
STATUTORY INSTRUMENTS

2016 No. 273

The Concession Contracts Regulations 2016

PART 3

Rules on the award of concession contracts

CHAPTER 2

Procedural guarantees

Technical and functional requirements

36.—(1) Technical and functional requirements shall be set out in the concession documents and shall lay down the characteristics required of the works or services that are the subject-matter of the concession contract.

(2) Those characteristics may also refer to the specific process of production or provision of the requested works or services provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives.

(3) The characteristics may, for example, include quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, terminology, symbols, testing and test methods, marking and labelling, or user instructions.

(4) Unless justified by the subject-matter of the concession contract, technical and functional requirements shall not refer to a specific make or source, or a particular process which characterises the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific production with the effect of favouring or eliminating certain undertakings or certain products.

(5) But such a reference is permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract is not possible, in which case the reference shall be accompanied by the words “or equivalent”.

(6) A contracting authority or utility shall not reject a tender on the grounds that the works and services tendered for do not comply with the technical and functional requirements to which it has referred, once the tenderer proves in its tender, by any appropriate means, that the solutions it has proposed satisfy in an equivalent manner the technical and functional requirements.

Changes to legislation:

The Concession Contracts Regulations 2016, Section 36 is up to date with all changes known to be in force on or before 14 March 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.

[View outstanding changes](#)

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(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))