

EU procurement guidance

Non-discrimination in technical specifications



EU procurement rules on non-discrimination in technical specifications

The aim of this guidance is to help contracting authorities draw up contract documents that comply with EU rules on non-discrimination. Contracting authorities failing to comply with the following rules are at serious risk of incurring domestic legal proceedings and/or EU infraction proceedings:

1 Contracting authorities must specify requirements in generic technical or performance terms. Brand-specific terms or terms which refer to materials or goods of specific origin, or to a particular process or means of production, may only be used exceptionally and with the words 'or equivalent'. This is only allowed if justified by the subject of the contract, or if the subject of the contract cannot otherwise be described to all providers in sufficiently precise and intelligible terms.

2 Furthermore, where standards are used:

- Contracting authorities must specify by reference to national standards implementing European standards or other European specifications. If these do not exist, contracting authorities should specify by reference to national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the products. Each of these references must be accompanied by the words 'or equivalent'.

- Contracting authorities must consider offers which claim to satisfy the requirements in an equivalent manner even though they do not conform to the standard in question: tenders must be examined to establish whether they satisfy the contracting authority's requirements in an equivalent manner and under no circumstances may contracting authorities reject offers solely on the grounds that they are not based on a specified standard or technology. The burden of proving technical equivalence will fall on the bidder in the absence of certification of conformity with the standard.

NB: It is possible to include in specifications, references to national standards or mandatory technical rules which go beyond the relevant EU standard, provided these are non-discriminatory, without prejudice to relevant European standards or specifications and otherwise compatible with EU community law.

Specific rules when purchasing computer hardware

A number of recent EU infraction cases have focused on the procurement of computers. Some UK procurements have also been examined requiring specific advice:

4 Where specifying microprocessors for desktops, laptops, servers or workstations, contracting authorities must describe the technology required using common specifications, for example using the generic term: "x86 processor". The requirements for microprocessors must exclude any reference to brands (e.g. Intel, AMD), manufacturer-specific processor architectures, trademarks, technology-types or other potentially discriminatory descriptors.

5 IT hardware specifications should additionally exclude any reference to minimum processor clock-speeds since this points to particular products and because performance of a microprocessor should take into account both clock-rate (MHz) and the number of executable instructions per clock (IPC). Likewise, specifying for example a minimum Front Side Bus speed in MHz or a minimum cache memory in MB is prohibited as such specifications do not directly relate to performance.

6 Contracting authorities may refer to a minimum score on an independent benchmark test measuring microprocessor performance as one way of specifying microprocessor performance in a non-discriminatory manner (typically, for a procurement of desktop PCs in an office environment, contracting authorities would use an application-based benchmark test). Contracting authorities should however ensure non-discriminatory scores are set on these tests.