

Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (Text with EEA relevance)

TITLE II

RULES ON THE AWARD OF CONCESSIONS:

GENERAL PRINCIPLES AND PROCEDURAL GUARANTEES

CHAPTER II

Procedural guarantees

Article 37

Procedural guarantees

1 Concessions shall be awarded on the basis of the award criteria set out by the contracting authority or contracting entity in accordance with Article 41, provided that all of the following conditions are fulfilled:

- a the tender complies with the minimum requirements set, where applicable, by the contracting authority or contracting entity;
- b the tenderer complies with the conditions for participation as referred to in Article 38(1); and
- c the tenderer is not excluded from participating in the award procedure in accordance with Article 38(4) to (7), and subject to Article 38(9).

The minimum requirements referred to in point (a) shall contain conditions and characteristics (particularly technical, physical, functional and legal) that any tender should meet or possess.

2 The contracting authority or contracting entity shall provide:

- a in the concession notice, a description of the concession and of the conditions of participation;
- b in the concession notice, in the invitation to submit a tender or in other concession documents, a description of the award criteria and, where applicable, the minimum requirements to be met.

3 The contracting authority or contracting entity may limit the number of candidates or tenderers to an appropriate level, on condition that this is done in a transparent manner and on the basis of objective criteria. The number of candidates or tenderers invited shall be sufficient to ensure genuine competition.

4 The contracting authority or contracting entity shall communicate the description of the envisaged organisation of the procedure and an indicative completion deadline to all participants. Any modification shall be communicated to all participants and, to the extent that they concern elements disclosed in the concession notice, advertised to all economic operators.

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5 The contracting authority or contracting entity shall provide for appropriate recording of the stages of the procedure using the means it judges appropriate, subject to compliance with Article 28(1).

6 The contracting authority or contracting entity may hold negotiations with candidates and tenderers. The subject-matter of the concession, the award criteria and the minimum requirements shall not be changed during the course of the negotiations.