

Department of Contracts
Notre Dame Ravelin
FLORIANA

To Permanent Secretaries
Directors General
Directors
Heads of Public Sector Organisations

23 December 2021

AWARD OF PRECARIOUS SERVICE CONTRACTS: 2022, 2023 AND 2024 RATES

Reference is being made to Contracts Circulars N° 27/2014, 04/2015, 20/2016, 01/2017, 07/2017, 08/2017, 20/2017, 20/2018, 17/2019 and 20/2020 published with the intent to establish the ‘Minimum Hourly Rates Payable to Contractor’ in relation to a set of specific services, with the scope of mitigating precarious work conditions.

The new ‘Minimum Hourly Rates Payable to Contractor’ for year 2022, 2023 and 2024 which reflect the rates following the Collective Agreement 2017-2024 as well as any relevant arrangements announced by the Government of Malta, are enclosed as per Annex 1 to this Circular. Such rates are applicable and payable to all new service contracts entered between Public Service Contacting Authorities and Contractors, as of 01 January 2022.

It is being emphasised that the awardee of a Public Contract in relation to specific services shall not be less than the rate indicated in the ‘**Mon – Sat Total Rate payable to Contractor**’ and the ‘**Sunday Total Rate payable to Contractor**’ columns, as outlined in Annex 1. In addition, the Contractor’s employees shall not be paid less than the stipulated ‘**Mon – Sat Basic Rate**’ and ‘**Sunday Basic Rate**’ in line with the same Annex.

Furthermore, in order to ensure that all applicable remuneration (over and above the Basic Rate) due to the employees namely, overtime and Public Holidays as well as other arrangements are paid as per the provisions that arise from the Employment and Industrial Relations Act (CAP 452), its Subsidiary Legislations, relevant Wage Regulation Orders and any other subsequent Legal Notices that might come into effect after the date of the publication of this Circular, Contracting Authorities are encouraged to direct any queries raised by Contractors or their employees to the Department for Industrial and Employment Relations (DIER).

Minimum Hourly Rates: Applicability of Rates

Further to this year's budget measure, any hours worked on Sundays shall not be remunerated less than the relevant 'Sunday Rate' as outlined in Annex 1. For avoidance of doubt, it is being clarified that a Contractor shall not be paid less than the 'Sunday Total Rate payable to Contractor' wherein his / her employees are engaged to render a service on a Sunday. Accordingly, in such circumstances, the Contractor's employees shall not be paid less than the 'Sunday Basic Rate'.

On the other hand, for any Contractor's employees that render their services only from Monday to Saturday, the minimum rate is indicated in the 'Mon – Sat Basic Rate'. To this end, the applicable minimum rate to the Contractor is specified in the 'Mon – Sat Total Rate payable to Contractor', as outlined in the same Annex.

It is to be noted that the rates indicated in Annex 1 are to be complied with by all relevant parties, unless more favourable rates are in place.

Minimum Hourly Rates for 2023 and 2024

Contracting Authorities are to take note that the 2023 and 2024 'Total Cost payable to Contractor' rates as per Annex 1 may be revised if the Government of Malta amends the applicable legislation (such as any relevant entitlement as per the respective annual budget). Nonetheless, such rates are being included as guidelines for future use.

Precarious Service Contracts: Different Nomenclature to the Contracts Circular

The Circular specifies the 'Minimum Hourly Rates Payable to Contractor' in relation to the following specific services:

- Cleaners (Offices)
- Street Sweepers
- Waste Collectors
- Health Attendants (Public Convenience)
- Cleaners (Hospitals and Elderly Homes)
- Assistant Clerical Workers
- Care Workers
- Clerical Workers
- Receptionists
- Security Guards
- Customer Care Support Officers
- Senior Clerks

In the eventuality that Contracting Authorities would like to utilise a nomenclature which is different to the above services (which are a replica of Annex 1), they shall liaise with the Department for Industrial and Employment Relations (DIER).

In such circumstances, Contracting Authorities shall indicate in writing the nomenclature they are proposing, including the duties and tasks of the service operators in question; upon presentation of such information, DIER shall approve (or otherwise) the nomenclature and provide all applicable 'Minimum Hourly Rates'.

Contracting Authorities shall keep a copy of any written communication with the Department for Industrial and Employment Relations for auditing purposes as well as for review by the Department of Contracts.

Applicability of the Minimum Hourly Rates

The Collective Agreement 2017-2024 relates to the Public Service¹ of Malta employees. Therefore, the relevant 'Total Rate Payable to Contractor' applies to any Contractor awarded a Public Contract by a Contracting Authority forming part of the Public Service. Accordingly, such rates shall not necessarily apply to the Public Sector² Contracting Authorities since the latter may be bound to other specific Collective Agreements.

In addition, it is to be noted that the contents of this Circular are also being extended to the Public Private Partnerships (Elderly Care) and Homes for the Elderly Renting out Beds to the Government of Malta.

Specific Collective Agreements applicable to particular Contracting Authorities

Further to the above, in the circumstance where a specific service requested by a Contracting Authority is not regulated by the Collective Agreement 2017-2024 for the Public Service of Malta Employees, Contracting Authorities shall make a note to this effect in the Procurement Document (including in the Pegged Rates Financial Bid Form). Consequently, prior to the publication of a Procurement Call, Contracting Authorities are bound to adjust the said Financial Bid Form to reflect the applicable rates.

¹ Public Service consists of Ministries and Departments of Government, thus, the core and integral components of the Government of Malta's administrative machinery – Public Service Official Website.

² Public Sector refers to all Government Organisations and their Employees, as distinct from the private sector. Entities in the wider Public Sector, namely Statutory Authorities and Agencies, Government Foundations, and companies with a Government majority shareholding, although belonging to the Government, they are not part of Government – Public Service Official Website.

Accordingly, the relevant 'Total Rate Payable to Contractor' and the applicable 'Basic Rate' for the Contractors' employees shall be in accordance with the rates published in the respective Collective Agreement of that particular Contracting Authority. In absence of a Collective Agreement, the concerned Contracting Authority shall contact the Department for Industrial and Employment Relations (DIER) for any relevant guidance.

In any such circumstance, Contracting Authorities shall liaise with Department for Industrial and Employment Relations to attain in writing all necessary assistance in relation to applicable nomenclatures and Minimum Hourly Rates. A copy of any communication with DIER shall be retained in file for auditing purposes as well as for presentation to the Department of Contracts, as and when requested.

Public Contracts at different Stages of the Procurement Procedure: Modus Operandi
Precarious Services Procurement Procedures published after the Date of this Circular shall invariably adhere to the relevant 'Total Rate Payable to Contractor', as established in Annex 1. Thus, prior Publication, the Procurement Document, specifically the Financial Bid Form shall include the new rates for 2022 (and 2023 / 2024, if applicable).

With regard to Public Contracts which have already been awarded and shall be / continue to be implemented in 2022, Contracting Authorities shall prepare an Addendum and adhere to the pertinent Modus Operandi in line with the relevant scenarios depicted below. Contracting Authorities are reminded that the new rates are also applicable to any extension periods of already awarded contracts. An Addendum shall also apply to any Procurement Procedures at the Publication and Evaluation Stages as well as Contracts not yet signed by both parties, as long as the Contract Agreement shall primarily be drawn up using the procurement conditions and specifications as published.

For avoidance of doubt, it is being specified that the above-mentioned Addendum Request is required for the 'Mon-Sat Total Rate Payable to Contractor' and 'Sunday Total Rate Payable to Contractor'.

Modifications and Addendum: Further to an Approved Modification Request sought through the applicable channels, an addendum reflecting the new rates as detailed in the 'Mon-Sat Total Rate Payable to Contractor' and in the 'Sunday Total Rate Payable to Contractor, covering 2022, 2023 and 2024 (as applicable) shall be drawn up. Therefore, irrespective of the bidding rate and awarded rate to any given Contractor, the difference between the

2022 (2023 or 2024 as applicable) and the 2021 (2022 or 2023 as applicable) relevant ‘Total Rate Payable to Contractor’ shall be paid as a modification to the Contractor.

In addition to any customary documentation to be presented to the relevant competent authority, the Request for an Approval of a Modification in relation to Precarious Services shall specify the estimated increase in the new total awarded Contract Value.

Backdated Modifications: All Contracting Authorities paying backdated modifications to Contractors shall inform the Department for Industrial and Employment Relations to be provided with any applicable guidance.

Modus Operandi: Procurement Procedure Published but not yet Awarded

Procurement Procedures published before the Date of this Circular and are not yet awarded, including procurement at the Publication and Evaluation stage as well as Contracts not yet signed by both parties, the contract shall be drawn up using the procurement conditions and specifications as published. However, Contracting Authorities shall request and issue, an Addendum to the Contract reflecting the new relevant ‘Total Rate Payable to Contractor’ rates.

Modus Operandi: Contracts in Implementation Stage – Awarded after 01 January 2015

Contracts in relation to the aforementioned precarious services which are at present in the implementation stage and which contracts were pegged to the rates stipulated through Contracts Circulars N° 27/2014, 04/2015, 20/2016, 01/2017, 07/2017, 08/2017, 20/2017, 20/2018, 17/2019 and 20/2020 necessitate an Addendum to the Contract reflecting the new relevant ‘Total Rate Payable to Contractor’ rates. Thus, Contracting Authorities shall request and issue the said Addendum accordingly.

Modus Operandi: Contracts in Implementation Stage – Awarded before 01 January 2015

Contracts in relation to the aforementioned precarious services which are at present in the implementation stage and which contracts were awarded before 01 January 2015 (i.e. contracts which were not applying the instructions in Contracts Circulars N° 27/2014, 04/2015, 20/2016 and 01/2017, 07/2017, 08/2017, 20/2017, 20/2018, 17/2019 and 20/2020), upon their expiration date, should invariably publish a new Procurement Procedure utilising the new relevant ‘Total Rate Payable to Contractor’ rates as per Annex 1.

Duration of Public Contracts

In line with Contracts Circular N° 06/2016 (dated 28 April 2016) Contracting Authorities are reminded that any awarded Public Contract in relation to the Provision of Precarious Services shall not be for a period of less than one (1) year.

Transfer of Business

Contractors being awarded a Public Contract are bound to the Transfer of Business (Protection of Employment) Regulations S.L. 452.85. Accordingly, it is the responsibility of any Economic Operator submitting a bid for a Public Contract in relation to the aforementioned precarious services to ascertain that the offer submitted is in conformity to the conditions stipulated in the Employment and Industrial Relations Act (CAP.452).

Further to the above, if the current Contractor is being paid a rate which is higher than the established relevant 'Total Rate Payable to Contractor' rate, Contracting Authorities are bound to adjust the Pegged Rates Financial Bid Form prior to the publication of a Procurement Call. Therefore, the said form shall reflect the higher rates.

Contact

Contracting Authorities may submit any queries in relation to the generic content of this Circular to the Department of Contracts' Customer Care service on info.contracts@gov.mt or by calling on +356 21220212.

However, regarding specific queries vis-a-vis the relevant 'Basic Rates' payable to the Contractor's Employees all interested parties (including Contracting Authorities and Contractors) are to contact the Department for Industrial and Employment Relations on info.dier@gov.mt or +356 21224245/6.

Anthony Cachia
Director General (Contracts)