

Appendix F

Legal Guidance:

I had a very useful informal discussion with your colleagues from the RNS and advised them that the 2006 Public Procurement Regulations did not apply to the seeking of offers in relation to a proposed public contract, framework agreement or dynamic purchasing system :-

“(e) for the acquisition of land, including existing buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right over land; or

(m) which is a **service concession contract** awarded by a contracting authority, subject to the application of regulation 46.”

The above are likely to be the relevant extracts from Regulation 6(2) of the 2006 Public Procurement Regulations, but your colleagues might like to review the general exclusions

A “**service concession contract**” is defined in Regulation 2(1) as a public services contract under which the consideration given by the contracting authority consists of or includes the right to exploit the service or services to be provided under the contract.

Accordingly, if RNS is satisfied that any proposed arrangement is for the grant of an estate, interest or easement etc or a service concession contract then the 2006 Regulations will not apply by virtue of Regulation 6(2). Thereafter, any property rights or service concession contracts would need to be awarded in accordance with the Council's Contract Procedure Rules.

If RNS is not satisfied that the proposed arrangement is for the grant of an estate, interest or easement etc or a service concession contract then in that event the Regulations are likely to apply.

The above would need to be justified for genuine operational reasons as there are general anti avoidance provisions within the Regulations.

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