

Department of Contracts
Notre Dame Ravelin
FLORIANA

To Permanent Secretaries
Directors General
Directors
Heads of Public Sector Organisations

02 October 2020

PROCUREMENT OF PROPERTY REGULATIONS – S.L. 601.12

On 30 April 2020, Legal Notice 163 of 2020, entitled ‘Procurement of Property Regulations 2020’ was published. The scope of this Legal Notice is to regulate the manner in which government carries out the Procurement of Property in an efficient and transparent manner. The ‘Procurement of Property’ refers to the acquisition by whatever title, whether real or personal, of immovable property, which includes amongst others the leasing and purchasing of property from third parties.

The Procurement of Property Regulations may be accessed through MJEG’s¹ website (<https://legislation.mt/>) or through the Department of Contracts’ website (<https://contracts.gov.mt>) specifically under the ‘Resources’ section.

Contracting Authorities, specifically officers responsible for Public Procurement are encouraged to thoroughly read and familiarise themselves with the said Legal Notice. Moreover, at Annex 1, the Department of Contracts is briefly summarising the salient content of the ‘Procurement of Property Regulations 2020’ Legal Notice.

It is to be noted that under the said Legal Notice, a procurement procedure having an estimated value which does not exceed the threshold of €500,000² excluding VAT is considered to be a Departmental Procurement Call, thus, it shall be published, administered and determined by the Contracting Authority on its own without the need to involve the Director of Contracts. On the other hand, a procurement procedure having an estimated value which exceeds the threshold of €500,000² excluding VAT shall be published, administered and determined by the Director of Contracts on behalf of a Contracting Authority.

¹ MJEG - Ministry for Justice, Equality and Governance.

² The Minister shall, from time to time, by regulations determine the thresholds applicable under these regulations.

In addition, unless otherwise approved by the Director of Contracts, the Procurement of Property process shall be published through Government's e-procurement platform ([Electronic Public Procurement System: ePPS](#)). Accordingly, a Manual Notification, providing an explanation on the relative ePPS fields is also being published.

All Contracting Authorities are hereby being notified that prior to the commencement of a procurement process in connection with Immovable Property, they must consult with the Government Authorities responsible for the administration of Government land and properties (namely Lands Authority and the Joint Office) to determine whether or not Government has in its 'Portfolio of Properties' a property which fulfils the needs and requirements of the respective Contracting Authority.

e-Template: Immovable Property

In order to assist and standardise procurement documentation, the Department of Contracts has formulated a Template for the drafting of the Procurement Document to be utilised for the Leasing of Immovable Property. In the fullness of time, the Purchasing of Immovable Property templates shall also be compiled.

To this effect, Contracting Authorities are expected to make use of the said Leasing Template (as well as other relevant Property Procurement Documentation / forms).

Contracting Authorities' users holding an active ePPS account, when logged in, may access such documentation through the 'Resources' section of the [Electronic Public Procurement System](#).

Preparation and Submission of the Procurement Documents

Further to any applicable market research, consultation with stakeholder/s, customary quality assurance processes and necessary approvals, Contracting Authorities shall draft the Procurement Document (including ancillary forms and documentation) and submit for approval to the responsible authority. It is also the responsibility of the Contracting Authority to prepare the .xml structure consisting of the Eligibility, Technical and Financial Criteria.

At Annex 2, the Department of Contracts is providing an overview of the Modus Operandi to be adhered to when submitting the Procurement Document to be published, administered and determined by the Director of Contracts on behalf of a Contracting Authority. Specifically, a dedicated email address to centralise the submission

of such documentation for vetting has been set up. Thus, Contracting Authorities shall direct any communication in relation to this matter on property.contracts@gov.mt.

Such a process applies to a procurement procedure having an estimated value which exceeds the threshold of €500,000 excluding VAT. Nonetheless, Contracting Authorities are encouraged to adopt a similar internal Modus Operandi when publishing their Departmental Procurement of Immovable Property.

Contact

Contracting Authorities are encouraged to submit any queries to their respective Ministry's Procurement Section. 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.

Anthony Cachia
Director General (Contracts)

Annex 1

OUTLINE OF THE PROCUREMENT OF PROPERTY REGULATIONS

Preliminary Market Consultations

Before publishing a procurement procedure, Contracting Authorities may conduct Preliminary Market Consultations (PMC) in advance of a Procurement Property Call to seek or accept advice from independent experts, authorities or market participants. The information collected may be used in the planning, preparation and conduct of a procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the basic procurement principles of transparency, equal treatment and non-discrimination.

A Preliminary Market Consultation Process shall not result in an award of the procurement.

Calculation of the Procurement Estimated Value

As per Regulation 16 of S.L. 601.12, the calculation of the estimated value of a procurement procedure shall be based on the total amount payable, excluding any tax, as estimated by the Contracting Authority, including any form of option and any renewals of the contracts as explicitly set out in the Procurement Documents.

To this effect, the Total Estimated Value of Procurement Excluding VAT is the joint values of the Estimated Cost together with the Estimated Potential Cost; this summed up total value shall determine who is the authority responsible for the 'Administration and Publishing of the Procurement Property Process'.

The estimated value of a Procurement Property Call split in separate lots, shall take into account the cumulative estimate value of all lots.

Publication Time Limits

The Minimum Publication Time Limit for the receipt of offers in the case of a single stage process or for the initial submission in the case of a procedure with multiple successive stages, shall be thirty (30) calendar days from the date on which the Procurement Document was published on Government's e-procurement Platform ([Electronic Public Procurement System – ePPS](#)) or from the next day on which an advert has been published on the Government Gazette.

Should there be the need to reduce the established Minimum Publication Time Limit by fifteen (15) calendar days, the Contracting Authority must obtain the prior written approval from the responsible body. In granting such an approval, conditions may be imposed as deemed fit.

Estimated Procurement Value which does not exceed the threshold of €500,000ⁱ

Approval to be sought from the Permanent Secretary responsible for the Contracting Authority in question, or any person delegated by her / him in writing.

Estimated Procurement Value which exceeds the threshold of €500,000ⁱ

Approval to be sought from the Director of Contracts.

Division into Lots

Contracting Authorities may decide to split a Procurement Call in separate lots, indicating in the Procurement Document whether the offer can be submitted for one, for several or for all the lots. The size and subject matter of each lot may also be determined.

It is also possible to limit the number of lots that may be awarded to one bidder, provided that the maximum number of lots per bidder is stated in the Procurement Document.

Appointment and Duties of an Evaluation Committee

Pursuant to Regulation 12 of S.L. 601.12, the Evaluation Committee shall evaluate the offers submitted by the bidders in response to the publication of a Procurement of Property Call and make recommendations through the Evaluation Report.

Estimated Procurement Value which does not exceed the threshold of €500,000ⁱ

The Evaluation Committee shall be approved by the Head of the Contracting Authority. The Evaluation Report shall be communicated to the Departmental Contracts Committee which is empowered to make Definitive Recommendations on the Award / Cancellation of the procurement process.

Estimated Procurement Value which exceeds the threshold of €500,000ⁱ

The Evaluation Committee shall be recommended by the Head of the Contracting Authority and approved by the Director of Contracts. The Evaluation Report shall be communicated to the Director of Contracts who shall be empowered to make Definitive Recommendations on the Award / Cancellation of the procurement process.

Award Criteria

In accordance to Regulation 47 of S.L. 601.12, Procurement Property Calls shall be awarded on the basis of objective criteria which comply with the regulations, thus, ensuring effective competition, resulting in the identification of an overall economic advantage for the Contracting Authority.

Contracting Authorities shall adopt an appropriate Award Mechanism which shall be based on (i) Price or (ii) Cost (using a cost-effectiveness approach such as life-cycle costing) or (iii) Best Price Quality Ratio (BPQR).

The award criteria, published in the Procurement Document, shall be linked to the subject-matter of the contract and shall not confer an unrestricted freedom of choice. Once established, the award criteria cannot be altered under any circumstance. In addition, the award criteria shall be accompanied by requirements which allow the verification of the offer by the bidders.

Such criteria may *inter alia* relate to environmental, social or innovation aspects. The location of the property is also a possible criterion.

Choice of Procedure

The Procurement of Property Regulations do not establish specific procedures to be adopted for the award of such a Contract. In fact, the authority responsible for the procurement process shall have the freedom to structure and organise the procedure leading to the choice of a successful bidder subject to compliance with S.L. 601.12.

Notwithstanding the aforesaid, the default Procurement Procedure shall be the Open Procedure, thus, any interested Economic Operator may submit a tender in response to an open Call for Competition.

Moreover, in accordance to Regulation 37 of S.L 601.12, the design of the Procurement of Property Award Procedure shall be clearly identified in the Procurement Document. The procedure adopted shall respect the principles of equal treatment, non-discrimination, transparency, proportionality and mutual recognition. In particular, the responsible authority shall not provide information in a discriminatory manner, which may give some bidders an advantage over others.

Modifications to the Contract

A Modification is defined as ‘any change, variation or amendment to the original terms of the contract including, but not limited to, the introduction of new conditions and to the removal or replacement of existing conditions.’

Pursuant to Regulation 50 of S.L. 601.12, Modifications to the Contracts are to be limited as far as practicable. However, Contracting Authorities may, subject to the applicable conditions, carry out modifications to the contracts, as long as the prior written approval from the responsible body is attained as necessary. Modification Requests shall detail, as a minimum the Information requirements as per Regulation 51 of S.L. 601.12.

In granting or refusing a request for a modification, the responsible authority may impose any condition or instruction as deemed necessary; the Contracting Authority shall be obliged to adhere to them and implement them accordingly.

Estimated Procurement Value which does not exceed the threshold of €500,000ⁱ

Approval to be sought from the Permanent Secretary responsible for the Contracting Authority in question, or any person delegated by her / him.

Estimated Procurement Value which exceeds the threshold of €500,000ⁱ

Approval to be sought from the Director of Contracts.

Modification Without Approval: When a modification is carried out without seeking the prior written approval of the Director of Contracts or of the respective Permanent Secretary, as the case may be, the responsible authority cannot be requested to give a retroactive approval of the modification. Thus, it shall abstain from taking any cognisance of it. The responsibility of this unapproved modification shall vest in the Head of that Contracting Authority in accordance with the Fiscal Responsibility Act.

Unlawful Modifications: Any modification carried out against the express refusal of the Permanent Secretary or the Director of Contracts, as the case may be, shall be deemed to be unlawful.

Termination or Rescission of a Contract

In line with Regulation 57 of S.L 601.12, the Director of Contracts has the right to issue a decision terminating or rescinding any contract or agreement that could have been reached or signed with an owner if it transpires that the award of that contract has been made in breach of the Procurement of Property Regulations.

Non-Applicability

The Procurement of Property Regulations shall not apply to the procurement of property:

- which is regulated by any other law;
- outside the territory of Malta;
- between contracting authorities or bodies governed by public law;
- by whatever title that is declared to be secret or is accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in Malta, as long as the essential interests concerned cannot be guaranteed by less intrusive measures;
- authorised under a government scheme published in the Gazette

Direct Contracts

Pursuant to Regulation 41 of the Procurement of Property Regulations a Contracting Authority may procure property through a Direct Contract upon obtaining the prior written approval from the competent authority.

Estimated Procurement Value which does not exceed the threshold of €500,000ⁱ

Approval to be sought from the Minister responsible for Finance who may delegate his authority in writing to the Permanence Secretary or any other senior official in this Ministry.

Estimated Procurement Value which exceeds the threshold of €500,000ⁱ

Approval to be sought from the Director of Contracts.

Regulations of S.L. 601.03: Mutatis Mutandis S.L. 601.12.

A number of regulations forming part of the Public Procurement Regulations S.L. 601.03 shall, mutatis mutandis, apply to the Procurement of Property Regulations S.L. 601.12 as follows:

Regulation / Part in S.L. 601.12	Regulation in S.L. 601.03
Part I – General Provisions Regulations 7 and 9: Applicability of the Regulations	Part I – General Provisions Regulations 10, 11 and 13
Part II – Boards, Committees and Tribunals Regulation 29: General Contracts Committee	Part II – Boards, Committees and Tribunals Regulations 64 to 72
Part II – Boards, Committees and Tribunals Regulation 34: Public Contracts Review Board	Part II – Boards, Committees and Tribunals Regulations 80 to 94
Part IV – Exclusion and Blacklisting of Economic Operators	Part VI – Exclusion and Blacklisting of Economic Operators
Part VII – Appeals Regulation 58: Remedies before closing date of a call for competition	Part IX – Remedies Regulations 262 to 269
Part VII – Appeals Regulation 59: Appeals from Decisions taken after the Closing Date for the Submissions of an Offer	Part IX – Remedies Regulations 270 to 276
Part VII – Appeals Regulation 60: Appeal from a Decision terminating or rescinding a Contract	Part IX – Remedies Regulations 283
Part VII – Appeals Regulation 61: Court of Appeal	Part IX – Remedies Regulations 284 to 290

ⁱ The Minister shall, from time to time, by regulations determine the thresholds applicable under these regulations.

Annex 2

MODUS OPERANDI: SUBMISSION OF A PROCUREMENT OF PROPERTY DOCUMENT FOR VETTING BY THE DEPARTMENT OF CONTRACTS

Step 1: Compilation of the Procurement Document

Contracting Authorities shall prepare and draft the Procurement Document (as well as other Property Procurement Documentation/forms) utilising the Immovable Property Template.

Step 2: Internal Approval of the Procurement Document

Contracting Authorities shall channel the Procurement Document (including all applicable forms and ancillary documentation) through all customary internal quality assurance processes prior to forwarding to the Department of Contracts. It is recommended that the Procurement Section (or in its absence, the Office responsible for Procurement) of the respective Contracting Authority reviews the Procurement Document and approves it for submission to the Department of Contracts.

Step 3: Collation of Additional Procurement-related Documentation

Contracting Authorities shall ascertain that the following additional procurement-related documentation is available, duly compiled and endorsed as necessary:

- Tender Originators Form (ToF);
- Commitment Form;
- Approval of Funds from the Ministry for Finance and Financial Services (Budget Office) or an Internal Financial Control Unit (as applicable);
- Approval from relevant channels in respect of expenditure;
- Procurement Estimated Value (including a detailed breakdown of costs);
- Any other pertinent Approval/s;
- Nominated Officers to sit on the Tender Evaluation Committee (TEC) board; their respective Curriculum Vitae (CVs) or a copy of the approved list of an established Pool of Evaluators already approved by the Department of Contracts

Step 4: Submission of Procurement Documentation

Further to the preparation of the Procurement Document (including all applicable forms and ancillary documents) as well as the gathering of other procurement-related documentation as detailed above, Contracting Authorities shall submit all via email to the Department of Contracts through property.contracts@gov.mt.

All the required documentation shall be accompanied by a covering email clearly indicating the purpose of the submission and stating the following information:

- Title of the Procurement
- Estimated Procurement Value excluding VAT
- List of enclosed Documentation
- Contracting Authority's Name and its respective Liaising Officer

The subject of the email shall read: **Procurement Document for Vetting**. In addition, the salient parts of the **Title of the Procurement** as well as the name of the **Contracting Authority** shall also be included.

Accordingly, such comprehensive information shall hasten the internal channelling at the Department of Contracts.