
STATUTORY INSTRUMENTS

2016 No. 273

The Concession Contracts Regulations 2016

PART 2

Scope and principles

CHAPTER 3

General Provisions

Mixed procurement contracts involving defence or security aspects

21.—(1) This regulation applies in the case of mixed contracts which have as their subject-matter elements of a concession contract covered by these Regulations and procurement or other elements covered by Article 346 of TFEU or the Defence and Security Regulations.

(2) In the case of contracts intended to cover several activities, one of them being listed in Schedule 2 or covered by the Utilities Contracts Regulations 2016, and another being covered by Article 346 of TFEU or the Defence and Security Regulations, the applicable provisions shall be established in accordance with regulation 23 of these Regulations and regulation 26 of the Utilities Contracts Regulations 2016, respectively.

(3) Where the different parts of a given contract are objectively separable, contracting authorities or utilities may choose to award separate contracts for the separate parts or to award a single contract.

(4) The decision to award a single contract shall not, however, be taken for the purpose of excluding contracts from the application of these Regulations or the Defence and Security Regulations.

(5) Where contracting authorities or utilities choose to award separate contracts for separate parts, the decision as to which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

(6) Where contracting authorities or utilities choose to award a single contract, the following criteria shall apply to determine the applicable legal regime—

- (a) where part of a given contract is covered by Article 346 of TFEU, or different parts are covered by Article 346 of TFEU and the Defence and Security Regulations respectively, the contract may be awarded without applying these Regulations, provided that the award of a single contract is justified by objective reasons;
- (b) where part of a given contract is covered by the Defence and Security Regulations, the contract may be awarded in accordance with these Regulations or in accordance with the Defence and Security Regulations, provided that the award of a single contract is justified by objective reasons.

(7) Paragraph (6)(b) is without prejudice to the thresholds and exclusions for which the Defence and Security Regulations provide.

(8) Where the different parts of a given contract are objectively not separable, the contract may be awarded without applying these Regulations where it includes elements to which Article 346 of

TFEU applies; otherwise it may be awarded in accordance with these Regulations or in accordance with the Defence and Security Regulations.

(9) This regulation is subject to regulation [23](#).