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SCOTTISH STATUTORY INSTRUMENTS

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**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**

**Procedural guarantees**

**39.**—(1) A concession contract must be awarded on the basis of the award criteria, provided that all of the following conditions are fulfilled—

- (a) the tender complies with any minimum requirements set by the contracting entity;
- (b) the tenderer complies with the conditions for participation set out in regulation 41(1) to (3) (selection of and qualitative assessment of candidates); and
- (c) the tenderer is not excluded from participating in the award procedure in accordance with regulation 40(1) to (9) (exclusion grounds), as read with regulation 40(14) to (18).

(2) The 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.

(3) The number of candidates or tenderers invited must be sufficient to ensure genuine competition.

(4) The contracting entity must communicate the following to all participants—

- (a) the description of the envisaged organisation of the procedure and an indicative completion deadline; and
- (b) any modification to that procedure or completion deadline.

(5) To the extent that any modification referred to in paragraph (4)(b) concerns elements disclosed in the concession notice, the contracting entity must advertise it to all economic operators.

(6) The contracting entity must provide for appropriate recording of the stages of the procedure using the means it considers appropriate, subject to regulation 31(1) and (2) (confidentiality).

(7) The contracting entity may hold negotiations with candidates and tenderers but the subject-matter of the concession contract, the award criteria and the minimum requirements must not change during the course of any negotiation.

(8) In this regulation—

- (a) “the award criteria” means the award criteria set out by the contracting entity in accordance with regulation 44 (concession contract award criteria);
- (b) “minimum requirements” mean the conditions and characteristics (in particular any technical, physical, functional and legal conditions and characteristics) that any tender must meet or possess.