

Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (repealed)

TITLE III

RULES ON PUBLIC WORKS CONCESSIONS

CHAPTER I

Rules governing public works concessions

Article 56

Scope

This Chapter shall apply to all public works concession contracts concluded by the contracting authorities where the value of the contracts is equal to or greater than EUR 6 242 000.

The value shall be calculated in accordance with the rules applicable to public works contracts defined in Article 9.

Article 57

Exclusions from the scope

This Title shall not apply to public works concessions which are awarded:

- (a) in the cases referred to in Articles 13, 14 and 15 of this Directive in respect of public works contracts;
- (b) by contracting authorities exercising one or more of the activities referred to in Articles 3 to 7 of Directive 2004/17/EC where those concessions are awarded for carrying out those activities.

However, this Directive shall continue to apply to public works concessions awarded by contracting authorities carrying out one or more of the activities referred to in Article 6 of Directive 2004/17/EC and awarded for those activities, insofar as the Member State concerned takes advantage of the option referred to in the second subparagraph of Article 71 thereof to defer its application.

Article 58

Publication of the notice concerning public works concessions

1 Contracting authorities which wish to award a public works concession contract shall make known their intention by means of a notice.

2 Notices of public works concessions shall contain the information referred to in Annex VII C and, where appropriate, any other information deemed useful by the contracting authority, in accordance with the standard forms adopted by the Commission pursuant to the procedure in Article 77(2).

3 Notices shall be published in accordance with Article 36(2) to (8).

4 Article 37 on the publication of notices shall also apply to public works concessions.

Article 59

Time limit

When contracting authorities resort to a public works concession, the time limit for the presentation of applications for the concession shall be not less than 52 days from the date of dispatch of the notice, except where Article 38(5) applies.

Article 38(7) shall apply.

Article 60

Subcontracting

The contracting authority may either:

- (a) require the concessionaire to award contracts representing a minimum of 30 % of the total value of the work for which the concession contract is to be awarded, to third parties, at the same time providing the option for candidates to increase this percentage, this minimum percentage being specified in the concession contract, or
- (b) request the candidates for concession contracts to specify in their tenders the percentage, if any, of the total value of the work for which the concession contract is to be awarded which they intend to assign to third parties.

Article 61

Awarding of additional works to the concessionaire

This Directive shall not apply to additional works not included in the concession project initially considered or in the initial contract but which have, through unforeseen circumstances, become necessary for the performance of the work described therein, which the contracting authority has awarded to the concessionaire, on condition that the award is made to the economic operator performing such work:

- when such additional works cannot be technically or economically separated from the initial contract without major inconvenience to the contracting authorities, or
- when such works, although separable from the performance of the initial contract, are strictly necessary for its completion.

However, the aggregate value of contracts awarded for additional works may not exceed 50 % of the amount of the original works concession contract.