

Department of Contracts  
Notre Dame Ravelin  
FLORIANA

To Permanent Secretaries  
Directors General  
Directors  
Heads of Public Sector Organisations

18 May 2021

## **PUBLICATION OF A LIST OF CONTRACTS AWARDED BY CONTRACTING AUTHORITIES AND SECTORAL PROCUREMENT DIRECTORATE**

The Director of Contracts is responsible for the regulation and administration of the Procurement Procedures as laid down in the Public Procurement Regulations S.L. 601.03 and Utilities Procurement S.L. 601.05<sup>1</sup>. Accordingly, pursuant to Regulation 12(1)(a) of S.L. 601.03 and Regulation 33 of S.L. 601.05<sup>2</sup>, the Director of Contracts is duty bound to monitor procurement activities with the purpose of ensuring adherence to the relevant Procurement Regulations as well as ascertaining that the results of such monitoring is made public.

To this effect, the publication of a List of Awarded Contracts by the Director Sectoral Procurement as well as by the relevant Contracting Authorities / Entities is crucial for the monitoring function of the Department of Contracts since it promotes transparency and good governance, the pillars of the Public Procurement Administrative Procedures. Failure to adhere to this Circular will constitute a breach of the relevant Procurement Regulations.

*This Circular **repeals** Contracts Circulars N° 15/2015 and 02/2017.*

### **Public Procurement Regulations – S.L. 601.03**

Regulation 111(2)<sup>3</sup> of S.L. 601.03 states that *‘every six months the head of the contracting authority shall publish in the Gazette a full list of all departmental contracts awarded by him with a value exceeding five thousand euro (€5,000) and a list of all cases involving variations which exceed the original contract values by more than five per cent. These two lists must include the name of the economic operator, the nature of the contracts, the original contract values and the final contract values, as the case may be: Provided that,*

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<sup>1</sup> Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulation: S.L. 601.05

<sup>2</sup> Regulation 33 states the provisions of regulations 10, 11, 12, 14 and 15 of the Public Procurement Regulations shall *mutatis mutandis* apply to these regulations.

<sup>3</sup> Regulation 111(2) is in Part III (titled Rules applicable to Departmental Tenders) of S.L. 601.03. Departmental Procurement relates to procurement having an estimated value of which is less than €139,000 excluding VAT.

*without prejudice to regulation 79, in the case of contracting authorities listed under Schedule 16, the obligation established under this sub-regulation shall apply when these contracting authorities publish calls that are not regulated as an open procedure’.*

Regulation 79(2)(k) of S.L. 601.03 states that one of the functions of the Director Sectoral Procurement<sup>4</sup> shall be *‘to publish every six (6) months in the Gazette the following:*

- (i) a list of contracts recommended for award by the Sectoral Procurement Directorate;*
- (ii) a list of modifications to contracts which exceed the contract value by more than five percent (5%) provided that the estimated value of the call exceeds ten thousand euro (€10,000) but is below one hundred thirty nine thousand euro (€139,000);*
- (iii) a list of all modifications to contracts which had an estimated value meeting or exceeding one hundred thirty nine thousand euro (€139,000) but not exceeding seven hundred and fifty thousand euro (€750,000)’.*

#### Contracting Authorities listed under Schedule 16

All Contracting Authorities under Schedule 16 are to adhere to the provisions as is set out in Regulation 79(2)(k) of S.L. 601.03. It is pertinent to note that since a Framework Agreement utilises the Open Procedure and the Dynamic Purchasing System adopts the Restricted Procedure, any relevant awards resulting from such procedures shall also form part of the List of Contracts published on the Government Gazette.

However, for instances wherein the Procurement Procedure is not the Open nor the Restricted, Contracting Authorities shall comply with Regulation 111(2) of S.L. 601.03.

Further to the above, in line with its regulatory role, the Director of Contracts is hereby establishing a structured ***Administrative Procedure***.

Every six (6) months, the Director Sectoral Procurement, in liaison with the Sectoral Procurement Directorate, is duty bound to publish a List of Awarded Contracts / Modifications to Contracts as follows:

- Contracts (including Direct Contracts and Quotations as well as any variations exceeding the Original Contract Value by more than 5%, if applicable) awarded by the Contracting Authorities themselves with a value which exceeds €5,000 up to €10,000 excluding VAT.

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<sup>4</sup> The Director Sector Procurement is responsible for the administration and management of the Sectoral Procurement Directorate who in turn is responsible for the administration, evaluation and recommendation on behalf of contracting authorities listed under Schedule 16 of calls for tenders published under an open or restricted procedure where the estimated value of such calls exceeds €10,000 but does not exceed €750,000 excluding VAT.

- Contracts recommended for award by the Sectoral Procurement Directorate (on behalf of Contracting Authorities listed under Schedule 16) in relation to Calls for Tenders published under an Open or Restricted Procedure with an Estimated Value which exceeds €10,000 but does not exceed €750,000 excluding VAT.
- Modifications to Contracts which exceed the Original Contract Value by more than 5% provided that the Estimated Value of the Call for Tenders exceeds €10,000 but is below €139,000 excluding VAT.
- Modifications to Contracts (i.e. any percentage) wherein the Estimated Value of the Call for Tenders equals or exceeds €139,000 but does not exceed €750,000 excluding VAT.

Contracting Authorities shall cooperate with their respective Sectoral Procurement Directorate and submit any applicable information as deemed necessary.

For avoidance of doubt, it is being clarified that should a Contracting Authority listed under Schedule 16 carry out a procurement procedure through a Design Contest or an Innovation Partnership, the responsibility to publish the list of such contracts on the Government Gazette shall lie with the Contracting Authority in line with Regulation 111(2) of S.L. 601.03.

*Commencement of the Administrative Procedure:* Although Legal Notice 56 of 2021, which is the relevant Legal Notice that established the Director Sectoral Procurement and Sectoral Procurement Directorate (in lieu of the Ministerial Procurement Units), became effective as of 15 March 2021, the above Administrative Procedure shall apply for all Contracts awarded as of 01 January 2021.

#### Contracting Authorities listed under Schedule 2

All Contracting Authorities under Schedule 2 are to adhere to the provisions as is set out in Regulation 111(2) of S.L. 601.03. Therefore, the List of Contracts shall include all Departmental Awards (including Open and Restricted Procedures, Design Contests, Innovation Partnerships and Framework Agreements) in line with the applicable thresholds.

In line with the Commencement of the Administrative Procedure for the Director Sectoral Procurement and the Sectoral Procurement Directorate as well as for the requirements of this reporting exercise, Contracting Authorities *currently* under Schedule 2 shall themselves be responsible to publish the List of Contracts awarded as of 01 January 2021.

### Contracting Authorities listed under Schedule 3

All Contracting Authorities (except Local Councils) are to adhere to the provisions as is set out in Regulation 111(2) of S.L. 601.03. Therefore, the List of Contracts shall include all Departmental Awards (including Open and Restricted Procedures, Design Contests, Innovation Partnerships and Framework Agreements) in line with the applicable thresholds.

With regard to Local Councils, Regulation 111(2) applies, however, the said list shall be uploaded on their respective Local Council's official online portal ([www.localgovernment.gov.mt](http://www.localgovernment.gov.mt)) in line with the provisions of the Procurement Guidelines published by the Local Government Division.

### **Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations – S.L. 601.05**

Regulation 87(1)<sup>5</sup> of S.L. 601.05 states that *'Regulations 100 and 102 to 113 of the Public Procurement Regulations, 2016, shall mutatis mutandis apply to these regulations'*.

Accordingly, Contracting Entities<sup>6</sup> are reminded to adhere to the provisions as is set out in Regulation 111(2) of S.L. 601.03. Therefore, the List of Contracts shall include all Departmental Awards (including Open and Restricted Procedures, Design Contests, Innovation Partnerships and Framework Agreements) in line with the applicable thresholds.

### **Emergency Procurement Regulations – S.L. 601.08**

Regulation 15 of S.L. 601.08 states that *'every six months, the contracting authority<sup>7</sup> shall publish a list of contracts awarded under these regulations in the Gazette, which list shall include the details of the bidders that were awarded the contracts and the value of the contracts'*.

Therefore, the List of Awarded Contracts published in the Government Gazette shall include all the Competitive Calls published through an electronic platform (including platforms administered by Contracting Authorities or Government's e-procurement Platform). Such calls shall have an estimated value which is less than €135,000 excl. VAT.

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<sup>5</sup> Regulation 87(1) is in Part III (titled Rules applicable to Departmental Tenders) of S.L. 601.05. Departmental Procurement relates to procurement having an estimated value of which is less than €428,000 excluding VAT.

<sup>6</sup> Contracting entities are entities which: (a) are contracting authorities or public undertakings and which pursue one of the activities referred to in regulations 8 to 14; (b) when they are not contracting authorities or public undertakings, have as one of their activities any of the activities referred to in regulations 7 to 13, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority.

Regulations 7 to 14 relate to various activities as follows: Reg 7 – Gas and Heat. Reg 8 – Electricity. Reg 9 – Water. Reg 10 – Transport Services. Reg 11 – Ports and Airports. Reg 12 – Postal Services. Reg 13 – Extraction of Oil and Gas Exploration or Extraction of Coal or other Solid Fuels. Reg 14 – Tenders Comprising Products Originating in Third Countries.

<sup>7</sup> Contracting Authorities currently refers to the Central Procurement Supplies Unit and the Civil Protection Department.

## **Content, Compilation and Publication of the List of Awarded Contracts**

To facilitate and standardise the Publication of the List of Awarded Contracts, the Department of Contracts is establishing the Content and Compilation of the said list as well as any ancillary Modus Operandi.

### Content of the List of Awarded Contracts

The List of Awarded Contracts shall at least include the name of the Awardee / Economic Operator / Contractor, the Nature of the Contract and the Contract Value. In the eventuality that Modifications / Variations are awarded to existing Contracts, the aforementioned list shall also include the Final Contract Values (in addition to the Original Contract Value).

### Compilation and Publication of the List of Awarded Contracts

The List of Awarded Contracts shall be compiled and published on the Government Gazette by the respective authority as follows:

- Director Sectoral Procurement (in liaison with the Sectoral Procurement Directorate and the relevant Contracting Authorities listed under Schedule 16 of S.L. 601.03)
- Contracting Authorities listed under Schedule 2 of S.L. 601.03
- Contracting Authorities listed under Schedule 3 of S.L. 601.03
- Contracting Entities pursuing activities in line with S.L. 601.05
- Contracting Authorities listed under the Schedule of S.L. 601.08

### Templates of the List of Awarded Contracts

Enclosed with this circular, at Annex I, the Department of Contracts is providing two (2) Sets of Templates split into different sub-headings as follows:

- List of Quotation Contracts
- List of Tender Contracts
- List of Direct Contracts
- List of Modifications / Variations to Contracts

One of the Templates is specific for the Director Sectoral Procurement, the Sectoral Procurement Directorate and the relevant Contracting Authorities listed under Schedule 16 of the Public Procurement Regulations S.L. 601.03.

The other Template shall be utilised by the Contracting Authorities listed under Schedules 2 and 3 of the Public Procurement Regulations S.L. 601.03 as well as by the Contracting Entities pursuing activities in line with the Utilities Procurement S.L. 601.05.

In addition, a specific template for the submission of a List of Contracts awarded under the Emergency Procurement Regulations S.L. 601.08 is also being provided.

The Director Sectoral Procurement and all relevant Contracting Authorities / Entities are expected to make use of these templates, thus, standardising the publication of the said List of Awarded Contracts on the Government Gazette.

### **Submission of the Publication Copies to the Department of Contracts**

Publication copies of the said List of Awarded Contracts, as published in the Government Gazette, are to be forwarded to the Compliance and Monitoring Unit (CMU) within the Department of Contracts at [compliance.contracts@gov.mt](mailto:compliance.contracts@gov.mt), by not later than one (1) month from expiry of the allocated time frames. Accordingly, the CMU is expecting to receive the submission of the Government Gazette copies as detailed below:

<b>List of Awarded Contracts Period</b>	<b>Submission to CMU</b>
January till June	End of July
July till December	End of January

It is pertinent to note that if no contracts (or part thereof) including modifications / variations took place in any given period, a nil reply should be communicated to the Department of Contracts. In such instance, the Director Sectoral Procurement or the relevant Contracting Authority / Entity as applicable shall specify to which type of Contract (Quotation, Tender, Direct Contract) or Modification / Variation the nil reply refers to.

### **Contact**

Contracting Authorities are encouraged to submit any queries to the Department of Contracts' Customer Care service on [info.contracts@gov.mt](mailto: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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