

Department of Contracts
Notre Dame Ravelin
FLORIANA

To Permanent Secretaries
Directors General
Directors
Heads of Public Sector Organisations

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REMEDIES BEFORE THE CLOSING DATE OF A CALL FOR COMPETITION: DEPOSIT

The legislation regulating procurement in Malta allow for redress measures during different stages of the process. In fact, prior to the closing date of a call for competition, an application may be lodged before the Public Contracts Review Board (PCRB).

Public Procurement Regulations – S.L. 601.03

Further to Legal Notice 301 of 2019, which came into force on 15 November 2019, Regulation 262 of the Public Procurement Regulations S.L. 601.03 (formerly S.L. 174.04) has been amended and now incorporates a deposit associated to the ‘Remedy before the Closing Date for a Call for Competition’. The relative regulation now reads as follows:

(1) Prospective candidates and tenderers may, prior to the closing date of a call for competition, file a reasoned application before the Public Contracts Review Board:

- (a) to set aside or ensure the setting aside of decisions including clauses contained in the procurement document and clarification notes taken unlawfully at this stage or which are proven to be impossible to perform; or*
- (b) to determine issues relating to the submission of an offer through the government’s eprocurement platform; or*
- (c) to remove discriminatory technical, economic or financial specifications which are present in the call for competition, in the contract documents, in clarifications notes or in any other document relating to the contract award procedure; or*
- (d) to correct errors or to remove ambiguities of a particular term or clause included in a call for competition, in the contract documents, in clarifications notes or in any other document relating to the contract award procedure; or*
- (e) to cancel the call for competition on the basis that the call for competition is in violation of any law or is likely to violate a particular law if it is continued.*

(2) The application shall only be valid if accompanied by a deposit equivalent to zero point five per cent (0.50%) of the estimated value set by the contracting authority of the whole tender or if the tender is divided into lots according to the estimated value of the tender set

by the contracting authority for each lot submitted by the tenderer, provided that in no case shall the deposit be more than fifty thousand euro (€50,000) which may be refunded as the Public Contracts Review Board may decide in its decision.

Consequently, in order for Economic Operators to be able to file an application at the PCRFB, they must be cognisant of the Estimated Procurement Value, so that the correct deposit may be calculated accordingly.

To this effect, pursuant to Regulation 262, **from the Date of this Contracts Circular**, the Estimated Value of each Procurement Call for Competition (including both quotations and tenders) shall be published in the Procurement Document.

Estimated Procurement Value

The Estimated Procurement Value shall consist of the Estimate excluding Value Added Tax (VAT) and without the Potential Cost.

Contracting Authorities shall conduct thorough, meticulous and comprehensive research including appropriate financial analysis of the procurement so as to ascertain that the Estimated Procurement Value is construed on current market prices. The purpose of this value shall be the guidance of prospective bidders when submitting their offer and is not to be considered as a binding capping price.

Therefore, the published Estimated Procurement Value is not restrictive and final on the Contracting Authority. Economic Operators are free to submit financial offers above or below the Estimated Procurement Value. However, the Contracting Authority reserves the right to accept or reject Financial Offers exceeding the Estimated Procurement Value.

Contracting Authorities shall regard the Estimated Procurement Value as fair, reasonable and justified. Accordingly, they are expected to prepare a detailed and thorough breakdown of costs for each procurement procedure.

In line with the monitoring and regulatory function of the Department of Contracts, the Director General (Contracts) reserves the right to request that Contracting Authorities forward copies of the breakdown costs of the Estimated Procurement Value. In so doing, s/he may impose any condition/s s/he may deem appropriate, thus, upholding transparency and good governance.

e-Procurement Templates

In order to assist Contracting Authorities to fully adhere to this policy, the Department of Contracts shall be publishing updated versions of the applicable eProcurement Templates which shall reflect the new requirements. Nonetheless, Contracting Authorities are to adhere to this new procedure with immediate effect.

Utilities Procurement Regulations – S.L. 601.05

In line with Regulation 181 of the Procurement of Entities operating in the water, energy, transport and postal services sectors Regulations, Part IX (titled ‘Remedies’) of the Public Procurement Regulations S.L. 601.03 shall apply mutatis mutandis.

To this effect, any Procurement Calls published under the Utilities Procurement Regulations shall also adhere to the above modus operandi.

Contact

Contracting Authorities are encouraged to submit any queries to their respective Ministry’s Procurement Section or to their Ministerial Procurement Unit (MPU), as the case may be. In addition, Contracting Authorities may also submit any queries to the Department of Contracts’ Customer Care service on info.contracts@gov.mt or +356 21220212.

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