

L.N. 155 of 2017**FINANCIAL ADMINISTRATION AND AUDIT ACT
(CAP. 174)****Public Procurement (Amendment) Regulations, 2017**

BY VIRTUE of the powers conferred by article 4 of the Financial Administration and Audit Act, the Minister of Finance has made the following regulations:-

1. The title of these regulations is the Public Procurement (Amendment) Regulations, 2017, and these regulations shall be read and construed as one with the Public Procurement Regulations, hereinafter referred to as the "principal regulations" Citation.
S.L. 174.04
2. In paragraph (k) of sub-regulation (1) of regulation 7 of the principal regulations, for the words "in paragraph (i)" there shall be substituted the words "in paragraph (j)". Amends
regulation 7 of
the principal
regulations.
3. Regulation 16 of the principal regulations shall be amended as follows: Amends
regulation 16 of
the principal
regulations.
 - (a) in paragraph (m) of sub-regulation (1) thereof, immediately after the words "signed by them", there shall be added the words "or on their behalf"; and
 - (b) paragraph (b) of sub-regulation (2) thereof shall be substituted by the following:

"(b) Contracting authorities that are listed under Schedule 16 also have the duty to open in public offers submitted by economic operators for quotations which have an estimated value exceeding five thousand euro (€5000) but not exceeding ten thousand euro (€10,000)."
4. Regulation 73 of the principal regulations shall be amended as follows: Amends
regulation 73 of
the principal
regulations.
 - (a) immediately after the words "listed in Schedule 2", there shall be added the words "and in Schedule 16"; and
 - (b) for the words "falling under regulation 9(1)(a)" there shall be substituted the words "starting from €10,000 up to the threshold established under regulation 9(1)(a)".
5. Paragraph (c) of sub-regulation (4) of regulation 79 of the principal regulations shall be substituted by the following: Amends
regulation 79 of
the principal
regulations.

"(c) to publish, unless otherwise provided for in these regulations, through government's e-procurement platform, as well as open in public, all calls for tenders with an estimated value which does not exceed €250,000;"

Amends
regulation 100
of the principal
regulations.

6. In sub-regulation (1) of regulation 100 of the principal regulations, for the words "and availability." there shall be substituted the words "and availability:", and immediately thereafter there shall be added the following new provisos:

"Provided that the Head of a Contracting Authority, listed in Schedule 1, may delegate his authority in writing, providing the reasons for such delegation, to a senior official of an entity forming part of the Contracting Authority, for the procurement by direct order of supplies, works or services, where the value does not exceed five hundred euro (€500). However the procurement under the above shall not exceed a total value of five thousand euro (€5,000) during a period of one calendar year:

Provided further that every six months, the senior official, who receives such a delegation from the Head of the Contracting Authority, shall provide the Head with a full list of all procurement effected under this sub-regulation. The list must include the date of the purchase, the name of the economic operator, the nature of the purchase, the invoice number, the payment reference, and the value of the supplies, works or services:

Provided finally the Head of the Contracting Authority may retrieve this delegation at any time at his discretion."

Substitutes
regulation 153
of the principal
regulations.

7. Regulation 153 of the principal regulations shall be substituted by the following:

"153. The negotiated procedure without prior publication may be used for public supply contracts in the following instances:

(a) where no tenders or no suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission where it so requests; or

(b) where the supplies can be supplied only by a particular economic operator for any of the following

reasons:

(i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;

(ii) competition is absent for technical reasons;

(iii) the protection of exclusive rights, including intellectual property rights:

Provided that the exceptions set out in subparagraphs (ii) and (iii) shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement; or

(c) where in so far as is strictly necessary, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority; or

(d) where the products involved are manufactured purely for the purpose of research, experimentation, study or development; however, contracts awarded pursuant to this paragraph shall not include quantity production to establish commercial viability or to recover research and development costs; or

(e) for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the duration of such contracts as well as that of recurrent contracts shall not, as a general rule, exceed three years; or

(f) for supplies quoted and purchased on a commodity market; or

(g) for the purchase of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under national laws or regulations."

Substitutes
regulation 154
of the principal
regulations.

8. Regulation 154 of the principal regulations shall be substituted by the following:

"154. (1) The negotiated procedure without prior publication may be used for public service contracts in the following instances:

(a) where no tenders or no suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission where it so requests; or

(b) where the supplies can be supplied only by a particular economic operator for any of the following reasons:

(i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;

(ii) competition is absent for technical reasons;

(iii) the protection of exclusive rights, including intellectual property rights:

Provided that the exceptions set out in subparagraphs (ii) and (iii) shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement; or

(c) where in so far as is strictly necessary, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority; or

(d) for new works consisting in the repetition of similar works entrusted to the economic operator to which the same contracting authorities awarded an original contract, provided that such works are in conformity with a basic project for which the original contract was awarded pursuant to a procedure for which a call for competition has been published in accordance with these regulations; or

(e) for public service contracts, where the contract concerned follows a design contest organised in accordance with these regulations and is to be awarded, under the rules provided for in the design contest, to the winner or one of the winners of the design contest; in the latter case, all winners must be invited to participate in the negotiations; or

(f) for the purchase of services on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under national laws or regulations.

(2) (a) If the negotiated procedure is used to carry out repetition of similar services, the basic project shall indicate the extent of possible additional services and the conditions under which they will be awarded.

(b) As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent services shall be taken into consideration by the contracting authorities when they apply the thresholds established under Schedule 5.

(c) The negotiated procedure for repetition of similar services may be resorted to only during the three years following the conclusion of the original contract."

9. Schedule 1 to the principal regulations shall be amended as follows:

Amends
Schedule 1 to
the principal
regulations.

(a) the words "Building Construction Industry Department" shall be deleted;

(b) for the words "St. James Cavalier Creativity Centre", there shall be substituted the words "Fondazzjoni Kreattività";

(c) for the words "National Council for Culture and the Arts", there shall be substituted the words "Arts Council Malta";

(d) for the word "Judicial" there shall be substituted the words "Courts of Justice Department"; and

(e) immediately after the words "Central Procurement Supplies Unit", there shall be added the following:

- " • Office of the Commissioner for Mental Health
- Customer Services Directorate
- Projects and Development Directorate
- Tourism and Economic Development Directorate
- EcoGozo Regional Development Directorate
- Office of the Chief Information Officer (Gozo)
- Restoration Directorate
- Department of Information
- Building Regulation Office
- Office of the Regulator IIP
- Legal Aid Agency
- Local Enforcement System Agency
- Malta Mediation Centre
- Pjazza Teatru Rjal
- Teatru Malta
- Valletta 2018 Foundation
- Żfin Malta".

Amends
Schedule 2 to
the principal
regulations.

10. Schedule 2 to the principal regulations shall be amended as follows:

(a) the words "Ministry for Gozo/Permanent Secretary's Office/Department of Corporate Services" shall be deleted;

(b) the words "Ministry for the Family and Social

Solidarity/Permanent Secretary's Office/Department of Corporate Services" shall be deleted;

(c) the words "Ministry for Justice, Culture and Local Government/Permanent Secretary's Office/Department of Corporate Services" shall be deleted;

(d) the words "Broadcasting Authority" shall be deleted;

(e) the words "Building Construction Industry Department" shall be deleted;

(f) the words "Public Broadcasting Services Ltd" shall be deleted;

(g) the words "Gozo Channel (Operations) Ltd" shall be deleted;

(h) the words "Local Government Department" shall be deleted;

(i) the words "Elderly and Community Care" shall be deleted;

(j) the words "St. James Cavalier Creativity Centre" shall be deleted;

(k) the words "National Council for Culture and the Arts" shall be deleted;

(l) the words "National Orchestra Ltd." shall be deleted;

(m) the words "Superintendence of Cultural Heritage" shall be deleted;

(n) the words "Manoel Theatre" shall be deleted;

(o) the word "Appoġġ" shall be deleted;

(p) the words "Attorney General" shall be deleted;

(q) the words "Identity Malta" shall be deleted;

(r) the words "Housing Authority" shall be deleted;

(s) the words "Malta Arbitration Centre" shall be deleted;

(t) the words "Foundation for Social Welfare Services" shall be deleted;

(u) the words "Benefit Fraud and Investigations" shall be deleted;

(v) the word "Judicial" shall be deleted;

(w) the words "Welfare Committee" shall be deleted;

(x) the words "National Commission on the abuse of drugs, alcohol and other dependencies" shall be deleted;

(y) the word "Sapport" shall be deleted;

(z) the word "Sedqa" shall be deleted;

(aa) the words "Social Security" shall be deleted;

(ab) the words "Social Welfare Standards" shall be deleted;

(ac) the words "Office of the Commissioner for Children" shall be deleted; and

(ad) the words "Notary to Government" shall be deleted.

Amends
Schedule 16 to
the principal
regulations.

11. In Schedule 16 to the principal regulations, immediately after the words "Institute for Education", there shall be added the following:

"• Ministry for Justice, Culture and Local Government / Permanent Secretary's Office / Department of Corporate Services

- Courts of Justice Department
- Local Government Department
- Notary to Government
- Restoration Directorate
- Office of the Regulator IIP
- Arts Council Malta
- Attorney General
- Broadcasting Authority

- Heritage Malta
- Fondazzjoni Kreattività
- Identity Malta
- Legal Aid Agency
- Local Enforcement System Agency
- Malta Arbitration Centre
- Malta Mediation Centre
- National Orchestra Ltd.
- Pjazza Teatru Rjal
- Public Broadcasting Services Ltd.
- Superintendence of Cultural Heritage
- Teatru Malta
- Teatru Manoel
- Valletta 2018 Foundation
- Żfin Malta
- Ministry for the Family and Social Solidarity/Permanent Secretary's Office/ Department of Corporate Services
- Elderly and Community Care
- Appoġġ
- Housing Authority
- Foundation for Social Welfare Services
- Benefit Fraud and Investigations
- Welfare Committee
- National Commission on the abuse of drugs, alcohol and other dependencies
- National Commission for the Family

B 1118

- Sapport
 - Sedqa
 - Social Security
 - Social Welfare Standards
 - Office of the Commissioner for Children
 - Ministry for Gozo/Permanent Secretary's Office/
Department of Corporate Services
 - Projects and Development
 - Directorate (Gozo)
 - Customer Services
 - Tourism and Economic Development Directorate (Gozo)
 - EcoGozo Regional Development Directorate (Gozo)
 - Office of the Chief Information Officer (Gozo)
 - Gozo Channel (Operations) Ltd".
-

