

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 41*

**Award criteria**

1 Concessions shall be awarded on the basis of objective criteria which comply with the principles set out in Article 3 and which ensure that tenders are assessed in conditions of effective competition so as to identify an overall economic advantage for the contracting authority or the contracting entity.

2 The award criteria shall be linked to the subject-matter of the concession, and shall not confer an unrestricted freedom of choice on the contracting authority or the contracting entity. They may include, inter alia, environmental, social or innovation-related criteria.

Those criteria shall be accompanied by requirements which allow the information provided by the tenderers to be effectively verified.

The contracting authority or the contracting entity shall verify whether tenders properly meet the award criteria.

3 The contracting authority or the contracting entity shall list the criteria in descending order of importance.

Notwithstanding the first subparagraph, where the contracting authority or contracting entity receive a tender which proposes an innovative solution with an exceptional level of functional performance which could not have been foreseen by a diligent contracting authority or contracting entity, the contracting authority or contracting entity may, exceptionally, modify the ranking order of the award criteria to take into account that innovative solution. In that case, the contracting authority or the contracting entity shall inform all tenderers about the modification of the order of importance and shall issue a new invitation to submit tenders, in respect of the minimal time limits referred to in Article 39(4). Where the award criteria have been published at the moment of the publication of the concession notice, the contracting authority or entity shall publish a new concession notice, in respect of the minimum time limits referred to in Article 39(3).

The modification of the ranking order shall not result in discrimination.