

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 I*

***General principles***

*Article 30*

**General principles**

1 The contracting authority or contracting entity shall have the freedom to organise the procedure leading to the choice of concessionaire subject to compliance with this Directive.

2 The design of the concession award procedure shall respect the principles laid down in Article 3. In particular during the concession award procedure, the contracting authority or contracting entity shall not provide information in a discriminatory manner which may give some candidates or tenderers an advantage over others.

3 Member States shall take appropriate measures to ensure that in the performance of concession contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X.

4 The Commission shall be empowered to adopt delegated acts in accordance with Article 48 to amend the list in Annex X, where necessary, to add new international agreements that have been ratified by all Member States or where the existing international agreements referred to are no longer ratified by all Member States or they are otherwise changed, for instance in respect of their scope, content or denomination.

*Article 31*

**Concession notices**

1 Contracting authorities and contracting entities wishing to award a concession shall make known their intention by means of a concession notice.

2 Concession notices shall contain the information referred to in Annex V and, where appropriate, any other information deemed useful by the contracting authority or entity, in accordance with the format of standard forms.

3 Contracting authorities and contracting entities wishing to award a concession for social and other specific services listed in Annex IV shall make known their intention of planned

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concession award through the publication of a prior information notice. Those notices shall contain the information set out in Annex VI.

4 By way of derogation from paragraph 1, contracting authorities or contracting entities shall not be required to publish a concession notice where the works or services can be supplied only by a particular economic operator for any of the following reasons:

- a the aim of the concession is the creation or acquisition of a unique work of art or artistic performance;
- b the absence of competition for technical reasons;
- c the existence of an exclusive right;
- d the protection of intellectual property rights and exclusive rights other than those defined in point (10) of Article 5.

The exceptions set out in points (b), (c) and (d) of the first subparagraph only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the concession award.

5 By way of derogation from paragraph 1, the contracting authority or contracting entity shall not be required to publish a new concession notice where no applications, no tenders, no suitable tenders or no suitable applications have been submitted in response to a prior concession procedure, provided that the initial conditions of the concession contract are not substantially altered and that a report is sent to the Commission, where it so requests;

For the purposes of the first subparagraph, a tender shall be considered not to be suitable where it is irrelevant to the concession, being manifestly incapable, without substantial changes, of meeting the contracting authority or contracting entity's needs and requirements as specified in the concession documents.

For the purposes of the first subparagraph, an application shall be considered not to be suitable:

- [<sup>X1</sup>a where the applicant concerned shall or may be excluded pursuant to Article 38(4) to (9) or does not meet the selection criteria set out by the contracting authority or the contracting entity pursuant to Article 38(1);]
- b where applications include tenders which are not suitable within the meaning of the second subparagraph.

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#### **Editorial Information**

- X1** Substituted by [Corrigendum to Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts \(Official Journal of the European Union L 94 of 28 March 2014\)](#).

### *Article 32*

#### **Concession award notices**

1 Not later than 48 days after the award of a concession, the contracting authorities and contracting entities shall, in accordance with the procedures laid down in Article 33, send a concession award notice on the results of the concession award procedure. For social and other specific services listed in Annex IV, such notices may however be grouped on a quarterly basis. In that case they shall send the grouped notices within 48 days of the end of each quarter.

2 Concession award notices shall contain the information set out in Annex VII, or in relation to concessions for social and other specific services listed in Annex IV, the information set out in Annex VIII, and shall be published in accordance with Article 33.

### Article 33

#### Form and manner of publication of notices

[<sup>X1</sup>1 Concession notices, concession award notices and the notice referred to in the second subparagraph of Article 43(1) shall include the information set out in Annexes V, VI, VII, VIII and XI and in the format of standard forms, including standard forms for corrigenda.]

The Commission shall establish those standard forms by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 50.

2 The notices referred to in paragraph 1 shall be drawn up, transmitted by electronic means to the Publications Office of the European Union and published in accordance with Annex IX. The Publications Office of the European Union shall give the contracting authority or contracting entity confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of publication which shall constitute proof of publication. Notices shall be published not later than five days after they are sent. The costs of publication of the notices by the Publications Office of the European Union shall be borne by the Union.

3 Concession notices shall be published in full in one or more of the official languages of the institutions of the Union as chosen by the contracting authority or contracting entity. That language version or those language versions shall constitute the sole authentic text or texts. A summary of the important elements of each notice shall be published in the other official languages of the institutions of the Union.

4 Concession notices and concession award notices shall not be published at national level before publication by the Publications Office of the European Union unless publication at Union level does not take place 48 hours after the Publications Office of the European Union confirms receipt by the contracting authority or the contracting entity of the notice as referred to in paragraph 2. Concession notices and concession award notices published at national level shall not contain information other than that contained in the notices dispatched to the Publications Office of the European Union but shall indicate the date of dispatch of the notice to the Publications Office of the European Union.

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### Article 34

#### Electronic availability of concession documents

1 Contracting authorities and contracting entities shall offer by electronic means unrestricted and full direct access free of charge to the concession documents from the date of publication of a concession notice or, where the concession notice does not include the invitation

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to submit tenders, from the date on which an invitation to submit tenders was sent. The text of the concession notice or of these invitations shall specify the internet address at which the concession documents are accessible.

2 Where, in duly justified circumstances, due to exceptional security, or technical reasons or due to the particularly sensitive nature of commercial information requiring a very high level of protection, unrestricted and full direct access free of charge by electronic means to certain concession documents cannot be offered, contracting authorities or contracting entities shall indicate in the notice or the invitation to submit a tender that the concession documents concerned will be transmitted by other means than electronic means and the time limit for the receipt of tenders shall be prolonged.

3 Provided that it has been requested in good time, the contracting authorities and contracting entities or competent departments shall supply to all applicants or tenderers taking part in the concession award procedure additional information relating to the concession documents not later than six days before the deadline fixed for the receipt of tenders.

#### *Article 35*

### **Combating corruption and preventing conflicts of interest**

Member States shall require contracting authorities and contracting entities to take appropriate measures to combat fraud, favouritism and corruption and to effectively prevent, identify and remedy conflicts of interest arising in the conduct of concession award procedures, so as to avoid any distortion of competition and to ensure the transparency of the award procedure and the equal treatment of all candidates and tenderers.

The concept of conflicts of interest shall at least cover any situation where staff members of the contracting authority or entity who are involved in the conduct of the concession award procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the concession award procedure.

With regard to conflicts of interest, the measures adopted shall not go beyond what is strictly necessary to prevent a potential conflict of interest or eliminate a conflict of interest that has been identified.