

UK transposition of the new EU procurement directive on concession contracts

Cabinet Office

RPC rating: fit for purpose

Description of proposal

Concession contracts grant a supplier the right to exploit the concession as a reward for delivering the service or building work. An example of a service concession is the right to run – at the supplier’s cost – a publicly-owned leisure centre for a defined period and to charge the public to use it. A works concession includes building toll bridges and car parks on publicly-owned land and charging for their use.

The proposal is to transpose into UK regulations a new EU procurement directive on concession contracts. The current EU rules apply only to works concessions procured by concession-awarding bodies in the public sector. The new directive extends the scope to bring in service concessions and concessions (works and service) offered by the utilities sector. The utilities to which the directive applies are those in the energy, transport and postal services sectors. The department states that UK implementation maximises simplification and flexibility, avoids gold plating and does not go beyond EU minimum requirements.

Impacts of proposal

Costs

The department estimates there to be one-off familiarisation costs of £0.4 million. This is based upon estimates provided by the ports sector. The consultation indicated that there would not be significant familiarisation costs to the public sector or to other utility sectors.

Bringing service concessions in scope of the regulated regime will result in additional procurement process costs for UK public sector concession awarding bodies. These costs are incurred across all stages of the procurement cycle; from developing and issuing the invitation to bid, through placing a contract notice for publication and evaluating bids, to completing a contract award notice for publication. European Commission studies estimate these costs to be on average about 0.2 per cent of a contract’s value. Recent data suggest an average contract value of £7.8 million and that about 26 contracts might additionally be brought in scope each year. This gives a cost of £0.41 million each year.

Bringing service concessions in scope will also result in additional procurement process costs for the ports sector. The department estimates this to be £0.23 million each year, based upon figures provided by the industry.

The department states that there is no evidence to suggest there is any appreciable number of works concessions being awarded by utility bodies. The department does not, therefore, expect that there will be additional procurement process costs to other utilities from this increase in scope. The overall cost of additional procurement processes is therefore estimated to be £0.64 million each year.

The new directive will also make above-threshold service concession contracts subject to the remedies provisions. This could lead to suppliers challenging decisions taken during the procurement process, resulting in additional costs such as legal fees and delays. Based upon challenges under existing remedies and public consultation, the department expects there to be two successful challenges to service concessions in the public sector over a ten-year period. Each challenge is expected to cost the equivalent of 15 per cent of the average concession contract value (£7.8 million). This gives an estimated cost to the public sector of £2.34 million over ten years. The department also expects there to be two challenges, over a ten-year period, affecting the ports sector. These costs are estimated to total £2.4 million over ten years. The overall cost resulting from the remedies provision is therefore estimated to be £4.7 million over years, equivalent to around £0.47 million each year (table on page 10).

Benefits

At the consultation stage, the department anticipated that there would be savings to public sector and utilities concession-awarding bodies resulting from increased competition for the contracts. However, the consultation has indicated that these benefits are limited. This is because many public sector bodies already advertise service concession contracts and there is unlikely to be much cross-border interest in concession contracts placed by utilities. These benefits are, therefore, not monetised, although the impact assessment (IA) does consider there to be potential for such benefits.

This gives an overall net cost of £1.11 million each year, or an NPV of -£10.27 million over ten years (table on page 10). In arriving at the costs to business, the costs above that fall wholly on the public sector are excluded. An analysis of annual statistics returns by utilities indicates that about 60 per cent of utilities are in the private sector. The department applies this proportion to the remaining costs to arrive at a business NPV of about -£2.75 million. The EANCBC corresponding to this is £0.32 million.

Quality of submission

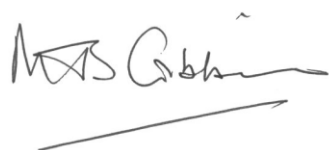
The department has provided a clear and reasonable assessment of the impacts of the proposal. The department has fully monetised the costs of the proposal and provided an assessment of the likely benefits, which reflects the results of the consultation. The IA would be improved by providing further explanation of why the proposal results in additional action by public sector concession-awarding bodies, to comply with procurement process requirements, and why this action, in their view, delivers no significant benefit.

Initial departmental assessment

Classification	Non-qualifying regulatory provision (EU)
Equivalent annual net cost to business (EANCB)	£ 0.32 million
Business net present value	-£ 2.75 million
Societal net present value	-£ 10.27 million

RPC assessment

Classification	Non-qualifying regulatory provision (EU)
EANCB – RPC validated	£ 0.32 million
Small and micro-business assessment	Not required (EU)



Michael Gibbons CBE, Chairman