
STATUTORY INSTRUMENTS

2016 No. 273

The Concession Contracts Regulations 2016

PART 2

Scope and principles

CHAPTER 5

Principles

Economic operators

26.—(1) Economic operators that, under the law of the member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that under the law of England and Wales or, as the case may be, Northern Ireland, they would be required to be either natural or legal persons.

(2) Legal persons may be required to indicate, in the tender or in the application, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

Groups of economic operators

(3) Groups of economic operators, including temporary associations, may participate in concession contract award procedures and shall not be required by contracting authorities or utilities to have a specific legal form in order to submit a tender or an application.

(4) Where necessary, contracting authorities or utilities may clarify in the concession documents how groups of economic operators are to meet the requirements as to economic and financial standing or technical and professional ability referred to in regulation 38 provided that this is justified by objective reasons and is proportionate.

(5) Any conditions for the performance of a concession contract by such groups of economic operators which are different from those imposed on individual participants shall also be justified by objective reasons and shall be proportionate.

(6) Contracting authorities or utilities may require groups of economic operators to assume a specific legal form once they have been awarded the contract, to the extent that such a change is necessary for the satisfactory performance of the contract.

Nomenclatures

27. Any references to nomenclatures in the context of the award of concession contracts shall be made using the CPV.

Confidentiality

28.—(1) A contracting authority or utility shall not disclose information which has been forwarded to it by an economic operator and designated by that economic operator as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

(2) Paragraph (1) is without prejudice to—

- (a) any other provisions of these Regulations, including the obligations relating to the advertising of awarded concession contracts and the provision of information to candidates and tenderers set out in regulations 32 and 40 respectively;
- (b) the Freedom of Information Act 2000(1);
- (c) any other requirement, or permission, for the disclosure of information that is applicable under the law of England and Wales or, as the case may be, Northern Ireland.

(3) Contracting authorities and utilities may impose on economic operators requirements aimed at protecting the confidential nature of information which they make available throughout the concession contract award procedure.

Rules applicable to communication

29.—(1) Except where the use of electronic means is mandatory in accordance with regulations 33(1) and 34, contracting authorities and utilities may choose one or more of the following means of communication for all communication and information exchange—

- (a) electronic means;
- (b) post or facsimile;
- (c) oral communication, including telephone, in respect of communications other than the essential elements of a concession contract award procedure, and provided that the content of the oral communication is documented to a sufficient degree on a durable medium;
- (d) hand delivery certified by an acknowledgement of receipt.

(2) The means of communication chosen shall be generally available and non-discriminatory, and shall not restrict economic operators' access to the concession contract award procedure.

(3) The tools and devices to be used for communicating by electronic means, and their technical characteristics, shall be interoperable with information and communication technology products in general use.

(4) In all communication, exchange and storage of information, contracting authorities and utilities shall ensure that the integrity of data and the confidentiality of applications and tenders are preserved.

(5) Contracting authorities and utilities shall examine the content of applications and tenders only after the time limit set for submitting them has expired.

(1) 2000 c.36.