

European Commission: Public Procurement Act – Article 80

EU's Public Procurement Act (9.9.2026)

https://single-market-economy.ec.europa.eu/document/download/59557310-3af0-426d-b6b6-0357b650065f_en?filename=Proposal%20for%20a%20Regulation%20-%20Public%20Procurement%20Act.pdf

Article 80

Contracts awarded to controlled entities

1. This Regulation does not apply to public contracts awarded by public buyers to a legal person governed by private or public law, provided that all of the following conditions are fulfilled at the time of the award:

- (a) the public buyer exercises control over the legal person concerned which is similar to that which it exercises over its own departments meaning it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person; such control may also be exercised by another legal person, which is itself controlled in the same way by the public buyer;
- (b) more than 80 % of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling public buyer or by other legal persons controlled by that public buyer; and
- (c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

2. Paragraph 1 also applies where a controlled legal person which is a public buyer awards a contract to its controlling public buyer, or to another legal person controlled by the same public buyer, provided that there is no direct private capital participation in the legal person being awarded the public contract.

3. This Regulation does not apply where a public buyer, which does not exercise over a legal person governed by private or public law control within the meaning of paragraph 1, awards a public contract to that legal person where all of the following conditions are fulfilled at the time of the award:

(a) the public buyer exercises jointly with other public buyers a control over that legal person which is similar to that which they exercise over their own departments, meaning:

- (i) the decision-making bodies of the controlled legal person are composed of representatives of all participating public buyers whereas individual representatives may represent several or all of the participating public buyers;
- (ii) those public buyers are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;
- (iii) the controlled legal person does not pursue any interests which are contrary to those of the controlling public buyers;

(b) more than 80 % of the activities of that legal person are carried out in their performance of tasks entrusted to it by the controlling public buyers or by other legal persons controlled by the same public buyers; and

(c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

4. For the percentage of activities referred to in paragraph 1, first subparagraph, point (b), and paragraph 3, first subparagraph, point (b), the average total turnover, or, where turnover does not appropriately reflect the volume of activities carried out, another objective and verifiable quantitative indicator of those activities such as costs incurred or overall income obtained, for the three years preceding the award of the contract shall be taken into consideration.

Where, by reason of the date on which the relevant legal person or public buyer was created or commenced activities or by reason of a reorganisation of its activities, the turnover, or alternative activity based measures such as costs, are either not available for the preceding three years or no longer relevant, it shall be sufficient to show that the measurement of activity is credible, particularly by means of business projections.

5. Member States may maintain or adopt stricter national provisions on the contracts excluded pursuant to this Article.

6. The exclusions in this Article shall not apply if the public contract shall be subcontracted in its entirety without a procurement procedure.