

Department of Contracts
Notre Dame Ravelin
FLORIANA

To Permanent Secretaries
Directors General
Directors
Heads of Public Sector Organisations

18 April 2023

**FURTHER TO: TEMPORARY SUSPENSION - CLAIMS RELATED TO
MARKET PRICE INCREASES OF COMMODITIES IN
PUBLIC CONTRACTS**

Reference is being made to Contracts Circular N° 15/2022¹ whereby it was specified that Subsidiary Legislation 601.13² in relation to a Temporary Suspension of the prohibition contained in Regulation 259 of the Public Procurement Regulations (2016) S.L. 601.03 and Regulation 179 of the Utilities Procurement Regulations (2016) S.L. 601.05³ was published.

Extension of the Subsidiary Legislation Expiration

Contracting Authorities / Entities are being informed that the provisions of the said legislation are being extended and shall now expire on 31 July 2023. To this end, Regulation 7 of S.L. 601.13 shall now read: *‘The provisions of these regulations shall expire on 31 July 2023, and no request for compensation shall be accepted as from the said date onwards. Consequently, on the said date, the temporary suspension of the provisions which are the subject of these regulations shall automatically lapse’*.

Extension of the Compensation Scheme Applicability

The Compensation Scheme vis-à-vis Market Price Increases of Commodities in Public Contracts is being extended. Accordingly, Contractors may raise

¹ Contracts Circular N° 15/2022 titled ‘Temporary Suspension: Claims Related to Market Price Increases of Commodities in Public Contracts’ was published on 19 September 2022

² S.L. 601.13 titled ‘Temporary Suspension of Certain Provisions relating to Public Procurement Regulations’ was published on the Government Gazette on 15 July 2022, through Legal Notice 203 of 2022. Such a Subsidiary Legislation provides for a Temporary Suspension of the prohibition contained in Regulation 259 of the Public Procurement Regulations S.L. 601.03 and Regulation 179 of the Utilities Procurement S.L. 601.05.

³ Utilities Procurement S.L. 601.05 refers to the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations.

Compensation Requests for Public Contracts which were originally signed (signature by the last party⁴) on or before 30 September 2022 and were still in force on such dates. To this end, Regulation 3 of S.L. 601.13 shall now read:

‘(1) Requests for compensation shall be made to the relative contracting authority, and may be entertained by the Director of Contracts on condition that the public contract which refers to the request: (a) shall have been signed on or before 30 September 2022; (b) was still in force on the date referred to in paragraph (a); and (c) refers to specific items listed in any policy document referred to in sub-regulation (2).

(2) The Director of Contracts may issue such policy documents as may be required from time to time, in order to facilitate and better regulate the compensation scheme referred to in these regulations’.

Extension of the Compensation Scheme Submission of Documentation

Reference is being made to Contracts Circular N° 16/2022⁵ and Contracts Circular N° 02/2023⁶, whereby the Director of Contracts published Compensation Scheme Policy Documents specifying the Regulatory Mechanism to be adopted vis-à-vis claims related to Market Price Increases of Commodity Items utilised in:

- Public Works (Construction) Contracts
- Public Contracts involving Supplies

To ascertain that Contracting Authorities / Entities review, assess and validate that the claims received (in relation to Supplies delivered / Works carried out up to 31 July 2023) are fair and reasonable as well as in accordance with the provisions of Subsidiary Legislation 601.13, the previously established timeframe is being extended. To this end, Contracting Authorities / Entities shall submit the relevant Compensation Requests to the Department of Contracts by no later than 31 December 2023. However, Contracting Authorities / Entities shall stipulate a realistic time frame by which Contractors shall submit their claims to them allowing them enough time to carry out the necessary verifications.

⁴ A contract shall take effect on the date on which it is signed by the last party.

⁵ Contracts Circular N° 16/2022 titled ‘Compensation Scheme: Claims for Increase in Price of Commodities in Public Works (Construction) Contracts’ was published on 22 September 2022.

⁶ Contracts Circular N° 02/2023 titled ‘Compensation Scheme: Claims for Increase in Price of Commodities in Public Contracts involving Supplies’ was published on 04 January 2023.

Accordingly, the Compensation Scheme Policy is still valid and applicable for Works executed / Supplies delivered as of 15 March 2022 and no later than 31 July 2023. For avoidance of doubt, it is being reiterated that any Works undertaken / rendered, or Supplies delivered, prior to 15 March 2022 or after the 31 July 2023 shall not be eligible for redress allowance under the Compensation Scheme Policy.

Additional Information

Contracting Authorities / Entities are encouraged to familiarise themselves with the revised consolidated version of Subsidiary Legislation 601.13, which is enclosed at Annex I, for ease of reference and perusal.

In exception of the above-mentioned change in timeframes, it shall be noted that the content of the original Contracts Circular N° 15/2022, Contracts Circular N° 16/2022 and Contracts Circular N° 02/2023 shall continue to remain applicable *mutatis mutandis*.

Contact

Contracting Authorities may submit any queries to the Department of Contracts' Customer Care service on info.contracts@gov.mt or by calling on +356 23781001.

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