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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 65**

**The Concession Contracts (Scotland) Regulations 2016**

**PART 2**

**SCOPE AND PRINCIPLES**

**CHAPTER 1**

**CONCESSION CONTRACTS TO WHICH THESE REGULATIONS APPLY**

**Subject matter and application of these Regulations**

7.—(1) These Regulations establish rules on procurement for the award of a concession contract by a contracting entity—

- (a) the value of which is estimated to be not less than the threshold mentioned in regulation 8 (thresholds and methods for calculating the estimated value of the concession contract); and
- (b) which is not excluded from the scope of these Regulations by any other provision of this Part.

(2) These Regulations are subject to Article 346 of the TFEU.

**Thresholds and methods for calculating the estimated value of the concession contract**

8.—(1) These Regulations apply to a procurement for the award of a concession contract if the estimated value of the contract to be awarded (not including value added tax) is equal to or greater than the amount specified in Article 8(1) of the Concession Contracts Directive.

(2) The value in pounds sterling of any amount expressed in Euros in any of the provisions of Concession Contracts Directive mentioned in this regulation shall be taken to be the value determined by the European Commission in accordance with Article 8 of the Concession Contracts Directive and published from time to time in the Official Journal in accordance with Article 9(3) of that Directive.

(3) The value of a concession contract shall be the total turnover of the concessionaire generated over the duration of the contract, net of value added tax, as estimated by the contracting entity, in consideration for the works and services which are the object of the concession contract and the supplies incidental to such works and services.

(4) That estimate must be calculated as at the moment at which the concession notice is sent for publication in accordance with regulation 35 (form and manner of publication of notices) or, in cases where such notice is not provided for, at the moment at which the contracting entity commences the procurement for the award of a concession contract.

(5) If the value as estimated at the time of the award is more than 20% higher than the estimate calculated in accordance with paragraph (4), the former shall be used for the purposes of this regulation.

(6) The estimated value of the concession contract must be calculated using an objective method specified in the concession documents.

(7) When calculating the estimated value of the concession contract, the contracting entity must, if applicable, take into account—

- (a) the value of any form of option and any extension of the duration of the concession contract;
- (b) revenue from the payment of fees and fines by the users of the works or services other than those collected on behalf of the contracting entity;
- (c) payments or any other financial advantages, in any form, from the contracting entity or any other public authority to the concessionaire, including compensation for compliance with a public service obligation and public investment subsidies;
- (d) the value of grants or any other financial advantages, in any form, from third parties for the performance of the concession contract;
- (e) revenue from sales of any assets which are part of the concession contract;
- (f) the value of all the supplies and services that are made available to the concessionaire by the contracting entity, provided that they are necessary for executing the works or providing the services;
- (g) any prizes or payments to candidates or tenderers.

(8) The method used to calculate the estimated value of a concession contract must not be chosen with the intention of excluding it from the scope of these Regulations.

(9) A concession contract must not be subdivided with the effect of preventing it from falling within the scope of these Regulations, unless justified by objective reasons.

(10) If a proposed work or proposed provision of services may result in a concession contract being awarded in the form of separate lots, account must be taken of the total estimated value of all such lots.

(11) If the aggregate value of the lots is equal to or greater than the threshold referred to in paragraph (1), these Regulations apply to the award of each lot.