
STATUTORY INSTRUMENTS

2016 No. 273

The Concession Contracts Regulations 2016

PART 5

Remedies

CHAPTER 1

Facilitation of remedies

Scope of Chapter 1

46. This Chapter applies to concession contracts falling within the scope of Parts 1 to 4.

Notices of decisions to award a concession contract

47.—(1) Subject to paragraphs (5) and (6), a contracting authority or utility shall send to each candidate and tenderer a notice communicating its decision to award the concession contract.

Content of notices

(2) Where it is to be sent to a tenderer, the notice referred to in paragraph (1) shall include—

- (a) the criteria for the award of the concession contract;
- (b) the reasons for the decision, including the characteristics and relative advantages of the successful tender, the score (if any) obtained by—
 - (i) the tenderer which is to receive the notice, and
 - (ii) the tenderer to be awarded the concession contract,and anything required by paragraph (3);
- (c) the name of the tenderer to be awarded the concession contract; and
- (d) a precise statement of either—
 - (i) when, in accordance with regulation 48, the standstill period is expected to end and, if relevant, how the timing of its ending might be affected by any and, if so what, contingencies, or
 - (ii) the date before which the contracting authority or utility will not, in conformity with regulation 48, enter into the concession contract.

(3) The reasons referred to in paragraph (2)(b) shall include the reason for any decision by the contracting authority or utility that the economic operator did not meet the technical and functional requirements in an equivalent manner as mentioned in regulation 36(6).

(4) Where it is to be sent to a candidate, the notice referred to in paragraph (1) shall include—

- (a) the reasons why the candidate was unsuccessful; and
- (b) the information mentioned in paragraph (2), but as if the words “and relative advantages” were omitted from sub-paragraph (b).

Exemptions

(5) A contracting authority or utility need not comply with paragraph (1) in any of the following cases—

- (a) where the concession contract is permitted by these Regulations to be awarded without prior publication of a concession notice in the Official Journal;
- (b) where the only tenderer is the one who is to be awarded the concession contract, and there are no candidates.

(6) A contracting authority or utility may withhold any information to be provided in accordance with the preceding requirements of this regulation where the release of such information—

- (a) would impede law enforcement or would otherwise be contrary to the public interest;
- (b) would prejudice the legitimate commercial interests of a particular economic operator, whether public or private; or
- (c) might prejudice fair competition between economic operators.

Meaning of “candidate” and “tenderer”

(7) In this regulation,—

- (a) “candidate” means a candidate, as defined in regulation 2(1), which—
 - (i) is not a tenderer, and
 - (ii) has not been informed of the rejection of its application and the reasons for it;
- (b) “tenderer” means a tenderer, as defined in regulation 2(1), which has not been definitively excluded.

(8) For the purposes of paragraph (7)(b), an exclusion is definitive if, and only if, the tenderer has been notified of the exclusion and either—

- (a) the exclusion has been held to be lawful in proceedings under Chapter 2 of this Part; or
- (b) the time limit for starting such proceedings has expired even on the assumption that the Court would have granted the maximum extension permitted by regulation 53(4) and (5).

Standstill period

48.—(1) Where regulation 47(1) applies, the contracting authority or utility must not enter into the concession contract before the end of the standstill period.

(2) Where the contracting authority or utility sends a regulation 47 notice to all the relevant economic operators by facsimile or electronic means, the standstill period ends at midnight at the end of the 10th day after the relevant sending date.

(3) Where the contracting authority or utility sends a regulation 47 notice to all the relevant economic operators only by other means, the standstill period ends at whichever of the following occurs first—

- (a) midnight at the end of the 15th day after the relevant sending date;
- (b) midnight at the end of 10th day after the date on which the last of the economic operators to receive such a notice receives it.

(4) In paragraphs (2) and (3), “the relevant sending date” means the date on which the regulation 47 notice is sent to the relevant economic operators, and if the notices are sent to different relevant economic operators on different dates, the relevant sending date is the date on which the last of the notices is sent.

(5) Where the contracting authority or utility sends the regulation 47 notice to one or more of the relevant economic operators by facsimile or electronic means and to the others by other means, the standstill period ends at whichever of the following two times occurs latest—

(a) midnight at the end of the 10th day after the date on which the last notice is sent by facsimile or electronic means;

(b) the time when whichever of the following occurs first—

(i) midnight at the end of the 15th day after the date on which the last notice is sent by other means;

(ii) midnight at the end of the 10th day after the date on which the last of the economic operators to receive a notice sent by any such other means receives it.

(6) In this regulation—

(a) “regulation 47 notice” means a notice given in accordance with regulation 47; and

(b) “relevant economic operators” means economic operators to which regulation 47 requires a notice to be sent.