

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 I

SUBJECT-MATTER, SCOPE, PRINCIPLES AND DEFINITIONS

CHAPTER II

Principles

Article 26

Economic operators

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 the Member State in which the contract is awarded, they would be required to be either natural or legal persons.

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.

2 Groups of economic operators, including temporary associations, may participate in concession award procedures. They shall not be required by contracting authorities or contracting entities to have a specific legal form in order to submit a tender or a request to participate.

Where necessary, contracting authorities or contracting entities may clarify in the concession documents how groups of economic operators shall meet the requirements as to economic and financial standing or technical and professional ability referred to in Article 38 provided that this is justified by objective reasons and is proportionate. Member States may establish standard terms for how groups of economic operators are to meet those requirements. Any conditions for the performance of a concession 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.

3 Notwithstanding paragraphs 1 and 2, contracting authorities or contracting entities may require groups of economic operators to assume a specific legal form once they have been awarded the contract, to the extent that that change is necessary for the satisfactory performance of the contract.

Article 27

Nomenclatures

1 Any references to nomenclatures in the context of the award of concessions shall be made using the 'Common Procurement Vocabulary (CPV)' as adopted by Regulation (EC) No 2195/2002 of the European Parliament and of the Council⁽¹⁾.

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2 The Commission shall be empowered to adopt delegated acts in accordance with Article 48 to adapt the CPV codes referred to in this Directive, where changes in the CPV nomenclature must be reflected in this Directive and they do not imply a modification of the scope of this Directive.

Article 28

Confidentiality

1 Unless otherwise provided in this Directive or in the national law to which the contracting authority is subject, in particular legislation concerning access to information, and without prejudice to the obligations relating to the advertising of awarded concession contracts and to the information to candidates and tenderers set out in Articles 32 and 40, the contracting authority or contracting entity shall not disclose information forwarded to it by economic operators which they have designated as confidential, including but not limited to, technical or trade secrets and the confidential aspects of tenders.

This Article shall not prevent public disclosure of non-confidential parts of concluded contracts, including any subsequent changes.

2 The contracting authority or contracting entity may impose on economic operators requirements aimed at protecting the confidential nature of information which it makes available throughout the concession award procedure.

Article 29

Rules applicable to communication

1 Except where use of electronic means is mandatory pursuant to Article 33(2) and Article 34, Member States or contracting authorities and contracting entities may choose one or more of the following means of communication for all communication and information exchange:

- a electronic means;
- b post or fax;
- c oral communication, including telephone, in respect of communications other than the essential elements of a concession 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.

Member States may make mandatory the use of electronic means of communication for concessions, going beyond the obligations established in Article 33(2) and Article 34.

2 The means of communication chosen shall be generally available and non-discriminatory, and shall not restrict economic operators' access to the concession award procedure. The tools and devices to be used for communicating by electronic means, as well as their technical characteristics shall be interoperable with the information and communication technology products in general use.

In all communication, exchange and storage of information, contracting authorities and contracting entities shall ensure that the integrity of data and the confidentiality of applications and tenders are preserved. They shall examine the content of applications and tenders only after the time limit set for submitting them has expired.

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- (1) Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) ([OJ L 340, 16.12.2002, p. 1](#)).