

Department of Contracts
Notre Dame Ravelin
FLORIANA

To Permanent Secretaries
Directors General
Directors
Heads of Public Sector Organisations

26 May 2021

INDICATIVE QUANTITIES: DEFINITE CONTRACT VALUE IN A PROCUREMENT PROCEDURE

Public Contracts are agreements concluded in writing between Economic Operators and Contracting Authorities wherein the scope is the execution of works, the supply of products or the provision of services, in relation to pecuniary (financial) interest. Accordingly, it consists of, or is measured, in money.

Amongst other salient elements, the quantities required for each Public Contract are pivotal for determining a realistic Procurement Estimated Value. To this effect, it is crucial that Contracting Authorities conduct comprehensive research on the procurement to be undertaken and ascertain that the quantities required are definite and pre-set at Publication Stage.

Furthermore, a Prior Information Notice / Periodic Indicative Notice, a Contract Notice and a Contract Award Notice should include the ‘quantity’ of the procurement, as applicable. In instances wherein the Procurement Call shall be divided into lots, such information shall be provided for each Lot.

Whilst it is acknowledged that at times certain procurement purchases necessitate an Indicative (rather than a Definite) Quantity, the Contracting Authority shall nonetheless as much as possible provide a realistic amount envisaged. Therefore, in such instances, as part of the Procurement Planning Stage, research shall also entail a meticulous review of an accurate Total Indicative Quantity which shall include a realistic Minimum Predicted Quantity that shall be procured. It is pertinent to note that utilising an inadequate quantification technique shall not be tolerated.

Further to the above, the Department of Contracts is of the opinion that for Economic Operators to provide a well-calculated Financial Bid they are to be cognisant of realistic quantities as well as a guaranteed Contract Value amount. Thus, an 80% of the Original Contract Value across the Duration of the Contract (and any possible extension, if applicable) is deemed as a reasonable Definite Capping that shall ascertain that the Economic Operators are equipped to assess the commercial viability based on any relevant economies of scale.

Contracting Authorities are also reminded that the Total Indicative Quantity as well as the Minimum Predicted Quantity shall be of such an amount that allows all offers to be priced up to two (2) decimal places.

To this effect, Contracting Authorities are being notified that whenever the procurement in question shall utilise a Procurement Procedure and / or a Procurement Tool (to aggregate procurement) wherein the required deliverable shall be on an ‘*as and when required basis*’ or an ‘*indicative quantity*’ is being provided, the authority responsible for the procurement process shall, prior to adopting such an approach in relation to quantity, obtain the written permission of the concerned competent authority as follows:

Director of Contracts

- Contracting Authorities listed under Schedule 2 of S.L. 601.03¹
- Contracting Authorities listed under Schedule 16 of S.L. 601.03, specifically for any Procurement Procedure which is not the Open nor the Restricted
- Contracting Authorities listed under Schedule 16 of S.L. 601.03, specifically for Procurement Procedures wherein the Estimated Procurement Value exceeds seven hundred and fifty thousand euro (€750,000) excluding VAT
- Contracting Entities pursuing activities in line with S.L. 601.05²

Director Sectoral Procurement

- Contracting Authorities listed under Schedule 16 of S.L. 601.03, specifically for Procurement Procedures (Open and Restricted) wherein the Estimated Procurement Value exceeds ten thousand euro (€10,000) but does not exceed seven hundred and fifty thousand euro (€750,000) excluding VAT

Head of Contracting Authority

- Contracting Authorities listed under Schedule 3 of S.L. 601.03

¹ Public Procurement Regulations S.L. 601.03

² Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulation: S.L. 601.05

Such an approval is mandatory for all Procurement Procedures wherein the Estimated Procurement Value exceeds the value of ten thousand euro (€10,000) excluding VAT.

The Request for Approval shall incorporate the following details:

- Background Information (including Procurement Description)
- Salient Research in relation to Quantity Requirements
- Justification for not procuring a Definite Quantity
- Total Indicative Quantity vs Minimum Predicted Quantity

Upon granting approval, the Director of Contracts or the Director Sectoral Procurement or the Head of Contracting Authority (as the case may be) may impose any conditions/s deemed appropriate for the correct execution of the Procurement Procedure.

Although a Minimum Predicted Quantity is being set, the Contracting Authority reserves the right to under-procure or over-procure quantities per deliverable, as long as, by the expiration of the Contract Duration (and any possible extension if applicable) an 80% of the Original Contract Value is procured.

e-Procurement Templates

To assist Contracting Authorities to fully adhere to this policy, the Department of Contracts shall in due course be publishing updated versions of the relevant eProcurement Template/s. Nonetheless, further to the attainment of the applicable approval, when drafting the Procurement Document, Contracting Authorities shall make reference to the Total Indicative Quantity and the Minimum Predicted Quantity as well as the 80% Definite Capping of the Original Contract Value in all the appropriate section/s of the documentation.

Other Routes

In instances wherein the quantities required are not definite, as and where applicable, a Contracting Authority may opt to utilize a Framework Agreement with Mini-Competitions or a Dynamic Purchasing System with Specific Contracts. Such alternative routes would necessitate a Definite Quantity to be established only a couple of weeks prior to the publishing of the Mini-Competition or the Specific Contract.

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.

Anthony Cachia
Director General (Contracts)