



# Managing an established facility: Procurement and Pre-procurement

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# European source of law on public procurement

## **DIRECTIVE 2004/18/EC**

of the European Parliament and of the Council  
of 31 march 2004

on the coordination of for the award of **public works** contracts, procedures **public supply** contracts and **public service** contracts

# European source of law on public procurement

## **An European Directive:**

- is a general legislative act of the European Union, which shall be implemented by each Member States in its national legal system (not self-executing).
- defines the framework compulsory rules of a specific subject matters leaving the Member States with a certain amount of leeway as to the exact rules to be adopted.

# National source of law on public procurement

(Examples)

- Italy: Legislative Decree dated 12 April 2006, no. 163 – Code of the public contracts for works, services and supplies;
- Sweden: Swedish Public Procurement Act (2007:1091 – LOU)
- Poland: Act of 29 January 2004 – Public Procurement Law

# Directive 2004/18/EC

## Scope

The Directive 2004/18/EC shall apply for the awarding of :

- **Public works contracts:** realisation of building or civil engineering works.
- **Public supply contracts:** purchase of products.
- **Public service contracts:** provision of services.

(Public Procurement)

# Directive 2004/18/EC

## Contracting Authority

Entities subject to the application of the Directive no. 2004/18 are the so called Contracting Authorities:

- State (central authorities);
- regional or local authorities;
- bodies governed by public law (state-owned companies);
- associations formed by one or several of such authorities or one or several of such bodies governed by public law.

# Directive 2004/18/EC

## Thresholds

The provisions of Directive 2004/18/EC shall apply only to the awarding of contracts which have a value exclusive of value-added tax (VAT) estimated to be equal to or greater than:

- € 5.000.000,00 for public works contracts;
- € 200.000,00 for public supply and services contracts.

Public contracts which have a value estimated lower than that above indicated are awarded in compliance with the national procurement rules.

Principles set by the Directive shall in any case apply.

# Directive 2004/18/EC

## Contracts Awarding Principles

Article 2 of the Directive no. 2004/18 settles the principles which shall apply to all public procurement procedures:

*“Contracting authorities shall treat economic operators **equally** and **non-discriminatorily** and shall act in a **transparent** way.”*

- > principle of equal treatment
- > principle of non discrimination
- > principle of transparency
- > principle of proportionality



# Directive 2004/18/EC

## Award procedures

### **Open procedures**

(single phase procedure)

Procedures whereby any interested economic operator may submit a tender.

### **Restricted procedures**

(two-phases procedure)

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.

# Directive 2004/18/EC

## Award procedures

### Competitive dialogue

(for particularly complex contracts only)

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.

# Directive 2004/18/EC

## Award procedures

### **Negotiated procedures**

(applicable only in specifically designated)

Procedures whereby the contracting authorities consult the economic operators of their choice and negotiate the terms of contract with one or more of these.

# Directive 2004/18/EC

## Contract notice main elements

- The chosen award procedure;
- Criteria for qualitative selection of the candidates or tenderers:
  - selection criteria regarding the personal situation of economic operators that may lead to their exclusion (eg. conviction by final judgment for participation in a criminal organisation), and required information proving that they do not fall within the cases justifying exclusion;
  - minimum economic and technical standards (economic and financial standing, technical and/or professional ability) required to the economic operator for the participation to the tender, information and any necessary formalities for their assessment;

# Directive 2004/18/EC

## Contract notice main elements

- Technical specifications: performance or functional requirements of the works, products or services subject matter of the contract
- Criteria to be used for award of the contract:
  - lowest price, or
  - most economically advantageous tender (criteria representing the most economically advantageous tender as well as their weighting shall be expressly mentioned)

# Procurement management

## Procurement Process

The procurement cycle is divided in three main steps:

### 1. Planning phase

Identification of the needs and analysis of how this needs can be satisfied. Contract document drafting.

### 2. Contract awarding phase

From contract notice publication to award decision (qualification of the candidates/tenderers, evaluation of the tenders, award of the contract)

### 3. Contract execution phase

Contract performance and performance evaluation

# Procurement management

## Procurement Process Strategy

The procurement planning is a crucial and essential phase for the successful performance of the whole process and for managing typical procurement risks.

<b>RISK</b>	<b>MISURES to avoid the risks</b>
Key output are not of appropriate quality	Provide clear technical specification defining quality requirements. Link payments to the performance stages.
Prices do not represent value for money	Prior regular benchmarking for defining the correct maximum value of the contract. Encouraging maximum competition.
Suppliers fail to deliver	Assessment of tenderers' financial viability and past performance, having a good knowledge of the tenderer markets and tender chain.

# Procurement management

## Procurement Process Strategy

e.g. setting in the tender documentation appropriate criteria for qualitative selection (economical/financial standing requirements, technical/professional ability requirements) of candidates or tenderers will produce the effect that only desired categories of economic operators will be able to participate to the selection procedure (to be tempered with the principle of proportionality).



# Sincrotrone Trieste S.C.p.A.

## “Main Fermi” tender procedure

**Restricted procedure** for the realisation of civil and plants infrastructures for FERMI@Elettra Project (value € 22,746,367.45) and the realisation self-financed by the contractor of a tri-generation plant (value € 2,928,972.92)

**Evaluation criteria:** most economically advantageous tender (technical quality evaluation)

# Sincrotrone Trieste S.C.p.A.

## “Main Fermi” tender procedure

**Particular conditions to which the performance of the contract was subject:**

- subsequent install payments each due upon performance of works for the value of € 3,000,000.00
- acceptance of the obligation of self-financing the realisation of the tri-generation plant and operating it for a period of 10 years upon payment of an annual fee for the remuneration of the capital investment and the operation and maintenance costs of the tri-generation plant

**Effect: to encourage the participation of very reliable economic operators.**

# Sincrotrone Trieste S.C.p.A.

## “Main Fermi” tender procedure

Weighting and main sub-weighting given to each criteria for the evaluation of the tender:

ELEMENTS	WEIGHTS	MAIN SUB-WEIGHTS
Technical quality of improving solutions	30	20 of which for the improving diggin solutions
Proposal for the trigeneration plant	20	6 of which for improving solutions for energy efficiency
Price mark-down	20	15 of which for civil and plant infrastructure price mark-down and 5 of which for annual fee mark-down
Quality and organisation of the construction site	15	
Reduction of performance duration	15	

CRITERI D) AGGIUDICAZIONE				Peso ponderale
	Elemento di valutazione			
1	Valore tecnico delle soluzioni migliorative proposte:	Subelemento di valutazione:	Sub peso ponderale:	30
		1.1 Scavi	20	
		1.2 Strutture in c.a.	7,3	
		1.3 Elenco materiali, componenti apparecchiature e delle lavorazioni riguardanti le soluzioni migliorative e le integrazioni proposte	2,3	
		SOMMARIO	30	
2	Proposta per l'impianto di trigenerazione	Subelemento di valutazione:	Sub peso ponderale:	20
		2.1 Approccio metodologico nella progettazione esecutiva dell'impianto	9	
		2.2 Eventuali miglioramenti tecnici proposti, inclusi aspetti di miglioramento nell'efficienza energetica in esercizio	6	
		2.3 Modalità per la gestione, conduzione coordinata ed efficiente e manutenzione ordinaria e straordinaria dell'impianto di trigenerazione e centrale termica	3	
		2.4 Modalità per l'effettuazione degli interventi in caso di guasto o malfunzionamento rispettando le necessità di continuità elettrica	3	
		2.5 Profilo del soggetto che provvederà alla gestione, conduzione e manutenzione dell'impianto di trigenerazione e della centrale termica	3	
3	Ribasso sul prezzo a base d'appalto:	Subelemento di valutazione:	Sub peso ponderale:	20
		3.1 Ribasso sul prezzo dei lavori in netto degli oneri per la sicurezza e del costo dell'impianto di trigenerazione	15	
		3.2 Ribasso sul canone annuo per la remunerazione del capitale e la gestione, conduzione e manutenzione ordinaria e straordinaria dell'impianto di trigenerazione e della centrale termica	5	
		SOMMARIO	20	
4	Organizzazione e qualità della struttura di cantiere:	Subelemento di valutazione:	Sub peso ponderale:	15
		4.1 Organizzazione del cantiere nelle 3 principali aree con la sequenza delle attività in esse previste	3	
		4.2 Cura estetica del cantiere e delimitazione fisica del cantiere stesso	2	
		4.3 Flessibilità per garantire percorsi promossi per assicurare le attività in corso e percorsi transitori dei percorsi del Laboratorio Elettra	2,3	
		4.4 Accessibilità e movimentazione dei mezzi pesanti	1,3	
		4.5 Protocolli acustici e di abbattimento delle polveri insistenti alle demolizioni interne ed esterne e protezione alla viabilità interna ed esterna del comprensorio	2,3	
		4.6 Modalità e tempi di ramomissione alla DL e al RUP dei materiali per approvazione e/o dei campioni per la scelta degli stessi	1,3	
5	Riduzione dei tempi di esecuzione:	Subelemento di valutazione:	Sub peso ponderale:	15
		5.1 Inizio montaggio ST nella Galleria Ondulatori	3	
		5.2 Inizio montaggio ST negli locali Service Galileo e Laser Lab	3	
		5.3 Inizio montaggio ST nell'Edificio Sala Sperimentale	2	
		5.4 Messa in servizio impianti Edificio Impianti Meccanici	4	
		5.5 Messa in servizio impianti Edificio Impianti Elettrici	2	
		5.6 Ultimazione lavori	1	
		SOMMARIO	15	
<b>TOTALE PESO POND.</b>				<b>100</b>

# Sincrotrone Trieste S.C.p.A.

## “Main Fermi” tender procedure

The choice of adopting the most economically advantageous tender criteria for the awarding of the tender, a well balanced weighting attribution between technical-quality elements and price elements, the setting of high weights for the evaluation of specific technical improving solution shall **encourage and favor innovative tenders** in the evaluation process, preventing poor, low-cost technical bids to be awarded.

Awarding price shall be little higher, but contracting authorities shall benefit better and innovative solution in the tender performance

# Sincrotrone Trieste S.C.p.A.

## “Kyma” Tender

**Restricted procedure** for the selection of one or more partners with whom to constitute a capital based company for the design, execution and commercialization of undulators and the development of other related industrial and commercial activities and awarding of the supply of 18 undulators for the FERMI@Elettra project (value € 9,000,000.00)

**Evaluation criteria:** most economically advantageous tender (technical quality evaluation)

# Pre-commercial Procurement

Directive 2004/18 [see article 16 (1)(f)] shall not apply to “*research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority*”



**Pre-commercial Procurement**

# Pre-commercial Procurement

## Main Features

### **1. Scope limited to R&D services:**

R&D can cover activities such as solution exploration and design, prototyping, up to the original development of a limited volume of first products or services in the form of a test series.

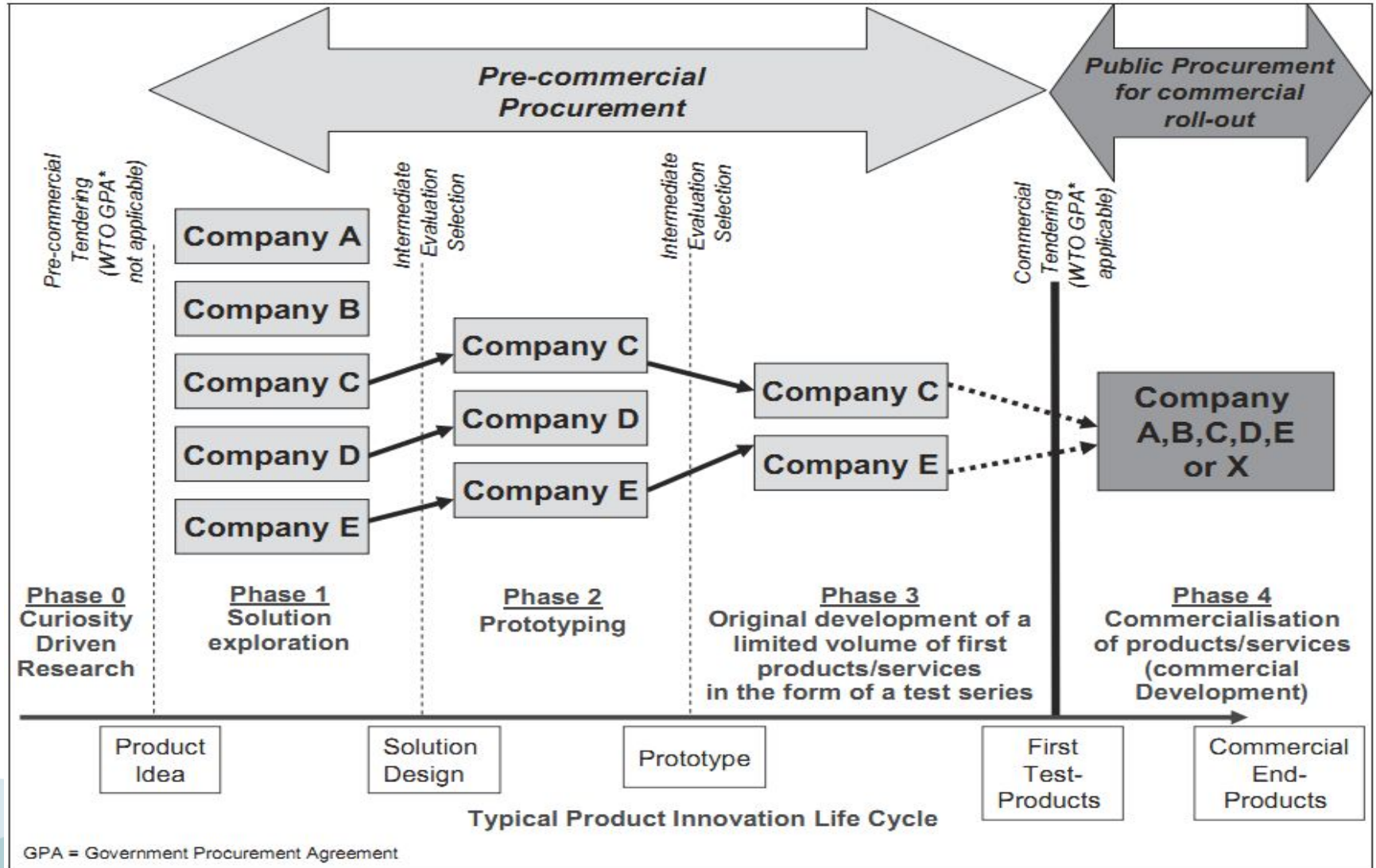
Included: limited production or supply of first original developed products or service for testing and quality standards verification.

Excluded: commercial development activities

### **2. Risk-benefits sharing according to market conditions**

Public authorities share with industrial partners risks and benefits of the R&D activities needed to develop the innovative solutions (IPRs on R&D results are shared).

# Pre-commercial Procurement





# Sincrotrone Trieste S.C.p.A.

## Broad Area Announcement (BAA)

Open procedure for selection of partner with whom to stipulate a collaboration contract for the development of new technologies (R&D services)

(The procedure was conceived based on ordinary open tender procedure and in respect of public procurement principles)

The BAA notice stated the criteria and the weights of importance for the evaluation of the most economically advantageous proposals by a technical

ELEMENTS	WEIGHTS
Competence of the personal and adequacy of the institution at the disposal of the proponent	30
Scientific and technical merits of the submitted proposal	40
Credibility and soundness of estimated cost	30

## ERICs procurement system

Directive 2004/18/CE shall not apply to public contracts governed by different procedural rules and awarded pursuant to the particular procedure of an international organisation [see art. 15 (c)].

An ERIC is an international organisation within the meaning of Article 15(c) of Directive 2004/18/EC [see article 7(3) of the Council Regulation no. 723/2009 on the Community legal framework for a European Research Infrastructure Consortium]

## ERICs procurement system

An ERIC shall not apply the procurement rules established by directive 2004/18/EC on public procurement, but shall **define its own procurement policy respecting principles of transparency, non-discrimination and competition.**

Basic principles of such policy shall be provided in the Statute of the ERIC

# Sincrotrone Trieste S.C.p.A. Industrial Liaison Office procurement procedures

Industrial Liaison Office (ILO) of Sincrotrone Trieste S.C.p.A. manages technology transfer and promotes the use of Laboratory facilities in applied research and for industrial applications.

ILO carries out commercial activities acting as a private economic operator, fulfilling standard and good practices in the selection and management of its suppliers.