



Guidelines on the use of accessibility award criteria suitable for public procurement of ICT products and services in Europe

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Foreword

This Technical Report (TR) has been produced by ETSI Technical Committee Human Factors (HF).

Introduction

The present document was prepared in response to Phase 2 of Mandate M 376 [i.21] from the European Commission to CEN, CENELEC and ETSI.

The primary objective of this Mandate was to produce a European Standard (EN 301 549 [i.19]), hereafter, for the purpose of the present document, called "the EN", that sets out in a single source, detailed practical and quantifiable functional accessibility requirements that take note of global initiatives in that field and which are applicable to all ICT products and services identified in Phase I and usable in public procurement.

The present document is one of the Technical Reports that supports the EN by giving guidance to procurers on the award criteria relevant to each area of user needs in the products and services under consideration.

A second Technical Report, (TR 101 550 [i.20]), lists the standards and technical specifications used in the creation of the compliance requirements for accessibility set out in the EN. It also provides a source reference for other documents needed to implement the test procedures required by the EN together with those testing methods necessary to implement them.

1 Scope

The present document gives guidance to procurement authorities intending to purchase ICT products and services on the use of award criteria relevant to each area of user needs in the public procurement of ICT products and services. It particularly deals with those aspects of any contract that are related to the functional accessibility requirements of ICT products and services that are dealt with in EN 301 549 [i.19].

The guidance provided in the present document is based on the assumption that the accessibility requirements of EN 301 549 [i.19] are applicable to a given procurement situation. Possible exceptions to the application of the EN to public procurement (e.g. national security, maintenance, repair, or occasional monitoring) are dealt with in TR 101 550 [i.20].

Aspects of award criteria that do not deal with accessibility in public ICT procurement in Europe are outside the scope of the present document.

2 References

References are either specific (identified by date of publication and/or edition number or version number) or non-specific. For specific references, only the cited version applies. For non-specific references, the latest version of the referenced document (including any amendments) applies.

Referenced documents which are not found to be publicly available in the expected location might be found at <http://docbox.etsi.org/Reference>.

NOTE: While any hyperlinks included in this clause were valid at the time of publication ETSI cannot guarantee their long term validity.

2.1 Normative references

The following referenced documents are necessary for the application of the present document.

Not applicable.

2.2 Informative references

The following referenced documents are not necessary for the application of the present document but they assist the user with regard to a particular subject area.

- [i.1] Case 31/87 "Gebroeders Beentjes BV V State of the Netherlands", 28 January 1987.
- [i.2] Case C-513/99 "Concordia bus Finland", Judgement of the court 17 September 2002.
- [i.3] Case C-448/01 "EVN AG and Wienstrom Gmbh v Republic of Austria".
- [i.4] Case C-532/06 "Emm. G. Lianakis AE and others v Dimos Alexandroupolis and others", 28 January 2008.
- [i.5] Commission Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (OJ L340/1 - 16.12.2002).
- [i.6] Commission Regulation (EC) No 2151/2003 of 16 December 2003 amending Regulation (EC) No 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) (OJ L 329/1 - 17.12.2003).
- [i.7] Commission Regulation (EC) No 1422/2007 of 4 December 2007 amending Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council in respect of their application thresholds for the procedures for the award of contracts (OJ L 317/34 - 5.12.2007).

- [i.8] Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (L 185 - 16.08.71).
- [i.9] Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (L 395/33 - 30.12.89).
- [i.10] Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (L 209/1 - 24.7.92).
- [i.11] Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (L 199/01 - 9.8.93).
- [i.12] Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (L 199/54 - 9.8.93).
- [i.13] Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (L 199/84 - 9.8.93).
- [i.14] Directive 2004/17/EC of the Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (L 134/1 - 30.4.2004).
- [i.15] Directive 2004/18/EC of the Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (L 134/114 - 30.4.2004).
- [i.16] Commission Directive 2005/51/EC of 7 September 2005 amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement (L 257/127 - 1.10.2005).
- [i.17] Commission Directive 2009/81/EC of 7 September 2005 amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement (L 257/127 - 1.10.2005).
- [i.18] ETSI EG 201 013: "Human Factors (HF); Definitions, abbreviations and symbols".
- [i.19] CEN/CENELEC/ETSI EN 301 549: "Accessibility requirements suitable for public procurement of ICT products and services in Europe".
- [i.20] CEN/CENELEC/ETSI TR 101 550: "Documents relevant to EN 301 549 "Accessibility requirements suitable for public procurement of ICT products and services in Europe".
- [i.21] European Commission "M/376 Standardisation Mandate to CEN, CENELEC and ETSI in support of European accessibility requirements for public procurement of products and services in the ICT domain".

3 Definitions and abbreviations

3.1 Definitions

For the purposes of the present document, the terms and definitions given in EG 201 013 [i.18] and the following apply:

award criteria: criteria by which the award of a contract is judged

contracting authority: state, regional or local authorities, bodies governed by public law, or associations of such bodies

economic operator: contractor, supplier or a service provider

open procedures: those procedures whereby any interested economic operator may submit a tender

public contract: contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities

restricted 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

selection criteria: criteria by which the eligibility or ability of a contractor is judged

3.2 Abbreviations

For the purposes of the present document, the following abbreviations apply:

CPV	Common Procurement Vocabulary
EFTA	European Free Trade Association
ICT	Information and Communication Technology
MEAT	Most Economically Advantageous Tender
TED	Tenders Electronic Daily

4 Accessibility requirements

When procuring ICT through an invitation to tender, it is necessary to provide a technical specification "*defining the required characteristics of the ICT products and services sought, such as quality levels, environmental performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product --- testing and test methods --- and conformity assessment procedures*" (from Directive 2004/17 [i.7]).

The present document deals particularly with the accessibility requirements set out in the technical specification in order to ensure that the procured ICT can be used in an effective manner by the widest possible number of users and to prevent discrimination against an important section of the community. It describes how various accessibility characteristics in differing offers may be assessed so as to determine the most accessible product or service.

To assist in this aim, the requirements in EN 301 549 [i.19] have been chosen to address the most important ICT design parameters that risk unintentionally creating barriers to use for people who have some limitations in their physical or sensory abilities (e.g. limited vision, limited hearing, or limited ability to move limbs). The use of EN 301 549 [i.19] is intended to provide a level of assurance that the procured ICT will be usable by the widest range of potential users, including persons with disabilities.

EN 301 549 [i.19] contains a comprehensive approach to ICT accessibility. It is written in such a way that it can be applied to any ICT and enable any supplier to demonstrate how each ICT product and service that they supply satisfies the accessibility needs of users by enabling people to locate, identify and operate ICT functions, and to access the information provided, regardless of physical, cognitive or sensory ability.

The requirements in EN 301 549 [i.19] are related to three factors:

- the abilities of users, and limitation to those abilities;
- the aspects of user interfaces/user interaction that rely on those abilities;
- the alternative media and modalities that users need in the context of ICT usage.

The underlying capabilities and features of the ICT only appear in EN 301 549 [i.19] in terms of some clustering of requirements related to broad functionally specific categories such as "ICT with two way voice communication". Even ICT within these broad functional categories still has to meet various other requirements that are not related to that type of functionality (e.g. if the ICT has a screen it also has to meet the same requirements as other ICT with screens). Where ICT is purchased for a specific individual, that ICT may only need to provide support for the particular needs of that individual.

Accessibility relates to the avoidance of, or removal of, barriers to access that prevent a person from making use of the capabilities and features of ICT. It therefore mainly relates to products and services that deal with the means of access to those capabilities and features, namely the user interface/user interaction aspects of the ICT.

5 The invitation to tender

5.1 General

When writing an invitation to tender there are a number of legal requirements and aspects of good practice that need to be observed. These are generally outside the scope of the present document but some points are important to consider. Examples of the more important legislation controlling public procurement of ICT are set out in Annex A.

It should be noted that tenders with a value estimated to be below a specified threshold are not covered by the procurement Directives, and so it is for Member States to decide whether such contracts should be subject to national rules. These thresholds were originally specified in Article 7 of Directive 2004/18/EC [i.15], and are now regularly updated by regulation.

Article 40 of Directive 2004/18/EC [i.15] sets out various rules which cover the information to be provided in the invitation to tender. In particular it states that "*the information shall include a copy of the specifications or of the descriptive document and any supporting document*"---and ---"*the relative weightings of the criteria for the award of the contract or, where appropriate, the descending order of importance of such criteria if they are not given in either the contract notice, the specifications or the descriptive document*".

5.2 Technical specification

5.2.1 Content

The technical specification forms the basis of the invitation to tender and provides a core set of requirements relating to the procurement. There is nothing however to prevent the technical specification from describing other desirable features that can assist when assessing the award criteria. When procuring ICT the procurement authority will be most concerned to ensure that the ICT has a set of capabilities and features that enable it to successfully meet the core purposes for which it is being procured. These capabilities and features will be the focus of most of the technical requirements included in the technical specification for the ICT.

Some simple examples of capabilities and features that the technical specification might be focussed around are:

- For a photocopier - the form (free-standing or desktop mounted), the size, the range of copying functions, the paper-handling capacity, the maintenance arrangements, etc.
- For an office e-mail, calendar, contacts and document storage system - the number of people that can use the system, connectivity to the outside world, the amount of document storage space, the supplier support offered, etc.
- For a public access system for a regional library service - the range of alternative access methods provided (e.g. web access from home, access from terminals in public places, access from terminals within libraries), the speed of response to public enquiries, the size of library catalogue that can be handled, the range of different loan items that can be handled, etc.

In addition to this core set of technical requirements, in order to avoid discrimination, it is necessary for the technical specification to have requirements intended to assure accessibility to all users. Which aspects of accessibility are most important might vary dependant on the needs of a particular procurement authority. For example, an authority purchasing for individuals with specific disabilities, such as pupils at a blind school, might put particular stress on those aspects of accessibility dealing with visual disability.

5.2.2 Over-specification

Many of the requirements that will appear in the technical specifications for these ICT procurements will cluster around the core set of capabilities and features that the procurement authority believe are of most importance for its purposes.

To avoid making the tender anticompetitive, it is important not to specify mandatory requirements in such detail so as to prevent reasonable competition by the provision of differing features or implementations. None of the examples of core capabilities and features given in the examples cited in clause 5.1 relate to how an end-user of any ICT products and services make use of these core capabilities and features. End-users will only be able to control functionality and access or create information by means of some form of user interface technologies.

It is appropriate for procurement authorities to specify functions instead of technologies. Unless a referred standard contains a specific requirement for a particular type of user interface and user interaction techniques (which is not the general case) it would be unnecessary, and probably unwise, to add any accessibility requirement into the technical specification that pre-suppose the use of any particular user interface.

Thus, most procurement authorities would generally consider it inadvisable to specify details of any type of user interface, such as requiring:

- the photocopier to have a touch-screen interface;
- the office e-mail, calendar, contacts and document storage system to use an integrated multi-window interface;
- the access to a public library system terminal to be via a keyboard and screen interface.

Most procurement authorities would understand that specification of the details of this type would be inadvisable, as a single solution is not seen as being essential and specifying one solution would be seen as discouraging innovation from suppliers.

The inclusion of any accessibility requirement that can only be met when a particular user interface is used would, unintentionally, be requiring the supplier to provide such a user interface in order to meet it. This will thus require all suppliers to provide such a user interface even though the procurement authority did not originally set out to explicitly require this.

The inclusion of a single carelessly detailed accessibility requirement could thus be anti-competitive by excluding all suppliers who do not provide a type of user interface that makes it possible to conform to that requirement. It could therefore have the result that a supplier who provides an alternative type of user interface that has very high levels of accessibility, would be excluded from the selection process.

There are two factors that counterbalance the damaging effects suggested above. In the first instance, a supplier who does not provide a user interface to which the requirement relates would often be able to claim that they have not failed to meet the requirement because the requirements in EN 301 549 [i.19] contain sufficient scoping text within them to make it clear when the requirement is not applicable. This is clarified by a note in Annex C of EN 301 549 [i.19] that makes it clear that "compliance is achieved" when a requirement is not applicable. In the second instance, the supplier could claim that they have met the underlying purpose of the requirement via different means (often referred to as "equivalent facilitation").

5.2.3 Competition

As described in Annex VI of Directive 2004/18/EC [i.15], a technical specification comprises the totality of the technical prescriptions set out in the tender documents which define the items or services required by the contract.

The preamble to the Directive [i.15] states that "*technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To this end, it must be possible to submit tenders which reflect the diversity of technical solutions. Accordingly, it must be possible to draw up the technical specifications in terms of functional performance and requirements, and, where reference is made to a European standard, or in the absence thereof, to national standards, tenders offering equivalent arrangements must be considered by contracting authorities.*"

5.2.4 Specification options

Thus, to permit competition, Article 23 of the Directive [i.15] allows a number of "mix and match" options in the technical specifications and states that they "*shall be formulated:*

- (a) *either by reference to technical specifications defined in Annex VI* [of the Directive and to other standards and technical approvals which are listed in order of preference]. Each reference is required to be accompanied by the words 'or equivalent';