
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 65

The Concession Contracts (Scotland) Regulations 2016

PART 3

**RULES ON THE PROCUREMENT FOR THE
AWARD OF CONCESSION CONTRACTS**

CHAPTER 7

PROCEDURAL GUARANTEES

Technical and functional requirements

38.—(1) The technical specifications and functional requirements must—

- (a) be set out in the concession contract procurement documents;
- (b) lay down the characteristics required of any works or services that are the subject matter of the concession contract.

(2) The characteristics referred to in paragraph (1)(b) may include—

- (a) quality levels;
- (b) levels of environmental and climate performance;
- (c) design for all requirements (including accessibility for disabled persons) and conformity assessment;
- (d) performance, safety or dimensions;
- (e) terminology;
- (f) symbols;
- (g) testing and test methods;
- (h) marking and labelling; or
- (i) user instructions.

(3) Those characteristics may also refer to the specific process of production or provision of the requested works or services provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives.

(4) Subject to paragraph (5), unless justified by the subject-matter of the concession contract, technical and functional requirements must not refer to a specific make or source, or a particular process which characterises the products or services provided by a specific economic operator or to trade marks, patents, types or a specific production with the effect of favouring or eliminating certain undertakings or certain products.

(5) Reference of a kind referred to in paragraph (4) is permitted, on an exceptional basis, if a sufficiently precise and intelligible description of the subject-matter of the contract is not possible, in which case the reference shall be accompanied by the words “or equivalent”.

(6) A contracting entity must not reject a tender on the grounds that the works and services tendered for do not comply with the technical and functional requirements to which it has referred, once the tenderer proves in its tender, by any appropriate means, that the solutions it has proposed satisfy in an equivalent manner the technical and functional requirements.