
STATUTORY INSTRUMENTS

2016 No. 273

The Concession Contracts Regulations 2016

PART 3

Rules on the award of concession contracts

CHAPTER 1

General principles

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, [^{F1}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 [^{F2}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 [^{F3}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

Changes to legislation: *The Concession Contracts Regulations 2016, Section 31 is up to date with all changes known to be in force on or before 10 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (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).

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)

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Changes and effects yet to be applied to :

- Regulations revoked by [2023 c. 54 Sch. 11 para. 6](#)
- reg. 31(2)(a) words inserted by [S.I. 2019/560 reg. 7\(17\)\(a\)](#) (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. 31(5) word substituted by [S.I. 2019/560 reg. 7\(17\)\(b\)](#) (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. 31(6)(a) words substituted by [S.I. 2019/560 reg. 7\(17\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Affecting Regulations revoked (20.11.2020) by S.I. 2020/1319, regs. 1(3), 2(a))

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(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))