

Department of Contracts  
Notre Dame Ravelin  
FLORIANA

To Permanent Secretaries  
Directors General  
Directors  
Heads of Public Sector Organisations

16 April 2025

## **SECTOR-SPECIFIC LEGISLATION AFFECTING PUBLIC PROCUREMENT / CONCESSION LEGISLATION AND PROCEDURES**

Public Procurement may be defined as the process by which Contracting Authorities/Entities purchase the execution of Works, provision of Supplies and the performance of Services from Economic Operators, which is ultimately reflected in a written Public Contract for pecuniary interest.

Accordingly, the Department of Contracts was founded to regulate and/or administer Public Procurement Procedures, as laid down in the relevant set of legislation, namely:

- Public Procurement Regulations: S.L. 601.03
- Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations: S.L. 601.05
- Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations S.L. 601.07
- Procurement of Property Regulations: S.L. 601.12
- Emergency Procurement Regulations: S.L. 601.08
- Concession Contracts Regulations: S.L. 601.09

Accordingly, the Department of Contracts' expertise and remit as well as its operative and regulatory functions relate directly and specifically to Public Procurement and Concession Legislation, Procedures and Policies.

### **Sector-Specific Legislation, Policies and Procedures**

Sector-Specific relates to an explicit industry/field/market/sector or any other area whereby the core and subject-matter of the Legislation/Policy/Procedure does not relate specifically

to Public Procurement/Concessions per se, whether or not there is direct or indirect reference to Public Procurement and/or Concession Procedures.

Public Procurement is such a dynamic field that Procurement/Concession provisions are spreading throughout Sector-Specific European Directives, Regulations and/or other binding communication. In addition, at times, Local Sector-Specific Legislation, Policies and Procedures also affect Public Contracts.

Knowledge and Awareness of such supplementary Sector-Specific Documentation is deemed as important to Contracting Authorities<sup>1</sup>/Entities<sup>2</sup>, especially during the Planning and Research Stage as well as during the drafting of the Procurement/Concession Documentation. To this end, to ascertain that Public Procurement/Concession Procedures are integrated and aligned to the relevant Sector-Specific Legislation/Policies/Procedures, it might be necessary to include additional information and/or requirements in the Public Procurement/Concession Documentation<sup>3</sup>.

Ministries, Departments, Entities, Agencies and any other Competent Authority/Body within the Public Administration that necessitate to link their Sector-Specific requirements to Public Contracts (in view that such are deemed as ancillary and/or complementary to Public Procurement/Concessions) are responsible to notify the Department of Contracts. In such instances, it is expected that primarily a detailed overview of the implications of the relevant Legislation and/or Policy and/or Procedure on Public Contracts is provided. Secondly, the said Authorities/Bodies shall also suggest the text that is being recommended for inclusion in the specific Articles/Clauses/Provisions within the relevant Public Procurement/Concession Documentation.

Furthermore, if any Articles/Clauses/Provisions or part thereof within any of the current Public Procurement/Concession Documentation need to be updated, amended or

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<sup>1</sup> Contracting Authorities in S.L. 601.03, S.L. 601.05 and in S.L. 601.12 is defined as 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'. Contracting Authorities in S.L. 601.09 is defined as per S.L. 601.03 with the additional inclusion of ... 'other than those authorities, bodies or associations which pursue one of the activities referred to in Schedule 4 and award a concession for the pursuit of one of those activities'. Contracting Authority in S.L. 601.08 is defined as 'one of the government entities specified in the Schedule' ie Central Procurement Supplies Unit and the Civil Protection Department.

<sup>2</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>3</sup> For the purposes of this Circular, 'Procurement/Concession Documentation' shall be understood as referring to any document produced or referred to by the Contracting Authority/Entity to describe/determine elements of the Procurement/Concession Procedure, including, but not limited to, the descriptive Procurement/Concession Document (which incorporates Terms and Conditions, Technical Specifications, Performance Clauses and Selection/Award Criteria) as well as Procurement Policy Notes, Contracts Circulars, Templates, Guidance Notes and any other such documentation as published by the Department of Contracts.

completely changed, the said Competent Authorities/Bodies shall inform the Department of Contracts and accordingly provide the recommended text.

#### Submission of Sector-Specific Requirements

Ministries, Departments, Entities, Agencies and any other Competent Authority/Body within the Public Administration shall communicate with the Department of Contracts through [info.contracts@gov.mt](mailto:info.contracts@gov.mt) to commence the necessary process to formulate the necessary Documentation and/or changes to the Documentation.

#### **Contact**

Contracting Authorities/Entities may submit any queries 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.

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