs of general interest retrospectively 201, 203
functional dimension of 193–4
generally 191
management supervision of 198
private companies as 219–20
private entities for industrial and commercial development as 220–55
private law entities as 215–19
private undertakings, connection with 221–4
contracting authorities (cont.):
semi-public undertakings as 217–18
state commercial companies as 205–14
contractors
Consortia and Group Procurement 150
Groups of economic operators 150
Reliance of tenderers on other sources 150
Substitution of consortia members 150–56
Disqualification and Reasons for automatic exclusion 129
Derogation 130
Ex officio application 131
Personal situation of candidates or tenderers 129–30
Proof of the personal situation of candidates and tenderers 130–31
Economic and financial standing of economic operators 131–3
Reliance on the financial and economic standing of group and/or consortia members 133
Exclusion and rejection of economic operators 142
Connection of tenderers with undertakings that assisted in the preparation of tenders 148–50
Exclusion of a tenderer who participates in the preparatory stages of a public contract 146–8
Market testing and selection of undertakings that assist in the preparation of public contracts 143–6
Verification of the suitability of participants 143
Official lists of approved economic operators 140–42
Certification 142
Technical and professional ability of economic operators 133–4
Evidence of environmental management as selection criterion 139
Evidence of intended subcontracting 139–40
Location of contractors as selection criterion 138, 139
Previous experience 134
Professional expertise and suitability to pursue professional activities 137
Quality assurance standards 140
Reality checks 137, 138
References as a selection criterion 135
Reliance on group or consortia 139
Technical expertise 136–7
contracts
categorization of Public Sector Directive 157–9
in-house 158
inter-administrative 189–90
international rules, pursuant to 185
mixed 54
public services, financing 167–9
Altmark case 182–5
award criteria 273–82
compensation approach 177–9
generally 157 et seq.
*quid pro quo* approach 178–82
state aid approach 174–8
excluded 84
reserved 86
secret 84–5
subsidised 87
subject matter of 275–8
utilities
to an affiliated undertaking 311
categorization of 298–300
central purchasing bodies by 315
to certain services excluded from the scope of the Directive 313
to a contracting entity forming part of a joint venture 312
directly exposed to competition 315
Decision by the Commission 316–17
Notification by Member States 316
Procedure for establishing direct exposure to competition 316
excluded 310
international rules, pursuant to 311
the purchase of water 313
for purposes of resale or lease to third parties 310
reserved 315
secret 312–14
secret or require special security measures 310–11
Service contracts awarded on the basis of an exclusive right 313
subject to special arrangements 314
the supply of energy 314
the supply of fuels for the production of energy 314
Works and service concessions 319
contractual nature
of PFI projects 54–8
of public–private partnerships 54–8
contractual performance
employment protection 106
environmental protection 107–9, 276, 277–80
Public Sector Directive, under 102
socio-economic conditions 105–7, 274
subcontracting 271, 272
taxes 127–8
Utilities Directive, under
employment protection 340–41
environmental protection 338
socio-economic conditions 340
subcontracting 339
taxes 340–41
working conditions 340
working conditions 128
corporatism 54–8
CPV see Common Procurement Vocabulary
damages
actions for 437–9
award of
Community law, under 397–401
Compliance Directives, under 376–9
Court’s jurisprudence, examples from 439–41
de minimis rule
public procurement generally 70
deadlines
Public Sector Directive, under 112 et seq.
Utilities Directive, under 323 et seq.
see time limits
dependency test
contracting authorities 195–6
design contests
communications between participants and jury 259
composition of 258, 259
conduct of 256, 257, 258
decisions of jury 259, 260
generally 256
scope 256
thresholds 256
detachable acts, theory of 386, 427–30
dimensionality 70–73
dissuasive penalty payments
generally 441
domestic legal system
EU relationship with 382–97
dual capacity
of contracting authorities 204–5
dynamic purchasing systems
award of contracts under 264, 265
conduct of 263, 264
generally 99–100
indicative tenders 262–63
setting up 261, 262, 263
ecological award criteria 107, 108, 276, 277, 278
see also environmental considerations
economic integration
of EU member states 2 et seq.
economic operators
Public Sector Directive, under see also contractors 140–41
exclusion and rejection of 142 et seq.
generally 129–34
official lists of approved 140–42
Utilities Directive, under
generally 300
and third countries 301–2
economic theories,
neo-classical, influence of 445–9
EDEM see European Defence Equipment Market 469–71
effectiveness, principle of,
electricity sector
  applicability of Utilities Directive 306–7

electronic auctions
  award criteria in 267, 268
  closure of 266, 267
generally 100, 101
organization of 266

electronic procurement 99–101
see also electronic auctions

employment protection
  Public Sector Directive, under 105, 106, 274, 275, 276,
  Utilities Directive, under 340–41

energy supply
  exclusions under Utilities Directive 306, 313

environmental considerations
  as award criteria 107, 108, 276, 277, 278

environmental protection
  Public Sector Directive, under 107–9, 276, 277–80
  Utilities Directive, under 338

European Commission
  complaints to, under Remedies Directives 441–42
  Compliance Directives, role under 379–81
  Decisions on direct exposure to competition in utilities contracts 316–17
  Green Paper on Public Procurement 81
  Green Paper on Public Private Partnerships 54
  Green Paper on Telecommunications Services 289
  White Paper for the Completion of the Internal Market 4–8

European Court of Justice
  annulment or set aside of contracting authorities’ acts 419–20
case law 420–37
interim measures
  admissibility requirements 415–19
  judgment by, consequences of 410–11
  locus standi, in annulment or set aside 430–31

European integration
evolution 2–7

excluded activities
  Utilities Directive, under 310
to an affiliated undertaking 311
central purchasing bodies by 315
to certain services excluded from the scope of the Directive 313
to a contracting entity forming part of a joint venture 312
directly exposed to competition 315
  Decision by the Commission 316–17
  Notification by Member States 316
  Procedure for establishing direct exposure to competition 316
  international rules, pursuant to 311
to a joint venture 311
  the purchase of water 313
  for purposes of resale or lease to third parties 310
  reserved 315
  secret 312–14
  secret or require special security measures 310–11
  Service contracts awarded on the basis of an exclusive right 313
  subject to special arrangements 314
  the supply of energy 314
  the supply of fuels for the production of energy 314
  Works and service concessions 319

exclusive rights
  applicability of Utilities Directive 310
  exploration for fuels 314
  in utilities procurement 313

extra-territorial application of public procurement regime
  GATT Agreement on Government Procurement 34–8

WTO Government Procurement Agreement 478
framework agreements
conduct of 259
corresponding contracting contracts-based 260
generally 97, 98
see also contracts 157–9, 298–300
functional dimension
of contracting authorities 193–5
fuels, exploration for
applicability of Utilities Directive 310
as and heat sector 314
GATT Agreement on Government Procurement (AGP) 34–8
general interest
definition of 198–201
entities meeting needs of retrospectively 201, 203
needs in, 202
GPA see World Trade Organization Government Procurement Agreement 46–51
Green Paper on Public Private Partnerships (European Commission) 54
Green Paper on Public Procurement (European Commission) 81
Green Paper on Telecommunications Services (European Commission) 289
harmonization 17–19, 20 et seq.
indicate tenders in dynamic purchasing systems
Public Sector Directive, under 262–3
Utilities Directive, under 323
industrial policy dimension 467–70
Initiative for Growth 81
institutional public–private partnerships 56–61
interim measures
admissibility requirements 415–19
Court’s jurisprudence, 414–19
judgment by, consequences of 410–11
locus standi, in annulment or set aside 430–31
proceedings before the ECI 404–5
sufficient time between award and conclusion, obligation to allow time 414–15
internal market
economic concept, as 1–6
introduction of 17–19
public procurement regulation and 2–5
international rules, contracts pursuant to 185, 311
invitation to negotiate
Public Sector Directive, under 242, 243
Utilities Directive, under 353–5
invitation to tender
generally 66
Public Sector Directive, under restricted award procedures, 232, 233
Utilities Directive, under periodic indicative notices 323
qualification system, notices on existence of 325
under competition, notices used as call for 326
joint venture
exclusions under Utilities Directive 311
joint procurement
public sector 94
judicial control
annulment or set aside of contracting authorities’ acts 419–20
case law 420–37
damages
actions for 437–9
award of Community law, under 397–401
Compliance Directives, under 376–9
Court’s jurisprudence, examples from 439–41
interim measures
admissibility requirements 415–19
judgment by, consequences of 410–11
locus standi, in annulment or set aside 430–31
proceedings before European Court of Justice 404–5
sufficient time between award and conclusion, obligation to allow time 414–15
Index 479
jury in design contests
conduct of 256, 257, 258
communications between participants
and jury 259
composition of 258, 259
decisions of jury 259, 260
generally 256

legal orders, national see also national fora 382–401

legal remedies
damages
actions for 437–9
award of Community law, under 397–401
Compliance Directives, under 376–9
Court’s jurisprudence, examples from 439–41
interim measures
admissibility requirements 415–19
judgment by, consequences of 410–11
locus standi, in annulment or set aside 430–31
proceedings before European Court of Justice 404–5
sufficient time between award and conclusion, obligation to allow time 414–15
set aside or annulment of contracting authorities’ acts 419–20
case law 420–37

lists
Certification 142
Official lists of approved economic operators 75, 140–42
litigation, reluctance in initiating 71–2
local labour employment
objectivity and 80, 105, 106, 274, 275, 276,
location of contractors, as selection criterion 138, 139
locus standi
of ECJ, annulment of contracting authorities’ acts 430–31
lowest offer, disqualification 286, 287
Public Sector Directive, under 273
abnormally low tenders 286
lowest price 286
Utilities Directive, under
abnormally low tenders 366
lowest price
Public Sector Directive, under 286
Utilities Directive, under 366
mandatory advertisement and publication, principle of 63–7
competition, notices used as call for 326
contract award notices
generally 66
Public Sector Directive 112, 113, 114, 120
Utilities Directive 323, 324, 325, 328, 335
contract notices, under Public Sector Directive 112, 113, 114, 120
generally 66
restricted award procedures 232, 233
Public Sector Directive, under contract award notices
contract notices 113, 114, 115, 116, 117, 118
public works concessions 270
Utilities Directive, under periodic indicative notices, under Utilities Directive 323
prior information notices 112, 113
Utilities Directive, under competition, notices used as call for 326
contract award notices 331
periodic indicative notices 323
qualification system, notices on existence of 325
market testing 143–6
member states
economic integration of 1–6, 17–19
MFN see most favoured nation principle 34–8
monetary applicability
general rules, of 86
Public Sector Directive, of contract value calculation 87–9
revision of thresholds 89
subsidized contracts 87
thresholds 86–7
Utilities Directive, of 318
Index

481

contract value calculation 318–20
revision of thresholds 320
monitoring requirements
Public Sector Directive, under 90
reports of contract awards 91
statistical obligations 91
Utilities Directive, under
award information to be stored 321
mechanisms 322
statistical obligations 321
monopolies, public 65
most economically advantageous tender
general 103, 104, 274
public sector procurement, in
social considerations as 105, 106,
274, 275, 276,
subject matter of contract and 281,
282
Utilities Directive, under
most economically advantageous
tender 365
variants in 280, 281
most favoured nation principle (MFN),
departure from 34–8

NACE (General Industrial Classification of Economic Activities within the European Communities) 4
national champion
definition of 467–70
national fora 382–401
needs in general interest, definition of
2001
definition of 198–201
entities meeting needs of retrospectively 201, 203
needs in 202
negotiate, invitations to
Public Sector Directive, under 242,
243
Utilities Directive, under 353–5
negotiated award procedures
accelerated 242
causality of condition justifying use of 250
conduct of 243, 244
extreme urgency as justification for 251, 252
generally 75, 76
grounds for use 241, 242
invitation to negotiate 242, 243
justification for use 247, 248, 249,
250
for technical reasons 250, 251
without prior publicity 253, 255
neo-classical economic theories,
influence of 445–9
new concepts
in public procurement generally 81–2
in public sector procurement 92–104
in utilities procurement 289–98
non-discrimination, principle of regulation, in 75–9
Remedies Directives, in 372
notification of exposure to direct competition in utilities contracts
Decision by the Commission 316–17
directly exposed to competition 315
Notification by Member States 316
Procedure for establishing direct exposure to competition 316
objectivity; principle of affiliated undertakings, contracts to 295
exclusions, under Utilities Directive 295, 296, 311, 312
utilities procurement, in 44, 45
award criteria
ecological criteria 277, 278
environmental considerations 107, 108, 276, 277, 278
generally 79, 80
lowest offer, disqualification 286, 287
Public Sector Directive, under 273
abnormally low tenders 286
electronic auctions 100, 101
generally informing candidates and tenderers 66
lowest price 286
most economically advantageous tender 103, 104, 274
public sector procurement, in
social considerations as 105, 106, 274, 275, 276,
subject matter of contract and 281, 282
objectivity; principle of (cont.):

Utilities Directive, under
abnormally low tenders 366
in dynamic purchasing systems
357, 358
in electronic auctions 359, 360, 361
lowest price 366
most economically advantageous
tender 365
variants in 280, 281
concession contracts
public works concessions
additional works awarded in 272
advertisement of 270, 271
award procedures for 271
concessionaire, nature of 269, 270
remit 269
repetition of similar works
within three years 252, 253
scope 269
subcontracting in 271, 272
design contests
communications between
participants and jury 259
composition of 258, 259
conduct of 256, 257, 258
decisions of jury 259, 260
generally 256
scope 256
thresholds 256
framework agreements
conduct of 259
contracts-based 260
generally 97, 98
local labour employment 80, 105, 106, 274, 275, 276,
public housing schemes
award of 268, 269
conduct of 268
generally 268
official list of contractors
Certification 142
Official lists of approved economic
operators 75, 140–42
open award procedures
additional documents 233
generally 74, 75, 229
participants in, choice of 228
specifications 230
time limits, extension of 230, 231
Open Network Provision (OPN) 290
opening of competitive dialogue 238, 239
conduct of 237, 238
generally 95, 96
penalty payments, dissuasive 441
periodic indicative notices (PINs)
Public Sector Directive, under
prior information notices 112, 113
Utilities Directive, under competition,
notices used as call for 326
periodic indicative notices 323
qualification system, notices on
existence of 325
PFI see Private Finance Initiative 56–62
PINs see periodic indicative notices;
prior information notices
ports
applicability of Utilities Directive 309
postal services
applicability of Utilities Directive 308
price convergence 65–9
principles
effectiveness 371
generally 63–80
mandatory advertisement and
publication 66–8
non-discrimination 75–80, 372
objectivity 79–80
procedural autonomy 372
transparency 65–9
prior information notices (PINs)
advertisement of, under Public Sector
Directive 112, 113
private companies
private companies as contracting
authorities 219–20
private entities for industrial and
commercial development as
220–55
private law entities as 215–19
private undertakings, connection with
214–15
semi-public undertakings as 217–18
Private Finance Initiative (PFI) 56–62
private law entities
private law entities as contracting
authorities 215–19

Christopher H. Bovis - 9781847205254
Downloaded from Elgar Online at 03/13/2019 09:20:58AM via free access
Index

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>private undertakings, connection with</td>
<td>214–15</td>
</tr>
<tr>
<td>probity</td>
<td>110–11</td>
</tr>
<tr>
<td>procedural autonomy, principle of, in Remedies Directives</td>
<td>372</td>
</tr>
<tr>
<td>public housing schemes</td>
<td></td>
</tr>
<tr>
<td>award of 268, 269</td>
<td></td>
</tr>
<tr>
<td>conduct of 268</td>
<td></td>
</tr>
<tr>
<td>generally 268</td>
<td></td>
</tr>
<tr>
<td>public law, bodies governed by, as contracting authorities</td>
<td></td>
</tr>
<tr>
<td>commerciality 198–200</td>
<td></td>
</tr>
<tr>
<td>definition of bodies governed by public law 195</td>
<td></td>
</tr>
<tr>
<td>dependency test 195, 196</td>
<td></td>
</tr>
<tr>
<td>dual capacity of 204, 205</td>
<td></td>
</tr>
<tr>
<td>entities meeting needs of general interest retrospectively 201, 203</td>
<td></td>
</tr>
<tr>
<td>functional dimension of 193–4</td>
<td></td>
</tr>
<tr>
<td>generally 191</td>
<td></td>
</tr>
<tr>
<td>management supervision of 198</td>
<td></td>
</tr>
<tr>
<td>public markets</td>
<td></td>
</tr>
<tr>
<td>concept of 463–5</td>
<td></td>
</tr>
<tr>
<td>public monopolies 65</td>
<td></td>
</tr>
<tr>
<td>public–private partnerships</td>
<td></td>
</tr>
<tr>
<td>Contractual 53–6</td>
<td></td>
</tr>
<tr>
<td>development at European level 51–3</td>
<td></td>
</tr>
<tr>
<td>Green Paper on Public Private Partnerships (European Commission) 52</td>
<td></td>
</tr>
<tr>
<td>institutional 56–61</td>
<td></td>
</tr>
<tr>
<td>Private Finance Initiative (PFI) 57–9</td>
<td></td>
</tr>
<tr>
<td>Public Procurement Directives</td>
<td></td>
</tr>
<tr>
<td>Public Sector Directive 49–51, 81 et seq.</td>
<td></td>
</tr>
<tr>
<td>Utilities Directive 49–51, 289 et seq.</td>
<td></td>
</tr>
<tr>
<td>public procurement rules</td>
<td></td>
</tr>
<tr>
<td>exclusion from, public service</td>
<td></td>
</tr>
<tr>
<td>concessions 319</td>
<td></td>
</tr>
<tr>
<td>Public Sector Directive advertisement</td>
<td></td>
</tr>
<tr>
<td>contract award notices 118</td>
<td></td>
</tr>
<tr>
<td>contract notices, under Public Sector Directive 112, 113, 114, 120</td>
<td></td>
</tr>
<tr>
<td>generally 66</td>
<td></td>
</tr>
<tr>
<td>invitation to tender generally 66</td>
<td></td>
</tr>
<tr>
<td>prior information notices (PINs) 112, 113</td>
<td></td>
</tr>
<tr>
<td>public works concessions 270</td>
<td></td>
</tr>
<tr>
<td>restricted award procedures, 232, 233</td>
<td></td>
</tr>
<tr>
<td>award criteria</td>
<td></td>
</tr>
<tr>
<td>abnormally low tenders 286</td>
<td></td>
</tr>
<tr>
<td>electronic auctions 100, 101</td>
<td></td>
</tr>
<tr>
<td>generally informing candidates and tenderers 66, 273</td>
<td></td>
</tr>
<tr>
<td>lowest price 286</td>
<td></td>
</tr>
<tr>
<td>most economically advantageous tender 103, 104, 274</td>
<td></td>
</tr>
<tr>
<td>social considerations as 105, 106, 274, 275, 276, subject matter of contract and 281, 282</td>
<td></td>
</tr>
<tr>
<td>award procedures application of competitive dialogue 95–7</td>
<td></td>
</tr>
<tr>
<td>award of contract 240–41</td>
<td></td>
</tr>
<tr>
<td>closure of 240</td>
<td></td>
</tr>
<tr>
<td>conduct of 237, 238</td>
<td></td>
</tr>
<tr>
<td>generally 95, 96</td>
<td></td>
</tr>
<tr>
<td>opening of 238, 239</td>
<td></td>
</tr>
<tr>
<td>submission of final tenders 240</td>
<td></td>
</tr>
<tr>
<td>contractual performance</td>
<td></td>
</tr>
<tr>
<td>employment protection 106</td>
<td></td>
</tr>
<tr>
<td>environmental protection 107–9, 276, 277–80</td>
<td></td>
</tr>
<tr>
<td>general 102–9</td>
<td></td>
</tr>
<tr>
<td>socio-economic conditions 105–7, 274</td>
<td></td>
</tr>
<tr>
<td>subcontracting 271, 272</td>
<td></td>
</tr>
<tr>
<td>taxes 127–8</td>
<td></td>
</tr>
<tr>
<td>working conditions 128</td>
<td></td>
</tr>
<tr>
<td>design contests</td>
<td></td>
</tr>
<tr>
<td>communications between participants and jury 259</td>
<td></td>
</tr>
<tr>
<td>composition of 258, 259</td>
<td></td>
</tr>
<tr>
<td>conduct of 256, 257, 258</td>
<td></td>
</tr>
<tr>
<td>decisions of jury 259, 260</td>
<td></td>
</tr>
<tr>
<td>generally 256</td>
<td></td>
</tr>
<tr>
<td>scope 256</td>
<td></td>
</tr>
<tr>
<td>thresholds 256</td>
<td></td>
</tr>
<tr>
<td>dynamic purchasing systems</td>
<td></td>
</tr>
<tr>
<td>award of contracts under 264, 265</td>
<td></td>
</tr>
<tr>
<td>conduct of 263, 264</td>
<td></td>
</tr>
<tr>
<td>generally 99–100</td>
<td></td>
</tr>
<tr>
<td>indicative tenders 262–3</td>
<td></td>
</tr>
<tr>
<td>setting up 261, 262, 263</td>
<td></td>
</tr>
<tr>
<td>electronic auctions</td>
<td></td>
</tr>
</tbody>
</table>

Downloaded from Elgar Online at 03/13/2019 09:20:58AM via free access
Public Sector Directive (cont.):
  closure of 266, 267
generally 100, 101
organization of 266
framework agreements
  conduct of 259
contracts-based 260
generally 97, 98
negotiated
  accelerated 242
causality of condition justifying
  use of 250
  conduct of 243, 244
extreme urgency as justification
  for 251, 252
generally 75, 76
grounds for use 241, 242
invitation to negotiate 242, 243
justification for use 247, 248,
249, 250
for technical reasons 250, 251
without prior publicity 253, 255
open
  additional documents 233
generally 74, 75, 229
participants in, choice of 228
specifications 230
time limits, extension of 230,
231
public housing schemes
  award of 268, 269
close of 268
generally 268
public works concessions
  additional works awarded in 272
advertisement of 270, 271
award procedures for 271
concessionaire, nature of 269,
270
remit 269
repetition of similar works
  within three years 252, 253
scope 269
subcontracting in 271, 272
restricted
  accelerated 232
generally 75, 76, 231
invitation to tender under 232,
233
time limits, extension of 232
weighting of criteria 234, 235,
236
Consortia and Group Procurement
  150
Groups of economic operators 150
Reliance of tenderers on other
sources 150
Substitution of consortia members
150–56
deadlines for receipt 112 et seq.,
Disqualification and Reasons for
automatic exclusion 129
Derogation 130
Ex officio application 131
Personal situation of candidates or
tenderers 129–30
Proof of the personal situation of
candidates and tenderers
130–31
Economic and financial standing of
economic operators 131–3
Reliance on the financial and
economic standing of group
and/or consortia members 133
Exclusion and rejection of economic
operators 142
Connection of tenderers with
undertakings that assisted in the
preparation of tenders 148–50
Exclusion of a tenderer who
participates in the preparatory
stages of a public contract 146–8
Market testing and selection of
undertakings that assist in the
preparation of public contracts
143–6
Verification of the suitability of
participants 143
monetary applicability of
contract value calculation 87–9
general rules, of 86
revision of thresholds 89
subsidized contracts 87
thresholds 86–7
monitoring requirements
general 90
reports of contract awards 91
statistical obligations 91
Official lists of approved economic
operators 140–42
Index 485

Certification 142
Technical and professional ability of economic operators 133–4
Evidence of environmental management as selection criterion 139
Evidence of intended subcontracting 139–40
Location of contractors as selection criterion 138, 139
Previous experience 134
Professional expertise and suitability to pursue professional activities 137
Quality assurance standards 140
Reality checks 137, 138
References as a selection criterion 135
Reliance on group or consortia 139
Technical expertise 136–7
public service concessions 319
publicity requirements see also advertisement

qualification of contractors
Disqualification and Reasons for automatic exclusion 129
Derogation 130
Ex officio application 131
Personal situation of candidates or tenderers 129–30
Proof of the personal situation of candidates and tenderers 130–31
Economic and financial standing of economic operators 131–3
Reliance on the financial and economic standing of group and/or consortia members 133
Exclusion and rejection of economic operators 142
Connection of tenderers with undertakings that assisted in the preparation of tenders 148–50
Exclusion of a tenderer who participates in the preparatory stages of a public contract 146–8
Market testing and selection of undertakings that assist in the preparation of public contracts 143–6
Verification of the suitability of participants 143
Technical and professional ability of economic operators 133–4
Evidence of environmental management as selection criterion 139
Evidence of intended subcontracting 139–40
Location of contractors as selection criterion 138, 139
Previous experience 134
Professional expertise and suitability to pursue professional activities 137
Quality assurance standards 140
Reality checks 137, 138
References as a selection criterion 135
Reliance on group or consortia 139
Technical expertise 136–7

official lists of approved economic operators 140–42
Certification 142
qualification system, notices on existence of, advertisement of, under Utilities Directive 325
qualitative selection
Disqualification and Reasons for automatic exclusion 129
Derogation 130
Ex officio application 131
Personal situation of candidates or tenderers 129–30
Proof of the personal situation of candidates and tenderers 130–31
Exclusion and rejection of economic operators 142
Connection of tenderers with undertakings that assisted in the preparation of tenders 148–50
Exclusion of a tenderer who participates in the preparatory stages of a public contract 146–8
Market testing and selection of undertakings that assist in the preparation of public contracts
qualitative selection (cont.): Verification of the suitability of participants 143
guid pro quo approach compensation approach and 178–82 generally 177, 178

rates, transparency 69 recognized contractors, lists of Certification 142
Official lists of approved economic operators 140–42
references as criterion for selection 135 remedies, legal
damages actions for 437–9 award of Community law, under 397–401
Compliance Directives, under 376–9 Court’s jurisprudence, examples from 439–41
interim measures admissibility requirements 415–19 judgment by, consequences of 410–11
locus standi, in annulment or set aside 430–31 proceedings before European Court of Justice 404–5
sufficient time between award and conclusion, obligation to allow time 414–15
set aside or annulment of contracting authorities’ acts 419–20 case law 420–37
Remedies Directives damages award under 376–9 effectiveness 371
enactment of 38, 39 European Commission’s role under 379–81
General 367 et seq. generally 367
non-discrimination 75–80, 372 procedural autonomy 372
scope of 38, 39, 40 see also Compliance Directives repetition of similar works within three years 252, 253
reports of contract awards
dynamic purchasing systems 357, 358 generally 305, 306
requests to participate
reserved contracts, under Utilities Directive 86, 315
restricted awards procedures accelerated 232 generally 75, 76, 231
invitation to tender under 232, 233 time limits, extension of 232
weighting of criteria 234, 235, 236
rule of reason approach 451 et seq.
secret contracts, under Utilities Directive 84, 314–15
selection of tenderers see also qualitative selection criteria for
semi-public undertakings as contracting authorities 217–18
service concessions, under Utilities Directive 319
services contracts classification of 40
non-priority 43 priority 42
set aside of contracting authorities’ acts Court’s jurisprudence, examples from 419–27
locus standi, in annulment or set aside 430–31
severance, doctrine of 386, 427–30
social considerations as award criteria Public Sector Directive, under 105, 106, 274, 275, 276
Utilities Directive, under 340–41
special rights in utilities procurement 310–11, 314
specification 230
standardization 140
state aid public procurement and state aid approach 178–82
state commercial companies as contracting authorities 205–14
statistical obligations
under Public Sector Directive 91
under Utilities Directive 321
subcontracting
evidence of intended subcontracting as qualification 139–40
in public works concessions 271, 272
subject matter of contract
and award criteria 275–8, 281–2
submission of final tenders
competitive dialogue, under Public Sector Directive 240
subsidized contracts, under Public Sector Directive 87
substitution of consortia members 150–56

tenderers
Consortia and Group Procurement 150
Groups of economic operators 150
Reliance of tenderers on other sources 150
Substitution of consortia members 150–56
Disqualification and Reasons for automatic exclusion 129
Derogation 130
Ex officio application 131
Personal situation of candidates or tenderers 129–30
Proof of the personal situation of candidates and tenderers 130–31
Economic and financial standing of economic operators 131–3
Reliance on the financial and economic standing of group and/or consortia members 133
Exclusion and rejection of economic operators 142
Connection of tenderers with undertakings that assisted in the preparation of tenders 148–50
Exclusion of a tenderer who participates in the preparatory stages of a public contract 146–8
Market testing and selection of undertakings that assist in the preparation of public contracts 143–6
Verification of the suitability of participants 143
Official lists of approved economic operators 140–42
Certification 142
Public Sector Directive, under see also contractors 140–41
exclusion and rejection of 142 et seq.
generally 129–34
official lists of approved 140–42
Technical and professional ability of economic operators 133–4
Evidence of environmental management as selection criterion 139
Evidence of intended subcontracting 139–40
Location of contractors as selection criterion 138, 139
Previous experience 134
Professional expertise and suitability to pursue professional activities 137
Quality assurance standards 140
Reality checks 137, 138
References as a selection criterion 135
Reliance on group or consortia 139
Technical expertise 136–7
Utilities Directive, under generally 300
and third countries 301–2
Utilities Directive advertisement
advertisement under 323, 324, 325, 328, 335
competition, notices used as call for 326
contract award notices 331
periodic indicative notices 323
periodic indicative notices, under Utilities Directive 323
qualification system, notices on existence of 325
Utilities Directive (cont.):
affiliated undertakings, contracts to exclusions, under Utilities Directive 295, 296, 311, 312 utilities procurement, in 44, 45 award criteria ecological criteria 277, 278 environmental considerations 107, 108, 276, 277, 278 generally 79, 80 lowest offer, disqualification 286, 287 abnormally low tenders 366 in dynamic purchasing systems 357, 358 in electronic auctions 359, 360, 361 lowest price 366 most economically advantageous tender 365 variants in 280, 281 excluded activities Utilities Directive, under 310 to an affiliated undertaking 311 central purchasing bodies by 315 to certain services excluded from the scope of the Directive 313 to a contracting entity forming part of a joint venture 312 directly exposed to competition 315 Decision by the Commission 316–17 Notification by Member States 316 Procedure for establishing direct exposure to competition 316 international rules, pursuant to 311 to a joint venture 311 the purchase of water 313 for purposes of resale or lease to third parties 310 reserved 315 secret 312–14 secret or require special security measures 310–11 Service contracts awarded on the basis of an exclusive right 313 subject to special arrangements 314 the supply of energy 314 the supply of fuels for the production of energy 314 Works and service concessions 319 exclusive rights applicability of Utilities Directive 310 exploration for fuels 314 in utilities procurement 313 variants in award criteria 280–81 vertical procurement see also subcontracting White Paper for the Completion of the Internal Market (European Commission) 54 working conditions Public Sector Directive, under 128 Utilities Directive, under 340 works concessions, under Utilities Directive 319 World Trade Organization (WTO) enforcement of rules under 443–4 generally 46–51 Government Procurement Agreement (GPA) compliance with 443