

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: SUBMISSION DEADLINE

Further to Contracts Circular N° 15/2019 (published on 11 December 2019) which related to the applicable deposit when lodging an application prior to the closing date of a call for competition, additional amendments took place to the relevant regulation.

Public Procurement Regulations – S.L. 601.03

Further to Legal Notice 196 of 2020 which came into force on 15 May 2020, Regulation 262 of the Public Procurement Regulations S.L. 601.03 now incorporates a specific timeframe linked 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, within the first two-thirds of the time period allocated in the call for competition for the submission of offers, 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 e-procurement 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 allowed sufficient time to file a remedy before the Closing Date of a Call for Competition, new minimum timeframes shall be applicable. Thus, the Minimum Publication Time Limits and their respective Publication Clarification Periods shall be amended accordingly.

Open Procedure New Timeframes

Although the Public Procurement Regulations list various procedures, the default competitive procurement procedure adopted locally is the Open Procedure.

To this effect, the Department of Contracts has prepared the following table illustrating the new Minimum Timeframes which are applicable with immediate effect.

Below Local Threshold¹ Call for Tenders

	New Minimum Timeframes	Old Minimum Timeframes
Publication Time Limit	21 Calendar Days	20 Calendar Days
Last date on which additional information ² can be requested by the Economic Operator ³	13 Calendar Days before Tender Submission Deadline	8 Calendar Days
Last date on which additional information ² can be issued by the Contracting Authority	8 Calendar Days (by 9.30am) before Tender Submission Deadline	4 Calendar Days

Above Local Threshold¹ Call for Tenders

	New Minimum Timeframes	Old Minimum Timeframes
Publication Time Limit	30 Calendar Days	30 Calendar Days
Last date on which additional information ² can be requested by the Economic Operator ³	16 Calendar Days before Tender Submission Deadline	12 Calendar Days
Last date on which additional information ² can be issued by the Contracting Authority	11 Calendar Days (by 9.30am) before Tender Submission Deadline	6 Calendar Days

In addition, any Clarification Meetings and/or Site Visits shall take place prior to the ‘Last date on which additional information can be requested by the Economic Operator’.

¹ The local threshold of Public Procurement is currently €139,000 excl VAT

² Additional Information refers to Clarification Requests / Replies as applicable

³ Deadline for request for any additional information from the Contracting Authority

Contracting Authorities shall take note of the above timeframes and apply them when drafting the Procurement Document and developing the Core Information on the CfT workspace of Government's e-procurement platform (ePPS), as applicable. In addition, the authority responsible for the procurement process, specifically the officer assigned the Tender Coordinator role on the ePPS system, shall ascertain that all Publication Clarification Replies are published within the stipulated timeframes.

Therefore, it is the Tender Coordinator's remit to establish the 'Last Date' when the:

- (i) Economic Operators may submit Clarification Requests, and
- (ii) Contracting Authority shall provide a Clarification Reply accordingly

However, it is pertinent to note that the ePPS time window is automatically set in line with the timeframes as per the relevant Procurement Directives (ie up to 6/4 calendar days prior Tender Submission Deadline) and Procurement Regulations. Thus, it is reiterated that extra caution needs to be taken when setting the Clarification Period timeframes, making sure that the new timeframes established through this Circular are adhered to and correctly applied.

e-Tender Templates: In order to assist Contracting Authorities to fully adhere to the requirements emanating from the applicable regulations and policies, the Department of Contracts has also published updated versions of the e-Tender Templates which reflect the new Minimum Publication Time Limits and their respective Publication Clarification Periods.

Extending the Tender Submission Deadline during the Publication Period

In the eventuality that the Publication Period of an Open Procedure necessitates an extension to the Tender Submission Deadline, such extension shall always be calculated in multiples of three (3). In addition, the Clarification Period Timeframe shall be extended accordingly. Contracting Authorities shall ascertain that any such dates shall not be on Weekends or Public Holidays.

Whenever the Tender Submission Deadline is extended, a new corresponding Deadline linked to the 'Remedy before the Closing Date for a Call for Competition' shall be set within the first two-thirds of the new Publication Period.

In order to assist Contracting Authorities in the calculation of the aforementioned timeframes, at Annex 1, the Department of Contracts is providing a table illustrating a set of pre-established Publication Time Limits and their respective Publication Clarification Periods as well as the deadline for any remedial action deemed necessary.

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 Regulations⁴ shall also adhere to the above new Timeframes.

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.

Anthony Cachia
Director General (Contracts)

⁴ The local threshold of the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors is currently €428,000 excl. VAT.