

Department of Contracts
Notre Dame Ravelin
FLORIANA

To Permanent Secretaries
Directors General
Directors
Heads of Public Sector Organisations

19 September 2022

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

Regulation 259 of the Public Procurement Regulations S.L. 601.03 and Regulation 179¹ of the Utilities Procurement Regulations S.L. 601.05² state that *‘A contractor cannot claim any increase whatsoever in price of commodities to be used in a public contract unless otherwise provided in the procurement document’*, wherein Public Contract³ is defined as *‘contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services’*.

In view of the current hostilities in Eastern Europe, Subsidiary Legislation 601.13⁴ (published on the Government Gazette on Friday, 15 July 2022, through Legal Notice 203 of 2022) provides for a Temporary Suspension of the prohibition contained in the aforementioned Regulation 259 of S.L. 601.03 and Regulation 179 of S.L. 601.05. It is to be noted that such a suspension is applicable solely to increase in market prices of commodities arising as a consequence of the conflict between Russia and Ukraine, which temporary suspension may be granted by the Director of Contracts only in accordance with

¹ Regulation 179 of S.L. 601.05 states that *‘Regulations 248 to 260 of the Public Procurement Regulations shall mutatis mutandis apply to this regulation’*. Accordingly, the content of Regulation 259 of S.L. 601.03 applies to S.L. 601.05.

² Utilities Procurement S.L. 601.05 refers to the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations.

³ Regulation 2(1) of S.L. 601.05 defines Supply, Works and Service Contracts as *‘contracts for pecuniary interest concluded in writing between one or more of the contracting entities referred to in sub-regulation (2), and one or more contractors, suppliers, or service providers’*.

⁴ S.L. 601.13 is titled *‘Temporary Suspension of Certain Provisions relating to Public Procurement Regulations’*.

strict conformity to the provisions of S.L. 601.13. The provisions of the said legislation shall expire in six (6) months from the publication of the said Legal Notice.

To this end, Contracting Authorities / Entities⁵ are encouraged to familiarise themselves with the contents of Subsidiary Legislation 601.13, which is enclosed at Annex I, for ease of reference and perusal.

Compensation Scheme Policy Documents: Commodity Items

The applicability of the Temporary Suspension vis-à-vis Increase in Price of Commodities shall take place through the implementation of a Compensation Scheme. To this end, pursuant to Regulation 3(2) of S.L. 601.13, during the coming months, from time to time, to facilitate and better regulate the said Compensation Scheme, the Director of Contracts shall be publishing a set of Individual Policy Documents (per applicable industry) specifying the Regulatory Mechanism to be adopted.

Accordingly, Contractors may raise a Request for Compensation to the respective Contracting Authority / Entity, providing valid and substantiated justifications for their consideration. Further to the necessary vetting and validation by the relevant Contracting Authority / Entity, the Director of Contracts may entertain such a request, if the concerned Public Contract was originally signed (signature by the last party⁶) on or before 24 February 2022 and was still in force on such dates. In addition, the Compensation Request must refer to specific Commodity Items which shall be listed in the relevant Compensation Scheme Policy Document per applicable industry.

In line with Regulation 7 of S.L. 601.13, the Temporary Suspension of the prohibition in relation to Regulation 259 of S.L. 601.03 and Regulation 179 of S.L. 601.05

⁵ Contracting entities 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. Regulations 7 to 14 relate to various activities as follows: Reg 7 – Gas and Heat. Reg 8 – Electricity. Reg 9 – Water. Reg 10 – Transport Services. Reg 11 – Ports and Airports. Reg 12 – Postal Services. Reg 13 – Extraction of Oil and Gas Exploration or Extraction of Coal or other Solid Fuels. Reg 14 – Tenders Comprising Products Originating in Third Countries.

⁶ A contract shall take effect on the date on which it is signed by the last party.

shall automatically expire in six (6) months from the publication of L.N. 203-2022. Accordingly, no Request for Compensation shall be accepted as from 15 January 2023.

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 21220212.

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