

Department of Contracts
Notre Dame Ravelin
Floriana

Permanent Secretaries
Director Generals
Directors
Heads of Public Sector Organisations

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CONTRACTING PROCEDURES

As has been announced during the information meeting held on 12th March 2010 new contracting procedures have been introduced. The ultimate aim of these procedures is to give a better guide to economic operators to submit valid offers in response to calls for tenders. These procedures also provide remedies for instances where a bidder did not submit a fully compliant tender from an administrative point of view. However, no remedies are provided for offers which are not fully compliant at the technical level or in respect of the financial offer.

It must be emphasized that Evaluation Committees should still continue to evaluate offers strictly in accordance with the published tender conditions and specifications. Such committees do not have any discretion to decide arbitrarily as to which offer is compliant or not. Evaluation Committees should invariably seek approval to ask bidders to submit missing documents against the payment of an administrative penalty. In the case of tenders published by the Department of Contracts this approval should be sought from the General Contracts Committee; in the case of Departmental tenders this approval should be sought from the respective Ministry.

Contracting authorities should continue to seek quality economic operators at the best financial conditions. Irrespective of the value of tenders, Evaluation Committees should first check whether a tender is administratively compliant. If it is, then it should be checked for its technical compliance. In the last stage the Committee should recommend the cheapest administratively and technically compliant tender. Those tenders that fail at any stage should be disqualified and no further consideration be given to such tenders. In the case of tenders with the Most Economically Advantageous Tenders as an award criteria, the winning tender should be the one that scored the highest number of points. After publishing the result, tenderers are to be informed of the outcome and of their right of appeal. In the case of three package tenders, bidders have the right of appeal at every stage of the tendering process.

In order to help Departments to publish calls for tenders the Department of Contracts has published on its website updated tender templates. These should be invariably used by all contracting authorities within the public sector. These templates should act as a model for tender documents for the procurement of works, supplies and services. Contracting authorities are free

to delete completely any part of these templates except for the following (i) the cover page, (ii) instructions to tenderers (iii) the tender form (iv) the General Conditions (v) the technical offer and (vi) the financial bid. These parts of the tender templates can be amended in accordance with the exigencies of the particular procurement. Contracting authorities are encouraged not to ask bidders to submit information which is already available within the public administration. Contracting authorities are also to retain the right not to award the tender to bidders who are not up-to-date in the payment of taxes, or bankrupt or under an administration appointed by the Court, or under proceedings leading to a declaration of bankruptcy. Such exclusion should also apply to bidders convicted criminally or found guilty of professional misconduct.

Although contracting authorities are free to draft tender documents as they wish, it is recommended that all the documents included in the templates should be retained in respect of high value tenders. For guidance only all these documents should be retained for tenders for the procurement of supplies and services valued at €500,000 and over and for works valued at €2,000,000 and over.

The Department of Contracts is also publishing a manual of procedures for members of Evaluation Committees. This is also available on the website of this Department at www.contracts.gov.mt . This publication should fill in a void which was sorely missed by several public organisations.

Contracting authorities should always keep in mind that public procurement should be carried out in a fair and transparent manner with no discrimination between economic operators. Should there be any difficulties on these tendering procedures, the Department of Contracts will be glad to provide its assistance.

Francis Attard
Director General (Contracts)