

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 36*

**Technical and functional requirements**

1 Technical and functional requirements shall define the characteristics required of the works or services that are the subject-matter of the concession. They shall be set out in the concession documents.

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. The characteristics may for instance include quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, terminology, symbols, testing and test methods, marking and labelling, or user instructions.

2 Unless justified by the subject-matter of the contract, technical and functional requirements shall 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. Such a reference shall be permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract is not possible. Such reference shall be accompanied by the words 'or equivalent'.

3 A contracting authority or contracting entity shall 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 satisfied in an equivalent manner the technical and functional requirements.