

L.N. 26 of 2018

**FINANCIAL ADMINISTRATION AND AUDIT ACT
(CAP. 174)**

**Various Provisions relating to Public Procurement
(Amendment) Regulations, 2018**

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 Various Provisions relating to Public Procurement (Amendment) Regulations, 2018. Citation.

Part I

Amendments to the Public Procurement Regulations

2. This Part amends the Public Procurement Regulations, and it shall be read and construed as one with the Public Procurement Regulations, hereinafter in this Part referred to as "the principal regulations". Amendments to the Public Procurement Regulations. S.L. 174.04

3. Sub-regulation (1) of regulation 9 of the principal regulations shall be amended as follows: Amends regulation 9 of the principal regulations.

(a) in paragraph (a) thereof, for the words "one hundred and thirty-five thousand euro (€135,000)" there shall be substituted the words "one hundred forty-four thousand euro (€144,000)"; and

(b) in paragraph (b) thereof, for the words "one hundred and thirty-five thousand euro (€135,000)" there shall be substituted the words "one hundred forty-four thousand euro (€144,000)".

4. Immediately after sub-regulation (5) of regulation 90 of the principal regulations there shall be added the following new sub-regulation: Amends regulation 90 of the principal regulations.

"(6) The Board shall have all such powers as are, by the Code of Organization and Civil Procedure, vested in the Civil Court, First Hall."

5. In sub-regulation (1) of regulation 205 of the principal regulations, immediately after the words "registered letters" there shall be added the words "or judicial letter". Amends regulation 205 of the principal regulations.

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Amends
regulation 209
of the principal
regulations.

6. In sub-regulation (2) of regulation 209 of the principal regulations, immediately after the words "registered mail" there shall be added the words "or judicial letter".

Amends
Schedule 1 to
the principal
regulations.

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

(a) the words "Paying Agency", "Agriculture and Fisheries Regulation Department", "Fisheries Control", "Rural Development and Aquaculture" and "Food and Veterinary Services" shall be deleted; and

(b) immediately after the words "Institute for Education" there shall be added the following:

- "• Rural Development Department
- Agriculture and Rural Payments Agency (ARPA)
- Veterinary and Phytosanitary Regulation Division
- Department of Fisheries and Aquaculture
- Public Abattoir
- Governance of Agricultural BioResources Agency
- Pitkalija Ltd.
- Environment and Resources Authority
- Malta Resources Authority".

Amends
Schedule 2 to
the principal
regulations.

8. In Schedule 2 to the principal regulations, the words "Ministry for the Environment, Sustainable Development and Climate Change/Permanent Secretary's Office/Department responsible for Corporate Services", "Paying Agency", "Agriculture and Fisheries Regulation Department", "Fisheries Control", "Rural Development and Aquaculture", "Food and Veterinary Services" and "WasteServe Malta Ltd" shall be deleted.

Amends
Schedule 5 to
the principal
regulations.

9. Schedule 5 to the principal regulations shall be amended as follows:

(a) in paragraph (a) thereof, for the words "EUR 5,225,000" there shall be substituted the words "EUR 5,548,000";

(b) in paragraph (b) thereof, for the words "EUR

135,000" there shall be substituted the words "EUR 144,000";
and

(c) in paragraph (c) thereof, for the words "EUR 209,000" there shall be substituted the words "EUR 221,000".

10. In Schedule 16 to the principal regulations, immediately after the words "Gozo Heliport Limited" there shall be added the following:

Amends
Schedule 16 to
the principal
regulations.

"• Ministry for the Environment, Sustainable Development and Climate Change/Permanent Secretary's Office/Department responsible for Corporate Services

- Rural Development Department
- Agriculture and Rural Payments Agency (ARPA)
- Veterinary and Phytosanitary Regulation Division
- Department of Fisheries and Aquaculture
- Public Abattoir
- Governance of Agricultural BioResources Agency
- Pitkalija Ltd.
- Environment and Resources Authority
- Malta Resources Authority
- WasteServe Malta Ltd".

Part II

Amendments to the Concession Contracts Regulations

11. This Part amends the Concession Contracts Regulations, and it shall be read and construed as one with the Concession Contracts Regulations, hereinafter in this Part referred to as "the principal regulations".

Amendments to
the Concession
Contracts
Regulations.
S.L. 174.10

12. In Schedule 3 to the principal regulations, for the words "€5,225,000" there shall be substituted the words "€5,548,000".

Amends
Schedule 3 to
the principal
regulations.

Part III

Amendments to the Public Procurement of Entities operating in the

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Water, Energy, Transport and Postal Services Sectors Regulations

Amendments to the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations.
S.L. 174.06

13. This Part amends the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations, and it shall be read and construed as one with the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations, hereinafter in this Part referred to as "the principal regulations".

Amends regulation 2 of the principal regulations.

14. The definition "procurement document" in regulation 2 of the principal regulations shall be substituted by the following new definition:

" "procurement document" means any document produced or referred to by the contracting entity to describe or determine elements of the procurement or the procedure, including the contract notice, the periodic indicative notice or the notices on the existence of a qualification system where they are used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;"

Amends regulation 30 of the principal regulations.

15. Regulation 30 of the principal regulation shall be amended as follows:

(a) in paragraph (a) of sub-regulation (1) thereof, for the words "four hundred and eighteen thousand euro (€418,000)", there shall be substituted the words "four hundred and forty-three thousand euro (€443,000)"; and

(b) in paragraph (b) of sub-regulation (1) thereof, for the words "four hundred and eighteen thousand euro (€418,000)", there shall be substituted the words "four hundred and forty three thousand euro (€443,000)".

Amends regulation 63 of the principal regulations.

16. Regulation 63 of the principal regulations shall be amended as follows:

(a) the current provision shall be re-numbered as sub-regulation (1) of the said regulation 63; and

(b) immediately after sub-regulation (1) thereof, as re-numbered, there shall be added the following new sub-regulations:

"(2) When a call for competition is made by means of a periodic indicative notice in respect of restricted procedures and negotiated procedures with prior call for competition, the notice shall meet all the following requirements:

(a) it shall refer specifically to the supplies, works or services that will be the subject of the contract to be awarded;

(b) it shall indicate that the contract will be awarded by restricted or negotiated procedure without further publication of a call for competition and it shall invite interested economic operators to express their interest;

(c) it shall contain, in addition to the information set out in section I of Part A of Schedule 8, the information set out in section 2 of Part A of Schedule 8;

(d) it shall be sent for publication between thirty-five days and twelve months prior to the date on which the invitation to confirm interest is sent.

(3) Such notices shall not be published on a buyer profile; however, the additional publication at national level pursuant to the provisions of regulation 67, if any, may be made on a buyer profile.

(4) The period covered by the periodic indicative notice shall be a maximum of twelve months from the date the notice is transmitted for publication; however, in the case of contracts for social and other specific services, the periodic indicative notice referred to in regulation 135(1)(a)(ii) may cover a period which is longer than twelve months."

17. Immediately after sub-regulation (7) of regulation 65 of the principal regulations, there shall be added the following new sub-regulation:

Amends
regulation 65 of
the principal
regulations.

"(8) Where the call for competition for the contract concerned has been made in the form of a periodic indicative notice and the contracting entity has decided that it will not award further contracts during the period covered by the periodic indicative notice, the contract award notice shall contain a specific indication to that effect."

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Amends
regulation 71 of
the principal
regulations.

18. In sub-regulation (1) of regulation 71 of the principal regulations, for the words "regularly referred to in their supply, works or service contracts" there shall be substituted the words "regularly referred to in their supply, works or service contracts or the technical specifications which they intend to apply to contracts for which the call for competition is a periodic indicative notice."

Amends
regulation 72 of
the principal
regulations.

19. Immediately after sub-regulation (5) of regulation 72 of the principal regulations, there shall be added the following new sub-regulation:

"(6) Where the means of calling for competition is a notice on the existence of a qualification system, such access shall be offered as soon as possible and at the latest when the invitation to tender or to negotiate is sent. The text of the notice or of those invitations shall specify the internet address at which the procurement documents are accessible."

Amends
regulation 73 of
the principal
regulations.

20. Immediately after sub-regulation (2) of regulation 73 of the principal regulations, there shall be added the following new sub-regulation:

"(3) Where a periodic indicative notice is used as a call for competition pursuant to regulation 89(2)(a), contracting entities shall simultaneously and in writing invite the economic operators which have expressed their interest to confirm their continuing interest."

Amends
regulation 74 of
the principal
regulations.

21. Paragraph (a) of sub-regulation (5) of regulation 74 of the principal regulations shall be substituted by the following:

"(a) state so in the contract notice, in the invitation to confirm interest, or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender or to negotiate;"

Amends
regulation 84 of
the principal
regulations.

22. Immediately after sub-regulation (2) of regulation 84 of the principal regulations, there shall be added the following new sub-regulation:

"(3) When a call for competition is made by means of a notice on the existence of a qualification system and for the purpose of selecting participants in procurement procedures for the specific contracts which are the subject of the call for competition, contracting entities shall:

(a) qualify economic operators in accordance with the provisions of regulation 169;

(b) apply to such qualified economic operators those provisions of sub-regulation (1) that are relevant to restricted or negotiated procedures, to competitive dialogues or to innovation partnerships."

23. Regulation 89 of the principal regulations shall be amended as follows:

Amends regulation 89 of the principal regulations.

(a) the current provision shall be re-numbered as sub-regulation (1) of the said regulation 89; and

(b) immediately after sub-regulation (1) thereof, as re-numbered, there shall be added the following new sub-regulations:

"(2) The call for competition may be made by one of the following means:

(a) a periodic indicative notice pursuant to the provisions of regulation 63 where the contract is awarded by restricted or negotiated procedure;

(b) a notice on the existence of a qualification system pursuant to the provisions of regulation 169 where the contract is awarded by restricted or negotiated procedure or by a competitive dialogue or an innovation partnership;

(c) by means of a contract notice pursuant to the provisions of regulation 64.

(3) In the case referred to in sub-regulation (2)(a), economic operators, having expressed their interest following the publication of the periodic indicative notice, shall subsequently be invited to confirm their interest in writing by means of an invitation to confirm interest in conformity with the provisions of regulation 73."

24. Paragraphs (a) and (b) of sub-regulation (2) of regulation 91 of the principal regulations shall be substituted by the following:

Amends regulation 91 of the principal regulations.

"(a) the periodic indicative notice included, in addition to the information required by section I of Part A of Schedule 8, all the information required by section II of Part A of Schedule 8, insofar as the latter information was available at the time the periodic indicative notice was published;

(b) the periodic indicative notice was sent for

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publication between thirty-five days and twelve months before the date on which the contract notice was sent."

Amends
regulation 99 of
the principal
regulations.

25. In regulation 99 of the principal regulations, immediately after the words "from the publication of the procurement document" there shall be added the words "or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest was sent".

Amends
regulation 116
of the principal
regulations.

26. In regulation 116 of the principal regulations, immediately after the words "or when the call for competition is published" there shall be added the words "or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest was sent and shall in any event not be less than fifteen days".

Amends
regulation 135
of the principal
regulations.

27. Immediately after sub-paragraph (ii) of paragraph (a) of sub-regulation (1) of regulation 135 of the principal regulations, there shall be added the following new sub-paragraph:

"(iii) by means of a notice on the existence of a qualification system, which shall be published continuously; or".

Amends
regulation 148
of the principal
regulations.

28. In paragraph (a) of sub-regulation (3) of regulation 148 of the principal regulations, immediately after the words "or when the call for competition is published" there shall be added the words "or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest is sent and shall in any event not be less than fifteen days".

Substitutes
regulation 158
of the principal
regulations.

29. Regulation 158 of the principal regulations shall be substituted by the following:

"158. Contracting entities which decide to hold an electronic auction shall state that fact in the contract notice, in the invitation to confirm interest or, where a notice on the existence of a qualification system is used as a means of calling for competition, in the invitation to tender. The procurement documents shall include at least the information set out in Schedule 8."

Amends
regulation 168
of the principal
regulations.

30. Regulation 168 of the principal regulations shall be amended as follows:

(a) sub-regulation (1) thereof shall be substituted by the following:

"(1) Where the objective rules and criteria for the exclusion and selection of economic operators requesting

qualification in a qualification system include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities, the economic operator may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. With regard to criteria relating to the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff or to the relevant professional experience, economic operators may however only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting entity that those resources will be available to it throughout the period of the validity of the qualification system, for example by producing a commitment by those entities to that effect.";

(b) in sub-regulation (4) thereof, for the words "regulations 80 and 81" there shall be substituted the words "regulation 81";

(c) sub-regulation (5) thereof shall be re-numbered as sub-regulation (7); and

(d) immediately after sub-regulation (4) thereof, there shall be added the following new sub-regulations:

"(5) Where the objective rules and criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated procedures, in competitive dialogues or in innovation partnerships include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities, the economic operator may where necessary and for a particular contract rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. With regard to criteria relating to the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff or to the relevant professional experience, economic operators may however only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. Where an economic operator wants to rely on the capacities of other entities, it shall prove to

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the contracting entity that the necessary resources shall be available to it, for example by delivering a commitment by those entities to that effect.

(6) Contracting entities shall verify, in accordance with regulation 166, whether the other entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria or whether there are grounds for exclusion or black-listing. The contracting entity shall require that the economic operator replaces an entity which does not meet a relevant selection criterion, or in respect of which there are compulsory grounds for exclusion to which the contracting entity has referred:

Provided that where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, the contracting entity may require that the economic operator and those entities be jointly liable for the execution of the contract:

Provided further that under the same conditions, a group of economic operators as referred to in regulations 80 and 81 may rely on the capacities of participants in the group or of other entities."

Substitutes
regulation 169
of the principal
regulations.

31. Regulation 169 of the principal regulations shall be substituted by the following:

"System of
qualification
for economic
operators.

169. (1) Contracting entities which so wish, after obtaining the written prior approval of the Director, may establish and operate a system of qualification of economic operators.

(2) Contracting entities which, after having obtained the prior written approval of the Director, establish or operate a system of qualification shall ensure that economic operators are at all times able to request qualification.

(3) The qualification system may involve different qualification stages.

(4) Contracting entities shall establish objective rules and criteria for the exclusion and selection of economic operators requesting qualification and objective criteria and rules for the operation of the qualification system, covering matters such as inscription in the system, periodic updating of the qualifications, if any, and the duration of the system.

(5) Where those criteria and rules include technical specifications, the provisions of regulations 76 to 78 shall apply. The criteria and rules may be updated as required.

(6) The criteria and rules referred to in sub-regulations (3) to (5) shall be made available to economic operators on request. Those updated criteria and rules shall be communicated to interested economic operators.

(7) Where a contracting entity considers that the qualification system of certain other entities or bodies meets its requirements, it shall communicate to interested economic operators the names of such other entities or bodies.

(8) When a call for competition is made by means of a notice on the existence of a qualification system, specific contracts for the works, supplies or services covered by the qualification system shall be awarded by restricted procedures or negotiated procedures, in which all tenderers and participants are selected among the candidates already qualified in accordance with such a system.

(9) Any charges that are billed in connection with requests for qualification or with updating or conserving an already obtained qualification pursuant to the system shall be proportionate to the generated costs.

(10) Where contracting entities choose to set up a qualification system in accordance with this regulation, the system shall be the subject of a notice as referred to in Schedule 20, indicating the purpose of the qualification system and how to have access to the rules concerning its operation.

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(11) Contracting entities shall indicate the period of validity of the qualification system in the notice on the existence of the system. They shall notify the Publications Office of the European Union of any change in period of validity, using the following standard forms:

(a) where the period of validity is changed without terminating the system, the form for notices on the existence of qualification systems;

(b) where the system is terminated, a contract award notice referred to in regulation 65."

Amends
Schedule 5 to
the principal
regulations.

32. Schedule 5 to the principal regulations shall be amended as follows:

(a) in paragraph (a) thereof, for the words "EUR 418,000", there shall be substituted the words "EUR 443,000"; and

(b) in paragraph (b) thereof, for the words "EUR 5,225,000", there shall be substituted the words "EUR 5,548,000".

Amends
Schedule 8 to
the principal
regulations.

33. Immediately after section I of Part A of Schedule 8 to the principal regulations, there shall be added the following new section:

"II. Additional information to be supplied where the notice is used as a means of calling for competition or permits the reduction of the time limits for the receipt of tenders

6. A reference to the fact that interested economic operators shall advise the entity of their interest in the contract or contracts.

7. E-mail or internet address at which the specifications procurement documents will be available for unrestricted and full direct access, free of charge. Where unrestricted and full direct access, free of charge, is not available for the reasons set out in regulation 72(2) and (4), an indication of how the procurement documents can be accessed.

8. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.

9. Time limit for the receipt of applications for an

invitation to tender or to negotiate.

10. Nature and quantity of the products to be supplied or general nature of the work or category of service and description, stating if framework agreement(s) are envisaged, including any options for further procurement and the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, an estimate of the timing of the subsequent calls for competition. State whether purchase, lease, rental or hire-purchase or any combination of those is involved.

11. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service; if the contract is divided into lots, this information shall be provided for each lot.

12. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.

13. Address to which interested undertakings shall send their expressions of interest in writing.

14. Time limit for receipt of expressions of interest.

15. Language or languages authorised for the presentation of candidatures or tenders.

16. Economic and technical conditions, and financial and technical guarantees required of suppliers.

17. (a) Estimated date for initiating the procurement procedures in respect of the contract or contracts (if known);

(b) Type of procurement procedure (restricted procedures, whether or not involving a dynamic purchasing system, or negotiated procedures).

18. Where appropriate, particular conditions to which the performance of the contract is subject.

19. Where appropriate, indication whether:

(a) electronic submission of tenders or requests to participate will be required/accepted,

(b) electronic ordering will be used,

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(c) electronic invoicing will be used,

(d) electronic payment will be accepted.

20. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

21 Where known, criteria referred to in regulation 170 to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be mentioned, where they do not appear in the specifications, or will not be indicated in the invitation to confirm interest or in the invitation tender or to negotiate."

Adds new
schedule to the
principal
regulations.

34. Immediately after Schedule 19 to the principal regulations there shall be added the following new schedule:

"Schedule 20

INFORMATION TO BE INCLUDED IN THE NOTICE ON
THE EXISTENCE OF A QUALIFICATION SYSTEM
(as referred to in regulations 89(2)(b) and 169(10))

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.

2. Main activity exercised.

3. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.

4. Purpose of the qualification system (description of the products, services or works or categories thereof to be procured through the system - CPV codes). NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service.

5. Conditions to be fulfilled by the economic operators in view of their qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of such conditions and verification methods is voluminous and based on documents available to interested economic operators, a summary of the main conditions and methods and a reference to those documents shall be sufficient.

6. Period of validity of the qualification system and the formalities for its renewal.

7. Reference to the fact that the notice acts as the call for competition.

8. Address where further information and documentation concerning the qualification system can be obtained (where different from the addresses mentioned under paragraph 1).

9. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

10. Where known, criteria referred to in regulation 170 to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria, shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to tender or to negotiate.

11. Where appropriate, an indication whether:

(a) electronic submission of tenders or requests to participate will be required/accepted,

(b) electronic ordering will be used,

(c) electronic invoicing will be used,

(d) electronic payment will be accepted.

12. Any other relevant information.

