

Department of Contracts
Notre Dame Ravelin
FLORIANA

To Permanent Secretaries
Directors General
Directors
Heads of Public Sector Organisations

24 January 2023

AWARD OF SERVICE CONTRACTS AND PEGGED RATES (2023)

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, 20/2020 and 21/2021 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, especially when such services are rendered to the Contracting Authorities / Entities.

Nonetheless, it is important to clarify that the Concept of Pegged Rates stems from one of the European Union’s ideologies as depicted in Article 157 of the Treaty on the Functioning of the European Union (TFEU), which relates to the ‘*principle of equal pay for male and female workers for equal work or work of equal value*’. In addition, the purpose of Directive 2006/54/EC¹ is to ensure the implementation of the principle of equal opportunities and equal treatment. In fact, Article 1(b) states that the Directive 2006/54/EC ‘*contains provisions to implement the principle of equal treatment in relation to: working conditions, including pay*²’.

¹ Directive 2006/54/EC of the European Parliament and of The Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)

² Article 2 of Directive 2006/54/EC defines pay as ‘the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his/ her employment from his/her employer’.

The concept of ‘Equal Pay for Equal Work or Work of Equal Value’³ is also in Malta’s local legislation. In fact, Article 27 of the Employment and Industrial Relations Act of 2002 (Chapter 452, Part IV) states that *‘Employees in the same class of employment are entitled to the same rate of remuneration for work of equal value: Provided that an employer and a worker or a union of workers as a result of negotiations for a collective agreement, may agree on different salary scales, annual increments and other conditions of employment that are different for those workers who are employed at different times, where such salary scales have a maximum that is achieved within a specified period of time; and Provided further that any distinction between classes of employment based on discriminatory treatment otherwise than in accordance with the provisions of this Act or any other law shall be null and of no effect’*.

To this end, this Contracts Circular shall not only refer to Service Contracts deemed as precarious, but it shall now also start incorporating contracts related to services which tend to be associated with pay discrimination⁴, both from a gender perspective as well as from a generic holistic perspective, including economic and social rights.

Minimum Hourly Rates Payable to Contractor

The new ‘Minimum Hourly Rates Payable to Contractor’ for year 2023 are based on the rates agreed upon in the Public Service Collective Agreement 2017-2024 as well as any relevant arrangements announced by the Government of Malta, are enclosed as per Annex I 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 2023.

³ Article 14 (Chapter 2, Declaration of Principles) of the Constitution of Malta relates to Equal rights of men and women. In fact, it specifies that ‘The State shall promote the equal right of men and women to enjoy all economic, social, cultural, civil and political rights and for this purpose shall take appropriate measures to eliminate all forms of discrimination between the sexes by any person, organisation or enterprise; the State shall in particular aim at ensuring that women workers enjoy equal rights and the same wages for the same work as men.’

⁴ Article 4 (Prohibition of Discrimination) of Directive 2006/54/EC states that ‘For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated. In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.’

Further to the above, it is important to note that the 2023 rates are subject to change throughout Year 2023 in accordance with amendments in the Public Service Salary Scales or associated increments. Accordingly, Contracting Authorities are instructed to apply the ‘Minimum Hourly Rates Payable to Contractor’, in line with Annex I, however, all relevant documentation (including the Procurement Document, particularly the Special Conditions and the Pegged Rates Financial Bid Form) shall include a proviso specifying that the said Rates are subject to be amended in line with the Cost-of-Living Adjustment (COLA) entailment of the Budget of that year and / or amendments in the Public Service Salary Scales and / or any associated government increments as well as any new Collective Agreement 2015-2031.

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 I. 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: Weekday and Sunday Rates

Further to last year’s budget measure, any hours worked on Sundays shall not be remunerated less than the relevant ‘Sunday Rate’ as outlined in Annex I.

For avoidance of doubt, it is being clarified that a Contractor shall not be paid less than the 'Sunday Total Rate payable to Contractor' in instances wherein one's 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 I are to be complied with by all relevant parties, unless more favourable rates are in place, and such rates are to be used as a basis for the computation of the estimated procurement value.

Minimum Hourly Rates for the coming years

Contracting Authorities are to take note that for the following years, as per usual *modus operandi*, the 'Total Cost payable to Contractor' Rates as per Annex I may be revised if the Government of Malta amends the applicable legislation (such as any relevant entitlement as per the respective annual budget).

In addition, rates are subject to be amended in line with the COLA entailment of the Budget of that year and / or amendments in the Public Service Salary Scales and / or any associated government increments as well as a new Collective Agreement 2015-2031.

Service Contracts: Different Nomenclature to the Contracts Circular

The Circular specifies the 'Minimum Hourly Rates Payable to Contractor' in relation to the different specific services as listed in Annex 1 of this Circular.

In the eventuality that Contracting Authorities would like to utilise a nomenclature which is different to those in Annex I, 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 Service⁵ 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 Sector⁶ Contracting Authorities / Entities 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

⁵ 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.

⁶ 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.

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.

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

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 I of this Contracts Circular.

With regard to Public Contracts which have already been awarded and shall be / continue to be implemented in 2023, 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 2023 shall be drawn up. Therefore, irrespective of the bidding rate and awarded rate to any given Contractor, the difference between the 2023 and the 2022 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 the aforementioned Services shall specify the estimated increase in the new total awarded Contract Value.

In view that throughout Year 2023, Rates in Annex I are susceptible to change in accordance with amendments in the Public Service Salary Scales or associated increments, the above Modus Operandi shall also be applied in such scenarios.

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 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, 20/2020 and 21/2021 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.

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 Pegged Rate 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 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 23781000.

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)

Annex 1 Contracts Circular 04/2023:

2023	Scale	Basic rate Monday to Saturday	Basic rate on Sunday	VL	Bonus / weekly allowance	PH	NI	SL	Maternity Leave Fund	Total Payable to Contractor Monday to Saturday	Total Payable to Contractor on Sunday
Cleaners (Offices)	20	€ 5.35	€ 10.70	€ 0.77	€ 0.25	€ 0.42	€ 0.54	€ 0.18	€ 0.03	€ 7.54	€ 12.89
Street Sweepers	20	€ 5.35	€ 10.70	€ 0.77	€ 0.25	€ 0.42	€ 0.54	€ 0.18	€ 0.03	€ 7.54	€ 12.89
Waste Collectors	20	€ 5.35	€ 10.70	€ 0.77	€ 0.25	€ 0.42	€ 0.54	€ 0.18	€ 0.03	€ 7.54	€ 12.89
Health Attendant (Public Convenience)	20	€ 5.35	€ 10.70	€ 0.77	€ 0.25	€ 0.42	€ 0.54	€ 0.18	€ 0.03	€ 7.54	€ 12.89
Cleaners (Hospitals and Elderly Homes)	18	€ 6.34	€ 12.68	€ 0.91	€ 0.25	€ 0.49	€ 0.64	€ 0.21	€ 0.03	€ 8.87	€ 15.21
Assistant Clerical Worker	18	€ 6.34	€ 12.68	€ 0.91	€ 0.25	€ 0.49	€ 0.64	€ 0.21	€ 0.03	€ 8.87	€ 15.21
Home Helper	18	€ 6.34	€ 12.68	€ 0.91	€ 0.25	€ 0.49	€ 0.64	€ 0.21	€ 0.03	€ 8.87	€ 15.21
Care Workers	17	€ 6.85	€ 13.70	€ 0.98	€ 0.25	€ 0.53	€ 0.69	€ 0.23	€ 0.03	€ 9.56	€ 16.41
Clerical Workers	16	€ 7.40	€ 14.80	€ 1.06	€ 0.25	€ 0.57	€ 0.74	€ 0.25	€ 0.04	€ 10.31	€ 17.71
Receptionists	16	€ 7.40	€ 14.80	€ 1.06	€ 0.25	€ 0.57	€ 0.74	€ 0.25	€ 0.04	€ 10.31	€ 17.71
Security Guards	16	€ 7.40	€ 14.80	€ 1.06	€ 0.25	€ 0.57	€ 0.74	€ 0.25	€ 0.04	€ 10.31	€ 17.71
Tradesman	16	€ 7.40	€ 14.80	€ 1.06	€ 0.25	€ 0.57	€ 0.74	€ 0.25	€ 0.04	€ 10.31	€ 17.71

Annex 1 Contracts Circular 04/2023:

2023	Scale	Basic rate Monday to Saturday	Basic rate on Sunday	VL	Bonus / weekly allowance	PH	NI	SL	Maternity Leave Fund	Total Payable to Contractor Monday to Saturday	Total Payable to Contractor on Sunday
Customer Care Support Officers	15	€ 7.91	€ 15.82	€ 1.14	€ 0.25	€ 0.61	€ 0.80	€ 0.27	€ 0.04	€ 11.02	€ 18.93
Nursing Aide	15	€ 7.91	€ 15.82	€ 1.14	€ 0.25	€ 0.61	€ 0.80	€ 0.27	€ 0.04	€ 11.02	€ 18.93
Senior Clerks	14	€ 8.50	€ 17.00	€ 1.22	€ 0.25	€ 0.66	€ 0.85	€ 0.29	€ 0.04	€ 11.81	€ 20.31
Senior Tradesman	14	€ 8.50	€ 17.00	€ 1.22	€ 0.25	€ 0.66	€ 0.85	€ 0.29	€ 0.04	€ 11.81	€ 20.31
Staff Nurse (with Diploma)	12	€ 9.75	€ 19.50	€ 1.40	€ 0.25	€ 0.76	€ 0.98	€ 0.33	€ 0.05	€ 13.52	€ 23.27
Staff Nurse (with Degree)	10	€ 11.08	€ 22.16	€ 1.59	€ 0.25	€ 0.86	€ 1.11	€ 0.37	€ 0.05	€ 15.31	€ 26.39

Contracting Authorities are to take note that the ‘Mon-Sat Total Rate Payable to Contractor’ and the ‘Sunday Total Rate payable to Contractor’ may be revised if the Government of Malta amends the applicable legislation such as the annual vacation leave entitlement and other entitlement as per the respective annual budget. It is to be noted that the ‘Mon-Sat Total Rate Payable to Contractor’ is not inclusive of the ‘Sunday Total Rate payable to Contractor’ rate. Any hours worked on Sundays shall not be remunerated at a rate less than the rates identified in the column titled ‘Sunday Total Rate payable to Contractor’. Accordingly, in such circumstances, the Contractor’s employees shall not be paid less than the rates indicated in the column titled ‘Sunday Basic Rate’. Likewise, any hours worked between Monday and Saturday shall not be remunerated at a rate less than the rates identified in the column titled ‘Mon-Sat Total Rate payable to Contractor’. In such instances, the Contractor’s employees shall not be paid less than the rates indicated in the column titled ‘Mon-Sat Basic Rate’.