

Department of Contracts  
Notre Dame Ravelin  
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To Permanent Secretaries  
Directors General  
Directors  
Heads of Public Sector Organisations

12 March 2019

**ENSURING COMPLIANCE WITH L.N. 26 OF 2018 –  
OBLIGATIONS OF ARTICLE 6 OF THE ENERGY EFFICIENCY DIRECTIVE ON  
PROCUREMENT OF PRODUCTS, SERVICES AND BUILDINGS**

Further to Procurement Policy Note #27 (PPN#27), originally published on the 28 of June 2016, public officials are reminded of the obligation under Article 6 of Directive 2012/27/EU of 25 October 2012 on Energy Efficiency. This obliges Member States to “ensure that central governments only purchase products, services and buildings with high energy-efficiency performance”. The purpose of this Contracts Circular is to remind all officials of this obligation in relevant procurement processes.

This obligation applies to all supplies and services procured above the threshold of €144,000 excluding VAT, to all Contracting Authorities falling under Schedules 1, 2 and 3 of the Public Procurement Regulations – Subsidiary Legislation 174.04, with the exception of Local Councils. Other public bodies, including Local Councils, are encouraged to meet the same requirements.

The following energy efficiency parameters have been established and shall be retained:

(a) Products covered by the Energy Labelling Regulations. Only those products listed in the Energy Labelling Directive, as listed in Annex I of PPN#27, which have the highest energy efficiency class may be purchased.

(b) Products covered by the benchmarks set under the Ecodesign Directive for products not listed in (a) above and listed in the Ecodesign Directive, only products that comply with the relevant energy efficiency benchmarks for that product set out in implementing measures may be purchased (refer to Annex II of PPN#27).

(c) Office equipment - Only products that meet the latest Energy Star4 standards for energy performance may be purchased. In so far as products covered by the Green Public Procurement (GPP) procedures are concerned, the GPP guidelines are to be adhered to.

(d) Tyres - Only tyres that have the highest fuel efficiency class, as defined by regulation EC 1222/2009 may be purchased (unless the purchase of tyres with the highest wet grip or external rolling noise class is justified in the interests of public safety or health).

(e) Services - In a contract for service, Contracting Authorities must ensure that any new products purchased by the service provider partially or wholly for the purpose of providing the services requested, the products comply with the standards set out in points (a) to (d). The obligation under this requirement is incorporated in the General Conditions for Service Contracts, Clause 7 (General Obligations).

(f) Buildings - In purchasing buildings or making new rental agreements for buildings, the Contracting Authority will in general have to choose only buildings which comply with the minimum energy performance requirements of 350kWh/m<sup>2</sup>yr. New buildings are subject to building regulations and regulated by Regulation 5 of the Subsidiary Legislation 513.01 entitled Energy Performance of Buildings Regulations (EBPR).

Annex III of PPN#27 is a self-declaration form which may (as applicable) be included as part of the General / Administrative Information requested for submission in a given tender, and hence is evaluated as part of the adjudicating process under Note 2A.

In line with the functions of the Director of Contracts established under Article 12 and 13 of Subsidiary Legislation 174.04, the Department of Contracts (DoC) regularly publishes and updates procurement templates. Accordingly, in the recent e-tender templates as published in January 2019, supplementary documentation on the Energy Efficiency Directive was included in the Instructions to Tenderers Section of the procurement documents. In fact, the said document with title 'Notes on the Energy Efficiency form' incorporates the instructions as per Appendix A of this Contracts Circular.

The requirements vis a vis Energy Efficiency are being deployed on the ePPS and procurers need to include all the necessary information as depicted in Appendix B of this Circular with immediate effect.

Basically, Contracting Authorities are being requested to state the energy efficiency benchmark of the procurement requested at publishing stage, where necessary. In the case where the most energy efficient option is not selected, Contracting Authorities will need to substantiate their decision through a valid justification.

Contracting Authorities shall also ensure that service providers provide evidence of meeting the necessary requirements – particularly in the procurement of any services which consist of any of the products mentioned above and which estimated value is above €144,000 excluding VAT.

Contracting Authorities are encouraged to submit any queries to the Energy Unit of the Energy and Water Agency on 22292558 or via [energy.efficiency@gov.mt](mailto:energy.efficiency@gov.mt).

Anthony Cachia  
Director General (Contracts)

## Appendix A:

### **For Supplies:**

Contracting Authorities should ensure that for the procurement of supplies exceeding €144,000 excluding VAT, which equipment is enlisted in Annex I and II of Procurement Policy Note #27, for example, computers, lighting, air conditioners, office equipment etc, the relevant energy efficiency benchmark for that product (e.g. A+++ for air conditioners) is set as a minimum technical requirement in the technical specifications of the contract.

All relevant supplies, energy efficiency classes and eco design requirements can be viewed in Procurement Policy Note #27 issued by the Department of Contracts (available from <https://contracts.gov.mt/en/ProcurementPolicyNotes/Documents/PPN27.pdf>) and through the ePPS Resources Section.

Contracting Authorities need to adhere to these standards and should procure supplies that are compliant with the follow criteria:

- **Cost Effectiveness** (Is the less energy efficient option cheaper in terms of maintenance and energy cost over its lifetime when compared to the most efficient option?)
- **Economic Feasibility** (Can the Contracting Authority bear the upfront price and running cost of the most energy efficient option?)
- **Wider Sustainability** (Does the less efficient option have a reduced environmental impact compared to the most efficient option?)
- **Technical Suitability** (Does the less efficient option suit your technical suitability better?)
- **Sufficient Competition** (Is there only one supplier on the market providing the most energy efficient option?)

### Key Questions for Contracting Authorities

Are you spending over €144,000 excluding VAT in aggregate on any one or more of the equipment mentioned in Annexes I and II of PPN#27?

If yes; have you set the respective energy efficiency class/eco-design label as a minimum technical requirement in your tender document? (*Also listed in Annexes I and II of PPN#27*)

If no; are they for reasons of cost effectiveness, economic feasibility, wider sustainability, technical suitability or sufficient competition?

### **For Services:**

For services that require the use of any of the equipment listed in in Annex I and II of Procurement Policy Note #27 (example; cleaning services that use vacuum cleaners), the Contracting Authority is required to ensure that if any new equipment purchases are made for the purpose of providing the service in question, the equipment purchased by the Contractor is of the highest energy efficiency benchmark.

When issuing tenders that might make use of such equipment, Contracting Authorities will also need to ensure that the Energy Efficiency Form, found in Annex III of Procurement Policy Note #27, forms part of the procurement document's ancillary documentation.

### Key Questions for Contracting Authorities

Are you spending over €144,000 excluding VAT in services?

Will the service require the use of any equipment mentioned in Annexes I and II of PPN#27?

If yes; have you included the Energy Efficiency Form (*Annex III of PPN#27*) in the tender dossier for the bidders to sign?

**Appendix B:**

Changes only apply to any procurement exceeding €144,000 excluding VAT and on selected supplies referred to above (Annex I and II of PPN #27.)

For relevant services; please ensure that the Energy Efficiency Form is included in the procurement document for bidders to sign.

Where;

 = Continuation of the tender uploading procedure

