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STATUTORY INSTRUMENTS

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**2016 No. 273**

**The Concession Contracts Regulations 2016**

**PART 3**

Rules on the award of concession contracts

CHAPTER 1

General principles

**Design of the award procedure**

**30.** The contracting authority or utility shall have the freedom to organise the procedure leading to the choice of concessionaire subject to compliance with these Regulations.

**Concession notices**

**31.—**(1) Contracting authorities and utilities wishing to award a concession contract, other than a concession contract for social and other specific services listed in Schedule 3, shall make known their intention through the publication of a concession notice.

(2) Such a concession notice shall contain—

(a) the information set out in Annex V to the Concessions Directive, [<sup>F1</sup>but as if—

(i) in paragraph 3, “Article 34(2)” were a reference to regulation 34(3) of these Regulations;

(ii) in paragraph 10, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations; and

(iii) paragraph 15 (financing by EU funds) were omitted,] and

(b) any other information that the contracting authority or utility considers useful.

(3) Contracting authorities and utilities wishing to award a concession contract for social and other specific services listed in Schedule 3 shall make known their intention of a planned concession contract award through the publication of a prior information notice.

(4) Such a prior information notice shall contain the information set out in Annex VI to the Concessions Directive.

(5) Contracting authorities and utilities wishing to publish a concession notice or prior information notice shall [<sup>F2</sup>submit] it for publication in accordance with regulation 33.

(6) Paragraphs (1) to (5) do not apply in any of the following cases—

(a) where no applications, no suitable applications, no tenders or no suitable tenders have been submitted in response to a prior concession contract procedure, provided that the initial conditions of the concession contract are not substantially altered [<sup>F3</sup>and that—

(i) a report is sent to the Minister for the Cabinet Office if the Minister so requests;

- (ii) where the contracting authority or utility is a devolved Welsh authority, a report is sent to the Welsh Ministers if they so request (whether or not the Minister for the Cabinet Office also makes a request under paragraph (i));
  - (iii) where the contracting authority or utility is a devolved Northern Ireland authority, a report is sent to a Northern Ireland department if that department so requests (whether or not the Minister for the Cabinet Office also makes a request under paragraph (i));]
- (b) where 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,
  - (iv) the protection of intellectual property rights and exclusive rights other than exclusive rights as defined in regulation 2,
- but only, in the case of paragraphs (ii) to (iv), where 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.
- (7) For the purposes of paragraph (6)(a)—
- (a) a tender shall be considered not to be suitable where it is irrelevant to the concession contract, being manifestly incapable, without substantial changes, of meeting the contracting authority or utility's needs and requirements as specified in the concession documents;
  - (b) an application shall be considered not to be suitable where—
    - (i) the applicant concerned is to be or may be excluded under regulation 38(8) to (25) or does not meet the selection criteria set out by the contracting authority or utility in accordance with regulation 38(1) to (3),
    - (ii) the application includes tenders which are considered not to be suitable as described in sub-paragraph (a).

#### Textual Amendments

- F1** Words in [reg. 31\(2\)\(a\)](#) inserted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **8(17)(a)** (with Sch. paras. 3-5)
- F2** Word in [reg. 31\(5\)](#) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **8(17)(b)** (with Sch. paras. 3-5)
- F3** Words in [reg. 31\(6\)\(a\)](#) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **8(17)(c)** (with Sch. paras. 3-5)

#### Concession award notices

**32.—(1)** Not later than 48 days after the award of a concession contract, contracting authorities and utilities shall [<sup>F4</sup>submit] a concession award notice for publication in accordance with regulation 33.

(2) But concession award notices for social and other specific services listed in Schedule 3 may be grouped for publication on a quarterly basis, in which case the contracting authority or utility shall [<sup>F5</sup>submit] the grouped notices for publication within 48 days of the end of each quarter.

(3) [<sup>F6</sup>Subject to paragraph (4), a concession award] notice shall contain the information set out in Annex VII to the Concessions 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.

[<sup>F7</sup>(4) In paragraph (3), the reference to Annex VII is a reference to that Annex, but as if—

- (i) in paragraph 7, “Article 41” were a reference to regulation 41 of these Regulations;
- (ii) in paragraph 11(c), “Article 8(3)” were a reference to regulation 9(6) and (7) of these Regulations;
- (iii) paragraph 12 (financing by EU funds) were omitted;
- (iv) in paragraph 14, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Concession Contracts Regulations 2016)”; and
- (v) in paragraph 15, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations.]

**Textual Amendments**

- F4** Word in reg. 32(1) substituted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **8(18)(a)** (with Sch. paras. 3-5)
- F5** Word in reg. 32(2) substituted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **8(18)(a)** (with Sch. paras. 3-5)
- F6** Words in reg. 32(3) substituted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **8(18)(b)** (with Sch. paras. 3-5)
- F7** Reg. 32(4) inserted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **8(18)(c)** (with Sch. paras. 3-5)

**Form and manner of publication of notices**

**33.**—(1) The notices required by regulations 31, 32 and 43(3) to be [<sup>F8</sup>submitted] for publication in accordance with this regulation (and any corrigenda to those notices) [<sup>F9</sup>shall be submitted to the UK e-notification service for publication.]

- <sup>F10</sup>(a) .....
- <sup>F10</sup>(b) .....

(2) Where the [<sup>F11</sup>provider of the UK e-notification service] has given the contracting authority or utility confirmation of <sup>F12</sup>... the publication of the information sent, indicating the date of that publication, that confirmation shall constitute proof of publication.

(3) Concession notices, prior information notices and concession award notices shall not be published [<sup>F13</sup>otherwise than on the UK e-notification service] before they are published [<sup>F14</sup>on that service] unless publication [<sup>F15</sup>on that service] does not take place within 48 hours after [<sup>F16</sup>the notice was submitted to that service].

(4) Concession notices, prior information notices and concession award notices published [<sup>F17</sup>otherwise than on the UK e-notification service] shall not contain information other than that contained in the notices [<sup>F18</sup>submitted to that service] but shall indicate the date of [<sup>F19</sup>submission of the notice to that service].

[<sup>F20</sup>(5) In these Regulations, “the UK e-notification service” has the meaning given by regulation 51(5) of the Public Contracts Regulations 2015, and regulation 51(6) and (7) of those Regulations apply for the purposes of these Regulations as if the reference to “paragraph (3)” in regulation 51(6)(b) were a reference to paragraph (2) of this regulation.]

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Concession Contracts Regulations 2016*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

### Textual Amendments

- F8** Word in reg. 33(1) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **8(19)(a)(i)(aa)** (with Sch. paras. 3-5)
- F9** Words in reg. 33(1) inserted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **8(19)(a)(i)(bb)** (with Sch. paras. 3-5)
- F10** Reg. 33(1)(a)(b) omitted (31.12.2020) by virtue of [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **8(19)(a)(ii)** (with Sch. paras. 3-5)
- F11** Words in reg. 33(2) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **8(19)(b)(i)** (with Sch. paras. 3-5)
- F12** Words in reg. 33(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(19)(b)(ii)** (with Sch. paras. 3-5)
- F13** Words in reg. 33(3) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **8(19)(c)(i)** (with Sch. paras. 3-5)
- F14** Words in reg. 33(3) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **8(19)(c)(ii)** (with Sch. paras. 3-5)
- F15** Words in reg. 33(3) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **8(19)(c)(iii)** (with Sch. paras. 3-5)
- F16** Words in reg. 33(3) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **8(19)(c)(iv)** (with Sch. paras. 3-5)
- F17** Words in reg. 33(4) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **8(19)(d)(i)** (with Sch. paras. 3-5)
- F18** Words in reg. 33(4) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **8(19)(d)(ii)** (with Sch. paras. 3-5)
- F19** Words in reg. 33(4) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **8(19)(d)(iii)** (with Sch. paras. 3-5)
- F20** Reg. 33(5) inserted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **8(19)(e)** (with Sch. paras. 3-5)

### Electronic availability of concession documents

**34.—(1)** Contracting authorities and utilities shall, by means of the internet, offer unrestricted and full direct access free of charge to the concession documents from the date of the publication [<sup>F21</sup>on the UK e-notification service] 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 shall specify the internet address at which the concession documents are accessible.

(3) Paragraph (4) applies where, 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 contracting authorities and utilities shall 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, contracting authorities and utilities shall supply to all applicants or tenderers taking part in the concession contract award procedure additional information relating to the concession documents not later than 6 days before the deadline fixed for the receipt of tenders.

#### Textual Amendments

**F21** Words in [reg. 34\(1\)](#) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), [regs. 1\(2\)](#), [8\(20\)](#) (with [Sch. paras. 3-5](#))

### Combating corruption and preventing conflicts of interest

**35.—(1)** Contracting authorities and utilities shall 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 contract 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.

(2) The measures adopted in relation to conflicts of interest 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.

(3) For the purposes this regulation, the concept of conflicts of interest shall at least cover any situation where relevant staff members 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 contract award procedure.

(4) In paragraph (3), “relevant staff members” means staff members of the contracting authority or utility who are involved in the conduct of the concession contract award procedure or may influence the outcome of that procedure.

**Changes to legislation:**

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Concession Contracts Regulations 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations.

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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))