

Department of Contracts
Notre Dame Ravelin
Floriania

26th January 2004

To Heads of Department
and Parastatal Entities

Re: Public Contracts Regulations 2003

On the 10 October 2003, by virtue of Legal Notice 299/2003, Government published the new Public Contracts Regulations, 2003 which have been drawn up in line with all relevant Public Procurement Directives of the European Union. Your attention is now drawn to Legal Notice 388/2003 entitled “Commencement Notice of the Public Contracts Regulations, 2003” which states as follows:-

“In virtue of regulation 1 of the Public Contracts Regulations, 2003, the Minister of Finance and Economic Affairs has appointed the 1st January, 2004 as the date on which the provisions of the said regulations shall come into force with regard to all matters specified therein other than those falling under sub-regulation (2) of regulation 18 of the Public Service (Procurement) Regulations, 1996.”

The above should be read and construed in accordance with the provisions of Legal Notice 387/2003 and it is, therefore, highly important that all procurement managers should obtain, without any further delay, copies of Legal Notices 299, 387 and 388 all of 2003. The provisions contained therein have to be fully adhered to by all the entities listed in Schedules 1, 2 and 3 of the new Regulations.

The Department of Contracts will soon be organizing training sessions on the new Regulations for all Procurement Officers in the affected entities. In addition a Manual of Procedure is being drawn up with the assistance of the Management Efficiency Unit of the Office of the Prime Minister.

While collective and individual study of the new Regulations is strongly recommended, your attention is drawn to some important developments which these regulations have brought into effect with regard to the right of aggrieved bidders to submit complaints, namely:

1. The right of any tenderer to submit a complaint to the General Contracts Committee in the case of all tenders with a contract value estimated to cost between Lm5,000 and Lm20,000 and which are issued by Local Councils and all Authorities listed in Schedule 2 of the Regulations; and
2. All tenders issued by authorities listed in Schedule 1 of the new Regulations and whose value exceeds Lm20,000 shall be subject to appeal procedures which will be heard by the Public Contracts Appeals Board in accordance with parts XII and XIII of the Regulations.

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In both instances the contracting authorities involved (Government Departments, Corporations and any Public Undertaking listed in Schedules 1, 2 or 3 as the case may be) are obliged by the new Regulations to include a clause in the tender document informing tenderers that the award of that particular contract is subject to the right of recourse. The tender document should also include a copy of Regulation 20 or Regulation 30, as applicable.

While it is understood that in the early implementation stage of the new Regulations some problems may be encountered, it is hoped that the planned training sessions as well as the Manual of Procedure and the advice which may be given by officials in the Department of Contracts will help to ensure that the transition to the new regulatory regime will be as smooth as possible.

Your kind co-operation would be appreciated.

J V Spiteri
Director General (Contracts)

enclosed Regulation 20 and Regulation 30

Right of recourse.

20. (1) Where the estimated value of the public contract exceeds Lm5000 but not Lm20,000 and is issued by a Local Council or by an Authority listed in Schedule 2, any interested undertaking shall have a right to make a complaint to the General Contracts Committee in accordance with the procedure laid down in these regulations.

(2) The Contracting Authority shall be obliged to issue a notice and affix an advertisement, in a prominent place at its premises, indicating the awarded public contract, the financial aspect of the award and the name of the successful tenderer.

(3) Any interested undertaking who may be aggrieved by the award shall, within three working days from the publication of the notice, file a letter of objection, together with a deposit of Lm100, with the Contracting Authority, clearly setting forth the reason for his complaint.

(4) After the expiry of the period allowed for the submission of a complaint the Contracting Authority shall deliver the letter of complaint, the deposit receipt and all documents relating to the public contract in question to the Director of Contracts.

(5) The Director of Contracts shall refer the case to the General Contracts Committee which shall examine the matter in a fair and equitable manner and determine the complaint by upholding or rejecting it.

(6) In its deliberation the Committee shall have the authority to obtain in any manner it deems appropriate, any other information not already provided by the Contracting Authority. The General Contracts Committee's decision shall be final and binding on the Contracting Authority and the interested undertaking who shall not be afforded any further recourse.

(7) Tender documents issued in terms of this part of the regulations shall include a clause informing tenderers that the award of the contract is subject to the right of recourse as provided for in this regulation, a copy of which should be reproduced in the documents.

(8) The Minister shall have the authority to order by legal notice, that recourse as provided in this regulation be made available also by Authorities listed in Schedule 3 and to prescribe the procedure by which such recourse is to be granted.

Appeals Board.

30. (1) There shall be established a public contracts Appeals Board to be known as the Appeals Board which shall be regulated in terms of Part XIV of these Regulations.

(2) It shall be the function of the Board to hear and determine complaints submitted by any person having or having had an interest in obtaining a particular public supply, public service or public works contract and who has been or risks being harmed by an alleged infringement by those Authorities listed in Schedule 1 to these regulations and whose value exceeds Lm20,000, in accordance with the procedures laid down in Parts XII and XIII of these regulations.

(3) Every Contracting Authority listed in Schedule I shall indicate in its tender documents that the award of the contract is subject to the appeals procedure as set forth in these regulations. The document shall include a copy of Parts XII or XIII, as the case may be, of these Regulations for the guidance of tenderers.