

Department of Contracts
Notre Dame Ravelin
FLORIANA

To Permanent Secretaries
Directors General
Directors
Heads of Public Sector Organisations

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THE NEW PUBLIC PROCUREMENT REGULATIONS (PPRs) 2016

On the 28th October 2016, the Government has published the Public Procurement Regulations 2016 (LN352/2016), Concession Contracts Regulations 2016 (LN353/2016), the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations 2016 (Utilities) (LN351/2016) and the Emergency Procurement Regulations 2016 (LN350/2016). These Regulations shall be implementing the Classic Contracts Directive 2014/24, the Concession Contracts Directive 2014/23 and the Utilities Contracts Directive 2014/25 respectively. Together they form a package of measures to improve public procurement processes.

The scope of each Regulation is defined in Annex 2 of this Circular.

The new regulations will essentially consolidate important procurement measures to increase effectiveness, transparency and accountability. These are the key elements that help to build trust and confidence in public procurement and permits that citizens recognize how taxpayers' money is administered. Streamlining of the procurement process will eventually deliver such key elements and in the long term will result in lower costs, greater innovation, and strong and profitable markets – all delivering better value for the taxpayer.

Another aim of these Regulations is to address Government's environmental and social commitments. The Government's aim is to ensure more sustainable

procurement and for this to be guaranteed, Economic Operators need to understand how to reduce the impacts of their supply chains on these factors. In this respect, the Regulations will be setting certain baselines for reducing both environmental and social impacts through, for example, the utilisation of labels in the Technical Specifications.

Furthermore, pursuant to Contracts Circular 13/2015, the transition to e-procurement across Government was a vital step in preparation for the entry into force of the new Public Procurement Regulations. The new rules cover the use of electronic communications, including the use of two important electronic tools, mainly, Electronic Auctions (e-auctions) and the Dynamic Purchasing System (DPS).

It is widely agreed that electronic communication can help reduce procurement process costs for Economic Operators and Contracting Authorities, reduce procurement timeframes, encourage access to procurement opportunities for stakeholders, facilitate compliance with the rules, and promote traceability, transparency and accountability in the procurement process.

The changes envisaged in the new Public Procurement Regulations enable Contracting Authorities to procure goods, services and works faster, through reduced time limits, with less bureaucracy, and with a greater focus to secure best value for public money in line with good governance practices.

The attention of Contracting Authorities is being drawn to the main changes catered for under the New Public Procurement Regulations 2016 (LN 352/2016). Annex 1 attached to this Circular outlines the requirements of the new Public Contracts Regulations with particular focus on the new thresholds and the modifications carried out to the general procedures.

At this point, it is pertinent to mention that previous national policies disseminated through the various Procurement Policy Notes (PPNs) and Circulars are still applicable unless otherwise stated, or as explicitly superseded

by other Circulars or PPNs that shall be published in the near future. Concurrent to the new Regulations, new procurement document templates (including one for departmental tenders), together with a comprehensive Manual of Procedures (MoP) and the customary .xml template structure for all Calls for Tender (CfT), have been prepared. These are accessible through the eGovernment Procurement Platform (ePPS) under the Resources section, which portal (www.etenders.gov.mt) is the official procurement platform for Government. The templates are to be used for all forthcoming procurement. All procurement procedures published under the 2010 PPRs shall continue to be regulated through the same legislation.

The set of new Regulations came into force on the 28th October 2016.

Contracting Authorities are encouraged to submit any queries with the Department of Contracts' customer care service on info.contracts@gov.mt or +356 21220212.

Anthony Cachia

Director General (Contracts)

Annex 1:

New thresholds

When the estimated value does not exceed €5,000, public contracts shall be awarded by:

- Obtaining hand quotations (a minimum of three (3) quotations) OR
- Issuing of a competitive call for quotations (Publication in the Government's eProcurement Platform); OR
- A direct contract award at the discretion of the Head of the Contracting Authority.

When the estimated value meets or exceeds €5,000, but does not exceed €10,000, public contracts shall be awarded by:

- Issuing a competitive call for quotations through the Government's e-Procurement platform, unless otherwise authorized in writing by the Director; OR
- A direct contract award at the discretion of the Head of the Contracting Authority.

When the estimated value exceeds €10,000 up to €135,000, public contracts shall be awarded after a departmental call for tenders, issued through the Government's eProcurement Platform (ePPS), unless otherwise authorised in writing by the Director.

In exceptional cases, public contracts valued in excess of €10,000 may be procured through a direct contract award by any Contracting Authority upon obtaining the prior written approval of the Minister (MFIN).

Minimum publication time limits

Minimum Time Limit for open procedure but issued using e-PPS - 30 days

Minimum Time Limit for open procedure but Urgent/Accelerated - 15 days

Minimum Time Limit for open procedure but a PIN was issued - 15 days

Minimum Time Limit for Departmental Tenders - 20 days

European Single Procurement Document

For all procurements issued under the new Regulations, it is mandatory for Contracting Authorities to accept the European Single Procurement Document (ESPD) where the estimated value is equal to or greater than the threshold of €135,000 (net of VAT). The introduction of the ESPD by the European Commission is to reduce the administrative burden on Economic Operators and to remove some of the barriers to cross-border competition in public procurement, especially for small to medium-sized enterprises (SMEs).

The ESPD is a reusable generic document which shall be used across all EU Member States. This means that the questions in the ESPD cannot be amended. Instead, Contracting Authorities must set out the specific requirements related to selection criteria, including relevant exclusion/blacklisting grounds as established under part VI of the Public Procurement Regulations and any other minimum standards relevant for the procurement exercise as established, in the procurement documents.

Economic Operators shall submit a completed ESPD in response to the requirements established in the procurement documents. The Economic Operator, subcontractor or other parties may rely on their ESPD response as a self-declaration that they have not breached any of the exclusion grounds. If an Economic Operator is in a situation which might result in its exclusion, it may provide evidence to show that it has taken appropriate remedial action to demonstrate its reliability. This is known as 'self-cleaning'. In such cases the

Economic Operator must not be excluded from the procurement procedure on such exclusion grounds.

A word document of the ESPD, for completion by Economic Operators, may be retrieved through the official Government's e-Procurement website; that is, the Government's e-Procurement Platform (available from www.etenders.gov.mt/Resources). The items within the sections/parts therein are also numbered for ease of reference.

Sub-division of tenders into lots

In order to assist SMEs, all tenders should be divided into lots. Where this is not possible, the Contracting Authority must indicate why in the Procurement Documents.

Ministerial Procurement Unit

A "Ministerial Procurement Unit" means an entity that is established under each Ministry which processes, publishes, administers and recommends the award of a call for tenders published under the open procedure, where the estimated value of this call for tenders exceeds ten thousand euro (€10,000) but does not exceed two hundred and fifty thousand euro (€250,000). Both thresholds are net of VAT. This decentralisation is effected upon the issue of the necessary approval by the Ministry for Finance.

There shall be in each Ministry a Ministerial Procurement Unit (for the time being, only in specific Ministries) which shall fall under the office of the Permanent Secretary responsible for that Ministry, or under another person in an equivalent post, being so delegated by the Minister responsible for that Ministry.

In spite of what is established in the regulations, the Minister may, irrespective of the value of the contract, order that a Contracting Authority, listed under

schedule 16, must forward the call for tenders to the Director of Contracts so that they are administered by that Department.

Preliminary Market Consultations

Before commencing a procurement procedure, one may test the market and gather information on what is available through a Preliminary Market Consultation. This may be done both to inform economic operators of a potential procurement and also to allow Contracting Authorities to seek advice in the planning, financial costs and conduct of a procurement procedure. Templates are available through the Resources section of the ePPS portal.

Using environmental and social labels

Social/environmental labels are permitted as part of the specification, award criteria or terms and conditions as proof of compliance with a requirement with specific characteristics that are linked to the subject matter of the contract. However, economic operators must be allowed to offer compliance with equivalent labels or offer other means of proof (e.g. technical documentation) where the label cannot be obtained within the relevant time limits. Labels must also meet certain conditions, such as being based on transparent and non-discriminatory criteria and awarded by a body independent of the economic operator applying for the label.

Award criteria

The award of the contract must be based solely on the ‘most economically advantageous tender’ (MEAT). However, this includes price; cost (including life cycle costs); and the best price quality ratio (BPQR). Experience may now be used for tenders (above the threshold of €500,000 as per Procurement Policy Note 25) as an award criterion.

Appeals for quotations/tenders estimated above or equal to €5,000

All objections are to be lodged with the Public Contracts Review Board (PCRB) and shall only be valid if accompanied by a deposit equivalent to:

- 0.50% of the estimated value of the whole tender or quotation set by the Contracting Authority;
- The deposit shall not be less than €400 and not more than €50,000.

The timeframes for objections are ten (10) calendar days.

Modifications to the contract

There is no need for the Director of Contract's approval where the value of the modification is below both of the following values:

- The thresholds set out in Schedule 5; and
- 10% of the initial contract value for service and supply contracts and 15% of the initial contract value for works contracts (relative only to additional works and not new works).

Where several successive modifications are made, the value shall be assessed on the basis of the net cumulative value of the successive modifications. Any new rates are to be referred to the Department of Contracts for approval.

Official thresholds of the OJEU

The European classical contracts Directive (2014/24/EU) - SL174.04 - Public Procurement Regulations

	Public Supply, Services and Design Contracts	Public Works Contracts
Tenders issued through the Central Government Authority (Department of Contracts)	€135,000	€5,225,000
Tenders issued by Sub-Central Authorities and Schedule 3 entities such as Local Councils	€209,000	€5,225,000

The European utility contracts Directive (2014/25/EU) - Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations - SL146.06 - Utilities

	Public Supply, Services and Design Contracts	Public Works Contracts
Utility Authorities	€418,000	€5,225,000

The Defence & Security Directive (2009/81/EC) - Contracting Authorities or Entities in the fields of Defence and Security Regulations - SL174.08 - Defence

	Supply, Services and Design Contracts	Public Works Contracts
Central Government Authority	€135,000	€5,225,000
Tenders issued by Sub-Central Authorities and Schedule 3 entities	€209,000	€5,225,000

Annex 2

Public Procurement Regulations (LN352/2016):

The scope of these regulations is to regulate all the procurement of goods, services and works carried out by the Government of Malta.

Concession Contracts (LN353/2016):

The scope of these regulations is to regulate all Public Concession Contracts carried out by the Government of Malta.

“concessions” means works or services concessions, as defined in paragraphs (a) and (b) hereunder:

(a) "works concession" means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the execution of works to one or more economic operators the consideration for which consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment;

(b) "services concession" means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the provision and the management of services other than the execution of works referred to in paragraph (a) to one or more economic operators, the consideration of which consists either solely in the right to exploit the services that are the subject of the contract or in that right together with payment.

Utilities Regulations (LN351/2016):

The scope of these regulations is that of regulating the procurement by contracting entities operating in the water, energy, transport and postal services sectors.

Emergency Regulations (LN350/2016):

The scope of these regulations is to regulate procurement in emergency situations.

"emergency procurement" shall mean the procurement of supplies, services or works, which becomes necessary either due to an unforeseen surge in the use of

supplies resulting in a month stock level, or which are otherwise necessary due to issues of national health, security or strategic importance.

These Regulations shall apply to the Central Procurement Supplies Unit (CPSU) and the Civil Protection Department (CPD).