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STATUTORY INSTRUMENTS

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**2016 No. 273**

**The Concession Contracts Regulations 2016**

**PART 3**

**Rules on the award of concession contracts**

**CHAPTER 1**

**General principles**

**Design of the award procedure**

**30.** The contracting authority or utility shall have the freedom to organise the procedure leading to the choice of concessionaire subject to compliance with these Regulations.

**Concession notices**

**31.—(1)** Contracting authorities and utilities wishing to award a concession contract, other than a concession contract for social and other specific services listed in Schedule 3, shall make known their intention through the publication of a concession notice.

(2) Such a concession notice shall contain—

- (a) the information set out in Annex V to the Concessions Directive, and
- (b) any other information that the contracting authority or utility considers useful.

(3) Contracting authorities and utilities wishing to award a concession contract for social and other specific services listed in Schedule 3 shall make known their intention of a planned concession contract award through the publication of a prior information notice.

(4) Such a prior information notice shall contain the information set out in Annex VI to the Concessions Directive.

(5) Contracting authorities and utilities wishing to publish a concession notice or prior information notice shall send it for publication in accordance with regulation 33.

(6) Paragraphs (1) to (5) do not apply in any of the following cases—

- (a) where no applications, no suitable applications, no tenders or no suitable tenders have been submitted in response to a prior concession contract procedure, provided that the initial conditions of the concession contract are not substantially altered and that a report is sent to the Commission where it so requests;
- (b) where the works or services can be supplied only by a particular economic operator for any of the following reasons—
  - (i) the aim of the concession contract is the creation or acquisition of a unique work of art or artistic performance,
  - (ii) competition is absent for technical reasons,
  - (iii) the existence of an exclusive right,

- (iv) the protection of intellectual property rights and exclusive rights other than exclusive rights as defined in regulation 2,  
but only, in the case of paragraphs (ii) to (iv), where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the concession contract award.
- (7) For the purposes of paragraph (6)(a)—
- (a) a tender shall be considered not to be suitable where it is irrelevant to the concession contract, being manifestly incapable, without substantial changes, of meeting the contracting authority or utility's needs and requirements as specified in the concession documents;
- (b) an application shall be considered not to be suitable where—
- (i) the applicant concerned is to be or may be excluded under regulation 38(8) to (25) or does not meet the selection criteria set out by the contracting authority or utility in accordance with regulation 38(1) to (3),
- (ii) the application includes tenders which are considered not to be suitable as described in sub-paragraph (a).

### **Concession award notices**

**32.**—(1) Not later than 48 days after the award of a concession contract, contracting authorities and utilities shall send a concession award notice for publication in accordance with regulation 33.

(2) But concession award notices for social and other specific services listed in Schedule 3 may be grouped for publication on a quarterly basis, in which case the contracting authority or utility shall send the grouped notices for publication within 48 days of the end of each quarter.

(3) A concession award notice shall contain the information set out in Annex VII to the Concessions Directive, or in the case of a concession contract for social and other specific services listed in Schedule 3, the information set out in Annex VIII to that Directive.

### **Form and manner of publication of notices**

**33.**—(1) The notices required by regulations 31, 32 and 43(3) to be sent for publication in accordance with this regulation (and any corrigenda to those notices)—

- (a) shall be sent by electronic means to the Publications Office of the European Union (“the EU Publications Office”) for publication; and
- (b) shall be in the format of the relevant standard forms set out in Commission Implementing Regulation (EU) 2015/1986(1) as amended from time to time.

(2) Where the EU Publications Office has given the contracting authority or utility confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of that publication, that confirmation shall constitute proof of publication.

(3) Concession notices, prior information notices and concession award notices shall not be published at national level before they are published by the EU Publications Office unless publication by that Office does not take place within 48 hours after it confirms receipt in accordance with Article 33(2) of the Concessions Directive.

(4) Concession notices, prior information notices and concession award notices published at national level shall not contain information other than that contained in the notices sent to the EU Publications Office but shall indicate the date of sending of the notice to that Office.

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(1) OJ No L 296, 12.11.2015, p1.

### **Electronic availability of concession documents**

**34.**—(1) Contracting authorities and utilities shall, by means of the internet, offer unrestricted and full direct access free of charge to the concession documents from the date of the publication in the Official Journal of a concession notice or, where the concession notice does not include the invitation to submit tenders, from the date on which the invitation to submit tenders was sent.

(2) The text of the concession notice or of the invitation to submit tenders shall specify the internet address at which the concession documents are accessible.

(3) Paragraph (4) applies where, in duly justified circumstances due to—

- (a) exceptional security reasons,
- (b) technical reasons, or
- (c) the particularly sensitive nature of commercial information requiring a very high level of protection,

unrestricted and full direct access free of charge to certain concession documents cannot be offered by means of the internet.

(4) In those circumstances contracting authorities and utilities shall indicate in the notice or the invitation to submit a tender that the concession documents concerned will be transmitted by means other than the internet and the time limit for the receipt of tenders shall be prolonged.

(5) Provided that it has been requested in good time, contracting authorities and utilities shall supply to all applicants or tenderers taking part in the concession contract award procedure additional information relating to the concession documents not later than 6 days before the deadline fixed for the receipt of tenders.

### **Combating corruption and preventing conflicts of interest**

**35.**—(1) Contracting authorities and utilities shall take appropriate measures to combat fraud, favouritism and corruption and to effectively prevent, identify and remedy conflicts of interest arising in the conduct of concession contract award procedures, so as to avoid any distortion of competition and to ensure the transparency of the award procedure and the equal treatment of all candidates and tenderers.

(2) The measures adopted in relation to conflicts of interest shall not go beyond what is strictly necessary to prevent a potential conflict of interest or eliminate a conflict of interest that has been identified.

(3) For the purposes this regulation, the concept of conflicts of interest shall at least cover any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the concession contract award procedure.

(4) In paragraph (3), “relevant staff members” means staff members of the contracting authority or utility who are involved in the conduct of the concession contract award procedure or may influence the outcome of that procedure.