
STATUTORY INSTRUMENTS

2016 No. 273

The Concession Contracts Regulations 2016

PART 2

Scope and principles

CHAPTER 1

Concession contracts to which these Regulations apply

Subject-matter and scope of these Regulations

7.—(1) These Regulations establish rules on the procedures for procurement by contracting authorities and utilities by means of a concession contract—

- (a) the value of which is estimated to be not less than the threshold mentioned in regulation 9; and
- (b) which is not excluded from the scope of these Regulations by any other provision of this Part.

(2) These Regulations apply to the award of works concession contracts or services concession contracts to economic operators by—

- (a) contracting authorities; or
- (b) utilities, provided that the works or services are intended for the pursuit of one of the activities listed in Schedule 2.

[^{F1}(3) These Regulations—

- (a) do not oblige the United Kingdom to supply information the disclosure of which it considers contrary to the essential interests of its security;
- (b) do not preclude the United Kingdom from taking such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production or trade in arms, munitions and war material, provided that such measures do not adversely affect the conditions of competition regarding products which are not intended for specifically military purposes.

(4) The arms, munitions and war material to which paragraph (3)(b) applies are, subject to paragraph (6), those included in the 1958 List.

(5) Subject to the effect of any regulations made under paragraph (6), any measures which, if they had been taken immediately before IP completion day, would have been covered by Article 346 of TFEU shall be regarded as measures covered by paragraph (3).

(6) The Secretary of State may make regulations providing that the 1958 List is to be treated for the purposes of these Regulations as if it were changed in respects specified in the regulations.

(7) In this regulation, “the 1958 List” means the list of arms, munitions and war material adopted by the Council of the European Economic Community in its decision 255/58 of 15th April 1958.]

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Textual Amendments

- F1** Reg. 7(3)-(7) substituted for reg. 7(3) (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), 8(4) (with Sch. paras. 3-5)

Principle of equal treatment, non-discrimination and transparency

8.—(1) Contracting authorities and utilities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.

(2) The design of the concession contract award procedure, including the estimate of the value, shall not be made with the intention of excluding it from the scope of these Regulations or of unduly favouring or disadvantaging certain economic operators or certain works, supplies or services.

(3) During the concession contract award procedure, contracting authorities and utilities shall not provide information in a discriminatory manner which may give some candidates or tenderers an advantage over others.

(4) Contracting authorities and utilities shall aim to ensure the transparency of the concession contract award procedure and of the performance of the contract, while complying with regulation 28.

[^{F2}(5) Contracting authorities and utilities ^{F3}... shall not terminate concession contracts in a manner that circumvents their obligations under these Regulations.]

Textual Amendments

- F2** Reg. 8(5) inserted (25.5.2023) by The Public Procurement (International Trade Agreements) (Amendment) Regulations 2023 (S.I. 2023/484), regs. 1(2), 3(2) (with reg. 5)
- F3** Words in reg. 8(5) omitted (26.5.2023) by virtue of The Public Procurement (International Trade Agreements) (Amendment) (Wales) (No. 2) Regulations 2023 (S.I. 2023/567), regs. 1(2), 3(2) (with reg. 5)

Threshold amounts and methods for calculating the estimated value of concession contracts

Threshold amounts

Threshold amounts

9.—(1) These Regulations apply to concession contracts the value of which are equal to or greater than [^{F4}£5,372,609].

^{F5}(2)

Calculating the value of the concession contract

(3) For the purposes of paragraph (1), the value of a concession contract shall be the total turnover of the concessionaire generated over the duration of the contract, [^{F6}inclusive] of value added tax, as estimated by the contracting authority or utility, in consideration for the works and services which are the object of the concession contract and for the supplies incidental to such works and services.

(4) That estimate shall be calculated as at the moment at which the concession notice is [^{F7}submitted] for publication in accordance with regulation 33 or, in cases where such notice is not provided for, at the moment at which the contracting authority or utility commences the

concession contract award procedure, for example by contacting economic operators in relation to the concession contract.

(5) But 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 shall be calculated using an objective method specified in the concession documents.

(7) When calculating the estimated value of the concession contract, contracting authorities and utilities shall, where applicable, take into account in particular—

- (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 authority or utility;
- (c) payments or any other financial advantages, in any form, from the contracting authority or utility 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 authorities or utilities, provided that they are necessary for executing the works or providing the services;
- (g) any prizes or payments to candidates or tenderers.

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

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

[^{F8}(9A) If a contracting authority or a utility ^{F9}... is unable to estimate the value of a concession contract in accordance with this regulation, the estimated value of the concession contract inclusive of value added tax is deemed to be equal to the threshold amount in paragraph (1).]

Treatment of lots

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

(11) Where the aggregate value of the lots is equal to or greater than the threshold mentioned in paragraph (1), these Regulations shall apply to the awarding of each lot.

Textual Amendments

- F4** Sum in Reg. 9(1) substituted (1.1.2024) by The Public Procurement (Agreement on Government Procurement) (Thresholds) (Amendment) Regulations 2023 (S.I. 2023/1117), regs. 1(1), **3(2)** (with reg. 5)
- F5** Reg. 9(2) omitted (31.12.2020) by virtue of The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **8(5)(b)** (with Sch. paras. 3-5)

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- F6** Word in reg. 9(3) substituted (1.1.2022) by The Public Procurement (Agreement on Government Procurement) (Thresholds) (Amendment) Regulations 2021 (S.I. 2021/1221), regs. 1(1), **4(2)(b)** (with reg. 7)
- F7** Word in reg. 9(4) substituted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **8(5)(c)** (with Sch. paras. 3-5)
- F8** Reg. 9(9A) inserted (25.5.2023) by The Public Procurement (International Trade Agreements) (Amendment) Regulations 2023 (S.I. 2023/484), regs. 1(2), **3(3)** (with reg. 5)
- F9** Words in reg. 9(9A) omitted (26.5.2023) by virtue of The Public Procurement (International Trade Agreements) (Amendment) (Wales) (No. 2) Regulations 2023 (S.I. 2023/567), regs. 1(2), **3(3)** (with reg. 5)

[^{F10}Review and amendment of the threshold in regulation 9(1)]

9A.—(1) Every two years the Minister for the Cabinet Office must review the threshold mentioned in regulation 9(1) to verify whether it corresponds with the threshold established in the GPA for works concessions.

(2) The Minister must do so by calculating the sterling value of the threshold on the basis of the average daily value of sterling in terms of the special drawing rights mentioned in the GPA over a period of 24 months ending with 31st August.

(3) The Minister must make that calculation using the applicable conversion rates in the monthly International Financial Statistics published from time to time by the International Monetary Fund.

(4) If the sterling value of the threshold so calculated differs from the sum for the time being mentioned in regulation 9(1) in respect of the threshold, the Minister must make regulations amending regulation 9(1) so as to substitute for that sum the sum equal to that value.

(5) Such regulations—

(a) must be made and laid before Parliament before 1st November following the end of the 24-month period covered by the review; and

(b) must provide for the substitution to come into force on the following 1st January.

(6) The first review under this regulation must relate to the 24-month period ending with 31st August 2021.]

Textual Amendments

- F10** Reg. 9A inserted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **8(6)** (with Sch. paras. 3-5)

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Changes and effects yet to be applied to :

- Regulations revoked by [2023 c. 54 Sch. 11 para. 6](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 8(5) words omitted by [S.I. 2023/506 reg. 3\(2\)](#) (This amendment not applied to legislation.gov.uk. S.I. 2023/506 revoked before coming into force by The Public Procurement (International Trade Agreements) (Amendment) (Wales) (No. 2) Regulations 2023 (S.I. 2023/567), regs. 1(2), 6)
- reg. 9(9A) words omitted by [S.I. 2023/506 reg. 3\(3\)](#) (This amendment not applied to legislation.gov.uk. S.I. 2023/506 revoked before coming into force by The Public Procurement (International Trade Agreements) (Amendment) (Wales) (No. 2) Regulations 2023 (S.I. 2023/567), regs. 1(2), 6)
- reg. 10(6)(6A) substituted for reg. 10(6) by [2024 c. 6 Sch. para. 6\(3\)](#)
- reg. 10(8A) inserted by [2024 c. 6 Sch. para. 6\(6\)](#)
- reg. 10(11)(d)(i)(aa) words substituted by [S.I. 2019/560 reg. 7\(7\)\(e\)\(i\)\(aa\)](#) (This amendment not applied to legislation.gov.uk. Affecting Regulations revoked (20.11.2020) by S.I. 2020/1319, regs. 1(3), 2(a))
- reg. 10(11)(d)(i)(bb) words substituted by [S.I. 2019/560 reg. 7\(7\)\(e\)\(i\)\(bb\)](#) (This amendment not applied to legislation.gov.uk. Affecting Regulations revoked (20.11.2020) by S.I. 2020/1319, regs. 1(3), 2(a))