SUBSIDIARY LEGISLATION 601.09

CONCESSION CONTRACTS REGULATIONS

28th October, 2016

LEGAL NOTICE 353 of 2016, as amended by Legal Notices 26 of 2018 and 196, 414 of 2020 and 26 of 2022 and Acts XXVIII of 2018 and XVII of 2024 and Legal Notices 112 and 360 of 2024

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Citation.

1. The title of these regulations is the Concession Contracts Regulations.

Part I
General Provisions

Interpretation and scope

Interpretation.

2. (1) For the purposes of these regulations -

"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

(*c*) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those bodies or authorities; or 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 award procedure;

"Commercial Sanction Tribunal" means the Commercial Sanction Tribunal as established under the Public Procurement Regulations; S.L. 601.03

"concessionaire" means an economic operator which has been awarded a concession;

"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;

"concessions" means works or services concessions, as defined in paragraphs (*a*) and (*b*) hereunder:

(*a*) "works concession" means a contract 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;

(*b*) "services concession" means a contract 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 referred to in paragraph (*a*) 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.

The award of a works or services concession shall involve the transfer to the concessionaire of an operating risk in exploiting those works or services encompassing demand or supply risk or both. 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. The part of the risk transferred to the concessionaire shall involve real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire shall not be merely nominal or negligible;

"contracting authorities" means State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law other than those authorities, bodies or associations which pursue one of the activities referred to in Schedule 4 and award a concession for the pursuit of one of those activities;

"conflicts of interest" shall at least cover any situation where staff members of the contracting authority or entity who are involved in the conduct of the concession award procedure or may influence the outcome of that procedure 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 award procedure;

"Director" means the Director of Contracts as established under the Public Procurement Regulations; S.L. 601.03

"economic operator" means any natural or legal person, or public entity, or a group of such persons or entities, including temporary associations of undertakings, which offers the execution of works and, or a work, 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;

"Evaluation Committee" means boards or committees appointed by the Director with the purpose of evaluating tenders received and for making recommendations thereon;

"exclusive 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 a single economic operator and which substantially affects the ability of

other economic operators to carry out such an activity;

"execution of works" means the execution, or both the design and execution, of works related to one of the activities referred to in Schedule 2 or of a work, or 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;

"General Contracts Committee" means the General Contracts Committee as established under the Public Procurement Regulations; S.L. 601.03

"Government's e-procurement platform" is an electronic platform which the Director may indicate from time to time by means of a circular;

"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, *inter alia*, with the purpose of helping to solve societal challenges or to support the Europe 2020 strategy;

"local authorities" includes all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as referred to in Regulation (EC) No 1059/2003;

"Minister" means the Minister responsible for finance;

"modification" means any change, variation or amendment to the original terms of the concession contract including but not limited to the introduction of new conditions and to the removal or replacement of existing conditions;

"Public Contracts Review Board" means the Public Contracts Review Board as established under the Public Procurement Regulations; S.L. 601.03

"public undertaking" means any undertaking over which the contracting authorities may exercise, directly or indirectly, a dominant influence by virtue of their ownership thereof, their financial participation therein, or the rules which govern it;

"regional authorities" include all authorities of the administrative units listed non-exhaustively in NUTS 1 and 2, as referred to in Regulation (EC) No 1059/2003;

"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;

"tenderer" means an economic operator which has submitted a tender;

"TFEU" means the Treaty on European Union and the Treaty on the Functioning of the European Union 2012/C326/01 including

any future amendment to the said Treaty;

"work" 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;

"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.

(2) For the purposes of these regulations "contracting entities" means entities which pursue one of the activities referred to in Schedule 4 and award a concession for the pursuit of one of those activities, and which are one of the following:

(*a*) State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law;

(*b*) public undertakings;

(*c*) entities other than those referred to in paragraphs (*a*) and (*b*) but which operate on the basis of special or exclusive rights, granted for the exercise of one of the activities referred to in Schedule 4;

(*d*) all entities listed under Schedule 1:

Provided that entities which have been granted special 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 shall not constitute "contracting entities" within the meaning of paragraph (*c*). Such procedures shall include:

(i) procedures with a prior call for competition in conformity with the Public Procurement Regulations, the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations, these regulations and the Public Procurement of Entities Operating in Water, Energy, Transport and Postal Services Sectors Regulations;

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(ii) procedures pursuant to other legal acts of the Union listed in Schedule 5, ensuring adequate prior transparency for granting authorisations on the basis of objective criteria.

(3) For the purposes of the definition "public undertaking" a dominant influence on the part of the contracting authorities shall be presumed in any of the following cases, in which those authorities, directly or indirectly:

(*a*) hold the majority of the undertaking's subscribed capital;

(*b*) control the majority of the votes attaching to shares

issued by the undertaking;

(*c*) can appoint more than half of the undertaking's administrative, management or supervisory body.

Scope.

3. The scope of these regulations is to regulate the award of works and service concessions to economic operators.

Applicability

Transitory provision.

4. Any concession procedure which has been issued prior to the publication of these regulations shall continue to be regulated by the laws which were previously in force, including any review on any decision thereon.

Non-applicability to concessions awarded by contracting authorities and contracting entities.

5. (1) These regulations shall not apply to:

(*a*) services concessions awarded to a contracting authority or to a contracting entity as referred to in regulation 2(2)(*a*) or to an association thereof on the basis of an exclusive right;

(*b*) services concessions awarded to an economic operator on the basis of an exclusive right which has been granted in accordance with the TFEU and Union legal acts laying down common rules on access to the market applicable to activities referred to in Schedule 4:

Provided that where Union sectoral legislation referred to in this paragraph does not provide for sector specific transparency obligations, regulation 96 shall apply:

Provided further that where the contracting authority or entity grants an exclusive right, with an estimated value which meets or exceeds the value established under Schedule 3, to an economic operator for the exercise of one of the activities referred to in Schedule 4 the contracting authority or entity shall inform the Commission thereof within one month after the award of that exclusive right;

(*c*) concessions for 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 to concessions for public passenger transport services within the meaning of Regulation (EC) No 1370/2007;

(*d*) concessions which the contracting authority or contracting entity is obliged to award or organise in accordance with procedures different from those laid down in these regulations established by any of the following:

(i) 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 thereof and covering works, supplies or services intended for the joint implementation or exploitation of a project by their signatories;

(ii an international organisation;

(*e*) concessions which the contracting authority or contracting entity awards in accordance with procurement rules provided by an international organisation or international financing institution, where the concessions concerned are fully financed by that organisation or institution. In the case of concessions co-financed for the most part by an international organisation or international financing institution, the parties shall agree on applicable procurement procedures;

(*f*) paragraphs (*d*) and (*e*) shall not apply to concessions awarded in terms of the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations; S.L. 601.07

(*g*) concessions in the fields of defence and security as referred to and in terms of the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations, which are governed by: S.L. 601.07

(i) specific procedural rules pursuant to an international agreement or arrangement concluded between one or more Member States and one or more third countries;

(ii) 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;

(iii) specific procedural rules of an international organisation purchasing for its purposes, or to concessions which must be awarded by a contracting authority or contracting entity in accordance with those rules;

(*h*) concessions in the fields of defence and security as referred to in the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations which fall under one of the following: S.L. 601.07

(i) concessions for which the application of these regulations would oblige Malta 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, regulations or

administrative provisions in force in Malta, provided that Malta has determined that the essential interests concerned cannot be guaranteed by less intrusive measures, such as those referred to in paragraph (*i*) hereunder;

(ii) concessions awarded in the framework of a cooperative programme referred to in regulation 14 of the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations; S.L. 601.07

(iii) 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;

(iv) concessions awarded in a third country, carried out when forces are deployed outside the territory of the Union where operational needs require those concessions to be concluded with economic operators located in the area of operations; and

(v) concessions otherwise exempted under these regulations;

(*i*) concessions not otherwise exempted under paragraph (h) to the extent that the protection of the essential security interests of Malta cannot be guaranteed by less intrusive measures, for instance by imposing requirements aimed at protecting the confidential nature of information which the contracting authority or contracting entity makes available in a concession award procedure as provided for in these regulations;

(*j*) service concessions for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;

(*k*) service concessions for 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 service providers, or concessions for broadcasting time or programme provision, that are awarded to audiovisual or radio media service providers;

(*l*) service concessions for arbitration and conciliation services;

(*m*) service concessions for any of the following legal services:

(i) legal representation of a client by a lawyer within the meaning of Article 1 of Council Directive 77/249/EEC in an arbitration or

conciliation held in a Member State, a third country or before an international arbitration or conciliation instance, or 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 in preparation of any of the proceedings referred to in sub-paragraph (i) or 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 Malta or are designated by law to carry out specific tasks under the supervision of such tribunals or courts;

(v) other legal services which in Malta are connected, even occasionally, with the exercise of official authority;

(*n*) service concessions for 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, central bank services and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;

(*o*) service concessions for loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;

(*p*) 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;

(*q*) 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;

(*r*) service concessions for lottery services, which are covered by CPV code 92351100-7, awarded by Malta to an economic operator on the basis of an exclusive right. For the purpose of this paragraph, the notion of

exclusive right does not cover exclusive rights as referred to in the proviso included under the definition of the term "contracting entities" under regulation 2(2):

Provided that the grant of such an exclusive right shall be subject to publication in the Official Journal of the European Union;

(*s*) concessions awarded by contracting entities for the pursuit of their activities in a third country, in conditions not involving the physical use of a network or geographical area within the Union.

(2) For the purposes sub-regulation (1)(*k*) "audiovisual media services" and "media service providers" shall, respectively, have the same meaning as in points (a) and (d) of Article 1(1) of Directive 2010/13/EU of the European Parliament and of the Council. "Programme" shall have the same meaning as in point (b) of Article 1(1) of that Directive, but shall also include radio programmes and radio programme materials. Furthermore, for the purposes of this provision, "programme material" shall have the same meaning as "programme".

(3) These regulations shall not affect social security systems of Malta.

(4) Non-economic services of general interest shall fall outside the scope of these regulations.

(5) These regulations shall also not affect the freedom of government to define, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to.

Non-applicability in the field of electronic communications

6. These regulations shall not apply to concessions for the principal purpose of permitting the contracting authorities to provide or exploit public communications networks, or to provide to the public one or more electronic communications services:

Provided that for the purposes of this regulation the term "public communications network" and "electronic communications service" shall have the same meaning as in Directive 2002/21/EC of the European Parliament and of the Council.

Non-applicability in the field of water.

7. (1) These regulations shall not apply to concessions awarded to -

(*a*) 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*) supply drinking water to such networks.

(2) These regulations shall also not apply to concessions with one, or both of the following subject-matters when they are connected with an activity referred to in sub-regulation (1):

(*a*) 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 twenty per cent of the total volume of water made available by such projects or irrigation or drainage installations; or

(*b*) the disposal or treatment of sewage.

Exclusion of activities which are directly exposed to competition. S.L. 601.05

8. These regulations shall not apply to concessions awarded by contracting entities where, for the Member State in which such concessions are to be performed, it has been established pursuant to regulation 28 of the Public Procurement of Entities Operating in Water, Energy, Transport and Postal Services Sectors Regulations that the activity is directly exposed to competition in accordance with regulation 27 of the said regulations.

Social and other specific services.

9. (1) Concessions for social and other specific services listed in Schedule 6 having an estimated value which is less than the threshold established under Schedule 3 and which fall within the scope of these regulations shall be subject only to the obligations arising from Part V.

(2) Concessions for social and other specific services listed in Schedule 6, having an estimated value which meets or exceeds the threshold established under Schedule 3 falling within the scope of these regulations shall be subject only to the obligations arising from regulations 95(3), 96 and Part V.

Research and development services.

10. These regulations shall only apply to service concessions 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 both 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.

The Office of the Director of Contracts

Director of Contracts and liability. S.L. 601.03

11. Regulations 10 and 11 of the Public Procurement Regulations shall apply *mutatis mutandis* to these regulations.

Functions and powers of the Director.

12. (1) For the purposes of these regulations it shall be the function of the Director:

(*a*) to evaluate and approve any request made in terms of regulation 16(1)(*b*) and (2);

(*b*) to approve the appointment of members of the evaluation committee following a recommendation by the contracting authority or the contracting entity;

(*c*) to appoint members of the special contracts committee after consultation with the contracting authority or the contracting entity;

(*d*) to monitor the correct and efficient implementation of these regulations;

(*e*) to give information and guidance on the interpretation and application of these regulations free of charge and to assist contracting authorities and entities and economic operators in correctly applying these regulations;

(*f*) to implement Part VI of the Public Procurement Regulations also in respect of these regulations; S.L. 601.03

(*g*) to identify and implement appropriate means to enable him to monitor the proper execution of contracts awarded under these regulations; and

(*h*) to make and transmit to the Minister a report, by not later than six months after the end of each financial year, about the performance of the Special Contracts Committee, during the financial year being reported upon.

(2) When granting the approval to the request as provided for in sub-regulation (1)(*a*) the Director may impose any conditions he may deem fit.

(3) When the Director or any person delegated by him identifies, through the monitoring activities identified under sub-regulation (1)(*d*), specific violations, such as fraud, corruption, conflict of interest and other serious irregularities, or systemic problems, he shall report this matter to the appropriate authority.

(4) The Director shall publish an annual report detailing results of the monitoring activities established in sub-regulation (1)(*d*).

Non-Observance of these regulations.

13. When the Director becomes aware that the conditions established under these regulations are not adhered to he may take any action necessary including directing the contracting authority or the contracting entity to cancel the procurement procedure.

Fraud and corruption.

14. The Director 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 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:

Provided that in instances of conflicts of interest, the measures adopted 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.

Request for information.

15. The Director has the power to request from any contracting authority or entity any information and documentation he might deem necessary in the execution of his tasks.

The Contracting Authority and Contracting Entity

Obligations of a contracting authority or contracting entity.

16. (1) It shall be the duty of all contracting authorities or contracting entities to:

(*a*) observe these regulations;

(*b*) obtain the prior written consent of the Director before publishing a concession document;

(*c*) publish concessions through government's e-procurement platform unless otherwise approved in writing by the Director:

Provided that where the Director approves the publication of the said concession documents through means other than the e-procurement platform the contracting authority or the contracting entity shall publicise the publication and the award of the concession in question in the Gazette;

(*d*) administer the process leading to the award of a concession contract;

(*e*) open offers in public;

(*f*) publish the names of the bidders and if applicable any prices quoted, either through Government's e-procurement platform or on the notice board at the contracting authority's or the contracting entity's premises;

(*g*) sign, as the case maybe, the contract with the bidder who has been recommended for award;

(*h*) monitor the implementation of the procurement procedure, the ensuing contract and contractual relationship including any remission or imposition of penalties;

(*i*) ensure that in the performance of concession contracts economic operators and their sub-contractors comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Schedule 12;

(*j*) make any payments resulting from the implementation of the contract;

(*k*) forward a copy of the contracts to the Director within two working days from the date when these are signed;

(*l*) institute and defend any judicial or arbitral proceedings that may be necessary in relation to any contract to be signed or that has been signed by them;

(*m*) notify the Commission, if so requested by the latter, of the following information regarding the application of regulations 18, 19 and 21:

(i) the names of the undertakings or joint ventures concerned;

(ii) the nature and value of the concessions involved;

(iii) proof, deemed necessary by the Commission, that the relationship between the undertaking or joint venture to which the concessions are awarded and the contracting entity complies with the requirements of regulations 17 to 21.

(2) In forwarding the request for the prior approval of the Director as established under sub-regulation (1)(*b*), the contracting authority or the contracting entity shall include the following:

(*a*) a copy of the proposed concession documents;

(*b*) where the process is split in numerous stages, a copy of the concession documents that will be used during the process; and

(*c*) a list of the persons that will be involved in the process.

(3) Where a contacting authority or contracting entity is not listed under any schedule it shall have the same obligations of an authority listed under Schedule 1.

Affiliated undertakings

Affiliated undertaking.

17. For the purposes of regulations 18 to 20 "affiliated undertaking" means any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the Directive 2013/34/EU.

Affiliated undertakings which are not subject to Directive 2013/34/EU.

18. (1) In the case of entities which are not subject to Directive 2013/34/EU including any future amendment to the same, "affiliated undertaking" shall mean any undertaking that:

(*a*) may be, directly or indirectly, subject to a dominant influence by the contracting entity;

(*b*) may exercise a dominant influence over the contracting entity; or

(*c*) 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 sub-regulation (1), "dominant influence" shall have the same meaning as in regulation 2(3).

Non-applicability to concessions awarded to affiliated undertakings and joint ventures.

19. Notwithstanding the provisions of regulation 22 and provided that the conditions in regulation 20 are met, these regulations shall not apply to concessions 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 referred to in Schedule 4, to an undertaking which is affiliated with one of those contracting entities.

Limitation on the non-applicability to affiliated undertakings and joint ventures.

20. (1) The provisions of regulation 19 shall apply to:

(*a*) service concessions provided that at least eighty per cent of the average total turnover of the affiliated undertaking over the preceding three years, taking into account all services provided by that undertaking, derives from the provision of services to the contracting entity or other undertakings with which it is affiliated;

(*b*) works concessions provided that at least eighty per cent of the average total turnover of the affiliated undertaking over the preceding three years taking into account all works provided by that undertaking, derives from the provision of works to the contracting entity or other undertakings with which it is affiliated.

(2) Where, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it shall be sufficient for that undertaking to show that the turnover referred to in sub-regulation (1)(*a*) or (*b*) is credible, in particular by means of business projections.

(3) Where more than one undertaking affiliated with the contracting entity with which they form an economic group provides the same or similar services or works, the percentages referred to in sub-regulation (1) shall be calculated taking into account the total turnover deriving respectively from the provision of services or works by those affiliated undertakings.

Joint ventures

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

21. Notwithstanding the provisions of regulation 22, and provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period, these regulations shall not apply to concessions awarded by any of the following:

(*a*) a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities referred to in Schedule 4, to one of these contracting entities; or

(*b*) a contracting entity to such a joint venture of which it forms part.

Concessions between Entities within the Public Sector

Concessions between entities within the public sector.

22. (1) A concession awarded by a contracting authority or a contracting entity as referred to in regulation 2(2)(*a*) to a legal person governed by private or public 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 eighty per cent 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 contracting entity as referred to in regulation 2(2)(*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 sub-regulation(1)(*a*), where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person. That control may also be exercised by another legal person, which is itself controlled in the same way by the contracting authority or contracting entity.

(3) Sub-regulations (1) and (2) also apply where a controlled legal person which is a contracting authority or contracting entity as referred to regulation 2(2)(*a*) awards a concession to its controlling contracting authority or contracting entity, or to 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 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.

Circumstances where a contracting authority or contracting entity can award a tender to a body governed by public law over which it does not exercise control.

23. (1) A contracting authority or a contracting entity as referred to in regulation 2(2)(*a*), which does not exercise control over a legal person governed by private or public law within the meaning of regulation 22, may nevertheless award a concession to that legal person without applying these regulations where all of the following conditions are fulfilled:

(*a*) the contracting authority or contracting entity as referred to in regulation 2(2)(*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 eighty per cent 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.

(2) For the purposes of sub-regulation (1)(*a*), contracting authorities or contracting entities as referred to in regulation 2(2)(*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. Individual representatives may represent several or all of the 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.

Contracts concluded exclusively between two or more contracting authorities or contracting entities.

24. A contract concluded exclusively between two or more contracting authorities or contracting entities as referred to in regulation 2(2)(*a*) shall fall outside the scope of these regulations where all of the following conditions are fulfilled:

(*a*) the contract establishes or implements a cooperation 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 cooperation is governed solely by considerations relating to the public interest; and

(*c*) the participating contracting authorities or contracting entities perform in the open market less than twenty per cent of the activities concerned by the cooperation.

Determination of the percentage of activities.

25. (1) For the determination of the percentage of activities referred to in regulations 22(1)(*b*), 23(1)(*b*) and 24(*c*), the average total turnover or an appropriate alternative activity based measure such as costs incurred by the relevant legal person, contracting authority or contracting entity as referred to in regulation 2(2)(*a*) with respect to services, supplies and works for the three years preceding the concession award shall be taken into consideration.

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

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

Mixed contracts

Mixed contracts.

26. Concessions which have as their subject-matter both works and services shall be awarded in accordance with the provisions applicable to the type of concession that characterises the main subject-matter of the contract in question.

Mixed concessions consisting partly of social and other specific services and partly of other services.

27. In the case of mixed concessions consisting partly of social and other specific services listed in Schedule 6 and partly of other services, the main subject-matter shall be determined according to which of the estimated values of the respective services is the higher.

Mixed contracts covered by Article 346 of the TFEU, by S.L. 601.07 or these regulations. S.L. 601.07

28. Where part of a given contract is covered by Article 346 of the TFEU or by the Public Procurement of Contracting Authorities or by the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations, regulation 33 of these regulations shall apply.

Contracts intended to cover several activities. S.L. 601.05

29. In the case of contracts intended to cover several activities, one of them being subject either to Schedule 4 of these regulations or to the Public Procurement of Entities operating in Water, Energy, Transport and Postal Services Sectors Regulations, the applicable provisions shall be established in accordance with regulation 34 of these regulations and regulation 6 of the Public Procurement of Entities operating in Water, Energy, Transport and Postal Services Sectors Regulations, respectively.

Applicable regulations on contracts which include parts that are objectively separable and others which include parts that are not objectively separable.

30. Where the different parts of a given contract are objectively separable, the provisions of regulation 31 shall apply. Where the different parts of a given contract are objectively not separable, the provisions of regulation 32 shall apply.

Contracts which have as their subject-matter elements covered by these regulations as well as other elements.

31. (1) In the case of contracts which have as their subject-matter elements covered by these regulations as well as other elements, contracting authorities and contracting entities may choose to award separate contracts for the separate parts. Where contracting authorities or contracting entities choose 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.

(2) Where contracting authorities or contracting entities choose to award a single contract, these regulations shall, unless otherwise provided in sub-regulation (3) or in regulation 33, apply to the ensuing mixed contract, irrespective of the value of the parts that would otherwise fall under a different legal regime and irrespective

of which legal regime those parts would otherwise have been subject to.

(3) In the case of mixed contracts containing elements of concessions as well as elements of public contracts covered by the Public Procurement Regulations, or contracts covered by Public Procurement of Entities operating in Water, Energy, Transport and Postal Services Sectors Regulations, the mixed contract shall be awarded in accordance with the Public Procurement Regulations, or the Public Procurement of Entities operating in Water, Energy, Transport and Postal Services Sectors Regulations, respectively.

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Regulations on contracts which include different parts that are not objectively separable.

32. (1) Where the different parts of a given contract are objectively not separable, the applicable legal regime shall be determined on the basis of the main subject-matter of that contract.

(2) In the event that the contracts identified in sub-regulation (1) involve both elements of a services concession 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.

Mixed procurement contracts involving defence or security aspects.
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33. (1) In the case of mixed contracts which have as their subject-matter elements of a concession covered by these regulations and procurement or other elements covered by Article 346 of the TFEU or the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations, this regulation shall apply.

(2) In the case of contracts intended to cover several activities, one of them being subject either to Schedule 4 of these regulations or to the Regulations on the Public Procurement of Entities operating in Water, Energy, Transport and Postal Services Sectors, and another being covered by Article 346 of the TFEU or the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations, the applicable provisions shall be established in accordance with, regulation 35 of these regulations and regulation 20 of the Public Procurement of Entities operating in Water, Energy, Transport and Postal Services Sectors Regulations, respectively.

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

(4) Where contracting authorities or contracting entities choose to award separate contracts for separate parts, the decision of the legal regime applicable to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

(5) Where contracting authorities or contracting entities choose 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 the TFEU, or different parts are covered by Article 346 of the TFEU and the Public Procurement

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of Contracting Authorities or Entities in the fields of Defence and Security Regulations respectively, the contract may be awarded without applying these regulations, provided that the award of a single contract is justified for objective reasons;

(*b*) where part of a given contract is covered by Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations, the contract may be awarded in accordance with these regulations or in accordance with Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations, provided that the award of a single contract is justified for objective reasons: S.L. 601.07

Provided that the decision to award a single contract shall not, however, be taken for the purpose of excluding contracts from the application of either these regulations or the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations. S.L. 601.07

(6) 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 the TFEU applies. Otherwise the contracting authority or contracting entity may choose to award a contract in accordance with these regulations or in accordance with the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations. S.L. 601.07

Contracts covering both activities referred to in Schedule 2 and other activities.

34. (1) By way of derogation from regulations 20 to 26, in the case of contracts intended to cover several activities, contracting entities may choose to award separate contracts for the purposes of each separate activity or to award a single contract. Where contracting entities choose to award a separate contract, the decision of which rules apply to any one of such separate contracts shall be taken on the basis of the characteristics of the separate activity concerned.

(2) Notwithstanding the provisions of regulations 26 to 32, where contracting entities choose to award a single contract, sub-regulations (4) and (5) shall apply. However, where one of the activities concerned is covered by Article 346 of the TFEU or the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations, regulation 35 of these regulations shall apply. S.L. 601.07

(3) The choice between awarding a single contract or awarding a number of separate contracts shall not be made with the objective of excluding the contract or contracts from the scope of these regulations or, where applicable, from the scope of the Public Procurement Regulations and, or the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations. S.L. 601.03 S.L. 601.05

(4) A contract which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is

principally intended.

(5) In the case of contracts for which it is objectively impossible to determine for which activity the contract is principally intended, the applicable rules shall be determined in accordance with the following:

(*a*) the concession shall be awarded in accordance with the provisions of the regulations applicable to concessions awarded by contracting authorities if one of the activities for which the contract is intended is subject to the provisions of the regulations applicable to concessions awarded by contracting authorities and the other is subject to the provisions of the regulations applicable to concessions awarded by contracting entities;

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(*b*) the contract shall be awarded in accordance with Public Procurement Regulations, if one of the activities for which the contract is intended is subject to these regulations and the other to Public Procurement Regulations;

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(*c*) 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 either this regulation, the Public Procurement Regulations, or the Public Procurement of Entities operating in Water, Energy, Transport and Postal Services Sectors Regulations.

Concessions covering both activities referred to in Schedule 2 and activities involving defence or security aspects.

35. (1) In the case of contracts intended to cover several activities, contracting entities may choose to award separate contracts for the purposes of each separate activity or to award a single contract. Where contracting entities choose 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 activity concerned.

(2) Notwithstanding the provisions of regulation 33, where contracting entities choose to award a single contract, sub-regulations (4), (5) and (6) shall apply.

(3) The choice between awarding a single contract or awarding a number of separate contracts shall not, however, be made with the objective of excluding the contract or contracts from the scope of application either of this regulation or the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations.

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(4) In the case of contracts intended to cover an activity which is subject to these regulations and another which is -

(*a*) covered by Article 346 of the TFEU; or

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(*b*) subject to the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations,

the contracting entity may:

(i) award a contract without applying these regulations in the cases set out under paragraph (*a*); or

(ii) award a contract either in accordance with these regulations or in accordance with the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations, in the cases set out under paragraph (*b*): S.L. 601.07

Provided that this sub-paragraph is without prejudice to the thresholds and exclusions provided for by Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations. S.L. 601.07

(5) Contracts referred to in sub-regulation (4)(*b*), which also include procurement or other elements which are covered by Article 346 of the TFEU, may be awarded without applying these regulations.

(6) However, it shall be a condition for the application of sub-regulations (4) and (5) that the award of a single contract is justified on objective reasons and the decision to award a single contract is not taken for the purpose of excluding contracts from the application of these regulations.

Special Contracts Committee and Evaluation Committee

36. The Director can appoint for a particular concession a Special Contracts Committee on such terms and conditions as may be specified in their letter of appointment; Special Contracts Committees.

37. (1) The Special Contracts Committee may be composed of a chairman, together with not less than four and not more than ten other members who appear to have the relevant qualifications or experience. Composition of the Special Contracts Committee.

(2) Members of the General Contracts Committee can be appointed to serve as members of the Special Contracts Committee.

(3) The members of the Special Contracts Committee shall be appointed for the duration of the adjudication process of the particular call for tenders, until the tender is awarded or else until the award of the public contract is withdrawn.

38. Any member of the Special Contracts Committee may during his tenure of office be removed by the Director where he is satisfied that there has been a clear case of misbehaviour by the member or inability of a member to perform his functions or where such circumstances exist that would disqualify such a member from remaining a member: Removal.

Provided that, if the chairman of the Special Contracts Committee is the Director, the latter may be removed by the Minister.

39. A person shall be disqualified from being appointed to and Disqualification

from remaining a member of a Committee if he:

(*a*) is a member of the House of Representatives, or of the European Parliament or of a Local Council;

(*b*) has such a financial or other interest as is likely to prejudice the discharge of his functions as a member of the Contracts Committees;

(*c*) is legally incapacitated or interdicted;

(*d*) has been adjudged bankrupt or has made a composition or arrangement with his creditors; or

(*e*) has been convicted of a crime affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud.

Resignation.

40. A member of either of these committees may resign his office by letter addressed to the Director.

Declaration that a member has a conflict of interest.

41. A member of the Special Contracts Committee who has any direct or indirect interest in any contract dealt with by such committee shall disclose the nature of his interest at the first meeting of that committee after the relevant facts have come to his knowledge; such disclosure shall be recorded in the minutes of that meeting of the committee and the member having an interest as aforesaid shall withdraw from any meetings at which such contract is discussed.

Secretaries.

42. The Director may also appoint persons from among the staff at the Department of Contracts to act as secretaries of these committees. The secretaries shall not be members of these committees and may not vote.

Meetings.

43. The meetings of the Special Contracts Committees shall be called by the chairman who shall preside over such meetings. The majority of the members of the Special Contracts Committee shall constitute a quorum at a meeting thereof.

Modus operandi.

44. Apart from what is stated in these regulations, the Special Contracts Committees established in terms of these regulations shall regulate their own proceedings.

Decisions.

45. Decisions of the Special Contracts Committee shall preferably be taken on the basis of unanimity. However, majority decisions shall be final and binding with regard to the award of the contract. The chairman shall in the event of an equality of votes, have a casting vote.

Role.

46. The Special Contracts Committees shall:

(*a*) advise on all matters relating to services and works concessions either on their own initiative or on specific issues relating to its functions which may from time to time be referred to it for its advice;

(*b*) open tenders in a public session;

(*c*) evaluate reports and recommendations submitted by

evaluation committees and make definite recommendations to the contracting authority or the contracting entity for the award of services concessions ensuring that the best value for money is obtained. In this regard, due consideration shall be given to:

(i) the final cost including financing costs to the contracting authority or the contracting entity; and

(ii) the impact of each offer on the recurrent expenditure of a contracting authority or the contracting entity;

(*d*) report any irregularities that may be brought to its notice or that may be detected in the tendering process and make recommendations thereon to the Minister charged with responsibility for the contracting authority or the contracting entity concerned.

Publication of tenders.

47. The Special Contracts Committee shall, when applicable, publish the list of tenders received, together with the respective prices, which list shall be given publicity by the Director immediately after their opening and scheduling.

Evaluation Committee.

48. (1) There shall be an Evaluation Committee composed at least of five members two of which shall be the chairman and the secretary. In any case the number of members of the Evaluation Committee shall be an odd number.

(2) The members of the Evaluation Committee shall be approved by the Director following a recommendation by the head of the contracting authority or the contracting entity.

(3) Regulations 38 to 41 shall apply *mutatis mutandis* to the members of the Evaluation Committee.

Voting.

49. The chairman and the secretary shall not have any voting powers.

Specialised support.

50. (1) Where the chairman believes that the Evaluation Committee needs specialised support he shall forward a request to the head of the contracting authority or the contracting entity who made the recommendation in terms of regulation 48(2).

(2) The head of the contracting authority or the contracting entity shall afford the support in the shortest time possible.

Role of the Evaluation Committee.

51. (1) The role of the Evaluation Committee shall be that of evaluating and dealing with the submissions made by a candidate or tenderer as established in the concession documents and to make recommendations to the contracting authority or the contracting entity or the Special Contracts Committee as the case maybe.

(2) A copy of the recommendation shall be forwarded to the Director within a reasonable time before publication of the recommendation.

Boards and Tribunals

Public Contracts Review Board and Commercial Sanction Tribunal.

52. (1) The Public Contracts Review Board and the Commercial Sanctions Tribunal as established under the Public Contracts Regulations, 2016, shall be deemed competent authorities to deal with matters and disputes falling under these regulations.

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(2) Regulations 80 to 99 of the Public Procurement Regulations shall *mutatis mutandis* apply to these regulations.

Methods for calculating the estimated value of concessions

Calculating the estimated value of concessions.

53. The value of a concession 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 the contracting entity, in consideration for the works and services being the object of the concession, as well as for the supplies incidental to such works and services.

Time when estimate is valid.

54. (1) The estimate shall be valid at the moment at which the concession notice is sent or, in cases where such notice is not provided for, at the moment at which the contracting authority or the contracting entity commences the concession award procedure, for instance by contacting economic operators in relation to the concessions.

(2) The determination of whether a concession exceeds the threshold established under Schedule 3 is that if the value of the concession is twenty per cent higher than its estimated value, then the valid estimate shall be the value of the concession at the time of the award.

Use of an objective method in calculating estimated value.

55. (1) The estimated value of the concession shall be calculated using an objective method specified in the concession documents. When calculating the estimated value of the concession, contracting authorities and contracting entities 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;

(*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 financial advantage in any form whatsoever 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;

(*e*) revenue from sales of any assets which are part of the concession;

(*f*) the value of all the supplies and services that are made available to the concessionaire by the contracting authorities or contracting entities, provided that they are necessary for executing the works or providing the services;

(*g*) any prizes or payments to candidates or tenderers.

(2) The choice of the method used to calculate the estimated value of a concession shall not be made with the intention of excluding it from the scope of these regulations. A concession shall not be subdivided with the effect of preventing it from falling within the scope of these regulations, unless justified by objective reasons.

Value of concession when proposed work or service is split into lots.

56. (1) Where a proposed work or service may result in concessions being awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots.

(2) Where the concession is divided into lots these regulations shall apply to the awarding of each lot.

Thresholds.

57. The Minister shall, from time to time, by regulations determine the thresholds applicable under these regulations. Such thresholds shall be reflected in Schedule 3.

The Tenderer/Candidate

Economic operators established in another Member State.

58. (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 Member State in which the contract is awarded, 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 award procedures. They shall not be required by contracting authorities or contracting entities to have a specific legal form in order to submit a tender or a request to participate.

(4) Notwithstanding the provisions of sub-regulations (1), (2) and (3), contracting authorities or contracting entities may require groups of economic operators to assume a specific legal form once they have been awarded the contract, to the extent that such change is necessary for the satisfactory performance of the contract.

Regulations on how groups of economic operators shall meet the requirements.

59. (1) Where necessary, contracting authorities or contracting entities may clarify in the concession documents how groups of economic operators shall meet the requirements as to economic and financial standing or technical and professional ability referred to in regulations 77 and 78 provided that this is justified by objective reasons and is proportionate.

(2) Contracting authorities may establish standard terms for how groups of economic operators are to meet the requirements in sub-regulation (1). Any conditions for the performance of a concession 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.

Principle of equal treatment, non-discrimination and transparency.

60. (1) Contracting authorities and contracting entities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.

(2) The design of the concession 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) Contracting authorities and contracting entities shall aim at ensuring the transparency of the award procedure and of the performance of the contract, while complying with regulations 64 and 65.

Part II
The Process

Setting Up of Procedure

Choice of procedure.

61. (1) The contracting authority or contracting entity shall have the freedom to organise the procedure leading to the choice of concessionaire subject to compliance with these regulations.

(2) The design of the concession award procedure shall respect the principles laid down in regulation 60. 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.

Procedural guarantees.

62. (1) Concessions shall be awarded on the basis of the award criteria set out by the contracting authority or contracting entity in accordance with regulation 79 provided that all of the following conditions are fulfilled:

(*a*) the tender complies with the minimum requirements set, where applicable, by the contracting authority or contracting entity;

(*b*) the tenderer complies with the conditions for participation as referred to in regulation 77;

(*c*) the tenderer is not excluded from participating in the award procedure in accordance with Part VI of the Public Procurement Regulations; and

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(*d*) the tenderer is not black listed in terms of Part VI of the Public Procurement Regulations.

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(2) The minimum requirements referred to in sub-regulation (1)(*a*) shall contain conditions and characteristics (particularly technical, physical, functional and legal) that any tender should

meet or possess.

Confidentiality.

63. (1) Unless otherwise provided in these regulations or in any legislation concerning access to information, and without prejudice to the obligations relating to the advertising of awarded concession contracts and to the information to candidates and tenderers set out in regulations 80 and 96, the contracting authority or contracting entity shall not disclose information forwarded to it by economic operators which they have designated as confidential, including but not limited to, technical or trade secrets and the confidential aspects of tenders.

(2) Without prejudice to what is stated in these regulations the following information shall not be considered as confidential:

(*a*) the name of the bidders and the individual names of the members of a group of economic operators who submitted a particular tender;

(*b*) the name of the sub-contractors;

(*c*) documentation submitted by economic operators attesting that they comply with selection criteria; and

(*d*) technical information which is already public.

Disclosure of non-confidential information.

64. (1) The provisions of regulation 63 shall not prevent public disclosure of non-confidential parts of concluded contracts, including any subsequent changes.

(2) The contracting authority or a contracting entity may impose on economic operators requirements aimed at protecting the confidential nature of information which it makes available throughout the concession award procedure.

Information to the bidders about the selected procedure.

65. The contracting authority or contracting entity shall communicate the description of the envisaged organisation of the procedure and an indicative completion deadline to all participants. Any modification shall be communicated to all participants and, to the extent that they concern elements disclosed in the concession notice or in the Gazette, as the case maybe, they are to be advertised to all economic operators.

Recording of the stages.

66. The contracting authority or contracting entity shall provide for appropriate recording of the stages of the procedure using the means it judges appropriate, subject to compliance with regulations 63 and 64(1).

Negotiations.

67. The contracting authority or contracting entity may hold negotiations with candidates and tenderers. The subject-matter of the concession, the award criteria and the minimum requirements shall not be changed during the course of the negotiations.

Procedural guarantees for tenders with an estimated value which meets or exceeds the value in Schedule 3.

68. (1) For tenders with an estimated value which meets or exceeds the threshold established under Schedule 3, the contracting authority or contracting entity shall provide:

(*a*) in the concession notice, a description of the concession and of the conditions of participation;

(*b*) in the invitation to submit a tender or in other concession documents, a description of the award criteria and, where applicable, the minimum requirements to be met.

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

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

69. (1) When fixing the time limits for the receipt of applications or of tenders, contracting authorities or contracting entities shall take account in particular the complexity of the concession 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 award documents, the time limits for the receipt of applications for the concession 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 sub-regulations (3) and (4).

(3) The minimum time limit for the receipt of applications whether or not including tenders for the concession shall be thirty days from the date on which the concession notice was sent.

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

(5) The time limit for receipt of tenders may be reduced by five days where the contracting authority or contracting entity accepts that tenders may be submitted by electronic means in conformity with the provisions of regulation 75.

Technical and functional requirements.

70. (1) Technical and functional requirements shall define the characteristics required of the works or services that are the subject-matter of the concession. They shall be set out in the concession documents.

(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. The characteristics may for instance 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.

(3) Unless justified by the subject-matter of the 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. Such a reference shall be permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract is not possible. Such reference shall be accompanied by the words 'or equivalent'.

(4) 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 satisfied in an equivalent manner the technical and functional requirements.

Use of CPV Codes.

71. Any references to nomenclatures in the context of the award of concessions shall be made using the 'Common Procurement Vocabulary (CPV)' as adopted by Regulation (EC) No 2195/2002 of the European Parliament and of the Council.

Duration of the concession.

72. (1) The duration of concessions shall be limited.

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

Limit on the duration of a concession.

73. (1) For concessions lasting more than five 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.

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

Reserved concessions.

74. (1) Contracting authorities may reserve the right to participate in concession award procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons or may provide for such concessions to be performed in the context of sheltered employment programmes, provided that at least thirty per cent of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.

(2) In case of tenders with an estimated value which exceeds the threshold established under Schedule 3, the concession notice or, in the case of services concessions as defined in regulation 9(2), prior information notice shall make reference to this regulation.

Methods of communication.

75. (1) All concessions issued by the contracting authorities shall be published through government's e-procurement platform unless otherwise approved in writing by the Director and any communication should be carried out through the same platform;

(2) Upon the authorization of the Director, the contracting

authority or the contracting entity may choose one or more of the following means of communication for all communication and information exchange:

(*a*) post or fax;

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

(*c*) hand delivery certified by an acknowledgement of receipt.

(3) The means of communication chosen shall be generally available and non-discriminatory, and shall not restrict economic operators' access to the concession award procedure. The tools and devices to be used for communicating by electronic means, as well as their technical characteristics shall be interoperable with the information and communication technology products in general use.

(4) In all communication, exchange and storage of information, contracting authorities and contracting entities shall ensure that the integrity of data and the confidentiality of applications and tenders are preserved. They shall examine the content of applications and tenders only after the time limit set for submitting them has expired.

Electronic availability of concession documents.

76. (1) Contracting authorities and contracting entities shall offer by electronic means unrestricted and full direct access free of charge to the concession documents.

(2) For tenders with an estimated value which is less than the thresholds established under Schedule 3 the obligation set out under sub-regulation (1) shall commence from the date on which the concession document has been published.

(3) For tenders with an estimated value which meets or exceeds the thresholds established under Schedule 3 the obligation established under sub-regulation (1) shall commence from the publication of a concession notice or, where the concession notice does not include the invitation to submit tenders, from the date on which an invitation to submit tenders was sent. The text of the concession notice or of these invitations shall specify the internet address at which the concession documents are accessible.

(4) Where, in duly justified circumstances, due to exceptional security, or technical reasons or due to the particularly sensitive nature of commercial information requiring a very high level of protection, unrestricted and full direct access free of charge by electronic means to certain concession documents cannot be offered, contracting authorities or contracting entities shall indicate in the notice or the invitation to submit a tender that the concession documents concerned will be transmitted by other means than electronic means and the time limit for the receipt of tenders shall be prolonged.

(5) If requested in good time, the contracting authorities and contracting entities or competent departments shall supply to all applicants or tenderers taking part in the concession award procedure additional information relating to the concession documents not later than six days before the deadline fixed for the receipt of tenders.

Qualitative Assessment and Selection of Candidates, Economic Operators and Tenderers.

Qualitative assessment of candidates, economic operators and tenderers.

77. Contracting authorities and contracting entities shall verify the conditions for participation relating to the professional and technical ability and the financial and economic standing of the candidates or tenderers, on the basis of self-declarations, reference or references to be submitted as proof in accordance with the requirements specified in the concession notice that shall be non-discriminatory and proportionate to the subject-matter of the concession. The conditions for participation shall be related and proportionate to the need to ensure the ability of the concessionaire to perform the concession, taking into account the subject-matter of the concession and the purpose of ensuring genuine competition.

Reliance on the capacities of other entities.

78. (1) With a view to meeting the conditions for participation laid down in regulation 77 an economic operator may, where appropriate and for a particular concession, rely on the capacities of other entities, regardless of the legal nature of its links with them. Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting authority or the contracting entity that it will have at its disposal, throughout the period of the concession, the necessary resources, for example, by producing a commitment by those entities to that effect. With regard to financial standing, the contracting authority or the contracting entity may require that the economic operator and those entities are jointly liable for the execution of the contract.

(2) Under the same conditions, a group of economic operators as referred to in regulations 58 and 59 may rely on the capacities of participants in the group or of other entities.

Award of Contract

Award criteria.

79. (1) Concessions shall be awarded on the basis of objective criteria which comply with the principles set out in regulation 60 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 the contracting entity.

(2) The award criteria shall be linked to the subject-matter of the concession, and shall not confer an unrestricted freedom of choice on the contracting authority or the contracting entity. They may include, *inter alia*, environmental, social or innovation-related criteria.

(3) Those criteria shall be accompanied by requirements which allow the information provided by the tenderers to be effectively verified.

(4) The contracting authority or the contracting entity shall

verify whether tenders properly meet the award criteria.

(5) The contracting authority or the contracting entity shall list the criteria in descending order of importance.

(6) Notwithstanding the provisions of sub-regulation (1), where the contracting authority or contracting entity receive 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. In that case, the contracting authority or the contracting entity shall inform all tenderers about the modification of the order of importance and shall issue a new invitation to submit tenders, in respect of the minimal time limits referred to in regulation 69(4).

(7) Without prejudice to the provisions of sub-regulation (6), where the award criteria have been published at the moment of the publication of the concession notice, the contracting authority or entity shall publish a new concession notice, in respect of the minimum time limits referred to in regulation 69(3).

(8) The modification of the ranking order shall not result in discrimination.

Provision of information to candidates.

80. (1) The contracting authority or contracting entity shall as soon as possible inform each candidate and tenderer of decisions taken concerning the award of a concession, including the name of the successful tenderer, the grounds for any decision to reject his application or tender and the grounds for any decision not to award a contract for which there has been publication of a concession notice or to recommence the procedure.

(2) Further to what is stated under sub-regulation (1), on request from the party concerned, the contracting authority or contracting entity shall as quickly as possible, and in any case within fifteen days from receipt of a written request inform any tenderers that have made 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 sub-regulation (1), regarding the contract, where the release of such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between such operators.

Exclusion and Black Listing of Candidates, Economic Operators and Tenderers

Applicability of Part VI of the Public Procurement Regulations. S.L. 601.03

81. Part VI of the Public Procurement Regulations shall *mutatis mutandis* apply to these regulations.

Further grounds for exclusion.

82. (1) In the case of concessions in the fields of defence and security as referred to in Directive 2009/81/EC, an economic operator may also be excluded from participation in a concession award if on the basis of any means of evidence, including protected data sources, he has been found not to possess the reliability necessary to exclude risks to the security of the Republic of Malta.

(2) The period of exclusion in this scenario shall be three years from the date of the relevant event.

Part III

Rules on Performance of Concession Contracts

Rules relating to subcontractors

Obligations on subcontractors.

83. (1) Contracting authorities shall ensure that the obligations established under regulation 16(1)(i) are observed also by sub-contractors.

(2) The concessionaire is liable for all acts or omissions carried out by his subcontractors during the concession.

Disclosure of level of sub-contracting.

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

Provided that a contracting authority or the contracting entity may impose the obligation to deliver the required information directly on the concessionaire.

(2) The provisions of regulation 83 and of sub-regulation (1) shall not affect the liability of the main concessionaire.

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

(4) The contracting authority or the contracting entity shall require the concessionaire to notify it of any changes to the information supplied under sub-regulation (3) during the course of the concession as well as of the required information for any new subcontractors which it subsequently involves in such works or services.

(5) The proviso to sub-regulation (1), and sub-regulations (3) and (4) shall not apply to suppliers.

(6) Contracting authorities and contracting entities may extend the obligations provided for in sub-regulations (3) and (4) amongst others to the following:

(*a*) services concessions other than those concerning services to be provided at the facilities under the oversight of the contracting authority or the

contracting entity or to suppliers involved in works or services concessions;

(*b*) subcontractors of the concessionaire's subcontractors or further down the subcontracting chain.

Modifications of the Concession Contracts

Modification of concession contracts during their term.

85. (1) Concession contracts may be modified without a new concession award procedure 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. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the concession;

(*b*) for additional works or services by the original concessionaire that have become necessary and that were not included in the initial concession 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; and

(ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority or contracting entity:

Provided that in the case of concessions awarded by a contracting authority or the contracting entity, for the purposes of pursuing an activity other than those referred to in Schedule 4, any increase in value shall not exceed fifty per cent of the value of the original concession;

(*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 foresee;

(ii) the modification does not alter the overall nature of the concession;

(iii) in the case of concessions awarded by a contracting authority or the contracting entity, for the purposes of pursuing an activity other than those referred to in Schedule 4, any increase in value is not higher than fifty per cent of the value of the initial concession;

(*d*) where a new concessionaire replaces the one to which the contracting authority or the contracting entity had

initially awarded the concession as a consequence of either:

(i) an unequivocal review clause or option in conformity with the provisions of paragraph (*a*);

(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; or

(iii) in the event that the contracting authority or contracting entity itself assumes the main concessionaire's obligations towards its subcontractors;

(*e*) where the modifications, irrespective of their value, are not substantial within the meaning of sub-regulation (5).

(2) When contracting authorities or contracting entities modify a concession, which has an estimated value which meets or exceeds the thresholds established under in Schedule 3, in terms of the instances set out under sub-regulation (1)(*b*) and (*c*), it shall publish a notice to that effect in the Official Journal of the European Union. Such notice shall contain the information set out in Schedule 13 and shall be published in accordance with the provisions of regulation 97.

(3) Without any need to verify whether the conditions set out under sub-regulations (5)(*a*) to (*d*) are met, concessions may equally be modified without a new concession award procedure where the value of the modification is below both of the following values:

(*a*) the threshold set out under Schedule 3; and

(*b*) ten per cent of the value of the initial concession:

Provided that the modification may not alter the overall nature of the concession. Where several successive modifications are made, the value shall be assessed on the basis of the net cumulative value of the successive modifications.

(4) For the purpose of the calculation of the value referred to in sub-regulation (1)(*b*) and (*c*) and sub-regulation (3), the updated value shall be the reference value when the concession includes an indexation clause. If the concession does not include an indexation clause, the updated value shall be calculated taking into account the average inflation in Malta.

(5) A modification of a concession during its term shall be considered to be substantial within the meaning of sub-regulation (1)(*e*), where it renders the concession materially different in character from the one initially concluded. In any event, without prejudice to the provisions of sub-regulations (1), (2) and (3), a

modification shall be considered to be substantial where one or more of the following conditions is met:

(*a*) the modification introduces conditions which, had they been part of the initial concession award procedure, would have allowed for the admission of applicants other than those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the concession award procedure;

(*b*) the modification changes the economic balance of the concession in favour of the concessionaire in a manner which was not provided for in the initial concession;

(*c*) the modification extends the scope of the concession considerably;

(*d*) where a new concessionaire replaces the one to which the contracting authority or contracting entity had initially awarded the concession in other cases than those provided for under sub-regulation (1)(*d*).

(6) A new concession award procedure in accordance with these regulations shall be required for other modifications of the provisions of a concession during its term than those provided for under sub-regulations (1), (2) and (3).

Decision of the contracting authority or the contracting entity.

86. In granting or refusing a modification, the contracting authority or the contracting entity shall take account of whether any *force majeure*, or unforeseen events prevail and shall specify whether such a modification could have been avoided. The contracting authority or the contracting entity shall also establish under which regulation this modification is being approved and a detailed explanation and description of the modification in question.

Record of the modifications.

87. (1) The contracting authority or the contracting entity is to keep a full record of modifications requests, including the name of the concessionaire involved and details of the documents specified in regulation 88.

(2) The contracting authority or the contracting entity shall forward to the Director every six months a report on the modifications including all the information included under regulation 88 and sub-regulation (1) hereof:

Provided that the Director may require further information to that submitted by the contracting authority or the contracting entity.

Content of the approved modification.

88. The document of the approved modification shall contain the following information:

(*a*) a detailed description and explanation of the modification;

(*b*) the reasons and the legal basis which brought about the need for this modification;

(*c*) the effect on the total cost of the concession contract and any effect on the recurrent expenditure that will ensue;

(*d*) the timeframe expected for the execution of the modification; and

(*e*) the financial rate or any sum which should be paid in respect of that modification.

Consent of the concessionaire to execute the modification.

89. (1) Once a contracting authority or a contracting entity approves a modification, the concessionaire must lay down in writing whether he accepts to execute the same modification at the financial rates or sums and within the timeframe as specified by the contracting authority or the contracting entity.

(2) If the concessionaire carries out the modification without providing a written confirmation, it shall be deemed that he agreed to perform the modification at the conditions stipulated by the contracting authority or the contracting entity.

Unlawful modifications.

90. Any modification carried out against these regulations shall be deemed to be founded on unlawful consideration and the concessionaire shall have no right for compensation with respect to that modification unless he shows that he was unaware about such irregularity.

Action to recoup payments.

91. The Attorney General on behalf of the Government may institute civil proceedings in a court of law for the restoration of payments received by a concessionaire in bad faith in relation to modifications executed against these regulations. Such action shall not be subject to any prescriptive period.

Duty on contractors.

92. A concessionaire shall desist from executing a modification unless he is furnished with a written copy of the approval from the contracting authority or the contracting entity which specifies the regulation and paragraph under which the modification is being approved.

Disputes on modifications.

93. (1) Disputes on whether a particular task forms part of the concession contract or else constitutes a modification to the original concession between the contracting authority or the contracting entity and the concessionaire shall not delay or suspend the continuation of the concession contract, however, the concessionaire shall have the right to assert his claim before of any court or tribunal against the contracting authority or the contracting entity to receive additional payment for that task if it results that it does not form part of the original concession contract.

(2) Such action for additional compensation by the concessionaire shall be barred by prescription on the lapse of two years to be reckoned from the day when the concessionaire becomes aware or could have become aware of that task.

Termination of Concession Contracts

Termination of concession contracts.

94. (1) Contracting authorities can terminate a contract during its term, where:

(*a*) a modification of the concession has taken place, which would have required a new concession award procedure pursuant to regulation 85;

(b) the concessionaire has been, at the time of concession award, in one of the situations referred to in regulation 192 of the Public Procurement Regulations and should therefore have been excluded from the concession award procedure;

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(*c*) a contracting authority or contracting entity has awarded the concession without complying with its obligations under the Treaties, Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts or these regulations;

(*d*) the contractor fails to discharge any obligation which he has contracted.

(2) If the contracting authority or the contracting entity has no valid reason for the termination, it is to compensate the contractor for all his expenses and work and to pay him a sum to be fixed by the court, according to circumstances, but not exceeding the profits which the contractor could have made by the contract.

(3) If the contracting authority or the contracting entity has valid reason for the termination, it is to pay the contractor only such sum which shall not exceed the actual proven expenses and work of the contractor.

(4) Any payment made in advance to the contractor before the termination of the contract shall be applied to the sums due in terms of sub-regulations (2) or (3) and the contractor shall return any resulting excess to the contracting authority or the contracting entity.

(5) The contract shall be immediately terminated when the contracting authority or the contracting entity informs the contractor, by any means whatsoever, of his decision to terminate the contract, and this without the need of any authorization or confirmation by any court or Board.

Part IV

Rules common to Concessions which meet or exceed the threshold

Publications

Concession notices.

95. (1) Contracting authorities and contracting entities wishing to award a concession shall make known their intention by means of a concession notice.

(2) Concession notices shall contain the information referred to in Schedule 7 and, where appropriate, any other information deemed useful by the contracting authority or entity, in accordance with the format of standard forms.

(3) Contracting authorities and contracting entities wishing to award a concession for social and other specific services listed in Schedule 6 shall make known their intention of the planned concession award through the publication of a prior information notice. Those notices shall contain the information set out in Schedule 8.

(4) By way of derogation from the provisions of sub-regulation (1), contracting authorities or contracting entities shall not be required to publish a concession notice where the works or services can be supplied only by a particular economic operator for any of the following reasons:

(*a*) the aim of the concession is the creation or acquisition of a unique work of art or artistic performance;

(*b*) the absence of competition for technical reasons;

(*c*) the existence of an exclusive right;

(*d*) the protection of intellectual property rights and exclusive rights other than those defined in regulation 2.

(5) The exceptions set out in sub-regulation (4)(*b*), (*c*) and (*d*) only apply when 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 award.

(6) By way of derogation from the provisions of sub-regulation (1), the contracting authority or contracting entity shall not be required to publish a new concession notice where no applications, no tenders, no suitable tenders or no suitable applications have been submitted in response to a prior concession 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.

(7) For the purposes of sub-regulation (6), a tender shall be considered not to be suitable where it is irrelevant to the concession, being manifestly incapable, without substantial changes, of meeting the contracting authority or contracting entity's needs and requirements as specified in the concession documents.

(8) For the purposes of the sub-regulation (6), an application shall be considered not to be suitable:

(*a*) where the applicant concerned shall or may be excluded pursuant to regulations 193, 194(*a*) and (*b*) and 199 of the Public Procurement Regulations, or does not meet the selection criteria set out by the contracting authority or the contracting entity pursuant to the provisions of regulation 77; S.L. 601.03

(*b*) where applications include tenders which are not suitable within the meaning of the sub-regulation (7).

Concession award notices.

96. (1) Not later than forty-eight days after the award of a concession, the contracting authorities and contracting entities shall, in accordance with the procedures laid down in regulation 97,

send a concession award notice on the results of the concession award procedure. For social and other specific services listed in Schedule 6, such notices may however be grouped on a quarterly basis. In that case they shall send the grouped notices within forty-eight days of the end of each quarter.

(2) Concession award notices shall contain the information set out in Schedule 9 or in relation to concessions for social and other specific services listed in Schedule 6, the information set out in Schedule 10, and shall be published in accordance with the provisions of regulation 97.

Form and manner of publication of notices.

97. (1) Concession notices, concession award notices and the notice referred to in regulation 85(2) shall include the information set out in Schedules 7, 9 and 10 and in the format of standard forms, including standard forms for corrigenda.

(2) The notices referred to in sub-regulation (1) shall be drawn up, transmitted by electronic means to the Publications Office of the European Union and published in accordance with Schedule 11.

(3) The Publications Office of the European Union 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.

(4) 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 by the Publications Office of the European Union in the other official languages of the institutions of the Union.

(5) Concession notices, concession award notices and adverts on the Gazette shall not be published at national level before publication by the Publications Office of the European Union unless publication at Union level does not take place forty-eight hours after the Publications Office of the European Union confirms receipt by the contracting authority or the contracting entity of the notice as referred to in sub-regulations (2) and (3). Concession notices, concession award notices and adverts on the Gazette published at national level shall not contain information other than that contained in the notices dispatched to the Publications Office of the European Union but shall indicate the date of dispatch of the notice to the Publications Office of the European Union.

Part V
Remedies

Remedies before Closing Date of a Call for Competition

Remedies before closing date of a call for competition; *Amended by: L.N. 196 of 2020.*

98. Prospective candidates may, one day prior to the closing date of a call for competition, file a reasoned application before the Public Contracts Review Board:

(*a*) to set aside or ensure the setting aside of decisions

including clauses contained in the procurement document and clarification notes taken unlawfully at this stage or which are proven to be impossible to perform; or

(*b*) to determine issues relating to the submission of an offer through the government's e-procurement platform; or

(*c*) to remove discriminatory technical, economic or financial specifications which are present in the call for competition, in the concession documents, in clarifications notes or in any other document relating to the contract award procedure; or

(*d*) to correct errors or to remove ambiguities of a particular term or clause included in a call for competition, in the concession documents, in clarifications notes or in any other document relating to the concession award procedure; or

(*e*) to cancel the call for competition on the basis that the call for competition is in violation of any law or is likely to violate a particular law if it is continued.

Publication of the application.

99. (1) The application by the complainant shall be affixed on the notice board of the Public Contracts Review Board and shall also be published on the website of the same board.

(2) The Public Contracts Review Board shall notify the contracting authority or the contracting entity and the Director about this request.

(3) It shall be the responsibility of the prospective candidates to visit the website of the Public Contracts Review Board and be aware of the latest information published online.

Reply to the application.

100. The contracting authority or the contracting entity and any interested party may, within five days from the date when the application is uploaded on the website of the Public Contracts Review Board, file a written reply. Such replies shall also be affixed to the notice board of the Public Contracts Review Board and uploaded online.

Decision by the Public Contracts Review Board.

101. The Public Contracts Review Board shall decide the application with urgency after hearing the parties, provided that not more than one sitting may be fixed for such purpose. The final decision of the Public Contracts Review Board may be appealed by the aggrieved party before the Court of Appeal as provided in regulations 119, 120, 121, 122, 123 and 124.

Suspension of the process.

102. Pending the decision of the Public Contracts Review Board the process of the call shall be suspended.

New deadline for the submission of offers.

103. In its final decision the Public Contracts Review Board must always establish the new deadline for the submission of the offers.

Implementation.

104. The contracting authority or the contracting entity shall

abide to the decision of the Public Contracts Review Board in the shortest time possible and where the contracting authority fails to implement the decision of the Public Contracts Review Board the latter may report the matter to the minister responsible for that contracting authority.

No charge for this type of application.

105. Any application filed in terms of this title shall be without any charge.

Appeals from Decisions taken after the Closing Date for the Submission of a Tender

Appeals from decisions taken after the closing date for the submissions of a tender.

106. Any tenderer, or any person, having or having had an interest or who has been harmed or risks being harmed by an alleged infringement or by any decision taken including a proposed award in obtaining a contract, a rejection of a tender or a cancellation of a call for tender after the lapse of the publication period, may file an appeal by means of an objection before the Public Contracts Review Board, which shall contain in a very clear manner the reasons for their complaints.

Filing of the application.

107. The objection shall be filed within ten calendar days following the date on which the contracting authority or the contracting entity by fax or other electronic means sent its proposed award decision or the rejection of a tender or the cancellation of the call for tenders after the lapse of the publication period.

Communication to the tenderer or candidate.

108. The communication to each candidate of the proposed award or of the cancellation of the call shall be accompanied by a summary of the relevant reasons relating to the rejection of the tender or the reasons why the call for tenders is being cancelled after the lapse of the publication period, and by a precise statement of the exact standstill period.

Deposit.

109. The objection shall only be valid if accompanied by a deposit equivalent to 0.50 per cent of the estimated value set by the contracting authority or the contracting entity of the whole tender or if the tender is divided into lots according to the estimated value of the tender set by the contracting authority for each lot submitted by the tenderer, provided that in no case shall the deposit be less than four hundred euro (€400) or more than fifty thousand euro (€50,000) which may be refunded as the Public Contracts Review Board may decide in its decision.

Service on the Director and contracting authority or contracting entity.

110. The Secretary of the Public Contracts Review Board shall immediately notify the Director and the contracting authority or the contracting entity that an objection had been filed with his authority thereby immediately suspending the award procedure.

Suspension of the process.

111. The contracting authority or the contracting entity shall be precluded from concluding the concession contract during the period of ten calendar days allowed for the submission of appeals. The award process shall be completely suspended if an appeal is eventually submitted.

Procedure of the appeal.

112. The procedure to be followed in submitting and determining appeals as well as the conditions under which such appeals may be filed shall be the following:

(*a*) any decision by the Special Contracts Committee or by the contracting authority or the contracting entity, shall be made public by affixing it to the notice-board of the contracting authority or the contracting entity or by uploading it on government's e-procurement platform prior to the award of the contract;

(*b*) the appeal of the complainant shall also be affixed to the notice-board of the Public Contracts Review Board and shall be communicated by fax or by other electronic means to all participating tenderers;

(*c*) the contracting authority or the contracting entity and any interested party may, within ten calendar days from the day on which the appeal is affixed to the notice-board of the Department of Contracts or of the contracting authority or the contracting entity and uploaded where applicable on the Government's e-procurement platform, file a written reply to the appeal. These replies shall also be affixed to the notice-board of the Public Contracts Review Board and where applicable it shall also be uploaded on the Government's e-procurement platform;

(*d*) after the preparatory process is duly completed, the head of the contracting authority or the contracting entity shall within ten days forward to the Chairman of the Public Contracts Review Board all documentation pertaining to the call for tenders in question including files, tenders submitted, copies of deposit receipts and any motivated letter;

(*e*) the secretary of the board shall inform all the participants of the call for tenders, and the contracting authority or the contracting entity of the date or dates as the case maybe when the appeal will be heard;

(*f*) when the oral hearing is concluded, the Public Contracts Review Board, if it does not deliver the decision on the same day, shall reserve decision for the earliest possible date to be fixed for the purpose, but not later than six weeks from the day of the oral hearing:

Provided that for serious and justified reasons expressed in writing by means of an order notified to all the parties, the Public Contracts Review board may postpone the judgment for a later period;

(*g*) the secretary of the board shall keep a record of the grounds of each adjournment and of everything done in each sitting; and

(*h*) after evaluating all the evidence and after considering all submissions put forward by the parties, the Public Contracts Review Board shall decide whether to

accede or reject the appeal.

Ineffectiveness of a Concession Contract

Ineffectiveness of a contract.

113. (1) An interested party or a tenderer may file an application before the Public Contracts Review Board to declare that a concession contract with an estimated value which meets or exceeds the threshold established under Schedule 3 is ineffective.

(2) An interested party may only request the Public Contracts Review Board to declare a signed concession contract ineffective if the contracting authority or the contracting entity has awarded a contract without prior publication of a contract notice in the Official Journal of the European Union without this being permissible in accordance with Directive 2014/23/EC.

(3) Any tenderer may also request the Public Contracts Review Board to declare a contract ineffective in the following two instances:

(*a*) when, notwithstanding an appeal is lodged before the Public Contracts Review Board, a contracting authority or the contracting entity concludes the contract before a final decision is given by the Public Contracts Review Board; or

(*b*) when the contract is concluded by a contracting authority or the contracting entity before the expiry of the period for the filing of an appeal as provided for in regulation 106.

(4) The provisions of sub-regulation (2) shall not apply where:

(*a*) the contracting authority or the contracting entity considers that the award of a contract without prior publication of a contract notice in the Official Journal of the European Union is permissible in accordance with Directive 2014/23/EC;

(*b*) the contracting authority or the contracting entity has published in the Official Journal of the European Union a notice as described in Article 3a of Directive 89/665 expressing its intention to conclude the contract; and

(*c*) the contract has not been concluded before the expiry of a period of at least ten calendar days with effect from the day following the date of the publication of this notice.

Request for compensation.

114. Apart from the declaration for the ineffectiveness of a contract the applicant may request the Public Contracts Review Board to liquidate and order the contracting authority or the contracting entity to compensate him for actual damages suffered.

Service of the notice.

115. The application must be served to the contracting authority or the contracting entity and to all signatories of the concession contract, sought to be declared ineffective, who shall have twenty days to file a reply.

Decision of the Public Contracts Review Board.

116. (1) If the Public Contracts Review Board declares a contract to be ineffective, it shall impose penalties on the contracting authority or the contracting entity after assessing in its decision all relevant factors, including the seriousness of the infringement and the behaviour of the contracting authority or the contracting entity.

(2) The Public Contracts Review Board may not consider a contract ineffective, even though it has been awarded illegally on the grounds mentioned in regulation 113, if the Public Contracts Review Board finds, after having examined all relevant aspects, that the overriding reasons relating to a general interest require that the effects of the contract shall be maintained.

Penalties.

117. The penalties imposed by the Public Contracts Review Board shall consist of:

(*a*) the imposition of fines on the contracting authority or the contracting entity, as the case may be, in the amount of fifteen per cent of the tender value but not exceeding fifty thousand euro (€50,000); or

(*b*) the shortening of the duration of the contract:

Provided that the award of damages prescribed in regulation 114 shall not be considered as an appropriate alternative penalty for the purposes of this regulation.

Admissibility of applications.

118. Applications for the ineffectiveness of a contract shall be deemed admissible if they are made:

(*a*) before the expiry of at least thirty calendar days with effect from the day following the date on which:

(i) the contracting authority or the contracting entity published a contract award notice, provided that this notice includes justification of the decision to award the contract without prior publication of a contract notice in the Official Journal of the European Union; or

(ii) the contracting authority or the contracting entity informed the tenderers and candidates concerned of the conclusion of the contract; and

(*b*) in any other case before the expiry of a period of at least six months with effect from the day following the date of the conclusion of the contract.

Court of Appeal

Appeal to the court of appeal.

Cap. 12.

119. Any party who feels aggrieved by a decision taken by the Public Contracts Review Board may appeal to the Court of Appeal as constituted in accordance with article 41(1) of the Code of Organization and Civil Procedure by means of an application filed in the registry of that court within twenty calendar days from the decision on which that decision has been made public.

Parties to the appeal.

120. The appeal application shall be addressed against the contracting authority or the contracting entity, the recommended

tenderer, if any, and any other party involved in the proceedings before the Public Contracts Review Board, who may file a written reply within twenty days from the date of service:

Provided that if the appellant fails to try to serve the appeal application on all the parties above-mentioned within two weeks of the filing of the appeal, the Court, after hearing during the first sitting of the appeal the reasons why service was not effected, may declare by means of a decree delivered in open court that the appeal is deserted with expenses to be borne by the appellant.

Hearing.

121. (1) The Court of Appeal shall set down the cause for hearing at an early date, in no case later than two months from the date on which the appeal is brought before it, and shall cause notice of such date to be given to the parties to the suit who, on their part, shall assume the responsibility to visit the court registry and be aware of the latest information regarding the appointment for the hearing of the case.

(2) After appointing the application for hearing, and after listening to the oral submissions made by all parties, the Court shall decide the application on its merits, within the shortest time possible but not any later than four months from the day when the appeal had been filed and the parties have been duly notified. Pending the decision of the Court the process of the call for tenders shall be suspended.

Appeal by the contracting authority or the contracting entity.

122. A contracting authority or the contracting entity may only refer a matter to the Court of Appeal in relation to a decision taken by the Public Contracts Review Board relating to the ineffectiveness of a concession contract, penalties and the award of damages.

Frivolous and vexatious applications.

123. If, during the hearing of the appeal, the Court finds that the application is frivolous and vexatious, the Court may impose on the party so guilty a penalty, to be paid to the contracting authority or the contracting entity, of between one thousand euro (€1,000) and five thousand euro (€5,000).

Extension of time-limits.

124. The Court may, for serious and necessary reasons, by means of a decree, extend for a reasonable period the judicial time-limits referred to in this Part.

Re-trial.

125. No application for a re-trial from a decision of the Court of Appeal may be made if, after the final decision has been given, the concession contract has been signed between the contracting authority or the contracting entity and the recommended tenderer and no request for the suspension of the execution of the decision has been made.

Schedule 1
List of contracting authorities

Amended by:
XXVIII.2018.44;
XVII.2024.35;
L.N. 112 of 2024.

- Office of the Prime Minister/Permanent Secretary's Office/Department of Corporate Services
- Ministry for European Affairs and Implementation of the Electoral Manifesto/Permanent Secretary's Office/Department of Corporate Services
- Ministry for Foreign Affairs/Permanent Secretary's Office/Department of Corporate Services
- Ministry for Education and Employment/Permanent Secretary's Office/ Operations Department
- Ministry for Transport and Infrastructure/Permanent Secretary's Office/ Department of Corporate Services
- Ministry for Gozo/Permanent Secretary's Office/Department of Corporate Services
- Ministry for Social Dialogue, Consumer Affairs and Civil Liberties/ Permanent Secretary's Office/Department of Corporate Services
- Ministry for the Economy, Investment and Small Business/Permanent Secretary's Office/Department of Corporate Services
- Ministry for Finance/Permanent Secretary's Office/Department of Corporate Services
- Ministry for the Family and Social Solidarity/Permanent Secretary's Office/ Department of Corporate Services
- Ministry for Justice, Culture and Local Government/Permanent Secretary's Office/Department of Corporate Services
- Ministry for Tourism/Permanent Secretary's Office/Department of Corporate Services
- Ministry for Home Affairs and National Security/Permanent Secretary's Office/Department of Corporate Services
- Ministry for Sustainable Development, the Environment and Climate Change/Permanent Secretary's Office/Department of Corporate Services
- Ministry for Competitiveness and Digital, Maritime and Services Economy/ Permanent Secretary's Office/Department of Corporate Services
- Ministry for Health/Permanent Secretary's Office/Department of Corporate Services
- Malta Standards Authority
- Broadcasting Authority
- Centre for Development, Research and Training
- Internal Audit and Investigations Directorate
- EuroMedITI Ltd

- Armed Forces of Malta
- Industrial Projects and Services Ltd
- Public Service Commission
- Government Printing Press
- Electoral Office
- Mediterranean Academy for Diplomatic Studies
- International Institute on Ageing
- Planning and Priorities Co-ordination Division
- Funds and Programme Division
- Malta Information Technology Agency (MITA)
- Malta Communications Authority
- Grand Harbour Regeneration Corporation p.l.c.
- Malta Government Technology Investments Limited (MGTIL)
- Transport Malta
- Paying Agency
- Regulator for Energy and Water Services
- Building and Engineering
- Construction and Maintenance
- EU Affairs Department
- Cleansing and Maintenance Department
- Building Construction Industry Department
- Financial Management Department
- Project Design and Implementation Department
- Agriculture and Fisheries Regulation Department
- Strategy and Support Division
- Services Division
- Building Industry Consultative Council
- Manufacturing and Services
- Fisheries Control
- Food and Veterinary Services
- Oil Exploration
- WasteServ Malta Ltd.
- Rural Development and Aquaculture
- European Union Programmes Agency
- National Archives
- Department of Regulatory Compliance
- Directorate for EU and International Affairs

- Examinations
- Foundation for Tomorrow's Schools
- Foundation for Educational Services
- Fondazzjoni Patrimonju Malti
- Institute for Tourism Studies
- Junior College
- Jobsplus
- Malta College of Arts, Science and Technology
- National Commission for Higher Education
- Maltese National Commission for UNESCO
- SportMalta
- Malta Libraries
- Public Broadcasting Services Ltd.
- University of Malta
- Lotteries and Gaming Authority
- Malta Statistics Authority
- Malta Financial Services Authority
- Malta Stock Exchange
- Customs Department
- Contracts Department
- Lotteries Department
- Inland Revenue Department
- Treasury Department
- Economic Policy Division
- VAT Division
- Gozo Channel (Operations) Ltd.
- Financial Intelligence Analysis Unit
- Enemalta p.l.c.
- Water Services Corporation
- Malta Air Traffic Services Ltd. (MATS)
- Malta Enterprise
- INDIS Malta Ltd.
- MGI/MIMCOL
- Tax Compliance Unit
- Collective Bargaining Unit
- Privatisation Unit
- Capital Transfer Duty

- Local Government Department
- Police Department
- Local Councils
- Agency for the Welfare of Asylum Seekers (AWAS)
- Civil Protection
- Civil Registration
- Public Registry
- Land Registry
- Correctional Services
- Elderly and Community Care
- Occupational Health and Safety Authority
- National Blood Transfusion Centre
- Foundation for Medical Services
- Health
- Mater Dei Hospital
- Mount Carmel Hospital
- Zammit Clapp Hospital
- Malta Tourism Authority
- Environment and Resources Authority
- Planning Authority
- Mediterranean Conference Centre
- St James Cavalier Creativity Centre
- Hertitage Malta
- National Council for Culture and the Arts
- National Orchestra Ltd
- Superintendence of Cultural Heritage
- Manoel Theatre
- Aċċess
- Appoġġ
- Attorney General
- Identity Malta
- National Employment Authority
- Housing Authority
- Malta Arbitration Centre
- Foundation for Social Welfare Services
- Benefit Fraud and Investigations
- Judicial

- Welfare Committee
- Data Protection Commission
- Commission on Domestic Violence
- Commission for the Promotion of Equality for Men and Women
- National Commission on the abuse of drugs, alcohol and other dependencies
- National Commission for Persons with Disability
- National Commission for the Family
- Malta Council for Economic and Social Development
- Industrial and Employment Relations
- Sapport
- Sedqa
- Social Security
- Social Welfare Standards
- Office of the Commissioner for Voluntary Organisations
- Office of the Commissioner for Children
- Medicines Authority
- Cooperatives Board
- Consumer and Competitive Division
- Commerce Division
- Malta National Laboratory
- Notary to Government
- Government Property Division
- Joint Office
- Projects Malta Ltd
- Central Procurement Supplies Unit
- Employment Commission
- Aġenzija Żgħażagħ
- National Literacy Agency
- Institute for Education
- Infrastructure Malta

Schedule 2
List of the Activities referred to in the definition
of Execution of Works
(Regulation 2)

		NACE Rev[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		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,	45110000
				- 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.	

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.12	Test drilling and boring	This class includes: - test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes. This class excludes: - 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

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.21	General construction of buildings and civil engineering works	This class includes: - 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 excludes: - 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,	45210000 Except: - 45213316 45220000 45231000 45232000
				- 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.	

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.22	Erection of roof covering and frames	This class includes - erection of roofs, - roof covering, - waterproofing.	45261000
		45.23	Construction of highways, roads, airfields and sport facilities	This class includes: - 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 parks.	45212212 and DA03 45230000 except: - 45231000 - 45232000 - 45234115
				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

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		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.	45250000 45262000
				This class excludes: - renting of scaffolds without erection and dismantling, see 71.32.	
	45.3		Building installation		45300000

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.31	Installation of electrical wiring and fittings	This class includes: installation in buildings or other construction projects of: - 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	This class includes: - installation in buildings or other construction projects of thermal, sound or vibration insulation. This class excludes: - waterproofing, see 45.22.	45320000
		45.33	Plumbing	This class includes: - installation in buildings or other construction projects of:	45330000
				- plumbing and sanitary equipment, - gas fittings, - heating, ventilation, refrigeration or air-conditioning equipment and ducts, - sprinkler systems. This class excludes: - installation of electrical heating systems, see 45.31.	

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.34	Other building installation	This class includes: - installation of illumination and signalling systems for roads, railways, airports and harbours, - installation in buildings or other construction projects of fittings and fixtures n.e.c.	45234115 45316000 45340000
	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,	45420000
				- 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.	

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		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 or plastic, - terrazzo, marble, granite or slate floor or wall coverings, - wallpaper.	45430000
		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

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.50		This class excludes: - renting of construction or demolition machinery and equipment without operators, see 71.32.	45500000

1 Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community

Amended by:
L.N. 26 of 2018;
L.N. 196 of 2020;
L.N. 26 of 2022;
L.N. 360 of 2024.

Schedule 3
Values of thresholds
(Regulation 57)

The values of the thresholds applicable to Public Contracts is as follows net of Value Added Tax:

€5,538,000 for both works and service concession

Schedule 4
Activities exercised by Contracting Entities

The provisions of these regulations governing concessions awarded by contracting entities shall apply to the following activities:

1. As far as gas and heat are concerned:

(*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.

The supply by a contracting entity, as defined under regulations 2(2)(*b*) and (*c*), of gas or heat to fixed networks which provide a service to the public shall not be considered to be a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:

(i) 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 this sub-paragraph or in paragraphs 2 and 3 of this Schedule;

(ii) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than twenty per cent of that contracting entity's turnover on the basis of the average for the preceding three years, including the current year.

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 4 of this Schedule.

2. As far as electricity is concerned:

(*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.

For the purposes of these regulations, supply of electricity includes generation/production, wholesale and retail sale of electricity.

The supply by a contracting entity referred to in paragraphs (*b*) and (*c*) of the definition of the term "contracting entity" under regulation 2(2) of electricity to networks which provide a service to the public shall not be considered to be a relevant activity within the meaning of paragraph 1 of this schedule where all 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 this sub-paragraph or in paragraphs 1 and 3 of this Schedule;

(*b*) supply to the public network depends only on that contracting entity's own consumption and has not exceeded thirty per cent of that contracting entity's total production of energy, on the basis of the average for the preceding three years, including the current year.

3. 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.

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, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

4. 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.

5. 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 within the meaning of sub-paragraph (ii) and provided that the conditions set out in regulation 27 of the Public Procurement of Entities operating in Water, Energy, Transport and Postal Services Sectors Regulations are not satisfied in respect of the services falling within sub-paragraph (ii).

For the purpose of these regulations and without prejudice to relevant legislation transposing Directive 97/67/EC:

(i) 'postal item' means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value,

irrespective of weight;

(ii) 'postal services' means services consisting of the clearance, sorting, routing and delivery of postal items. This shall include both services falling within as well as services falling outside the scope of the universal service set up in conformity with the legislation transposing Directive 97/67/EC;

(iii) 'other services than postal services' means services provided in the following areas:

- mail service management services (services both preceding and subsequent to despatch, including 'mailroom management services'),
- services concerning postal items not included in sub-paragraph (*a*), such as direct mail bearing no address.

6. 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 5

List of legal acts of the union referred to in sub-paragraph (ii) of the proviso to the definition of the term contracting entity

[Regulation 2(2)]

Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute 'special or exclusive rights' within the meaning of these regulations. The following lists procedures, ensuring adequate prior transparency, for granting authorisations on the basis of other legislative acts of the Union which do not constitute 'special or exclusive rights' within the meaning of these regulations:

(*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 its Article 5(3), provided that its length is in conformity with Article 4(3) or (4) of that Regulation.

Schedule 6
Services referred
[Regulation 8(2)]

Description	CPV Code
79611000-0; 75200000-8; 75231200-6; 75231240-8; 79622000-0 [Supply services of domestic help personnel]; 79624000-4 [Supply services of nursing personnel] and 79625000-1 [Supply services of medical personnel] from 85000000-9 to 85323000-9; 85143000-3, 98133100-5, 98133000-4 and 98200000-5 and 98500000-8 [Private households with employed persons] and 98513000-2 to 98514000-9 [Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services]	Health, social and related services
85321000-5 and 85322000-2, 75000000-6 [Administration, defence and social security services], 75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 Education and training services to 80660000-8; from 92000000-1 to 92342200-2; from 92360000-2 to 92700000-8; 79950000-8 [Exhibition, fair and congress organisation services], 79951000-5 [Seminar organisation services], 79952000-2 [Event services], 79952100-3 [Cultural event organisation services], 79953000-9 [Festival organisation services], 79954000-6 [Party organisation services], 79955000-3[Fashion shows organisation services], 79956000-0 [Fair and exhibition organisation services]	Administrative, social, educational, healthcare and cultural services
75300000-9	Compulsory social security services provided that these services are not covered by these regulations where they are organised as non-economic services of general interest. A contracting authority is free to organise the provision of compulsory social services or of other services as services of general interest or as non- economic services of general interest.
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services

Description	CPV Code
98000000-3; 98120000-0; 98132000-7; 98133110-8 and 98130000-3	Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services.
98131000-0	Religious services
55100000-1 to 55410000-7; 55521000-8 to 55521200-0 [55521000-8 Catering services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service]. 55520000-1 Catering services, 55522000-5 Catering services for transport enterprises, 55523000-2 Catering services for other enterprises or other institutions, 55524000-9 School catering services 55510000-8 Canteen services, 55511000-5 Canteen and other restricted-clientele cafeteria services, 55512000-2 Canteen management services, 55523100-3 School-meal services	Hotel and restaurant services
79100000-5 to 79140000-7; 75231100-5	Legal services, to the extent not excluded pursuant to regulation 5(1)(m)(i) to (v)
75100000-7 to 75120000-3; 75123000-4; 75125000-8 to 75131000-3	Other administrative services and government services
75200000-8 to 75231000-4	Provision of services to the community
75231210-9 to 75231230-5; 75240000-0 to 75252000-7; 794300000-7; 98113100-9	Prison related services, public security and rescue services, to the extent not excluded pursuant to regulation 5(1)(p)
79700000-1 to 79721000-4 [Investigation and security services, Security services, Alarm-monitoring services, Guard services, Surveillance services, Tracing system services, Absconder-tracing services, Patrol services, Identification badge release services, Investigation services and Detective agency services] 79722000-1[Graphology services], 79723000-8 [Waste analysis services]	Investigation and security services
64000000-6 [Postal and telecommunications services], 64100000-7 [Post and courier services], 64110000-0 [Postal services], 64111000-7 [Postal services related to newspapers and periodicals], 64112000-4 [Postal services related to letters], 64113000-1 [Postal services related to parcels], 64114000-8 [Post office counter services], 64115000-5 [Mailbox rental], 64116000-2 [Post-restante services], 64122000-7 [Internal office mail and messenger services]	Postal Services
50116510-9 [Tyre-remoulding services], 71550000-8 [Blacksmith services]	Miscellaneous services
98900000-2 [Services provided by extra-territorial organisations and bodies] and 98910000-5 [Services specific to international organisations and bodies]	International services

Schedule 7
Information to be included in Concession Notices
(Regulation 95)

1. Name, identification number (where provided for in national legislation), address, including NUTS code, 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 76(4) 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. NUTS code for the main location of works in case of works concessions or NUTS code 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 8

Information to be included in Prior Information Notices concerning Concessions for Social and Other Specific Services

[Regulation 95(3)]

1. Name, identification number (where provided for in national legislation), address including NUTS code, 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. NUTS code 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 9
Information to be included in Concession Award Notices
(Regulation 96)

1. Name, identification number (where provided for in national legislation), address including NUTS code 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. NUTS code for the main location of works in case of works concessions or NUTS code 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 79 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 including NUTS code 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 55(1).

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 of the European Union 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 regulations 53 to 56.

17. Any other relevant information.

Schedule 10

Information to be included in Concession Award Notices concerning Concessions for Social and Other Specific Services (Regulation 96)

1. Name, identification number (where provided for in national legislation), address including NUTS code, where applicable, 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 including NUTS code, telephone, fax number, e-mail address and internet address of the successful economic operator(s).

8. Any other relevant information.

Schedule 11

Features concerning Publication

Publication of notices

1. The notices referred to in regulations 95 and 96 shall be sent by the contracting authorities or contracting entities to the Publications Office of the European Union and published in accordance with the following rules:

- Notices referred to in regulations 95 and 96 shall be published by the Publications Office of the European Union
- The Publications Office of the European Union shall give the contracting authority or entity the confirmation referred to in regulation

97(2) and (3).

2. Format and procedures for sending notices electronically.

The format and procedure for sending notices electronically as established by the Commission are made accessible at the internet address 'http://simap.europa.eu.'EN.

Schedule 12
List of International Social and Environmental Conventions
(Regulation 16)

ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;

ILO Convention 98 on the Right to Organise and Collective Bargaining;

ILO Convention 29 on Forced Labour;

ILO Convention 105 on the Abolition of Forced Labour;

ILO Convention 138 on Minimum Age;

ILO Convention 111 on Discrimination (Employment and Occupation);

ILO Convention 100 on Equal Remuneration;

ILO Convention 182 on Worst Forms of Child Labour;

Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);

Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);

Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (PIC Convention) and its 3 regional Protocols.

Schedule 13
Information to be included in Notices of Modifications of a Concession during its term
(Regulation 85)

1. Name, identification number (where provided for in national legislation), address including NUTS code, 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. CPV codes.

3. NUTS code for the main location of works in case of works concessions or NUTS code for the main place of performance in service concessions.

4. Description of the concession before and after the modification: nature and extent of the works, nature and extent of services.

5. Where applicable, modification of value of the concession, including increase in prices or fees caused by the modification.

6. Description of the circumstances which have rendered necessary the modification.

7. Date of concession award decision.

8. Where applicable, the name, address including NUTS code telephone, fax number, e-mail address and internet address of the new economic operator or operators.

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

10. 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.

11. Date(s) and reference(s) of previous publications in the Official Journal of the European Union relevant to the contract(s) concerned by this notice.

12. Date of dispatch of the notice.

13. Any other relevant information.