

Department of Contracts  
Notre Dame Ravelin  
FLORIANA

To Permanent Secretaries  
Directors General  
Directors  
Heads of Public Sector Organisations

09 October 2023

## **CONSTRUCTION INDUSTRY LICENSING REGULATIONS**

The Minister for Public Works and Planning responsible for the Construction Industry in consultation with the Building and Construction Authority has formulated the Construction Industry Licensing Regulations and which were published on 18 July 2023, through Legal Notice 166 of 2023, Subsidiary Legislation 623.09.

The aim of this Legal Notice is to regulate the Construction Industry through necessary licensing whereby S.L. 623.09 define a Licensed Contractor (also referred to as Licensee) as *‘the person or entity<sup>1</sup> who holds a valid licence issued under these regulations; and the term "licensed contractor" for the purpose of these regulations shall also include sub-contractors’* and a Licence as a *‘means of which a person may exercise, in Malta, any of the service activities listed in Schedule I to which the licence relates’<sup>2</sup>*.

Schedule I of S.L. 623.09 lists the Service Activities for which a licence is required:

- Demolition
- Excavation and Piling
- Construction

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<sup>1</sup> An Entity means a registered company recognised by the Laws of Malta or of another Member State or Third Country and includes any other body or association of persons with a separate and distinct legal personality.

<sup>2</sup> Pursuant to Regulation 15(3) of S.L. 623. 09, ‘an entity which submits an application for a license, may appoint and authorise a competent person to act on its behalf with respect to the fulfilment of the criteria and obligations set out in these regulations and to act as the entity’s licensed administrator’. A Licensed Administrator means the competent person engaged by the entity or as a director of the entity, who on its behalf administers the licence issued by the Authority.

However, pursuant to Regulation 4(1) and Regulation 15(6) of S.L. 623.09, ‘*minor works*<sup>3</sup> can be carried out by the holder of a construction licence’. In the eventuality that a person or entity ‘*submits an application for a licence with respect to the service activity specified in Part C of Schedule II* [Criteria for the Licensing Construction], [it] *shall also be required to submit a valid masons licence*<sup>4</sup>’.

The Department of Contracts, in liaison with the Office of the Ministry for Public Works and Planning as well as the Building and Construction Authority, encourage Contracting Authorities<sup>5</sup> / Entities<sup>6</sup>, specifically officers responsible for Public Procurement, and Economic Operators in the Construction Industry to thoroughly read and familiarise themselves with the Construction Industry Licensing Regulations S.L. 623.09.

For ease of perusal, such Regulations are enclosed at Annex I. Nonetheless, it is recommended that the latest version of such Regulations is accessed / downloaded through the MfJ’s<sup>7</sup> website (<https://legislation.mt/eli/sl/623.9/eng>) and conform accordingly.

### **Service Activities Licences**

Pursuant to Regulation 3 of the Construction Industry Licensing Regulations S.L. 623.09, current and prospective Economic Operators (including any person or entity) operating in the Construction Industry are reminded to submit an application to the Chief Executive Officer of the Building and Construction Authority for the relevant licence in relation to any (or all) of the Service Activities by not later than **31 October 2023**.

The said Licence shall be in the form prescribed by the Building and Construction Authority adhering to Regulations 14 and 15 of S.L. 623.09.

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<sup>3</sup> *Minor Works means construction works which may be either excavation, demolition or building activity which in their nature do not constitute major excavation, demolition or building works, but are considered as incidental work in relation to any of the service activity listed in Schedule I. Minor works include minor alterations of building, such as the opening or closure of apertures and removing or building of walls and does not involve demolition or construction of structures or buildings, including the removal or construction of roofs. Minor works shall also include excavations in relation to the laying of foundations and pipe works, or lift pits, or trimming works which may only be carried out with handheld equipment and does not include excavation works in relation to the construction of reservoirs, pools, or basements, or works related to clearance or trimming of land. This shall also include any other works which the Board may from time to time determine by notice in the Gazette.*

<sup>4</sup> *Mason’s Licence means a licence issued for the exercise of masonry works as established by the Code of Police Laws (CAP 10) or other legislation. (Consultation on the draft Masons licence legislation has just been finalised and it is envisaged that licences will not be issued under the code of police laws but under this legislation).*

<sup>5</sup> *Contracting Authorities in S.L. 601.03 are the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law.*

<sup>6</sup> *Contracting Entities in S.L. 601.05 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.*

<sup>7</sup> *MfJ – Ministry for Justice.*

**Demolition, Excavation and Piling as well as Construction Service Activities shall only be permissible if the Economic Operators are in possession of a valid licence, in accordance with the requirements of S.L. 623.09.**

If Contractors assume the exercise of any of the Service Activities without a valid licence; or fail to comply with any conditions of a clearance or licence; or who act in breach of S.L. 623.09; or make a false declaration shall be guilty of an offence against the Construction Industry Licensing Regulations S.L. 623.09. Accordingly, Contractors shall be accountable to the ‘Offences and Penalties’ as described in Part IV of S.L. 623.09.

In light of the aforementioned points, in accordance with Regulations 3(4) and 3(5) of S.L. 623.09, it is important to note that individuals or entities may, during the period from 01 November 2023 until 31 May 2024, continue to engage in their respective Service Activity/ies related to the aforementioned license/s while the relevant License Application is being processed.

### **Applicability of the Construction Industry Licensing Regulations in Public Procurement / Concessions**

The Construction Industry Licensing Regulations S.L. 623.09 apply to any type of Public Procurement Award Procedure and Concession Award Procedure (irrespective of the Estimated Value or Source Funding) covered by the Public Procurement Regulations S.L. 601.03, the Utilities Procurement Regulations S.L. 601.05<sup>8</sup>, the Procurement of Property Regulations S.L. 601.12, the Emergency Procurement Regulations S.L. 601.08 and the Concession Contracts Regulations S.L. 601.09, specifically for any Works Procurement / Concessions involving the Service Activities described in Schedule I S.L. 623.09.

### **Obligations of Contracting Authorities / Entities in Public Procurement / Concessions**

The Department of Contracts is requesting that Contracting Authorities / Entities across the Public Administration abide by the applicable *modus operandi*, depending on the stage of the Public Procurement / Concession Process, as detailed below:

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<sup>8</sup> *Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations S.L. 601.05.*

***Pre-Publication / Vetting Stage:*** The Procurement / Concession Document, specifically under Selection Criteria<sup>9</sup>, shall include a new requirement specifying that the Economic Operators in their capacity as bidders, shall submit proof that the application for the relevant licence has been submitted to the Building and Construction Authority, by the stipulated deadline, ie no later than 31 October 2023.

As part of the documentation to be submitted the bidders are to provide a copy of the said Service Activity Licence Application accompanied by the Acknowledgement of its Submission and Receipt. Such attestation documents shall also indicate the Submission Date as well as the Building and Construction Authority Addressee.

***Publication Stage:*** With regard to Procurement / Concession Procedures still under publication, the requirement to submit the proof of timely application submission (no later than 31 October 2023) shall be communicated to Economic Operators through the publication of a Clarification Note.

In line with the Pre-Publication Stage requirements, bidders shall submit a copy of the aforementioned application and a copy of the corresponding acknowledgement, together with their offer. Such attestation documents shall be considered under Note 2 of the Procurement / Concession Document, meaning that a non-submission of such documentation is rectifiable only once<sup>10</sup> during the Administrative Stage of the evaluation of the offers.

***Evaluation Stage:*** With regard to Procurement / Concession Calls that are under evaluation, the Recommended Bidder of such procedures, prior to Contract Signing, shall be requested to submit the aforementioned proof of application, namely the Service Activity Licence Application and the Acknowledgement of its Submission and Receipt. Should this not be provided, the Award of the Contract shall be revoked.

***Implementation Stage:*** Contracting Authorities / Entities shall be responsible to remind their current Contractors<sup>11</sup> to align themselves to the requirements of S.L. 623.09 and specifically to submit an application for a Licence with respect to the relevant Service Activity/ies by not later than 31 October 2023.

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<sup>9</sup> In line with the e-Procurement Templates, Selection Criteria is classified under Note 2 wherein Note 2 states that: 'Tenderers will be requested to either clarify / rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within five (5) working days from notification'.

<sup>10</sup> In line with policy and as specified in the e-Procurement Templates 'Requests for Clarifications and / or Rectifications concerning a previous request dealing with the same shortcoming shall not be entertained'.

<sup>11</sup> Regulation 2 of S.L. 601.03 defines Economic Operators as any natural or legal person or public entity or group of such persons and, or entities, including any temporary association of undertakings and shall cover equally the concepts of contractor, supplier and service provider.

In addition, as of 01 November 2023, Contracting Authorities / Entities shall conduct thorough reviewing and assessment of their implementing Contractors to ascertain that they applied for the said licence/s by the stipulated deadline. The aforementioned Proof of Application (including the Acknowledgement of its Submission and Receipt), in addition to any other supplementary documentation deemed necessary, shall be retained in file for auditing purposes as well as for presentation to the relevant authority, as and when requested.

If the copy of the Service Activity Licence and its acknowledgment are not submitted to the Contracting Authority / Entity within a stipulated time as determined by the latter, Contracting Authorities / Entities would have no option other than to proceed with the Termination of Contract since the Contractor would be in breach of the Contract Agreement as per Articles 2 and 11.14 of the General Conditions for Works Contracts.

Contracting Authorities / Entities should carry out the above-mentioned exercise immediately after 01 November 2023 and inform the Building and Construction Authority as well as the Compliance and Monitoring Unit at the Department of Contracts of any Contractor who has not submitted the said application.

### **e-Procurement Templates**

To assist Contracting Authorities / Entities to fully adhere to this policy, in due course, the Department of Contracts, as applicable and necessary, shall be updating the relevant Procurement Documentation to reflect the new requirements. **Nonetheless, Contracting Authorities / Entities are responsible to adhere to this Circular with immediate effect.**

### **Additional Information**

To assist Contracting Authorities / Entities, for ease of reference and perusal, at Annex II, a Glossary with the salient terminology within the Construction Industry Licensing Regulations S.L. 623.09 is being enclosed. Furthermore, at Annex III, a brief overview of the salient provisions vis-à-vis the Service Activities Licences (including Applicability, Transitory Period, Suspension and Revocation) is also being provided.

### **Contact**

Contracting Authorities may submit any queries in relation to the generic procurement content of this Circular to the Department of Contracts' Customer Care service on [info.contracts@gov.mt](mailto:info.contracts@gov.mt) or by calling on +356 2378 1001.

However, regarding specific queries vis-a-vis the Service Activities Licence Applications and the Construction Industry Licensing Regulations S.L. 623.09 (including any provisions emanating from it) as well as any other technical difficulties, all interested parties (including Contracting Authorities / Entities and Contractors) are to contact the Building and Construction Authority on [info@bca.org.mt](mailto:info@bca.org.mt) or +356 8004 9000.

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