

Department of Contracts
Notre Dame Ravelin
Floriana

To Permanent Secretaries
Directors General
Directors
Heads of Public Sector Organisations

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NEW REGULATIONS REGARDING THE AWARD OF SERVICES CONTRACTS WITHIN THE PUBLIC ADMINISTRATION

In 2013 OPM Circulars 12/2013 and 15/2013 introduced new conditions which were to be included in Services Contracts that were to be awarded by Government Departments or Public Sector Organisations. These conditions were necessary to enhance Government's efforts to curb precarious employment situations in Services Contracts across the Public Administration.

These conditions included:

1. A guarantee that the services provided will not be subcontracted to third parties. It is to be clarified that this limitation on sub-contracting is strictly limited to cases where the sub-contractor being awarded work by the tenderer has employees of the tenderer who are also in the employ of the sub-contractor and are carrying out, with the subcontractor, the same or very similar duties as those in their contract of employment with the tenderer. Furthermore, any sub-contractor will need to agree to all the other conditions laid down in this circular whilst the tenderer will remain responsible for all the work or services provided in the contract **including** those carried out by the sub-contractor;
2. A guarantee that the contractual work will not be carried out by self-employed persons but solely by employees of the tenderer. It is to be clarified that this exclusion does not apply to bona fide self-employed individuals, and that the tenderer is guaranteeing that no work will be carried out by persons designated as self-employed where their actual employment status in terms of the Employment Status National Standard Order, LN 44/2012, is that of an employee;
3. A guarantee that all the employees of the tenderer, whether providing services to the Contracting Authority or not, have a written contract of service and are registered with the Employment & Training Corporation. On award of the

contract the tenderer shall furnish a list of employees who will be providing services to the Contracting Authority as well as having copies of the written contracts of service of any of the employees available at any time for inspection;

4. All employees are to be given a detailed payslip containing all relevant details including the amount paid, normal hours worked, overtime hours, hours worked on Sundays and Public Holidays, hours availed of as leave or sick leave, a breakdown of bonuses/allowances as well as deductions made (such as social security contributions and income tax);
5. Employee's wages/salaries are paid only by direct payment in the employee's bank account;
6. The tenderer is to guarantee that the relevant bank statements of wage/salaries' deposit and copies of the detailed payslips are to be made available as and when required by the Director of Industrial & Employment Relations;
7. The contractor shall be obliged to specify the minimum hourly workers' costs in tenders involving the provision of employees' services and shall also provide a breakdown of the employee costs in tenders where the tender requires a global sum covering the services to be provided. Guidance from the Department of Industrial and Employment Relations will be sought by the contracting authority for an estimate of the minimum statutory hourly costs for the particular work in the specific sector which is being tendered for.

During the 2015 Budget Speech, government announced further measures regarding the payments to workers engaged in contracts providing services to Government Departments or Public Sector Organisations. These measures are aimed to ensure that such workers are paid at least the basic minimum rate for the same employment payable to public administration employees.

As a result, apart from the above-mentioned conditions which are to continue to be included without exception, the following new instructions are to be followed in any services tender issued by any Government Department or Public Sector Organisation.

Any new tender which is to be issued during 2015 must ensure that the minimum rates payable by the tenderer to employees engaged in any of the services contracts undertaken by a Government Department or Public Sector Organisation shall not be less than those indicated in the Table A below.

The Contracting Authority shall pay the service provider a rate which shall include the salary due to the employee and an additional amount to cover the social costs (bonuses, leave, sick leave etc) as indicated in the Table B below.

Table A – Minimum rates due to Employees by the Contractor*:

Type of employment	Government Salary Scale	Hourly rate payable	
		Year: 2015	Year: 2016
Cleaners (Offices)	20	€4.77	€4.89
Cleaners (Hospitals & Homes for the Elderly)	18	€5.38	€5.51
Care workers	17	€5.71	€5.86
Clerical/Security	16	€6.06	€6.22

Table B – Minimum hourly rates due to the Contractor (which include social costs)*:

Type of employment	Government Salary Scale	Hourly rate payable	
		Year: 2015	Year: 2016
Cleaners (Offices)	20	€6.28	€6.44
Cleaners (Hospitals & Homes for the Elderly)	18	€7.09	€7.27
Care workers	17	€7.53	€7.73
Clerical/Security	16	€8.00	€8.21

***The rates quoted in the above Tables A & B are excluding VAT.**

It is important to underline that these new rates are payable and effective with all new services contracts entered into from 1st January 2015. In the case of tenders already issued and not awarded before the 1st January 2015, the contract shall be drawn up using the tender conditions and specifications as published, however, an addendum to the contract shall then be issued reflecting the above mentioned minimum hourly rates. It is imperative that Contracting Authorities issuing new services tenders include the above mentioned minimum hourly rates in the tender document.

Conditions and minimum hourly rates for Services Contracts awarded before 1st January 2015 shall remain unaltered.

Tenders should be issued immediately for those contracts which have expired during the current year.

It is needless to remind all Permanent Secretaries that the above instructions are to be adhered to without exception and that they will be responsible to ensure that all

departments and public sector organisations under their responsibility strictly follow the above instructions.

Any matters for clarification should be addressed to the Permanent Secretary – MSDC or the Director General (Contracts) who are jointly working on this initiative.

Anthony Cachia
Director General (Contracts)