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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 6**

**GENERAL PRINCIPLES**

**Concession notice**

**33.**—(1) A contracting entity wishing to award a concession contract, other than a concession contract for social and other specific services listed in Schedule 3, must make known their intention through the publication of a concession notice.

(2) Such a concession notice must contain—

- (a) the information set out in Annex V to the Concession Contracts Directive; and
- (b) any other information that the contracting entity considers useful;

and must be in the format of the standard forms set out in Commission Implementing Regulation 2015/1986<sup>(1)</sup>.

(3) A contracting entity wishing to award a concession contract for social and other specific services listed in Schedule 3 must make known their intention of a planned concession contract award through the publication of a prior information notice.

(4) Such a prior information notice must contain the information set out in Annex VI to the Concession Contracts Directive and must be in the format of the standard forms set out in Commission Implementing Regulation 2015/1986.

(5) This regulation does not apply in any of the following cases—

- (a) if no applications, no suitable applications, no tenders or no suitable tenders have been submitted in response to a prior procurement for the award of a concession contract, provided that the initial conditions of the concession contract are not substantially altered and that a report is sent to the European Commission if it so requests;
- (b) if the works or services can be supplied only by a particular economic operator for any of the following reasons—
  - (i) the aim of the concession contract is the creation or acquisition of a unique work of art or artistic performance;
  - (ii) competition is absent for technical reasons;
  - (iii) the existence of an exclusive right;

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<sup>(1)</sup> OJ L 222, 12.11.2015, p.1.

- (iv) the protection of intellectual property rights and exclusive rights other than exclusive rights as defined in regulation 2 (interpretation),  
but only, in the case of sub-paragraphs (ii) to (iv), if 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 contract award.
- (6) For the purposes of paragraph (5)(a)—
  - (a) a tender must be considered not to be suitable if it is irrelevant to the concession contract, being manifestly incapable, without substantial changes, of meeting the contracting entity's needs and requirements as specified in the concession documents;
  - (b) an application must be considered not to be suitable if—
    - (i) the applicant concerned is to be or may be excluded under regulation 40 (exclusion grounds) or does not meet the selection criteria set out by the contracting entity in accordance with regulation 41(1) to (3) (selection of and qualitative assessment of candidates);
    - (ii) the application includes tenders which are considered not to be suitable as described in sub-paragraph (a).

#### **Concession contract award notice**

**34.**—(1) Not later than 48 days after the award of a concession contract, the contracting entity must send for publication a concession contract award notice in accordance with regulation 35 (form and manner of publication of notices).

(2) A concession contract award notice for social and other specific services listed in Schedule 3 may be grouped for publication on a quarterly basis, in which case the contracting entity must send the grouped notices for publication within 48 days of the end of each quarter.

(3) A concession contract award notice must contain the information set out in Annex VII to the Concession Contracts Directive, or in the case of a concession contract for social and other specific services listed in Schedule 3, the information set out in Annex VIII to that Directive.

#### **Form and manner of publication of notices**

**35.**—(1) A notice required by regulation 33 (concession notice), 34 (concession contract award notice) and 46(3) (modification of contracts) to be sent for publication in accordance with this regulation (and any corrigenda to a notice)—

- (a) must be sent by electronic means to the Publications Office of the European Union ("EU Publications Office") for publication; and
- (b) must be in the format of the standard forms set out in Commission Implementing Regulation 2015/1986(2).

(2) If the EU Publications Office has given the contracting entity confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of that publication, that confirmation shall constitute proof of publication.

(3) The notices referred to in regulations 33, 34 and 46(3) must not be published at national level before they are published by the EU Publications Office unless publication by that Office does not take place within 48 hours after it confirms receipt in accordance with Article 33(2) of the Concession Contracts Directive.

(4) Notices published at national level must not contain information other than that contained in the notices sent to the EU Publications Office but must indicate the date of sending of the notice to that Office.

### **Electronic availability of concession documents**

**36.**—(1) A contracting entity must, by means of the internet, offer unrestricted and full direct access free of charge to the concession documents from the date of the publication in the Official Journal of a concession notice or, where the concession notice does not include the invitation to submit tenders, from the date on which the invitation to submit tenders was sent.

(2) The text of the concession notice or of the invitation to submit tenders must specify the internet address at which the concession documents are accessible.

(3) Paragraph (4) applies if, in duly justified circumstances due to—

- (a) exceptional security reasons;
- (b) technical reasons; or
- (c) the particularly sensitive nature of commercial information requiring a very high level of protection,

unrestricted and full direct access free of charge to certain concession documents cannot be offered by means of the internet.

(4) In those circumstances a contracting entity must indicate in the notice or the invitation to submit a tender that the concession documents concerned will be transmitted by means other than the internet and the time limit for the receipt of tenders shall be prolonged.

(5) Provided that it has been requested in good time, a contracting entity must supply to all applicants or tenderers taking part in the procurement for the award of a concession contract additional information relating to the concession documents not later than 6 days before the deadline fixed for the receipt of tenders.

### **Conflict of Interest**

**37.**—(1) A contracting entity must take appropriate measures to prevent, identify and remedy a conflict of interest arising in the conduct of the procurement for the award of a concession contract so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.

(2) The measures in relation to a conflict of interest must not go beyond what is strictly necessary to prevent a potential conflict of interest or eliminate an identified conflict of interest.

(3) Without prejudice to the generality thereof, reference to “conflicts of interest” in paragraph (1) includes any situation where a relevant staff member has, 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 procurement for the award of a concession contract.

(4) In paragraph (3), “relevant staff member” means a contracting entity staff member or staff member of a procurement service provider acting on behalf of the contracting entity, who is involved in the conduct of the procurement for the award of concession contract or may influence the outcome of that procurement.