

Department of Contracts
Notre Dame Ravelin
FLORIANA

To Permanent Secretaries
Directors General
Directors
Heads of Public Sector Organisations

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DIVISION AND AMALGAMATION OF LOTS

During Procurement Planning, amongst other decisions, Contracting Authorities shall consider whether or not the Procurement Procedure shall be divided into lots. This provision is included in Directives 2014/EU/241 and 2014/EU/252 and accordingly transposed in the applicable National Public Procurement Regulations, as one of the initiatives intended to encourage Small and Medium Enterprise (SME) participation. Additionally, the diversity resulting from multiple lots may also foster competition and enhance efficiency.

It is recommended that as part of research, Contracting Authorities analyse the market to obtain a thorough understanding of the operational, logistical and financial perspective of how the specific market works. Accordingly, one is in a better position to decide on the viability of a Contract into Lots.

Recital 78 of Directive 2014/EU/24 and Recital 87 of Directive 2014/EU/25 explain that when contracts are divided into lots, such a division may be based on either of the following approaches:

- Quantitative – The size of the individual contracts is structured in a way to correspond to the capacity of SMEs.
- Qualitative – The content of the lot corresponds to the capacity / skills of the different trades and specialised sectors of SMEs.

¹ Directive 2014/EU/24 was transposed into National Law S.L. 601.03

² Directive 2015/EU/25 was transposed into National Law S.L. 601.05

Pursuant to Regulation 33³ of S.L. 601.03 and Regulation 56 of S.L. 601.05⁴ should a contract be awarded in the form of separate lots, Contracting Authorities may determine the size and subject-matter of each lot. Quantities per lot are indivisible, thus, each lot shall be awarded for the whole of the quantity / quantities indicated.

Accordingly, Contracting Authorities shall establish the Estimated Procurement Value for each lot, its quantity / quantities as well as its content focus, which shall be linked to the scope of the overall Procurement Procedure, thus, creating a functional whole project. In addition, it is important that Economic Operators are notified whether they may submit a proposal for one, for several or for all of the lots.

The aforementioned EU Directives and their corresponding National Regulations include provisions that require the aggregation of procurement. Such documentation also stipulates that contracts shall not result in artificial splitting with the scope of circumventing the thresholds in order to avoid the application of the EU Directives / National Regulations. Therefore, it is very important to record the reasons to divide a Contract into Lots.

Additionally, should Contracting Authorities utilise lots, they shall ensure that no methods are utilised that would favour National Economic Operators; to the contrary, lots shall afford equal and non-discriminatory access to any potential bidder.

Contract without Lots

Pursuant to Regulation 34 of S.L. 601.03, where a Procurement Call has an Estimated Value which equals or exceeds the Local Threshold⁵, Contracting Authorities shall justify the non-subdivision of a Contract into Lots, by providing an indication of the main reasons for their decision. Accordingly, this information shall be included in the Procurement Document. Such a requirement is reflected in the Templates published by the Department of Contracts.

Recital 78 of Directive 2014/EU/24 includes some examples of where it *may* not be appropriate to divide a Contract into Lots. For instance, the division into lots might:

- Restrict competition
- Render contract implementation excessively technically difficult or expensive
- Jeopardise contract execution due to coordination issues with different contractors

³ Public Procurement Regulations S.L. 601.03

⁴ Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations S.L. 601.05 (Utilities)

⁵ Local threshold currently reads Euro 139,000 excluding VAT. The Minister for Finance shall, from time to time, by regulations determine the thresholds applicable under these regulations.

Limitation on the Number of Lots: New Administrative Procedure

The Department of Contracts is hereby establishing a new strategic administrative procedure in relation to managing lots; each lot shall have a minimum Estimated Value equal to or exceeding Euro 5,000 excluding VAT. Therefore, a Procurement Call may not carry any lots below this threshold since it is established in line with Regulation 270⁶ of S.L. 601.03 which relates to the provisions of ‘Appeals from decisions taken after the Closing Date for the Submission of an Offer’⁷.

In addition, the number of lots shall be reasonable and proportionate to the aggregate Estimated Value of all lots; such a provision shall be viewed from an administrative perspective wherein a substantial number of lots will result in a cumbersome procurement process as well as difficulties in contract management. Nonetheless, the number of lots utilised shall still be sufficient to ensure genuine competition in so far as there are enough qualified and potential Economic Operators in the relevant market.

At Awarding Stage, in line with the published terms and conditions, each lot is deemed as a separate contract. Therefore, the requirements, characteristics, criteria and deliverables shall be defined per lot.

Accordingly, Contracting Authorities shall ensure that when planning for different lots, all applicable variables (such as quality, timescales, costs, scope, quantities, benefits, risks) are taken into consideration. Each lot shall be assessed for its viability to be managed as a single lot wherein the Estimated Value is equal to or exceeding Euro 5,000 excluding VAT. Such considerations should always be without prejudice to the relevant Procurement Regulations.

Furthermore, during the Vetting Process, the Department of Contracts, the Sectoral Procurement Directorate or the applicable authority responsible for the procurement process reserves the right to recommend the amalgamation of lots deemed as excessively small for the scope of the overall Procurement Procedure.

⁶ Regulation 270 states that ‘Where the estimated value of the public contract meets or exceeds five thousand euro (€5,000) any tenderer or candidate concerned, or any person, having or having had an interest or who has been harmed or risks being harmed by an alleged infringement or by any decision taken including a proposed award in obtaining a contract, a rejection of a tender or a cancellation of a call for tender after the lapse of the publication period, may file an appeal by means of an objection before the Public Contracts Review Board, which shall contain in a very clear manner the reasons for their complaints’.

⁷ The same provisions apply to Utilities Procurement since Regulation 181 of S.L. 601.05 states that ‘Part IX of the Public Procurement Regulations shall mutatis mutandis apply to these regulations’. Part IX of S.L. 601.03 relates to ‘Remedies’.

Additional Information

In order to assist and guide Contracting Authorities in the correct interpretation of the regulations in relation to ‘Contract into Lots’, the Department of Contracts has updated and reviewed Guidance Note #15 titled ‘Lots’.

All Contracting Authorities are reminded that active ePPS account holders (when logged in) may access Guidance Notes, grouped in a zipped folder, through the ‘Resources’ section of Government’s e-Procurement platform (Electronic Public Procurement System – ePPS).

Contact

Contracting Authorities are encouraged to submit any queries to the Department of Contracts’ Customer Care service on info.contracts@gov.mt or +356 21220212. Alternatively, guidance may be sought from the Office of the Director Sectoral Procurement on +356 22001905/8 or from the Sectoral Procurement Directorate. Contracting Authorities may also submit any queries to the Ministry’s Procurement Section.

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