



STATUTORY INSTRUMENTS.

S.I. No. 203 of 2017



EUROPEAN UNION (AWARD OF CONCESSION CONTRACTS)
REGULATIONS 2017

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EUROPEAN UNION (AWARD OF CONCESSION CONTRACTS)
REGULATIONS 2017

I, PASCHAL DONOHOE, Minister for Public Expenditure and Reform, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No.27 of 1972), and for the purpose of giving effect to Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts and giving further effect to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC and to Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, hereby make the following regulations:

PART 1

GENERAL

Citation, commencement and application

1. (1) These Regulations may be cited as the European Union (Award of Concession Contracts) Regulations 2017.

(2) These Regulations are deemed to have come into operation on 18 April 2016.

Interpretation

2. (1) In these Regulations—

“affiliated undertaking” has the meaning given by Regulation 12;

“assess” includes examine;

“Award of Contracts by Utilities Regulations” means the European Union (Award of Contracts by Utility Undertakings) Regulations 2016 (S.I. No. 286 of 2016);

“bodies governed by public law” means bodies that have all of the following characteristics—

(a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

(b) they have legal personality; and

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 23rd May, 2017.*

- (c) they have any of the following characteristics—
- (i) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law;
 - (ii) they are subject to management supervision by those authorities or bodies; or
 - (iii) they have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;

“candidate” means an economic operator that has sought an invitation or has been invited to take part in a concession contract award procedure;

“Commission” means the European Commission;

“concessionaire” means an economic operator that has been awarded a concession contract;

“concession award notice” means the notice referred to in Regulation 32;

“concession contract” has the meaning given by Regulation 3;

“concession document” means any document produced or referred to by the contracting authority or contracting entity to describe or determine elements of the concession or the procedure, including the concession notice, the technical and functional requirements, proposed conditions of concession, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;

“concession notice” means the notice referred to in Regulation 30;

“Concessions Directive” means Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts;

“contracting authority” has the meaning given by Regulation 4;

“contracting entity” has the meaning given by Regulation 5;

“contractor” means a person or group of persons who, on the market, offers to carry out works or a particular work;

“corruption”, other than in Regulation 37, has the meaning given to it by the Convention drawn up on the basis of Article K.3 (2)(c) of the Treaty on European Union, on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union drawn up under the Council Act of 26 May 1997;

“contravene” includes fail to comply with;

“CPV” means the Common Procurement Vocabulary established by Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002;

“Directive 77/249/EEC” means Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services;

“Directive 2002/21/EC” means Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive);

“Directive 2004/39/EC” means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, as amended by Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006, Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007, Directive 2008/10/EC of the European Parliament and of the Council of 11 March 2008, Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 and Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010;

“Directive 2009/81/EC” means Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC as amended by Commission Regulation (EC) No 1177/2009 of 30 November 2009, Commission Regulation (EU) No 1251/2011 of 30 November 2011, Council Directive 2013/16/EU of 13 May 2013, Commission Regulation (EU) No 1336/2013 of 13 December 2013 and Commission Regulation (EU) 2015/2340 of 15 December 2015;

“Directive 2010/13/EU” means Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services;

“Directive 2013/34/EU” means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;

“disability” has the same meaning as it has in the Disability Act 2005 (No. 14 of 2005);

“disabled” means a disability in relation to a natural person;

“dominant influence’ has the meaning given by Regulation 5(4);

“economic operator” means any natural or legal person, or public entity, or a group of such persons or entities, including temporary associations of undertakings, who or which offers—

- (a) the execution of works or a work or both, or
- (b) the supply of products or the provision of services,

on the market;

“electronic means” means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

“European Financial Stability Facility” means the société anonyme incorporated in Luxembourg (R.C.S. Luxembourg B153.414);

“European Stability Mechanism” means the international financial institution established as the European Stability Mechanism by Article 1 of the Treaty establishing the European Stability Mechanism done at Brussels on 2 February 2012 between the Euro Area Member States of the European Union;

“exclusive right” means a right granted by a competent authority by means of any law, regulation or published administrative provision which is compatible with the Treaties the effect of which is to limit the exercise of an activity to a single economic operator and which substantially affects the ability of other economic operators to carry out such an activity;

“execution of works” means—

- (a) the execution, or both the design and execution, of works related to one of the activities listed in Schedule 1;
- (b) the execution, or both the design and execution, of a work;
- (c) the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority or contracting entity exercising a decisive influence on the type or design of the work;

“fraud” has the meaning given to it by Article 1 of the Convention on the protection of the European Communities’ financial interests;

“GPA” means the Agreement on Government Procurement between certain parties to the World Trade Organisation done at Marrakesh on 15 April 1994, as amended by the Protocol Amending the Agreement on Government Procurement done at Geneva on 30 March 2012;

“innovation” means the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes a new marketing method, or a new organisational method

in business practices, workplace organisation or external relations, amongst other things, with the purpose of helping to solve societal challenges or to support the Europe 2020 strategy and “innovative” shall be construed accordingly;

“land” includes all buildings and structures constructed on land;

“legal person” means a person, whether governed by private or public law, other than a natural person;

“local authority”, in relation to the State, has the same meaning as it has in the Local Government Act 2001 (No. 37 of 2001);

“Member State” means a Member State of the European Union and, where relevant, includes a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as adjusted by the Protocol signed at Brussels on 17 March 1993), as amended;

“money laundering” has the meaning given to it by Article 1 of Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;

“Official Journal” means the Official Journal of the European Union;

“prior information notice” means the notice referred to in Regulation 30(3);

“Publications Office” means the Publications Office of the European Union;

“Public Authorities Contracts Directive” means Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC;

“Public Authority Contracts Regulations” means the European Union (Award of Public Authority Contracts) Regulations 2016 (S.I. No. 284 of 2016);

“public authority” means any body corporate, not having an industrial or commercial character, that is established for a public purpose, and—

- (a) is financed wholly or substantially by the State, a local or regional authority or another public authority; or
- (b) is subject to management supervision by such a body, or
- (c) has an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, a local or regional authority or another public authority, and, in particular, includes any body listed in Annex III to the Public Authorities Contracts Directive;

“public undertaking” has the meaning given by Regulation 5;

“regional authority” includes an authority of an administrative unit classified as NUTS level 1 or 2 in accordance with Regulation (EC) No 1059/2003 of the

European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS);

“services concession contract” has the meaning given by Regulation 3;

“special right” means a right granted by a competent authority of a Member State by means of any law, regulation or published administrative provision which is compatible with the Treaties the effect of which is to limit the exercise of an activity to two or more economic operators and which substantially affects the ability of other economic operators to carry out such an activity;

“standard forms”, where the particular type of such forms is not specified in the provision concerned, means standard forms established by the Commission for the publication of notices and other purposes in the field of public procurement;

“tenderer” means an economic operator that has submitted a tender;

“TFEU” means the Treaty on the Functioning of the European Union;

“Treaties” means the Treaty on European Union and TFEU;

“Utilities Directive” means Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC;

“VAT” means value added tax;

“work”, where used as a singular noun, means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;

“works concession contract” has the meaning given by Regulation 3;

“written” or “in writing” means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information which is transmitted and stored by electronic means;

“working day” means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a Bank Holiday.

(2) A word or expression which is used in these Regulations and which is also used in the Concessions Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in that Directive.

Meaning of “concession contract”

3. (1) In these Regulations, “concession contract” means a works concession contract or a services concession contract within the meaning of paragraph (2) or (3), as appropriate.

(2) For the foregoing purpose, “works concession contract” means a contract—

- (a) for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the execution of works to one or more economic operators, the consideration for which consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment; and
 - (b) that meets the requirements of paragraph (4).
- (3) For the foregoing purpose, “services concession contract” means a contract—
- (a) for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the provision and the management of services (other than the execution of works) to one or more economic operators, the consideration of which consists either solely in the right to exploit the services that are the subject of the contract or in that right together with payment; and
 - (b) that meets the requirements of paragraph (4).
- (4) For the purposes of paragraphs (2)(b) and (3)(b), the requirements are—
- (a) the award of the contract involves the transfer to the concessionaire of an operating risk in exploiting the works or services encompassing demand or supply risk or both; and
 - (b) the part of the risk transferred to the concessionaire involves real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire is not merely nominal or negligible.
- (5) For the purposes of paragraph (4)(a), the concessionaire shall be deemed to assume operating risk where, under normal operating conditions, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession contract.

Meaning of “contracting authority”

4. In these Regulations, “contracting authority” means—

- (a) a State, regional or local authority,
- (b) a body governed by public law, or
- (c) an association formed by one or more such authorities or one or more such bodies governed by public law,

other than an authority, body or association which pursues one of the activities listed in Schedule 2 and awards a concession contract for the pursuit of one of those activities.

Meaning of “contracting entity”

5. (1) In these Regulations, “contracting entity” means an entity which pursues one of the activities listed in Schedule 2 and awards a concession contract for the pursuit of one of those activities, and which is one of the following—

- (a) a State, regional or local authority, body governed by public law or an association formed by one or more such authorities or one or more such bodies governed by public law;
- (b) a public undertaking, as defined in paragraph (4);
- (c) any other entity which operates on the basis of special rights or exclusive rights, granted for the exercise of one of the activities listed in Schedule 2.

(2) However, any such entity is not a contracting entity within the meaning of paragraph (1)(c) if it has been granted special rights or exclusive rights by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria.

(3) The procedures referred to in paragraph (2) shall include—

- (a) procurement procedures with a prior call for competition in conformity with these Regulations, the Public Authority Contracts Regulations, the Award of Contracts by Utilities Regulations or Directive 2009/81/EC;
- (b) procedures pursuant to the legal acts of the European Union listed in Schedule 3, ensuring adequate prior transparency for granting authorisations on the basis of objective criteria.

(4) In this Regulation “public undertaking” means any undertaking over which a contracting authority may exercise, directly or indirectly, a dominant influence by virtue of—

- (a) its ownership of that undertaking,
- (b) its financial participation in that undertaking, or
- (c) the rules which govern that undertaking.

(5) For the purposes of the definition of “public undertaking” in paragraph (4), a dominant influence on the part of the contracting authority shall be presumed where that authority, directly or indirectly—

- (a) holds the majority of the undertaking’s subscribed capital;
- (b) controls the majority of the votes attaching to shares issued by the undertaking; or
- (c) can appoint more than half of the undertaking’s administrative, management or supervisory body.

PART 2

SCOPE AND PRINCIPLES

CHAPTER 1

*Concession contracts to which these Regulations apply**Subject-matter and scope of these Regulations*

6. (1) These Regulations make provision in respect of the procedures for procurement by contracting authorities and contracting entities by means of a concession contract—

- (a) the value of which is estimated to be not less than the threshold mentioned in Regulation 8; 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) contracting entities, provided that the works or services are intended for the pursuit of one of the activities listed in Schedule 2.

(3) These Regulations are subject to Article 346 of TFEU.

Principles of equal treatment, non-discrimination and transparency

7. (1) A contracting authority and a contracting entity 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) A contracting authority and a contracting entity shall aim to ensure the transparency of the concession contract award procedure and of the performance of the contract, while complying with Regulation 27.

Threshold and methods for calculating the estimated value of concession contracts

8. (1) These Regulations shall apply to a concession contract the value of which is equal to or greater than €5,225,000.

(2) The value of a concession contract shall be the total turnover of the concessionaire generated over the duration of the contract, net of VAT, as estimated by the contracting authority or contracting entity, in consideration for the works and services which are the object of the concession contract, and the supplies incidental to such works and services.

(3) That estimate shall be valid as at the moment at which the concession notice is sent for publication or, in cases where such notice is not provided for, at the moment at which the contracting authority and contracting entity commences the concession contract award procedure, for example by contacting economic operators in relation to the concession contract.

(4) For the purpose of paragraph (1), if the value of the concession contract at the time of the award is more than 20 % higher than its estimated value, the valid estimate shall be the value of the concession at the time of the award.

(5) The estimated value of the concession contract shall be calculated using an objective method specified in the concession documents.

(6) When calculating the estimated value of the concession contract, a contracting authority and a contracting entity 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 contracting entity;
- (c) payments or any other financial advantages, in any form, made by the contracting authority or contracting entity 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 authority or contracting entity, provided that they are necessary for executing the works or providing the services;
- (g) any prizes or payments to candidates or tenderers.

(7) 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.

(8) 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.

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

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

CHAPTER 2

Exclusions

Exclusions applicable to concessions awarded by contracting authorities and contracting entities

9. (1) These Regulations shall not apply to services concession contracts awarded to a contracting authority or a contracting entity referred to in Regulation 5(1)(a), or to an association of such contracting authorities or contracting entities, on the basis of an exclusive right.

(2) These Regulations shall not apply to services concession contracts awarded to an economic operator on the basis of an exclusive right that has been granted in accordance with the TFEU and European Union legal acts laying down common rules on access to the market applicable to an activity listed in Schedule 2.

(3) However, where the European Union sectoral legislation referred to in paragraph (2) does not provide for sector-specific transparency obligations, Regulation 31 shall apply.

(4) These Regulations shall not apply to concession contracts for—

- (a) air transport services based on the granting of an operating licence within the meaning of Regulation (EC) No 1008/2008 of the European Parliament and of the Council; or
- (b) public passenger transport services within the meaning of Regulation (EC) No 1370/2007 of the European Parliament and of the Council.

(5) These Regulations shall not apply to concession contracts which the contracting authority or contracting entity is obliged to award or organise in accordance with procedures which are different from those specified by these Regulations and are established by any of the following—

- (a) a legal instrument creating international law obligations, such as an international agreement, concluded in conformity with the TFEU, between a Member State and one or more third countries (or subdivisions of such countries) and covering works, supplies or services intended for the joint implementation or exploitation of a project by its signatories;
- (b) an international organisation.

(6) These Regulations shall not apply to concession contracts which the contracting authority or contracting entity awards in accordance with procurement rules provided by an international organisation or international financing institution where the concession contracts concerned are fully financed by that organisation or institution.

(7) In the case of concession contracts, the majority of the finance for which is provided by an international organisation or international financing institution, the contracting authority or contracting entity and the international organisation or international financing institution, as appropriate, shall agree on applicable procurement procedures.

(8) Paragraphs (5) to (7) shall not apply to concession contracts in the fields of defence and security as referred to in Directive 2009/81/EC.

(9) These Regulations shall not apply to concession contracts in the fields of defence and security as referred to in Directive 2009/81/EC—

- (a) which are governed by specific procedural rules pursuant to an international agreement or arrangement concluded between one or more Member States and one or more third countries;
- (b) which are governed by specific procedural rules pursuant to a concluded international agreement or arrangement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;
- (c) which are governed by specific procedural rules of an international organisation purchasing for its purposes, or which must be awarded by a Member State in accordance with those rules.

(10) These Regulations shall apply to the awarding of concessions in the fields of defence and security as referred to in Directive 2009/81/EC with the exception of the following:

- (a) concessions for which the application of these Regulations would oblige the State to supply information the disclosure of which it considers contrary to the essential interests of its security; or where the procurement and performance of the concession are declared to be secret or must be accompanied by special security measures in accordance with the laws of, or administrative provisions in force in, the State provided that the State has determined that the essential interests concerned cannot be guaranteed by less intrusive measures, such as those referred to in paragraph (11);
- (b) concessions awarded in the framework of a cooperative programme referred to in point (c) of Article 13 of Directive 2009/81/EC;
- (c) concessions awarded by a government to another government relating to works and services directly linked to military equipment or sensitive equipment, or works and services specifically for military purposes, or sensitive works and sensitive services;

- (d) concessions awarded in a third country, carried out when forces are deployed outside the territory of the European Union where operational needs require those concessions to be concluded with economic operators located in the area of operations; and
- (e) concessions otherwise exempted under these Regulations.

(11) These Regulations shall not apply to concession contracts not otherwise exempted under paragraph (10) to the extent that the protection of the essential security interests of the State or another Member State cannot be guaranteed by less intrusive measures, for example by imposing requirements aimed at protecting the confidential nature of information which the contracting authority or contracting entity makes available in a concession contract award procedure as provided for in these Regulations.

(12) These Regulations shall not apply to services concession contracts for—

- (a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or which concern interests in or rights over any of them;
- (b) (i) the acquisition, development, production or co-production of programme material intended for audiovisual media services or radio media services, that are awarded by audiovisual or radio media providers, or
 - (ii) concessions for broadcasting time or programme provision that are awarded to audiovisual or radio media service providers;
- (c) arbitration or conciliation services;
- (d) any of the following legal services—
 - (i) legal representation of a client by a lawyer within the meaning of Article 1 of Directive 77/249/EEC, in—
 - (I) an arbitration or conciliation held in a Member State, a third country or before an international arbitration or conciliation instance, or
 - (II) judicial proceedings before the courts, tribunals or public authorities of a Member State or a third country, or before international courts, tribunals or institutions;
 - (ii) legal advice given—
 - (I) in preparation of any of the proceedings referred to in paragraph (d) (i), or

- (II) where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings,

provided that the advice is given by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;

- (iii) document certification and authentication services which must be provided by notaries;
 - (iv) legal services provided by trustees or appointed guardians or other legal services the providers of which are designated by a court or tribunal in the member State concerned or are designated by law to carry out specific tasks under the supervision of such tribunals or courts;
 - (v) other legal services which in the Member State concerned are connected, even occasionally, with the exercise of official authority;
- (e) any of the following—
- (i) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council;
 - (ii) central bank services, and
 - (iii) operations conducted with the European Financial Stability Facility and the European Stability Mechanism;
- (f) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;
- (g) civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations, and which are covered by CPV codes: 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3 except patient transport ambulance services;
- (h) political campaign services which are covered by CPV codes 79341400-0, 92111230-3 and 92111240-6, when awarded by a political party in the context of an election campaign.

(13) In this Regulation—

“audiovisual media services” and “media service providers” have, respectively, the meanings given by Articles 1(1)(a) and 1(1)(d) of Directive 2010/13/EU;

“programme” has the meaning given by Article 1(1)(b) of Directive 2010/13/EU, but also includes radio programmes and radio programme materials;

“programme material” has the same meaning as “programme”.

(14) These Regulations shall not apply to services concession contracts for lottery services, which are covered by CPV code 92351100-7, and awarded by a Member State to an economic operator on the basis of an exclusive right. For the purposes of this paragraph, the notion of exclusive rights does not cover exclusive rights as referred to in Regulation 5(2).

(15) The grant of such an exclusive right shall be subject to publication in the Official Journal.

(16) These Regulations shall not apply to a concession contract awarded by a contracting entity for the pursuit of its activities in a third country, in conditions not involving the physical use of a network or geographical area within the European Union.

Specific exclusions in the field of electronic communications

10. (1) These Regulations shall not apply to concession contracts for the principal purpose of permitting a contracting authority to provide or exploit public communications networks, or to provide to the public one or more electronic communication services.

(2) In this Regulation, “public communications network” and “electronic communications service” have the meanings given by Directive 2002/21/EC.

Specific exclusions in the field of water

11. These Regulations shall not apply to—

- (a) concession contracts awarded to provide or operate fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water;
- (b) concession contracts awarded to supply drinking water to such networks;
- (c) concession contracts for one or both of the following—
 - (i) hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20% of the total volume of water made available by such projects or irrigation or drainage installations,
 - (ii) the disposal or treatment of sewage,

when the contracts are connected with an activity referred to in paragraph (a) or (b).

Concession contracts awarded to an affiliated undertaking

12. (1) In this Regulation, “affiliated undertaking” means—

- (a) any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of Directive 2013/34/EU;
 - (b) in the case of an entity which is not subject to that Directive, any undertaking that—
 - (i) may be, directly or indirectly, subject to a dominant influence by the contracting entity,
 - (ii) may exercise a dominant influence over the contracting entity, or
 - (iii) in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.
- (2) For the purposes of paragraph (1)(b), “dominant influence” has the same meaning as it has in Regulation 5(5).
- (3) Notwithstanding Regulation 16 and provided that the conditions in paragraph (4) are met, these Regulations shall not apply to concession contracts awarded—
- (a) by a contracting entity to an affiliated undertaking, or
 - (b) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities listed in Schedule 2, to an affiliated undertaking of one its members.
- (4) The conditions referred to in paragraph (3) are that—
- (a) in respect of services concession contracts, at least 80% of the average total turnover of the affiliated undertaking over the preceding 3 years, taking into account all services provided by that undertaking, derives from the provision of services to the contracting entity or one or more of its affiliated undertakings;
 - (b) in respect of works concession contracts, at least 80% of the average total turnover of the affiliated undertaking over the preceding 3 years, taking into account all works provided by that undertaking, derives from the provision of works to the contracting entity or one or more of its affiliated undertakings.
- (5) Where, because of the date on which an affiliated undertaking was created or commenced activities, the turnover referred to in paragraph (4)(a) or (b) is not available for the preceding 3 years, it shall be sufficient for that undertaking to show that the turnover is credible, in particular by means of business projections.
- (6) Where more than one affiliated undertaking provides the same or similar services or works to the contracting entity with which they form an economic

group, the percentages referred to in paragraph (4) shall be calculated taking into account the total turnover deriving respectively from the provision of services or works by those affiliated undertakings.

Concessions awarded to a joint venture or to a contracting entity forming part of a joint venture

13. Notwithstanding Regulation 16, these Regulations shall not apply to concession contracts awarded by—

- (a) a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities listed in Schedule 2, to one of those contracting entities, or
- (b) a contracting entity to such a joint venture of which it forms part,

provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least 3 years and the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part of the joint venture for at least the same period.

Notification of information by contracting entities

14. A contracting entity shall notify to the Commission, if so requested, the following information regarding the application of Regulation 12 (1)(b), (2) and (3) and Regulation 13—

- (a) the names of the undertakings or joint ventures concerned;
- (b) the nature and value of the concession contracts involved;
- (c) proof, deemed necessary by the Commission, that the relationship between the undertaking or joint venture to which the concession contracts are awarded and the contracting entity complies with the requirements of Regulation 12 or 13.

Exclusion of activities which are directly exposed to competition

15. These Regulations shall not apply to a concession contract awarded by a contracting entity where it has been established that the activity is directly exposed to competition in accordance with Regulation 34 of the Award of Contracts by Utilities Regulations.

Concession contracts between entities within the public sector

16. (1) A concession contract awarded by a contracting authority, or a contracting entity referred to in Regulation 5(1)(a), to a legal person, governed by public or private law, shall fall outside the scope of these Regulations where all of the following conditions are fulfilled—

- (a) the contracting authority or contracting entity exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;

- (b) more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or contracting entity or by other legal persons controlled by that contracting authority or contracting entity; and
- (c) there is no direct private capital participation in the controlled legal person, with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

(2) A contracting authority or a contracting entity referred to in Regulation 5(1)(a) shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of paragraph (1)(a) where—

- (a) it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person, or
- (b) that control is exercised by another legal person, which is itself controlled in the same way by the contracting authority or contracting entity.

(3) A concession contract also falls outside the scope of these Regulations where a controlled legal person which is a contracting authority or a contracting entity referred to in Regulation 5(1)(a) awards a concession contract to—

- (a) its controlling contracting authority or contracting entity, or
- (b) another legal person controlled by the same contracting authority or contracting entity,

provided that there is no direct private capital participation in the legal person being awarded the concession contract, with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

(4) A contracting authority, or a contracting entity referred to in Regulation 5(1)(a), which does not exercise over a legal person, governed by private or public law, control within the meaning of paragraph (1) or (2) may nevertheless award a concession contract to that legal person without applying these Regulations where all of the following conditions are fulfilled—

- (a) the contracting authority or contracting entity referred to in Regulation 5(1)(a) exercises jointly with other contracting authorities or contracting entities a control over that legal person which is similar to that which they exercise over their own departments;

- (b) more than 80% of the activities of that legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authorities or contracting entities or by other legal persons controlled by the same contracting authorities or contracting entities; and
- (c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

(5) For the purposes of paragraph (4)(a), contracting authorities or contracting entities referred to in Regulation 5(1)(a) exercise joint control over a legal person where all of the following conditions are fulfilled—

- (a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities or contracting entities;
- (b) those contracting authorities or contracting entities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person; and
- (c) the controlled legal person does not pursue any interests which are contrary to those of the controlling contracting authorities or contracting entities.

(6) For the purposes of paragraph (5)(a), individual representatives may represent several or all of the participating contracting authorities or contracting entities.

(7) A contract concluded exclusively between two or more contracting authorities or contracting entities referred to in Regulation 5(1)(a) shall fall outside the scope of these Regulations where all of the following conditions are fulfilled—

- (a) the contract establishes or implements a co-operation between the participating contracting authorities or contracting entities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;
- (b) the implementation of that co-operation is governed solely by considerations relating to the public interest; and
- (c) the participating contracting authorities or contracting entities perform on the open market less than 20% of the activities concerned by the co-operation.

(8) For the determination of the percentage of activities referred to in paragraphs (1)(b), (4)(b) and (7)(c), the average total turnover, or an appropriate alternative activity-based measure such as costs incurred by the relevant legal

person or contracting authority or contracting entity referred to in Regulation 5(1)(a) with respect to services, supplies and works for the 3 years preceding the concession award shall be taken into consideration.

(9) Where, because of—

- (a) the date on which the relevant legal person, contracting authority or contracting entity was created or commenced activities, or
- (b) a reorganisation of its activities,

the turnover, or alternative activity-based measure such as costs, is either not available for the preceding 3 years or no longer relevant, it shall be sufficient to show that the measurement of activity is credible, particularly by means of business projections.

CHAPTER 3

Duration of Contract, Provisions Concerning Mixed Contracts, Etc.

Duration of the concession contract

17. (1) The duration of concession contracts shall be limited.

(2) The contracting authority or contracting entity shall estimate the duration on the basis of the works or services requested.

(3) For concessions lasting more than 5 years, the maximum duration of the concession shall not exceed the time that a concessionaire could reasonably be expected to take to recoup the investments made in operating the works or services together with a return on invested capital taking into account the investments required to achieve the specific contractual objectives.

(4) The investments taken into account for the purposes of the calculation shall include both initial investments and investments during the life of the concession contract.

Social and other specific services

18. Concession contracts for social and other specific services listed in Annex IV to the Concessions Directive falling within the scope of these Regulations shall be subject only to the obligations arising from Regulations 30(3) and 31.

Mixed contracts

19. (1) Concession contracts which have as their subject-matter both works and services shall be awarded in accordance with the provisions applicable to the type of concession contract that characterises the main subject-matter of the contract in question.

(2) In the case of mixed concession contracts consisting partly of social and other specific services listed in Annex IV to the Concessions Directive and partly of other services, the main subject-matter shall be determined in accordance with which of the estimated values of the respective services is the highest.

- (3) Where the different parts of a given contract are objectively separable—
- (a) in the case of contracts which have as their subject-matter elements covered by these Regulations as well as other elements, a contracting authority and a contracting entity may choose to award separate contracts for the separate parts or to award a single contract;
 - (b) where a contracting authority or a contracting entity chooses to award separate contracts for separate parts, the decision as to which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned;
 - (c) where a contracting authority or a contracting entity chooses to award a single contract, these Regulations, unless otherwise provided in subparagraph (d) or in Regulation 20, apply to the ensuing mixed contract, irrespective of—
 - (i) the value of the parts that would otherwise fall under a different legal regime,
 - (ii) which legal regime those parts would otherwise have been subject to;
 - (d) in the case of a mixed contract containing elements of concession contracts as well as elements of public contracts covered by the Public Authority Contracts Regulations or contracts covered by the Award of Contracts by Utilities Regulations, the mixed contract shall be awarded in accordance with the Public Authority Contracts Regulations or the Award of Contracts by Utilities Regulations, respectively.
- (4) Where the different parts of a given contract are objectively not separable—
- (a) the applicable legal regime shall be determined on the basis of the main subject-matter of that contract; and
 - (b) where that contract involves both elements of a services concession contract and of a supply contract, the main subject-matter shall be determined according to which of the estimated values of the respective services or supplies is the higher.
- (5) Where part of a given contract is covered by Article 346 of TFEU or Directive 2009/81/EC, Regulation 20 shall apply instead of paragraphs (1) to (4).
- (6) In the case of contracts intended to cover several activities, one of them being an activity listed in Schedule 2 or subject to the Award of Contracts by Utilities Regulations, the applicable provisions shall be established in accordance with Regulation 21 of these Regulations and Regulation 7 of the Award of Contracts by Utilities Regulations, respectively.

Mixed procurement contracts involving defence or security aspects

20. (1) This Regulation applies in the case of mixed contracts which have as their subject matter elements of a concession contract covered by these Regulations and procurement or other elements covered by Article 346 of TFEU or Directive 2009/81/EC.

(2) In the case of contracts intended to cover several activities, one of them being subject to Schedule 2 or covered by the Award of Contracts by Utilities Regulations, and another being covered by Article 346 of TFEU or Directive 2009/81/EC, the applicable provisions shall be established in accordance with Regulation 22 of these Regulations and Regulation 26 of the Award of Contracts by Utilities Regulations, respectively.

(3) Where the different parts of a given contract are objectively separable, a contracting authority or contracting entity may choose to award separate contracts for the separate parts or to award a single contract.

(4) The decision to award a single contract shall not, however, be taken for the purpose of excluding contracts from the application of these Regulations or the Directive 2009/81/EC.

(5) Where a contracting authority or a contracting entity chooses to award separate contracts for separate parts, the decision as to which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

(6) Where a contracting authority or a contracting entity chooses to award a single contract, the following criteria shall apply to determine the applicable legal regime—

(a) where part of a given contract is covered by Article 346 of TFEU, or different parts are covered by Article 346 of TFEU and Directive 2009/81/EC respectively, the contract may be awarded without applying these Regulations, provided that the award of a single contract is justified by objective reasons;

(b) where part of a given contract is covered by Directive 2009/81/EC, the contract may be awarded in accordance with these Regulations or in accordance with Directive 2009/81/EC, provided that the award of a single contract is justified by objective reasons.

(7) Where the different parts of a given contract are objectively not separable, the contract may be awarded without applying these Regulations where it includes elements to which Article 346 of TFEU applies. Otherwise the contracting authority or contracting entity may choose to award a contract in accordance with these Regulations or in accordance with Directive 2009/81/EC.

Contracts covering both activities listed in Schedule 2 and other activities

21. (1) This Regulation applies in the case of contracts intended to cover several activities where one of those activities is listed in Schedule 2.

(2) A contracting entity may choose to award separate contracts for the purposes of the separate activities or to award a single contract for the purposes of all the activities.

(3) The choice between awarding a single contract or separate contracts shall not be made with the objective of excluding the contract or contracts from the scope of these Regulations or, where applicable, the Public Authority Contracts Regulations or the Award of Contracts by Utilities Regulations.

(4) Where a contracting entity chooses to award a separate contract, the decision as to which provisions shall apply to any one of such separate contracts shall be taken on the basis of the characteristics of the separate activity concerned.

(5) Where a contracting entity chooses to award a single contract—

(a) a contract which is intended to cover several activities shall be subject to the provisions applicable to the activity for which it is principally intended;

(b) in the case of a contract where it is objectively impossible to determine for which activity the contract is principally intended, the applicable provisions shall be determined in accordance with the following—

(i) the contract shall be awarded in accordance with the provisions of these Regulations applicable to concession contracts awarded by contracting authorities, if one of the activities for which the contract is intended is subject to the provisions of these Regulations applicable to concession contracts awarded by contracting authorities and the other is subject to the provisions of these Regulations applicable to concession contracts awarded by contracting entities,

(ii) the contract shall be awarded in accordance with the Public Authority Contracts Regulations, if one of the activities for which the contract is intended is subject to these Regulations and the other to the Public Authority Contracts Regulations,

(iii) the contract shall be awarded in accordance with these Regulations, if one of the activities for which the contract is intended is subject to these Regulations and the other is not subject to these Regulations, the Public Authority Contracts Regulations or the Award of Contracts by Utilities Regulations.

(6) However, where one of the activities concerned is covered by Article 346 of TFEU or Directive 2009/81/EC., Regulation 22 applies instead of paragraph (5).

Contracts covering both activities listed in Schedule 2 and activities involving defence or security aspects.

22. (1) This Regulation applies in the case of contracts intended to cover several activities, one of them being listed in Schedule 2 and another being covered by Article 346 of TFEU or Directive 2009/81/EC.

(2) A contracting entity may choose to award separate contracts for the purposes of the separate activities or to award a single contract for the purposes of all the activities.

(3) The choice between awarding a single contract or awarding separate contracts shall not, however, be made with the objective of excluding the contract or contracts from the scope of these Regulations or Directive 2009/81/EC and a decision to award a single contract shall be justified by objective reasons.

(4) Where a contracting entity chooses to award separate contracts for separate parts, the decision as to which legal regime applies to any one of the separate contracts shall be taken on the basis of the characteristics of the separate activity concerned.

(5) Where a contracting entity chooses to award a single contract, the following shall apply—

(a) in the case of a contract intended to cover an activity which is covered by these Regulations and another which is covered by Article 346 of TFEU, the contracting entity may award the contract without applying these Regulations;

(b) in the case of a contract intended to cover an activity which is covered by these Regulations and another which is covered by Directive 2009/81/EC, the contracting entity may award the contract either in accordance with these Regulations or in accordance with Directive 2009/81/EC.

(6) Paragraph (5)(b) is without prejudice to the thresholds and exclusions that are provided by Directive 2009/81/EC.

(7) Contracts referred to in paragraph (5)(b) which also include procurement or other elements which are covered by Article 346 of TFEU may be awarded without applying these Regulations.

CHAPTER 4

Specific Situations

Reserved concession contracts

23. (1) A contracting authority and a contracting entity may—

(a) reserve the right to participate in concession contract award procedures to sheltered workshops and economic operators whose main

aim is the social and professional integration of disabled or disadvantaged persons, or

- (b) provide for such concession contracts to be performed in the context of sheltered employment programmes,

provided that at least 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.

(2) In such a case, the concession contract notice or, in the case of a concession contract for social and other specific services listed in Annex IV to the Concessions Directive, the prior information notice, shall make reference to Article 24 of the Concessions Directive.

Research and development services

24. These Regulations apply to services concession contracts for research and development services which are covered by CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 provided that the following conditions are fulfilled—

- (a) the benefits accrue exclusively to the contracting authority or contracting entity for its use in the conduct of its own affairs; and
- (b) the service provided is wholly remunerated by the contracting authority or contracting entity.

CHAPTER 5

Provisions Relating to Economic Operators, Confidentiality, Etc.

Economic operators

25. (1) Economic operators that, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of the State, they would be required to be either natural or legal persons.

(2) Legal persons may be required to indicate, in the tender or in the application, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

(3) Groups of economic operators, including temporary associations, may participate in concession contract award procedures and shall not be required by a contracting authority or a contracting entity to have a specific legal form in order to submit a tender or a request to participate.

(4) Where necessary, a contracting authority or a contracting entity may clarify in the concession documents how groups of economic operators are to meet the requirements as to economic and financial standing or technical and professional ability referred to in Regulation 38 provided that this is justified by objective reasons and is proportionate.

(5) Any conditions for the performance of a concession contract by such groups of economic operators which are different from those imposed on individual participants shall also be justified by objective reasons and shall be proportionate.

(6) Notwithstanding paragraphs (1) to (5), a contracting authority or contracting entity may require groups of economic operators to assume a specific legal form once they have been awarded the contract, to the extent that such a change is necessary for the satisfactory performance of the contract.

Nomenclatures

26. Any references to nomenclatures in the context of the award of concession contracts shall be made using the CPV.

Confidentiality

27. (1) A contracting authority or contracting entity shall not disclose information which has been forwarded to it by an economic operator and designated by that economic operator as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

(2) Paragraph (1) is without prejudice to—

(a) any other provisions of these Regulations, including the obligations relating to the advertising of awarded concession contracts and the provision of information to candidates and tenderers set out in Regulations 31 and 40 respectively; and

(b) the Freedom of Information Act 2014 (No. 30 of 2014).

(3) This Regulation shall not prevent public disclosure of non-confidential parts of concluded contracts, including any subsequent changes.

(4) A contracting authority or a contracting entity may impose on an economic operator requirements aimed at protecting the confidential nature of information which the contracting authority or contracting entity makes available throughout the concession contract award procedure.

Provisions applicable to communication

28. (1) A contracting authority and a contracting entity may choose one or more of the following means of communication for all communication and information exchange—

(a) electronic means;

(b) post or fax;

(c) oral communication, including telephone, in respect of communications other than the essential elements of a concession contract award procedure, and provided that the content of the oral communication is documented to a sufficient degree on a durable medium;

(d) hand delivery certified by an acknowledgement of receipt,

except where the use of electronic means is mandatory in accordance with Regulations 32(2) and 33.

(2) The means of communication chosen shall be generally available and non-discriminatory, and shall not restrict economic operators' access to the concession contract award procedure.

(3) The tools and devices to be used for communicating by electronic means, and their technical characteristics, shall be interoperable with information and communication technology products in general use.

(4) In all communication, exchange and storage of information, a contracting authority and a contracting entity shall ensure that the integrity of data and the confidentiality of applications and tenders are preserved.

(5) A contracting authority and a contracting entity shall examine the content of applications and tenders only after the time limit set for submitting them has expired.

PART 3

RULES ON THE AWARD OF CONCESSION CONTRACTS

CHAPTER 1

General principles

General principles

29. (1) In paragraph (2) "relevant procedure" means the procedure leading to the choice of concessionaire.

(2) If the relevant procedure complies with these Regulations, then nothing in these Regulations is to be construed as prejudicing the freedom of a contracting authority or contracting entity to organise the relevant procedure.

(3) The design of the concession award procedure shall respect the principles specified in Regulation 7. In particular, during the concession award procedure, the contracting authority or contracting entity shall not provide information in a discriminatory manner which may give some candidates or tenderers an advantage over others.

(4) In the performance of concession contracts, economic operators shall comply with applicable obligations in the field of environmental, social and labour law that applies at the place where the works are carried out or the services provided, that have been established by Union law, national law, collective agreements, or by international, environmental, social and labour law listed in Annex X to the Concessions Directive. A contracting authority or contracting entity shall ensure that such obligations are incorporated into the relevant concession contracts.

Concession notices

30. (1) A contracting authority or a contracting entity wishing to award a concession contract, other than a concession contract for social and other specific services listed in Annex IV to the Concessions Directive, shall make known its intention through the publication of a concession notice.

(2) Such a concession notice shall contain—

- (a) the information set out in Schedule 4, and
- (b) where appropriate, any other information deemed useful by the contracting authority or contracting entity,

and shall be in the format of the standard forms set out in Regulation (EU) 2015/1986 of 11 November 2015.

(3) A contracting authority or a contracting entity wishing to award a concession contract for social and other specific services listed in Annex IV to the Concessions Directive shall make known its intention of a planned concession award through the publication of a prior information notice. Such a prior information notice shall contain the information set out in Schedule 5.

(4) This Regulation shall 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 and that a report is sent to the Commission where it so requests;
- (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 each of clauses (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.

(5) For the purposes of paragraph (4)(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's or contracting

entity'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 required to be, or may be, excluded under Regulation 37(1) to (18) or does not meet the selection criteria set out by the contracting authority or contracting entity in accordance with Regulation 38,
 - (ii) the application includes tenders which are considered not to be suitable as described in subparagraph (a).

Concession award notices

31. (1) Not later than 48 days after the award of a concession contract, the contracting authority or contracting entity shall send a concession award notice on the results of the concession award procedure in accordance with the procedure specified in Regulation 32.

(2) However, concession contract award notices for social and other specific services listed in Annex IV to the Concessions Directive may be grouped for publication on a quarterly basis, in which case the contracting authority or contracting entity shall send the grouped notices for publication within 48 days of the end of each quarter.

(3) A concession award notice shall contain the information set out in Schedule 6, or in the case of a concession contract for social and other specific services listed in Annex IV to the Concessions Directive, the information set out in Schedule 7 and shall be published in accordance with Regulation 32.

Form and manner of publication of notices

32. (1) Concession notices, concession award notices and the notice referred to in Regulation 43(4) shall include the information set out in Schedules 4, 6 and 7 and in the format of standard forms, including standard forms for corrigenda.

(2) The notices referred to in paragraph (1) shall be drawn up, transmitted by electronic means to the Publications Office and published in accordance with Annex IX to the Concessions Directive. The Publications Office shall give the contracting authority or contracting entity confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of publication which shall constitute proof of publication. Notices shall be published not later than five days after they are sent. The costs of publication of the notices by the Publications Office shall be borne by the Union.

(3) Concession notices shall be published in full in one or more of the official languages of the institutions of the Union as chosen by the contracting authority or contracting entity. That language version or those language versions shall constitute the sole authentic text or texts. A summary of the important elements of each notice shall be published in the other official languages of the institutions of the Union.

(4) Concession notices and concession award notices shall not be published in the State or another Member State before publication by the Publications Office unless publication at Union level does not take place 48 hours after the Publications Office confirms receipt by the contracting authority or the contracting entity of the notice as referred to in paragraph (2). Concession notices and concession award notices published in the State or another Member State shall not contain information other than that contained in the notices dispatched to the Publications Office but shall indicate the date of dispatch of the notice to the Publications Office.

Electronic availability of concession documents

33. (1) A contracting authority and a contracting entity shall offer, by electronic means, unrestricted and full direct access free of charge to the concession documents from the date of the publication in the Official Journal 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 electronic means.

(4) In the circumstances set out in paragraph (3) a contracting authority or a contracting entity shall indicate in the notice or the invitation to submit a tender that the concession documents concerned will be transmitted by means other than electronic means and the time limit for the receipt of tenders shall be prolonged.

(5) Provided that it has been requested in good time, a contracting authority or a contracting entity or a competent department 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.

Combating corruption and preventing conflicts of interest

34. (1) A contracting authority and contracting entity 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, “conflicts of interest” includes 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 contracting entity who are involved in the conduct of the concession contract award procedure or may influence the outcome of that procedure.

CHAPTER 2

Procedural guarantees

Technical and functional requirements

35. (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) However, 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 contracting entity 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.

Procedural guarantees

36. (1) Concession contracts shall be awarded on the basis of the award criteria, provided that all of the following conditions are fulfilled—

- (a) the tender complies with any minimum requirements set, where applicable, by the contracting authority or contracting entity;
- (b) the tenderer complies with the conditions for participation set out in Regulation 38(1) to (3); and
- (c) the tenderer is not excluded from participating in the concession contract award procedure in accordance with Regulation 37(1) to (9), and subject to Regulation 37(13) to (18).

(2) The contracting authority or contracting entity shall provide:

- (a) in the concession notice, a description of the concession contract and of the conditions of participation;
- (b) in the concession notice or the invitation to submit a tender, or other concession document, a description of the award criteria, and where applicable, the minimum requirements to be met.

(3) The contracting authority or contracting entity may limit the number of candidates or tenderers to an appropriate level, on condition that this is done in a transparent manner and on the basis of objective criteria.

(4) The number of candidates or tenderers invited shall be sufficient to ensure genuine competition.

(5) The contracting authority or contracting entity shall communicate the following to all participants—

- (a) the description of the envisaged organisation of the procedure and an indicative completion deadline; and
- (b) any modification to that procedure or completion deadline.

(6) To the extent that any modification referred to in paragraph (5)(b) concerns elements disclosed in the concession notice, the contracting authority or contracting entity shall advertise it to all economic operators.

(7) The contracting authority or contracting entity shall provide for appropriate recording of the stages of the procedure using the means it considers appropriate, subject to Regulation 27(1), (2) and (3).

(8) The contracting authority or contracting entity may hold negotiations with candidates and tenderers; however the subject matter of the concession contract, the award criteria and the minimum requirements shall not be changed during the course of any negotiations.

(9) In this Regulation—

“award criteria” means the award criteria set out by the contracting authority or contracting entity in accordance with Regulation 41;

“minimum requirements” mean the conditions and characteristics (in particular any technical, physical, functional and legal conditions and characteristics) that any tender must meet or possess.

Exclusion grounds

37. (1) Subject to paragraphs (6), (15) and (20), a contracting authority or a contracting entity referred to in Regulation 5(1)(a) shall exclude an economic operator from participation in a concession contract award procedure where it has established that the economic operator concerned has been convicted of one or more of the following offences:

- (a) participation in a criminal organisation, within the meaning of Article 2 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime;
- (b) corruption, which, in this Regulation, means corruption within the meaning of the following:
 - (i) Regulation 2;
 - (ii) Article 2(1) of Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector;
 - (iii) the law of the State, where the contracting authority or the contracting entity or the economic operator concerned is established in the State;
 - (iv) the law of the Member State, other than the State, in which the contracting authority or the contracting entity or the economic operator concerned is established;
- (c) fraud within the meaning of Article 1 of the Convention on the protection of the European Communities’ financial interests drawn up under the Council Act of 26 July 1995;
- (d) terrorist offences or offences linked to terrorist activities, within the meaning of Articles 1 and 3 respectively of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism or inciting or aiding or abetting or attempting to commit an offence referred to in Article 4 of that Council Framework Decision;

- (e) money laundering or terrorist financing, within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;
- (f) child labour and other forms of trafficking in human beings, within the meaning of Article 2 of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA.

(2) The obligation of a contracting authority or a contracting entity referred to in Regulation 5(1)(a) to exclude an economic operator under paragraph (1) also applies (but subject to paragraphs (6), (15) and (20)) where the person convicted is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control in the economic operator.

(3) Subject to paragraphs (5) to (7), an economic operator shall be excluded by a contracting authority or a contracting entity referred to in Regulation 5(1)(a) from participation in a concession contract award procedure where—

- (a) the contracting authority or contracting entity is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions, and
- (b) the breach referred to in subparagraph (a) has been established by a judicial or administrative decision having final and binding effect in accordance with the law of the country in which the operator is established or the Member State of the contracting authority or contracting entity.

(4) Subject to paragraph (5), a contracting authority or a contracting entity referred to in Regulation 5(1)(a) may exclude an economic operator from participation in a concession contract award procedure where the contracting authority or contracting entity can demonstrate, by any appropriate means, that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions.

(5) Paragraphs (3) and (4) shall not apply when the economic operator has fulfilled its obligations by paying, or entering into a binding arrangement with a view to paying, the taxes or social security contributions due, including, where applicable, any interest accrued or fines.

(6) A contracting authority or a contracting entity referred to in Regulation 5(1)(a) shall not be obliged to exclude an economic operator under this Regulation where, on an exceptional basis, there are overriding reasons relating to the public interest such as public health or protection of the environment.

(7) A contracting authority or a contracting entity referred to in Regulation 5(1)(a) shall not be obliged to exclude an economic operator under paragraph (3) where such an exclusion would be disproportionate, including where—

- (a) only minor amounts of taxes or social security contributions referred to in paragraph (3)(a) are unpaid, or
- (b) the economic operator was informed of the exact amount due following its breach of its obligations relating to the payment of taxes or social security contributions referred to in paragraph (3)(a) at such time that it did not have the possibility of taking measures as provided for in paragraph (5) before the expiration of the deadline for requesting participation or, in open procedures, the deadline for submitting its tender.

(8) Subject to paragraphs (15) and (21), a contracting authority or a contracting entity referred to in Regulation 5(1)(a) may exclude from participation in a concession contract award procedure any economic operator in one or more of the following situations:

- (a) where the contracting authority or contracting entity can demonstrate by any appropriate means a violation of applicable obligations referred to in Regulation 29(4);
- (b) where the economic operator is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the law of the State;
- (c) where the contracting authority or contracting entity can demonstrate, by any appropriate means, that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable;
- (d) where a conflict of interest within the meaning of Regulation 34 cannot be effectively remedied by other, less intrusive, measures;
- (e) where the contracting authority or contracting entity has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition;
- (f) where the economic operator has shown significant or persistent deficiencies in the performance of a prior public contract which led to early termination of that prior contract, damages or other comparable sanctions;
- (g) where the economic operator has been guilty of serious misrepresentation in supplying the information required for the verification of the

absence of grounds for exclusion or the fulfilment of the selection criteria, has withheld such information or is not able to submit supporting documents required under these Regulations;

- (h) where the economic operator has undertaken to unduly influence the decision-making process of the contracting authority or contracting entity, or obtain confidential information that may confer upon it undue advantages in the concession award procedure or where the economic operator has negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award;
- (i) in the case of a concession contract in the fields of defence and security as referred to in Directive 2009/81/EC, where the economic operator has been found, on the basis of any means of evidence, including protected data sources, not to possess the reliability necessary to exclude risks to the security of the State.

(9) Notwithstanding subparagraph (b) of paragraph (8), a contracting authority or a contracting entity may decide not to exclude an economic operator that is in any of the situations referred to in that subparagraph where it has established that the economic operator will be able to perform the contract taking into account the national rules and measures of the Member State of establishment of the economic operator or the law of the State, as appropriate, on the continuation of business in those situations.

(10) A contracting authority or a contracting entity referred to in Regulation 5(1)(a) shall, at any time during the concession contract award procedure, exclude an economic operator where it becomes aware that the economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraphs (1) to (3).

(11) A contracting authority or a contracting entity referred to in Regulation 5(1)(a) may, at any time during the concession contract award procedure, exclude an economic operator where it becomes aware that that economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraph (4) or (8).

(12) Subject to paragraphs (15) and (22), a contracting entity other than one referred to in Regulation 5(1)(a) may exclude an economic operator from participation in a concession contract award procedure where it is aware that that economic operator is in one of the situations referred to in paragraph (1), (4) or (8)

(13) In addition to its operating in the case there mentioned, paragraph (12) shall, subject to paragraph (15), operate to enable a contracting entity other than one referred to in Regulation 5(1)(a) to exclude, at any time during the concession contract award procedure, an economic operator where it becomes aware that that economic operator is, in view of acts committed or omitted

either before or during the procedure, in one of the situations referred to in paragraph (1), (4) or (8).

(14) An economic operator that is in one of the situations referred to in paragraph (1), (2) or (8) may provide evidence to the effect that measures taken by the economic operator concerned are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion.

(15) Where the evidence provided under paragraph (14) is considered sufficient the economic operator concerned shall not be excluded from the concession contract award procedure.

(16) For the purposes of paragraphs (14) and (15) the economic operator shall show that it has—

- (a) paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct concerned,
- (b) clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities, and
- (c) taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

(17) The contracting authority or contracting entity shall, when evaluating the measures shown to be taken by the economic operator under paragraph (16), take into account the gravity and particular circumstances of the criminal offence or misconduct concerned.

(18) Where the contracting authority or contracting entity considers that the measures shown to be taken by the economic operator under paragraph (16) are insufficient, it shall give the economic operator a statement of the reasons for that decision.

(19) An economic operator that is excluded by final judgment from participating in procurement or concession contract award procedures shall not be entitled to make use of the possibility provided for in paragraphs (14) to (18) during the period of exclusion resulting from that judgement in the Member State where the judgement is effective.

- (20) (a) The following applies in relation to the construction of paragraphs (1) and (2) where the case is not a case in which the period of exclusion has been set by final judgment.
- (b) Paragraphs (1) and (2) shall be construed so that the requirement under either of those paragraphs that the economic operator be excluded, in the manner there mentioned, shall cease to apply on the expiration of the period of 5 years from the date of conviction of the economic operator or person, as the case may be, for the offence concerned referred to in the relevant paragraph.

(21) (a) The following applies in relation to the construction of paragraph (8) where the case is not a case in which the period of exclusion has been set by final judgment.

(b) Paragraph (8) shall be construed so that the power under that paragraph to exclude an economic operator, in the manner there mentioned, shall not be exercisable where the economic operator concerned establishes that 3 or more years have elapsed since the date that the economic operator was in the relevant situation referred to in that paragraph.

(22) (a) The following applies in relation to the construction of paragraph (12) where the case is not a case in which the period of exclusion has been set by final judgment.

(b) Paragraph (12) shall be construed so that—

(i) the power under that paragraph to exclude an economic operator, in the manner there mentioned as it relates to paragraph (1), shall cease to be exercisable on the expiration of the period of 5 years from the date of conviction of the economic operator for the offence concerned referred to in paragraph (1),

(ii) the power under that paragraph to exclude an economic operator, in the manner there mentioned as it relates to paragraph (8), shall not be exercisable where the economic operator concerned establishes that 3 or more years have elapsed since the date that the economic operator was in the relevant situation referred to in paragraph (8).

(23) The reference in paragraph (19) to the requirement under paragraph (1) or (2) includes a reference to the requirement under either such paragraph as it operates by virtue of paragraph (10).

(24) The reference in paragraph (20) to the power under paragraph (8) includes a reference to the power under paragraph (8) as that paragraph operates by virtue of paragraph (11).

(25) The reference in paragraph (22) to a particular power under paragraph (12) includes a reference to the particular power under paragraph (12) as that paragraph operates by virtue of paragraph (13).

Selection of and qualitative assessment of candidates

38. (1) A contracting authority or a contracting entity shall verify the conditions for participation in a concession contract award procedure relating to the professional and technical ability and the financial and economic standing of candidates or tenderers on the basis of self-declarations or references submitted as proof in accordance with the requirements specified in the concession notice.

(2) Those requirements shall be non-discriminatory and proportionate to the subject-matter of the concession contract.

(3) The conditions for participation shall be related and proportionate to the need to ensure the ability of the concessionaire to perform the concession contract, taking into account the subject matter of the concession contract and the purpose of ensuring genuine competition.

(4) For the purpose of meeting the conditions for participation set out in paragraphs (1) to (3), an economic operator may, where appropriate and for a particular concession contract, rely on the capacities of other entities, regardless of the legal nature of its links with them, subject to the following provisions of this Regulation.

(5) Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting authority or contracting entity that it will have at its disposal, throughout the period of the concession contract, the necessary resources, for example, by producing a commitment by those entities to that effect.

(6) With regard to financial standing, the contracting authority or contracting entity may require that the economic operator and those entities on which it relies are jointly liable for the execution of the contract.

(7) A group of economic operators within the meaning of Regulation 25 may rely on the capacities of participants in the group or of other entities, and paragraphs (4) to (6) apply in relation to such a group in the same way that they apply in relation to an economic operator.

Time limits for receipt of applications and tenders for the concession contract

39. (1) When fixing the time limits for the receipt of applications or of tenders, a contracting authority or contracting entity shall take account, in particular, of the complexity of the concession contract and the time required for drawing up tenders or applications, without prejudice to the minimum time limits set out in this Regulation.

(2) Where applications or tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the concession documents, the time limits for the receipt of applications for the concession contract or for the receipt of tenders shall be fixed so that all economic operators concerned may be aware of all the information needed to produce applications or tenders and in any event shall be longer than the minimum time limits set out in paragraphs (3) and (4).

(3) The minimum time limit for the receipt of applications (whether or not including tenders for the concession contract) shall be 30 days from the date on which the concession notice was sent for publication in accordance with Regulation 30.

(4) Where the procedure takes place in successive stages the minimum time limit for the receipt of initial tenders shall be 22 days from the date on which the invitation to tender is sent.

(5) The time limits for receipt of tenders may be reduced by 5 days where the contracting authority or contracting entity allows the submission of tenders by electronic means in accordance with Regulation 28.

Provision of information to candidates and tenderers

40. (1) The contracting authority or contracting entity shall as soon as possible inform each candidate and tenderer of decisions reached concerning the award of a concession contract, including—

- (a) the name of the successful tenderer; and
- (b) the grounds for any decision—
 - (i) to reject its application or tender,
 - (ii) not to award a contract for which there has been publication of a concession notice, or
 - (iii) to recommence the procedure.

(2) On request from the party concerned, the contracting authority or contracting entity shall as quickly as possible, and in any event within 15 days from receipt of a request in writing, inform any tenderers that have submitted an admissible tender of the characteristics and relative advantages of the tender selected.

(3) The contracting authority or contracting entity may decide to withhold certain information referred to in 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.

Award criteria

41. (1) A concession contract shall be awarded on the basis of objective criteria which comply with the principles set out in Regulation 7 and which ensure that tenders are assessed in conditions of effective competition so as to identify an overall economic advantage for the contracting authority or contracting entity.

(2) The award criteria—

- (a) shall be linked to the subject-matter of the concession contract;

- (b) shall not confer an unrestricted freedom of choice on the contracting authority or contracting entity; and
 - (c) may include environmental, social, or innovation-related criteria.
- (3) The award criteria shall be accompanied by requirements which allow the information provided by the tenderers to be effectively verified.
- (4) The contracting authority or contracting entity shall verify whether tenders properly meet the award criteria.
- (5) The contracting authority or contracting entity shall list the award criteria in descending order of importance.
- (6) Notwithstanding paragraph (1), where the contracting authority or contracting entity receives a tender which proposes an innovative solution with an exceptional level of functional performance which could not have been foreseen by a diligent contracting authority or contracting entity, the contracting authority or contracting entity may, exceptionally, modify the ranking order of the award criteria to take into account that innovative solution.
- (7) Where paragraph (6) applies the contracting authority or contracting entity shall—
- (a) inform all tenderers about the modification of the order of importance and issue a new invitation to submit tenders in compliance with the minimum time limit referred to in Regulation 39(4) for the receipt of tenders;
 - (b) where the award criteria have been published in or at the same time as the concession notice, publish a new concession notice in compliance with the minimum time limit referred to in Regulation 39(3) for the receipt of applications.
- (8) The contracting authority or contracting entity shall ensure that a modification of the ranking order referred to in paragraph (6) does not result in discrimination.

PART 4

RULES ON THE PERFORMANCE OF CONCESSION CONTRACTS

Subcontracting

42. (1) In the concession documents, the contracting authority or contracting entity may ask the tenderer to indicate in its tender any share of the concession contract that it may intend to subcontract to third parties and any proposed subcontractors.

(2) Paragraph (1) is without prejudice to the question of the concessionaire's liability.

(3) In the case of a works concession contract and in respect of services to be provided at a facility under the oversight of the contracting authority or contracting entity, after the award of the concession contract and at the latest when the performance of the concession contract commences, the contracting authority or contracting entity shall require the concessionaire to notify to the contracting authority or contracting entity the name, contact details and legal representatives of its subcontractors involved in such works or services, in so far as known at the time.

(4) The contracting authority or contracting entity shall require the concessionaire to notify it of—

- (a) any changes to the information notified under paragraph (3) during the course of the concession contract; and
- (b) the name, contact details and legal representatives of any new subcontractors which it subsequently involves in such works or services.

(5) Paragraphs (3) and (4) do not apply to suppliers.

(6) Where the contracting authority or contracting entity determines that such compliance in the following cases or by the following persons is required (and makes it a requirement accordingly), the obligations provided for in paragraphs (3) and (4) shall also fall to be complied with in such cases or by such persons as it determines, including, but not limited to—

- (a) cases of services concession contracts (other than those concerning services to be provided at the facilities under the oversight of the contracting authority or contracting entity) or suppliers involved in works concession contracts or services concession contracts;
- (b) subcontractors of the concessionaire's subcontractors or subcontractors further down the subcontracting chain.

(7) To avoid contraventions of the obligations referred to in Regulation 29(4), a contracting authority or a contracting entity may take appropriate measures by, amongst other things, verifying whether there are grounds for exclusion of subcontractors under Regulation 37.

(8) In such cases, the contracting authority or contracting entity—

- (a) shall require that the economic operator replace a subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion; and
- (b) may require that the economic operator replace a subcontractor in respect of which the verification has shown that there are non-compulsory grounds for exclusion.

Modification of concession contracts during their term

43. (1) Concession contracts may be modified without a new concession contract award procedure in accordance with these Regulations in any of the following cases—

- (a) where the modifications, irrespective of their monetary value, have been provided for in the initial concession documents in clear, precise and unequivocal review clauses, which may include value revision clauses or options, provided that such clauses—
 - (i) shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and
 - (ii) shall not provide for modifications or options that would alter the overall nature of the concession contract;
- (b) for additional works or services by the original concessionaire that have become necessary and were not included in the initial concession contract where a change of concessionaire—
 - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial concession contract, and
 - (ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority or contracting entity,

and this subparagraph is subject to, and is supplemented by, paragraph (2);
- (c) where all of the following conditions are fulfilled—
 - (i) the need for modification has been brought about by circumstances which a diligent contracting authority or contracting entity could not have foreseen,
 - (ii) the modification does not alter the overall nature of the concession contract,
 - (iii) in the case of a concession contract awarded by a contracting authority for the purposes of pursuing an activity other than an activity referred to in Schedule 2, any increase in value does not exceed 50 % of the value of the original concession contract.

and this subparagraph is subject to, and is supplemented by, paragraph (3);

- (d) where a new concessionaire replaces the one to which the contracting authority or the contracting entity had initially awarded the concession contract as a consequence of—
 - (i) an unequivocal review clause or option in conformity with paragraph (1)(a), or
 - (ii) universal or partial succession into the position of the initial concessionaire, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of these Regulations;
 - (e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph (8).
- (2) For the purposes of paragraph (1)(b)—
- (a) in the case of a concession contract awarded by a contracting authority for the purposes of pursuing an activity other than an activity referred to in Schedule 2, any increase in value shall not exceed 50% of the value of the original concession contract,
 - (b) where several successive modifications are made, that limitation shall apply to the value of each modification,
 - (c) such consecutive modifications shall not be aimed at circumventing these Regulations.
- (3) For the purposes of paragraph (1)(c)—
- (a) where several successive modifications are made, that limitation shall apply to the value of each modification;
 - (b) such consecutive modifications shall not be aimed at circumventing these Regulations.
- (4) A contracting authority or contracting entity which has modified a contract in either of the cases described in paragraph (1)(b) and (c) shall publish a notice to that effect in the Official Journal. Such a notice shall contain the information set out in Annex XI to the Concessions Directive and shall be published in accordance with Regulation 32.
- (5) Furthermore, and without any need to verify whether the conditions specified in paragraph (8)(a) to (d) are met, contracts may equally be modified without a new procurement procedure in accordance with these Regulations being necessary where the value of the modification is below each of the following values—
- (a) the threshold mentioned in Regulation 8; and

(b) 10% of the value of the initial concession contract.

(6) However, for the purposes of paragraph (5) the modification cannot alter the nature of the concession contract. Where several successive modifications are made, the value shall be assessed on the basis of the net cumulative value of the successive modifications.

(7) For the purpose of the calculation of the value mentioned in paragraphs (1)(c), (2) and (5)(b), the updated value shall be the reference value when the concession contract includes an indexation clause. If the concession contract does not contain an indexation clause, the updated value shall be calculated taking into account the average inflation in the State.

(8) A modification of a concession contract during its term shall be considered substantial for the purposes of paragraph (1)(e), where the modification renders the concession contract materially different in character from the one initially concluded. In any event, without prejudice to paragraphs (1) to (6), a modification shall be considered to be substantial where one or more of the following conditions are met:

- (a) the modification introduces conditions which, had they been part of the initial concession contract award procedure, would have—
 - (i) allowed for the admission of other applicants than those originally selected,
 - (ii) allowed for the acceptance of a tender other than that originally accepted, or
 - (iii) attracted additional participants in the concession contract award procedure;
- (b) the modification changes the economic balance of the concession contract in favour of the concessionaire in a manner which was not provided for in the initial concession contract;
- (c) the modification extends the scope of the concession contract considerably;
- (d) a new concessionaire replaces the one to which the contracting authority or the contracting entity had initially awarded the concession contract in cases other than those provided for in paragraph (1)(d).

(9) A new concession contract award procedure in accordance with these Regulations shall be required for modifications of the provisions of a concession contract during its term other than those provided for in paragraphs (1) to (6).

Termination of concession contracts

44. The contracting authority or contracting entity shall ensure that every concession contract which it awards contains provisions enabling it to terminate

the concession contract where one or more of the following conditions are fulfilled—

- (a) a modification of the concession contract has taken place, which would have required a new concession contract award procedure in accordance with Regulation 43;
- (b) the concessionaire, at the time of the concession contract award, falls within one of the cases referred to in Regulation 37(1), including as a result of the application of Regulation 37(2), or 37(8) and should therefore have been excluded from the concession contract award procedure;
- (c) the Court of Justice of the European Union finds, in a procedure pursuant to Article 258 of TFEU, that the State has failed to fulfil its obligations under the Treaties by virtue of the fact that the contracting authority or contracting entity has awarded the concession contract without complying with its obligations under the Treaties and the Concessions Directive.

Reporting to Minister

45. A contracting authority or a contracting entity shall, on request being made of it by the Minister therefor, send to the Minister a report containing such information as is specified in the request in respect of—

- (a) any concession contract within the scope of these Regulations; or
- (b) the procedure for the award of any such concession contract.

Transitional provision

46. (1) In this Regulation—

“public works concession contract” has the same meaning as it has in the Regulations of 2006;

“Regulations of 2006” means the European Communities (Award of Public Authorities’ Contracts) Regulations 2006 (S.I. No. 392 of 2006).

(2) These Regulations do not apply to a concession contract award procedure commenced by a contracting authority or a contracting entity before 18 April 2016.

(3) Without prejudice to the generality of paragraph (2), these Regulations do not apply to a public works concession contract to which Chapter 1 of Part 9 of the Regulations of 2006 applies if a contracting authority (within the meaning of those Regulations), before 18 April 2016, published a notice of its proposal to award such a contract in accordance with Regulation 71 of those Regulations.

(4) Notwithstanding the revocation of the Regulations of 2006 by the Public Authority Contracts Regulations, Chapter 1 of Part 9 of the Regulations of 2006

shall continue to apply to a public works concession contract in respect of which the notice referred to in paragraph (3) was published before 18 April 2016.

Amendment of Public Authority Contracts Regulations

47. The Public Authority Contracts Regulations are amended—

(a) in Regulation 57—

(i) in paragraphs (1) and (2), by substituting “paragraphs (6), (13) and (18)” for “paragraphs (6), (7), (13) and (18)”, in each place where it occurs; and

(ii) in paragraph (7), by substituting “paragraph (3)” for “this Regulation”,

(b) in Regulation 72(4), by substituting “below each of” for “less than either of”,

and

(c) in Regulation 76(4), by deleting “and selection”.

Amendment of Award of Contracts by Utilities Regulations

48. The Award of Contracts by Utilities Regulations are amended—

(a) in Regulation 82(2)(b), by substituting “Regulation 67(10) and (11)” for “Regulation 67(10)”,

(b) in Regulation 96(8), by substituting—

(i) “Regulations 59 to 61” for “Regulation 57”; and

(ii) “Regulation 57” for “Regulation 64”,

(c) in Regulation 97(3), by substituting “below each of” for “less than either of”

(d) in Regulation 101(4), by deleting “and selection”.

SCHEDULE 1

List of activities for works contracts

In the event of any difference of interpretation between the CPV and the NACE, the CPV nomenclature shall apply.

NACE ¹					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: construction of new buildings and works, restoring and common repairs.	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	This class includes: — demolition of buildings and other structures, — clearing of building sites, — earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. — site preparation for mining: — overburden removal and other development and preparation of mineral properties and sites. This class also includes: — building site drainage. — drainage of agricultural or forestry land.	45110000

¹Council Regulation (EEC) No 3037/90 of 9 October 1990 (OJ L293, 24.10.1990, p. 1.).

NACE ¹					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
		45.12	Test drilling and boring	<p>This class includes:</p> <ul style="list-style-type: none"> — test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes. <p>This class excludes:</p> <ul style="list-style-type: none"> — drilling of production oil or gas wells, see 11.20. — water well drilling, see 45.25, — shaft sinking, see 45.25, — oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20. 	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> — construction of all types of buildings construction of civil engineering constructions, — bridges, including those for elevated highways, viaducts, tunnels and subways, — long-distance pipelines, communication and power lines, — urban pipelines, urban communication and power lines, — ancillary urban works, — assembly and erection of prefabricated constructions on the site. This class 	45210000 Except: — 45213316 45220000 45231000 45232000

NACE ¹					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
				<p>excludes:</p> <ul style="list-style-type: none"> — service activities incidental to oil and gas extraction, see 11.20, — erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28, — construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23, — building installation, see 45.3, — building completion, see 45.4, — architectural and engineering activities, see 74.20, — project management for construction, see 74.20. 	
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <ul style="list-style-type: none"> — erection of roofs, — roof covering, — waterproofing. 	45261000
		45.23	Construction of highways, roads, airfields and sport facilities	<p>This class includes:</p> <ul style="list-style-type: none"> — construction of highways, streets, roads, other vehicular and pedestrian ways, — construction of railways, — construction of airfield runways, — construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, — painting of markings on road surfaces and car 	45212212 and DA03 45230000 except: — 45231000 — 45232000 — 45234115

NACE ¹					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
				parks. This class excludes: — preliminary earth moving, see 45.11.	
		45.24	Construction of water projects	This class includes: — construction of: — waterways, harbour and river works, pleasure ports (marinas), locks, etc., — dams and dykes, — dredging, — subsurface work.	45240000
		45.25	Other construction work involving special trades	This class includes: — construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment, — construction of foundations, including pile driving, — water well drilling and construction, shaft sinking, — erection of non-self-manufactured steel elements, — steel bending, — bricklaying and stone setting, — scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms, — erection of chimneys and industrial ovens. This class excludes: — renting of scaffolds without erection and dismantling, see 71.32	45250000 45262000
	45.3		Building installation		45300000

NACE ¹					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
		45.31	Installation of electrical wiring and fittings	<p>This class includes: installation in buildings or other construction projects of:</p> <ul style="list-style-type: none"> — electrical wiring and fittings, — telecommunications systems, — electrical heating systems, — residential antennas and aerials, — fire alarms, — burglar alarm systems, — lifts and escalators, — lightning conductors, etc. 	45213316 45310000 Except: – 45316000
		45.32	Insulation work activities	<p>This class includes:</p> <ul style="list-style-type: none"> — installation in buildings or other construction projects of thermal, sound or vibration insulation. <p>This class excludes:</p> <ul style="list-style-type: none"> — waterproofing, see 45.22. 	45320000
		45.33	Plumbing	<p>This class includes:</p> <ul style="list-style-type: none"> — installation in buildings or other construction projects of: — plumbing and sanitary equipment, — gas fittings, — heating, ventilation, refrigeration or air-conditioning equipment and ducts, — sprinkler systems. <p>This class excludes:</p> <ul style="list-style-type: none"> — installation of electrical heating systems, see 45.31. 	45330000
		45.34	Other building installation	<p>This class includes:</p> <ul style="list-style-type: none"> — installation of 	45234115 45316000 45340000

NACE ¹					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
				illumination and signalling systems for roads, railways, airports and harbours, — installation in buildings or other construction projects of fittings and fixtures n.e.c.	
	45.4		Building completion		45400000
		45.41	Plastering	This class includes: — application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.	45410000
		45.42	Joinery installation	This class includes: — installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials, — interior completion such as ceilings, wooden wall coverings, movable partitions, etc. This class excludes: — laying of parquet and other wood floor coverings, see 45.43.	45420000
		45.43	Floor and wall covering	This class includes: — laying, tiling, hanging or fitting in buildings or other construction projects of: — ceramic, concrete or cut stone wall or floor tiles, — parquet and other wood floor coverings carpets and linoleum floor coverings, — including of rubber	45430000

NACE ¹					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
				or plastic, — terrazzo, marble, granite or slate floor or wall coverings, — wallpaper.	
		45.44	Painting and glazing	This class includes: — interior and exterior painting of buildings, — painting of civil engineering structures, — installation of glass, mirrors, etc. This class excludes: — installation of windows, see 45.42,	45440000
		45.45	Other building completion	This class includes: — installation of private swimming pools, — steam cleaning, sand blasting and similar activities for building exteriors, — other building completion and finishing work n.e.c. This class excludes: — interior cleaning of buildings and other structures, see 74.70.	45212212 and DA04 45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	This class excludes: — renting of construction or demolition machinery and equipment without operators, see 71.32.	45500000

SCHEDULE 2

Activities Exercised by Contracting Entities as Referred to in Regulation 5

Interpretation

1. A reference in this Schedule to the relevant provisions having application to a particular activity is a reference to the provisions of these Regulations that govern concessions awarded by contracting entities having application to that activity.

Gas and heat

2. As far as gas and heat are concerned, the relevant provisions shall, subject to paragraph 3, apply to:

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat;
- (b) the supply of gas or heat to such fixed networks.

Supplemental provisions in relation to paragraph 2

3. (1) The supply by a contracting entity referred to in Regulation 5(1)(b) or (c) of gas or heat to fixed networks which provide a service to the public shall not be considered to fall within paragraph 2(a) or (b) where both of the following conditions are met:

- (a) the production of gas or heat by that contracting entity is the unavoidable consequence of carrying out an activity other than those referred to in paragraph 2, 4 or 9;
- (b) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of that contracting entity's turnover on the basis of the average for the preceding three years, including the current year.

(2) For the purposes of these Regulations, "supply" includes the generation/production, wholesale and retail sale of gas. However, production of gas in the form of extraction falls within the scope of paragraph 9.

Electricity

4. (1) As far as electricity is concerned, the relevant provisions shall, subject to paragraph 5, apply to:

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity;
- (b) the supply of electricity to such fixed networks.

(2) For the purposes of these Regulations, supply of electricity includes generation/production, wholesale and retail sale of electricity.

Supplemental provisions in relation to paragraph 4

5. The supply by a contracting entity referred to in Regulation 5(1)(b) or (c) of electricity to networks which provide a service to the public shall not be considered to fall within paragraph 4(1)(a) or (b) where both of the following conditions are met:

- (a) the production of electricity by that contracting entity takes place because its consumption is necessary for carrying out an activity other than those referred to in paragraph 2, 4 or 6;
- (b) supply to the public network depends only on that contracting entity's own consumption and has not exceeded 30 % of that contracting entity's total production of energy, on the basis of the average for the preceding three years, including the current year.

Transport services

6. (1) The relevant provisions shall apply to activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

(2) As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

Ports and airports

7. The relevant provisions shall apply to activities relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

Postal services

8. (1) The relevant provisions shall apply to activities relating to the provision of:

- (a) postal services;
- (b) other services than postal services, on condition that such services are provided by an entity which also provides postal services that have not been established to be directly exposed to competition in accordance with Regulation 34 of the Award of Contracts by Utilities Regulations.

(2) For the purpose of these Regulations and without prejudice to Directive 97/67/EC:

“postal item” means an item addressed in the final form in which it is to be carried, irrespective of weight, which includes—

- (a) correspondence,

- (b) books,
- (c) catalogues,
- (d) newspapers,
- (e) periodicals, and
- (f) postal packages containing merchandise with or without commercial value;

“postal services” means services consisting of the clearance, sorting, routing and delivery of postal items, including both services falling within as well as services falling outside the scope of the universal service set up in conformity with Directive 97/67/EC;

“other services than postal services” means services provided in the following areas:

- (a) mail service management services (services both preceding and subsequent to despatch, including mailroom management services);
- (b) services concerning items for posting not included in the definition of “postal item” in this subparagraph, such as direct mail bearing no address.

Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels

9. The relevant provisions shall apply to activities relating to the exploitation of a geographical area for the purpose of:

- (a) extracting oil or gas;
- (b) exploring for, or extracting, coal or other solid fuels.

SCHEDULE 3**List of Legal Acts of the Union Referred to in Regulation 5(3)(b)**

Each of the following procedures is a procedure for the purposes of Regulation 5(3)(b) (that is to say a procedure ensuring adequate prior transparency for granting authorisations on the basis of other legislative acts of the Union and rights granted on foot of which, accordingly, do not constitute “special or exclusive rights” within the meaning of that Regulation):

- (a) granting authorisation to operate natural gas installations in accordance with the procedures laid down in Article 4 of Directive 2009/73/EC;
- (b) authorisation or an invitation to tender for the construction of new electricity production installations in accordance with Directive 2009/72/EC;
- (c) the granting in accordance with the procedures laid down in Article 9 of Directive 97/67/EC of authorisations in relation to a postal service which is not or shall not be reserved;
- (d) a procedure for granting an authorisation to carry on an activity involving the exploitation of hydrocarbons in accordance with Directive 94/22/EC;
- (e) public service contracts within the meaning of Regulation (EC) No 1370/2007 for the provision of public passenger transport services by bus, tramway, rail or metro, which have been awarded on the basis of a competitive tendering procedure in accordance with Article 5(3) of that Regulation, provided that its length is in conformity with Article 4(3) or (4) of that Regulation.

SCHEDULE 4**Information to be Included in Concession Notices Referred to in Regulation 30**

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting authority or entity and, where different, of the service from which additional information may be obtained.
2. Type of contracting authority or entity and main activity exercised.
3. If the applications are to contain tenders, e-mail or internet address at which the concession documents will be available for unrestricted and full direct access, free of charge. Where unrestricted and full direct access, free of charge, is not available in the cases referred to in Regulation 33(3) an indication of how the procurement documents can be accessed.
4. Description of the concession: nature and extent of works, nature and extent of services, order of magnitude or indicative value and, where possible, duration of the contract. Where the concession is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.
5. CPV codes. Where the concession is divided into lots, this information shall be provided for each lot.
6. Address for the main location of works in case of works concessions or address for the main place of performance service concessions; where the concession is divided into lots, this information shall be provided for each lot.
7. Conditions for participation, including:
 - (a) where appropriate, indication whether the concession is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes;
 - (b) where appropriate, indication whether the provision of the service is reserved by law, regulation or administrative provision to a particular profession; reference to the relevant law, regulation or administrative provision;
 - (c) a list and brief description of selection criteria where applicable; minimum level(s) of standards possibly required; indication of required information (self-declarations, documentation).
8. Time limit for the submission of applications or receipt of tenders.
9. Criteria which will be applied in the award of the concession where they do not appear in other concession documents.

10. Date of dispatch of the notice.
11. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning the deadline for lodging appeals or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
12. Where appropriate, particular conditions to which performance of the concession is subject.
13. Address where applications or tenders shall be transmitted.
14. Where appropriate, indication of requirements and conditions related to the use of electronic means of communication.
15. Information as to whether the concession is related to a project and/or programme financed by Union funds.
16. For works concessions, indication as to whether the concession is covered by the GPA.

SCHEDULE 5

Information to be Included in Prior Information Notices Concerning Concessions for Social and Other Specific Services, as Referred to in Regulation 30(3)

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting authority or contracting entity and, where different, of the service from which additional information may be obtained
2. Where appropriate, e-mail or internet address at which the specifications and any supporting documents will be available.
3. Type of contracting authority or contracting entity and main activity exercised.
4. CPV codes; where the contract is divided into lots, this information shall be provided for each lot.
5. Address for the main place of delivery or performance of service concessions.
6. Description of the services, indicative order of magnitude or value.
7. Conditions for participation.
8. Where applicable, time limit(s) for contacting the contracting authority or contracting entity in view of participation.
9. Where applicable, brief description of the main features of the award procedure to be applied.
10. Any other relevant information.

SCHEDULE 6**Information to be Included in Concession Award Notices, as Referred to in Regulation 31**

1. Name, company number and registered business name (if any) address and, where appropriate, telephone, fax number, e-mail and internet address of the contracting authority or entity and, where different, of the service from which additional information may be obtained.
2. Type of contracting authority or entity and main activity exercised.
3. CPV codes.
4. Address for the main location of works in case of works concessions or address for the main place of performance in case of service concessions;
5. Description of the concession: nature and extent of works, nature and extent of services, duration of the contract. Where the concession is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.
6. Description of award procedure used, in the case of award without prior publication, justification.
7. Criteria referred to in Regulation 41 which were used for award of the concession or concessions.
8. Date of concession award decision or decisions.
9. Number of tenders received with respect of each award, including:
 - (a) number of tenders received from economic operators which are small and medium enterprises;
 - (b) number of tenders received from abroad;
 - (c) number of tenders received electronically.
10. For each award, name, address and, where applicable, telephone, fax number, e-mail address and internet address of the successful tenderer(s) including:
 - (a) information whether the successful tenderer is small and medium enterprise;
 - (b) information whether the concession was awarded to a consortium.
11. Value and main financial terms of the awarded concession, including:
 - (a) fees prices and fines if any;

(b) prizes and payments if any;

(c) any other details relevant to the value of the concession as laid down in Regulation 8(5) and (6).

12. Information whether the concession is related to a project and/or programme financed by Union funds.

13. Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

14. Date(s) and reference(s) of previous publications in the Official Journal relevant to the concession(s) advertised in this notice.

15. Date of dispatch of the notice.

16. Method used to calculate the estimated value of the concession, if not specified in other concession documents in accordance with Regulation 8.

17. Any other relevant information.

SCHEDULE 7

Information to be Included in Concession Award Notices Concerning Concessions for Social and Other Specific Services, as Referred to in Regulation 31

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting authority or entity and, where different, of the service from which additional information may be obtained.
2. Type of contracting authority or entity and main activity exercised.
3. CPV codes; where the contract is divided into lots, this information shall be provided for each lot.
4. Summary indication of the subject of the concession.
5. Number of tenders received.
6. Value of the successful tender, including fees and prices.
7. Name and address, telephone, fax number, e-mail address and internet address of the successful economic operator(s).
8. Any other relevant information.



GIVEN under my Official Seal,
18 May 2017.

PASCHAL DONOHOE,
Minister for Public Expenditure and Reform.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
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