

CONCESSIONS

PROCEDURAL GUARANTEES

Does the Directive include specific procedures for awarding concession contracts?

No, **the public buyer is not obliged to follow any specific procedures**, including 'open' or 'restricted' ones as is the case for public contracts.

The public buyer is free to structure the procedure according to national standards or their own preferences, provided that it follows certain basic rules.

What are the basic rules to follow?

The public buyer is obliged to:

- **publish a concession notice** in the Official Journal of the EU, in which it must:
 - provide a description of the concession;
 - disclose the conditions of participating in the concession award procedure e.g. the minimum turnover, availability of a specific kind and quantity of machine(s), experience with specific kinds of work or services.
- **inform** potential and actual participants to the procedure **of the minimum requirements and the award criteria**, either in the concession notice or in other concession documents.
 - examples of minimum requirements: number of lanes on a motorway, dimensions and shape of tunnels, frequency of the bus transport service, etc.;
 - examples of award criteria: the fees to be paid by users, the environmental performance of vehicles to be used to provide the service, etc.
- **respect established requirements** and eliminate candidates who do not fulfil them;
- **exclude** from the procedure **candidates who have been convicted for certain crimes**, such as fraud and money laundering;
- **provide all participants with a description of how the procedure will be organised and an indicative timetable**. If this is likely to change at a later stage (for instance because negotiations take a shorter or longer amount of time), the public buyer must inform all participants in advance.

What is the scope for negotiations in concession award procedures?

The public buyer:

- may negotiate with candidates and tenderers. However, **certain elements** of the initial call for tender may not be changed during the course of the procedure, hence **cannot be subject to negotiations**. This is the case for:
 - the concession's subject matter;

- the award criteria; and
 - the minimum requirements.
- must **ensure that all stages of the procedure are recorded**, using the most appropriate means (e.g. audio or video recording, minutes confirmed under oath by external independent observers, etc.).