

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5351 GIBRALTAR Thursday 15th October 2026

LEGAL NOTICE NO. 357 OF 2026

PUBLIC FINANCE (CONTROL AND AUDIT) ACT

PROCUREMENT (CONCESSION CONTRACTS) (AMENDMENT) REGULATIONS 2026

In exercise of the powers conferred upon him by section 75 of the Public Finance (Control and Audit) Act, and all other enabling powers, the Minister with responsibility for Finance has made the following Regulations–

Title.

1. These Regulations may be cited as the Procurement (Concession Contracts) (Amendment) Regulations 2026.

Commencement.

2. These Regulations come into operation on the day of publication.

Amendment to the Procurement (Concession Contracts) Regulations 2016.

3.(1) The Procurement (Concession Contracts) Regulations 2016 are amended in accordance with this regulation.

(2) In regulation 2(1), after the definition of “innovation” insert–

““negotiated procedure” means a procedure leading to the award of a contract whereby the concession granter negotiates the terms of the contract with one or more economic operators selected by it;”

(3) After regulation 17(3), insert the following subregulations–

“(4) For the purposes of subregulation (2), where a concession contract is a major infrastructure concession, the concession granter may, in estimating the maximum duration of the concession contract, take into account the following additional factors–

- (a) the long-term strategic value of the infrastructure to Gibraltar;
- (b) lifecycle renewal costs over the full operational period of the concession, including maintenance, refurbishment and replacement of major assets;

- (c) the scale and complexity of the initial construction works and associated facilities; and
 - (d) any other factor that the concession granter considers relevant to the assessment of the time reasonably required for the concessionaire to recoup its investments together with a return on invested capital.
- (5) In subregulation (4), a “major infrastructure concession” means a concession contract—
 - (a) for the design, construction, financing, operation and maintenance of physical infrastructure; and
 - (b) in respect of which the estimated capital investment (comprising the aggregate of initial capital expenditure and capital expenditure reasonably anticipated over the life of the concession) is not less than £5,000,000.
- (6) For the purposes of subregulation (5)(b), “capital investment” means expenditure on the acquisition, construction, improvement, renewal or replacement of tangible fixed assets forming part of or used in connection with the infrastructure that is the subject of the concession contract, but does not include routine operating expenditure.
- (7) Where a concession granter relies on subregulation (4), it must prepare and retain a written record setting out—
 - (a) the additional factors taken into account;
 - (b) the basis on which each factor has been assessed, including any financial modelling, projections or other evidence relied upon; and
 - (c) the reasons why the concession granter considers the duration of the concession contract to be justified having regard to those factors and to the requirements of subregulation (2).”
- (4) After subregulation 29(5) insert –
 - “(5A) Where subregulation (5) applies, the concession granter may award the concession contract in accordance with regulation 29A.”
- (5) Insert the following regulation after regulation 29—
 - “Use of the negotiated procedure without prior publication.**
 - 29A.(1) A concession granter may award a concession contract by a negotiated procedure without prior publication of a concession notice in accordance with this regulation.

- (2) The negotiated procedure without prior publication may be used for concession contracts in any of the following cases–
- (a) where no applications, no suitable applications, no tenders or no suitable tenders have been submitted in response to a prior concession contract award procedure, provided that the initial conditions of the concession contract are not substantially altered and that a report is sent to the Chief Minister if the Chief Minister so requests;
 - (b) where the works or services can be supplied only by a particular economic operator for any of the following reasons–
 - (i) the aim of the concession contract is the creation or acquisition of a unique work of art or artistic performance;
 - (ii) competition is absent for technical reasons;
 - (iii) the existence of an exclusive right;
 - (iv) the protection of intellectual property rights and exclusive rights other than exclusive rights as defined in regulation 2,but only, in the case of sub-paragraphs (ii) to (iv), where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the concession contract award;
 - (c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the concession granter, the time limits for a concession contract award procedure under these Regulations cannot be complied with;
 - (d) where this is necessary and proportionate in cases where the Minister has reasonable grounds to believe that the negotiated procedure without prior publication is necessary to protect one or more of the following–
 - (i) public morals, order or safety;
 - (ii) human, animal or plant life or health; or
 - (iii) intellectual property.
- (3) For the purposes of subregulation (2)(a)–
- (a) a tender must be considered not to be suitable where it is manifestly incapable, without substantial changes, of meeting the concession granter's needs and requirements as specified in the concession documents;

- (b) an application must be considered not to be suitable where the applicant concerned—
 - (i) is to be or may be excluded under regulation 36(8) to (25); or
 - (ii) does not meet the selection criteria set out by the concession granter in accordance with regulation 36(1) to (3).
- (4) For the purposes of subregulation (2)(c), the circumstances invoked to justify extreme urgency must not in any event be attributable to the concession granter.
- (5) In determining whether to award a concession contract in the circumstances set out in subregulation (2)(b), the concession granter may take into account public interest considerations including but not limited to those listed in subregulations (2)(d) and (6).
- (6) In determining whether to award a concession contract in the circumstances set out in subregulation (2)(d), the Minister may take into account public interest considerations, including but not limited to the following—
 - (a) risk of disruption to the provision of services;
 - (b) safeguarding jobs;
 - (c) safeguarding critical infrastructure; and
 - (d) the economic and financial stability of Gibraltar and its businesses.
- (7) For the avoidance of doubt, where the conditions set out in both regulation 29(5) and this regulation are met, the concession granter may rely on either or both provisions.
- (8) Where a concession contract is awarded in reliance on this regulation, the concession granter must—
 - (a) prepare and retain a written report setting out—
 - (i) the grounds on which the concession granter has relied;
 - (ii) the facts and circumstances justifying reliance on those grounds; and
 - (iii) the steps taken by the concession granter to comply, to the extent reasonably possible in the circumstances, with the principles of equal treatment and transparency;
 - (b) submit a concession award notice in accordance with regulation 30; and
 - (c) make the report available to the Minister on request.

- (9) For the purposes of subregulation (2)(a), a reference to a “prior concession contract award procedure” includes any publicly advertised process conducted by the concession granter to invite and assess interest from economic operators in relation to the proposed concession contract, whether or not that process constituted a formal concession contract award procedure within the meaning of these Regulations, provided that–
- (a) the process was publicly advertised and open to all interested economic operators;
 - (b) the process afforded a reasonable opportunity for economic operators to respond; and
 - (c) the process was conducted in accordance with the principles of transparency and equal treatment set out in regulation 4.”

Savings and transitional provision.

4.(1) Any step taken in connection with a concession contract award procedure before the coming into operation of these Regulations is not invalidated by reason only of the coming into operation of these Regulations.

(2) Where, before the coming into operation of these Regulations, a concession granter has commenced a concession contract award procedure in connection with a proposed concession contract, the concession granter may proceed to award the concession contract in reliance on the Procurement (Concession Contracts) Regulations 2016, as amended by these Regulations, without the need to recommence the procedure.

Dated: 15th October 2026.

F R PICARDO,
Minister with responsibility for Finance.

EXPLANATORY MEMORANDUM

These Regulations amend the Procurement (Concession Contracts) Regulations 2016 in two respects. First, they amend the duration provisions applicable to concession contracts by permitting concession granters, in the case of major infrastructure concessions requiring capital investment of not less than £5,000,000, to take into account additional factors when estimating the maximum duration of the concession under regulation 17(2), including the long-term strategic value of the infrastructure, and lifecycle renewal costs. Secondly, they introduce

a power permitting the award of concession contracts by negotiated procedure without prior publication of a concession notice, in circumstances aligned with the grounds for negotiated procedure without prior publication already applicable to public sector contracts under regulation 32A of the Procurement (Public Sector Contracts) Regulations 2016, as amended.

The Regulations clarify, for the purposes of regulation 29A(2)(a), that a prior concession contract award procedure includes any publicly advertised process conducted by the concession granter to invite and assess interest from economic operators in relation to a proposed concession contract, provided that the process was open, transparent and non-discriminatory. This ensures that a prior market engagement or expression of interest process may satisfy the condition, provided that it met the requisite standards of openness and transparency.

The Regulations also preserve the validity of steps already taken in any ongoing concession contract award procedure.