SUBSIDIARY LEGISLATION 601.03

PUBLIC PROCUREMENT REGULATIONS

28th October, 2016

LEGAL NOTICE 352 of 2016, as amended by Legal Notices 155 of 2017, 233 of 2017, 26 of 2018, 176 of 2018, 263 of 2018 and 195 and 301 of 2019 and 196, 413 and 446 of 2020, 56 of 2021 26 and 360 of 2022, 212 and 227 of 2023 and 112 of 2024; Act XXVIII of 2018, XXI of 2020 and X of 2023 and XVII of 2024 and Legal Notices 361 of 2024, 47 and 110 of 2025.

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Citation and scope.

1. (1) The title of these regulations is the Public Procurement Regulations.

(2) These regulations transpose the provisions of Directive 2014/24/EU of the European Parliament and of the Council of 26 February, 2014, on public procurement and repealing Directive 2004/18/EC.

Part I
General Provisions

Interpretation and Scope

Interpretation.
Amended by:
L.N. 195 of 2019;
L.N. 56 of 2021.

2. For the purposes of these regulations:

"ancillary purchasing activities" means activities consisting in the provision of support to purchasing activities, in particular in the following forms:

(*a*) technical infrastructure enabling contracting authorities to award public contracts or to conclude framework agreements for works, supplies or services;

(*b*) advice on the conduct or design of public procurement procedures;

(*c*) preparation and management of procurement procedures on behalf and for the account of the contracting authority concerned;

"black listed person" means any person, whether legal or natural, with whom a contracting authority and any body governed by public law shall be prohibited from carrying out any procurement whether directly or as a sub-contractor or as a member of a consortium and, or joint venture;

"bodies governed by public law" means bodies that have all of the following characteristics:

(*a*) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

(*b*) they have legal personality; and

(*c*) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;

"candidate" means an economic operator that has sought an invitation or has been invited to take part in a restricted procedure, in a competitive procedure with negotiation, in a negotiated procedure without prior publication, in a competitive dialogue or in an innovation partnership;

"candidate concerned" means a candidate who has not yet received information from a contracting authority about the

rejection of his application before the notification of the contract award decision to the tenderer concerned;

"central government authorities" means the contracting authorities listed in Schedule 6 and, in so far as corrections or amendments have been made at national level, their successor entities;

"centralised purchasing activities" means activities conducted on a permanent basis, in one of the following forms:

(*a*) the acquisition of supplies and, or services intended for contracting authorities;

(*b*) the award of public contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities;

"central purchasing body" means a contracting authority providing centralised purchasing activities and, possibly, ancillary purchasing activities;

"Commission" means the Commission of the European Union;

"common technical specification" means a technical specification in the field of ICT laid down in accordance with Articles 13 and 14 of Regulation (EU) 1025/2012;

"conflicts of interest" shall at least mean any situation where any person, including staff members of the contracting authority or of a procurement service provider acting on behalf of the contracting authority, who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure;

"conformity assessment body" shall be a body that performs conformity assessment activities including calibration, testing, certification and inspection accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products;

"contracting authorities" means 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;

"contract award notice" means an award notice to be published in the Official Journal of the European Union;

"contract notice" means a notice to be published in the Official Journal of the European Union;

"Contracts Committees" means the General Contracts Committee and, or the Special Contracts Committee;

"CPV" means the Common Procurement Vocabulary as adopted by Regulation (EC) No. 2195/2002 as amended from time to time;

"departmental tender" means tenders issued by contracting authorities with an estimated value which falls under the threshold established under regulation 9(1)(*a*);

"design contests" means those procedures which enable the contracting authority to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes;

"direct contracts" means contracts awarded without recourse to a prior call for competition;

"Director" means the Director of Contracts who heads the Department of Contracts;

"Director of Employment and Industrial Relations" shall have the same meaning as specified in the Employment and Industrial Relations Act; Cap. 452.

"Director Sectoral Procurement" means the Director responsible for the administration and management of the Sectoral Procurement Directorate;

"economic operator" means 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;

"electronic means" refers to electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

"European Technical Assessment" means the documented assessment of the performance of a construction product, in relation to its essential characteristics, in accordance with the respective European Assessment Document, as defined in point 12 of Article 2 of Regulation (EU) No 305/2011 of the European Parliament and of the Council;

"Evaluation Committee" means boards or committees appointed by contracting authorities with the purpose of evaluating tenders received and for making recommendations thereon;

"framework agreement" means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged;

"government's e-procurement platform" means the electronic platform for procurement as established by the Director;

"ineffectiveness" means a contract awarded illegally or when the procurement procedure was not followed correctly;

"innovation" means the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices,

workplace organisation or external relations *inter alia* with the purpose of helping to solve societal challenges or to support the Europe 2020 strategy for smart, sustainable and inclusive growth;

"irregular tenders" means tenders which do not comply with the procurement documents, which were received late, where there is evidence of collusion or corruption, or which have been found by the contracting authority to be abnormally low;

"label" means any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements;

"label requirements" means the requirements to be met by the works, products, services, processes or procedures in question in order to obtain the label concerned;

"life cycle" means all consecutive and, or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation;

"Member State" means a member state of the European Union;

"Minister" means the Minister responsible for Finance;

"modification" means any change, variation or amendment to the original terms of the contract including but not limited to the introduction of new conditions and to the removal or replacement of existing conditions;

"negotiated procedures" means those procedures whereby contracting authorities consult the economic operators of their choice and negotiate the terms of a contract with one or more of these;

"notice" means a notice published in the Gazette;

"prior information notices" means a notice published in the Official Journal according to what is specified under Part I;

"procurement" means acquisition by means of a public contract of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the supplies, works, or services are intended for a public purpose;

"procurement document" means any document produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is 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 including clarifications;

"procurement service provider "means a public or private body

which offers ancillary purchasing activities on the market;

"public contracts" means 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;

"public service contracts" means public contracts having as their object the provision of services other than those referred to in the definition of public works contracts;

"public supply contracts" means public contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products, which may include, as an incidental matter, siting and installation operations;

"public works contracts" means public contracts having as their object one of the following:

(*a*) the execution, or both the design and execution, of works related to one of the activities within the meaning Schedule 15;

(*b*) the execution, or both the design and execution, of a work;

(*c*) the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;

"regional authorities" includes authorities listed non-exhaustively in Nomenclature of Territorial Units for Statistics (NUTS) 1 and 2, as referred to in Regulation (EC) No 1059/2003 of the European Parliament and of the Council, while "local authorities" includes all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as referred to in Regulation (EC) No 1059/2003;

"restricted procedures" means those procedures in which any economic operator may request to participate and whereby only those economic operators invited by the contracting authorities may submit a tender;

"Review Board" means the Public Contracts Review Board;

"Sectoral Procurement Directorate" means the directorate responsible for the administration, evaluation and recommendation on behalf of contracting authorities listed under Schedule 16 of calls for tenders published under an open or restricted procedure where the estimated value of such calls exceeds ten thousand euro (€10,000) but it does not exceed the threshold of seven hundred and fifty thousand euro (€750,000);

"SME" has the same meaning as that given under Commission Recommendation 2003/361/EC;

"standard" means a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory, and which is

one of the following:

(*a*) "international standard" means a standard adopted by an international standardisation organisation and made available to the general public;

(*b*) "European standard" means a standard adopted by a European standardisation organisation and made available to the general public;

(*c*) "national standard" means a standard adopted by a national standardisation organisation and made available to the general public;

"technical reference" means any deliverable produced by European standardisation bodies, other than European standards, according to procedures adapted to the development of market needs;

"technical specification" means either:

(*a*) in the case of public works contracts the totality of the technical prescriptions contained in particular in the procurement documents, defining the characteristics required of a material, product or supply, so that it fulfils the use for which it is intended by the contracting authority; those characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions and production processes and methods at any stage of the life cycle of the works; those characteristics also include rules relating to design and costing, the test, inspection and acceptance of conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve; or

(*b*) in the case of public supply or service contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures;

"TFEU" means the Treaty on European Union and the Treaty on the Functioning of the European Union;

"tenderer" means an economic operator that has submitted a tender;

"tenderers concerned" means tenderers who have not yet been definitely excluded. An exclusion is definitive if it has been notified to the tenderers concerned and has either been considered lawful by the Review Board or can no longer be subject to review before the Court of Appeal;

"unacceptable tenders" means tenders submitted by tenderers that do not have the required qualifications, and tenders whose price exceeds the contracting authority's budget as determined and documented prior to the launching of the procurement procedure;

Cap. 406. "VAT" means value added tax under the Value Added Tax Act;

"work" means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;

"written" or "in writing" means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means.

Scope.

3. The scope of these regulations is to regulate all the procurement carried out by the Government of Malta.

Applicability

Applicability.

4. (1) These regulations shall regulate all the procurement procedures that are initiated after their entry into force.

(2) The application of these regulations is subject to Article 346 of the TFEU.

Transitory provisions.

5. Any procurement procedure which has been issued prior to the coming into force of these regulations shall continue to be regulated by the laws which were in force before the coming into force of these regulations, including any review on any decision thereon.

Subsidised contracts.

6. (1) These regulations shall also apply to works and service contracts which are subsidised directly by contracting authorities by more than 50% where these contracts include one of the following activities:

(*a*) civil engineering activities as listed in Schedule 15;

(*b*) building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes.

(2) The contracting authorities providing the subsidies referred to in sub-regulation (1) shall ensure compliance with these regulations where they do not themselves award the subsidised contract or where they award that contract for and on behalf of

other entities.

Non-Applicability. *Amended by: L.N.155 of 2017.*

7. (1) These regulations shall not apply to the following:

(*a*) public contracts and design contests which, under the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations, 2016, are awarded or organised by contracting authorities exercising one or more of the activities referred to in regulations 8 to 14 of the said Regulations and are awarded for the pursuit of those activities; S.L. 601.05

(*b*) public contracts excluded from the scope of the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations, under regulations 18, 23 and 34 thereof; S.L. 601.05

(*c*) public contracts awarded by a contracting authority which provides postal services within the meaning of paragraph (*b*) of regulation 13(2) of the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations for the pursuit of the following activities: S.L. 601.05

(i) added value services linked to and provided entirely by electronic means including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail;

(ii) financial services which are covered by CPV codes 66100000-1 to 66720000-3 and by point (*d*) of Article 21 of Directive 2014/25/EU and including in particular postal money orders and postal giro transfers;

(iii) philatelic services; or

(iv) logistics services (services combining physical delivery and, or warehousing with other non-postal functions);

(*d*) public contracts and design contests for the principal purpose of permitting the contracting authorities to provide or exploit public communications networks or to provide to the public one or more electronic communications service;

(*e*) public contracts and design contests which the contracting authority is obliged to award or organise in accordance with procurement procedures different from those laid down in these regulations established by any of the following:

(i) a legal instrument creating international law obligations, such as an international agreement, concluded in conformity with the Treaties, between a Member State and one or more third countries or subdivisions thereof and covering

works, supplies or services intended for the joint implementation or exploitation of a project by their signatories;

(ii) an international organisation:

Provided that before making use of the exclusion identified in sub-paragraph (i), a contracting authority shall communicate all legal instruments referred therein to the Commission;

(*f*) public contracts and design contests which the contracting authority awards or organises in accordance with procurement rules provided by an international organisation or international financing institution, where the public contracts and design contests concerned are fully financed by that organisation or institution. In the case of public contracts and design contests co-financed for the most part by an international organisation or international financing institution the parties shall agree on applicable procurement procedures;

(*g*) public service contracts for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;

(*h*) public service contracts for the acquisition, development, production or co-production of programme material intended for audiovisual media services or radio media services, that are awarded by audiovisual or radio media service providers, or contracts for broadcasting time or programme provision that are awarded to audiovisual or radio media service providers;

(i) arbitration and conciliation services;

(*j*) legal representation of a client by a lawyer within the meaning of Article 1 of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services in:

(i) an arbitration or conciliation held in a Member State, a third country or before an international arbitration or conciliation instance;

(ii) judicial proceedings before the courts, tribunals or public authorities of a Member State or a third country or before international courts, tribunals or institutions;

(*k*) legal advice given in preparation of any of the proceedings referred to in paragraph (*j*) of this sub-regulation or where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings, provided that the advice is given by a lawyer within the meaning of Article 1 of Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by

lawyers of freedom to provide services;

(*l*) document certification and authentication services which must be provided by notaries;

(*m*) legal services provided by trustees or appointed guardians or other legal services the providers of which are designated by a court or tribunal in the Member State concerned or are designated by law to carry out specific tasks under the supervision of such tribunals or courts;

(*n*) other legal services which are connected, even occasionally, with the exercise of official authority;

(*o*) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending central bank services and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;

(*p*) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;

(*q*) employment contracts;

(*r*) civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations, and which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3 except patient transport ambulance services;

(*s*) public passenger transport services by rail or metro;

(*t*) political campaign services covered by CPV codes 79341400-0, 92111230-3 and 92111240-6, when awarded by a political party in the context of an election campaign;

(*u*) public service contracts awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a law, regulation or published administrative provision which is compatible with the TFEU;

(*v*) public service contracts for research and development services other than those public service contracts for research and development services which fall under the CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 and whose benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority;

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(*w*) public contracts falling within the scope of Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations and those contracts which are excluded pursuant to regulations 9(1), 12 and 13 of Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulation;

(*x*) public contracts and design contests not otherwise exempted under paragraph (*w*) to the extent that the protection of the essential security interests of Malta cannot be guaranteed by less intrusive measures, for instance by imposing requirements aimed at protecting the confidential nature of information which the contracting authority makes available in a contract award procedure as provided for in these regulations;

(*y*) public contracts and design contests not otherwise exempted under paragraph (*w*) to the extent that the application of these regulations would oblige Malta to supply information the disclosure of which it considers contrary to the essential interests of its security;

(*z*) the procurement and performance of a public contract or design contest that are declared to be secret or are accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in Malta, as long as the essential interests concerned cannot be guaranteed by less intrusive measures, such as those referred to in paragraphs (*x*) and (*y*);

(*aa*) public contracts and design contests involving defence or security aspects which the contracting authority is obliged to award or organise in accordance with procurement procedures different from those laid down in these regulations established by any of the following:

(i) an international agreement or arrangement, concluded in conformity with the Treaties, between a Member State and one or more third countries or subdivisions thereof and covering works, supplies or services intended for the joint implementation or exploitation of a project by their signatories;

(ii) an international agreement or arrangement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;

(iii) an international organisation:

Provided that all agreements or arrangements referred to in sub-paragraph (i) shall be communicated to the Commission, which may consult the Advisory Committee on Public Procurement;

(*bb*) public contracts and design contests involving defence

or security aspects which the contracting authority awards in accordance with procurement rules provided by an international organisation or international financing institution, where the public contracts and design contests concerned are fully financed by this organisation or institution. In the case of public contracts and design contests co-financed for the most part by an international organisation or international financing institution the parties shall agree on applicable procurement procedures;

(*cc*) the organisation of the social security system;

(*dd*) all public procurement carried out in terms of the Emergency Procurement Regulations. S.L. 601.08

(2) For the purposes of this regulation:

"audiovisual media services" shall have the same meaning as pursuant to point (a) of Article 1(1) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services;

"electronic communications service" shall have the meaning given to this term in Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services;

"media service providers" shall have the same meaning as pursuant to point (*d*) of Article 1(1) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services;

"programme" shall have the same meaning as pursuant to point (b) of Article 1(1) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services and shall also include radio programmes and radio programme materials;

"programme material" shall have the same meaning of the term "programme";

"public communications network" shall have the meaning given to this term in Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

(3) Contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules shall be regulated by sub-regulation (1)(*aa*) and (*bb*).

Public contracts between entities within the public sector.

8. (1) Subject to the provisions of regulation 111(3), a public contract, having an estimated value which falls under regulation 9(1)(*b*), awarded by a contracting authority to a legal person governed by private or public law, shall fall outside the scope of these regulations when all of the following conditions are fulfilled:

(*a*) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;

(*b*) more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority; and

(*c*) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

Provided that a contracting authority shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of paragraph (*a*) where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person. Such control may also be exercised by another legal person, which is itself controlled in the same way by the contracting authority.

(2) The provisions of sub-regulation (1) also apply where a controlled legal person which is a contracting authority awards a contract to its controlling contracting authority, or to another legal person controlled by the same contracting authority, provided that there is no direct private capital participation in the legal person being awarded the public contract with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

(3) A contracting authority, which does not exercise control over a legal person governed by private or public law control within the meaning of sub-regulation (1), may nevertheless award a public contract to that legal person without applying these regulations where all of the following conditions are fulfilled:

(*a*) the contracting authority exercises jointly with other contracting authorities a control over that legal person which is similar to that which they exercise over their own departments;

(*b*) more than 80% of the activities of that legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authorities or by other legal persons controlled by the same contracting

authorities; and

(*c*) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

(4) For the purposes of sub-regulation (3)(*a*), contracting authorities exercise joint control over a legal person where all of the following conditions are fulfilled:

(*a*) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities. Individual representatives may represent several or all of the participating contracting authorities;

(*b*) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person; and

(*c*) the controlled legal person does not pursue any interests which are contrary to those of the controlling contracting authorities.

(5) A contract concluded exclusively between two or more contracting authorities shall fall outside the scope of these regulations where all of the following conditions are fulfilled:

(*a*) the contract establishes or implements a cooperation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;

(*b*) the implementation of that cooperation is governed solely by considerations relating to the public interest; and

(*c*) the participating contracting authorities perform on the open market less than 20% of the activities concerned by the cooperation.

(6) For the determination of the percentage of activities referred to in sub-regulations (1)(*b*), (3)(*b*) and (5)(*c*), the average total turnover, or an appropriate alternative activity-based measure such as costs incurred by the relevant legal person or contracting authority with respect to services, supplies and works for the three years preceding the contract award shall be taken into consideration.

(7) Where, because of the date on which the relevant legal person or contracting authority was created or commenced activities or because of a reorganisation of its activities, the turnover, or alternative activity based measure such as costs, are either not available for the preceding three years or no longer relevant, it shall be sufficient to show that the measurement of

activity is credible, particularly by means of business projections.

Administration of the process.
Amended by: L.N. 26 of 2018; L.N. 196 of 2020; L.N. 56 of 2021; L.N. 26 of 2022; L.N. 361 of 2024.

9. (1) Without prejudice to the applicability of the other provisions of these regulations, the procurement process of public contracts:

Amended by: L.N. 26 of 2018.

(*a*) the estimated value of which is less than one hundred forty three thousand euro (€143,000), shall be issued, administered and determined by the contracting authorities on their own without the need to involve the Director;

Amended by: L.N. 26 of 2018.

(*b*) the estimated value of which equals or exceeds the threshold of one hundred forty three thousand euro (€143,000) shall be issued, administered and determined by the Director on behalf of the contracting authority;

(*c*) that have been published by the Sectorial Procurement Directorate in the name of the contracting authority listed under Schedule 16, where the estimated value of such procurement exceeds ten thousand euro (€10,000) but does not exceed seven hundred and fifty thousand euro (€750,000) have to be published, administered and determined by the Sectorial Procurement Directorate on its own without the need to involve the Director.

(2) Public contracts required by those contracting authorities listed in Schedule 3 shall be issued, administered and determined by these contracting authorities on their own without the need to involve the Director, subject to the provisions set out in these regulations including but not limited to the right of appeal.

(3) The Minister shall, from time to time, by regulations determine the thresholds applicable under these regulations. Such thresholds shall be equal to, and categorised in the same fashion, as the thresholds established pursuant to the relevant European Union Directives as published from time to time in the Official Journal of the European Union.

The Office of the Director of Contracts

Director of Contracts.

10. There shall be a Director of Contracts who shall be responsible for the management of the Department of Contracts and generally for the regulation and administration of the procurement procedures as laid down in these regulations.

Liability.

11. In the exercise of his functions, the Director and his immediate family shall not be held personally liable for any act or omission done in good faith. For the purpose of this regulation, ''immediate family'' shall mean the spouse and children of the Director.

Functions of the Director.
Amended by: L.N. 56 of 2021.

12. (1) Unless otherwise provided for in these regulations, it shall be the duty of the Director to carry out the following functions:

(*a*) to monitor procurement activities with the aim of ensuring adherence to these regulations and to ensure that the results of these monitoring activities are made available to the public through appropriate means of information;

(*b*) to establish and regulate the procedure to be followed during meetings of the General Contracts Committee, the Special Contracts Committee, the Departmental Contracts Committee and the Evaluation Committee, and during the issue and publication of calls for tenders, receipt of offers, opening of bids, evaluation of tenders and award of contracts in accordance with the rules herein set out;

(*c*) to obtain information from all the contracting authorities on the award and performance of contracts as he may deem necessary in order to enable him to ensure conformity with these regulations;

(*d*) to provide information and guidance on the interpretation and application of these regulations, to assist contracting authorities and economic operators, in particular SMEs, in correctly applying these regulations;

(*e*) to provide support to contracting authorities with regard to planning and carrying out procurement procedures;

(*f*) to grant access to public supply contracts or public service contracts with a value which equals or exceeds one million euro (€1,000,000) and public works contracts with a value which equals or exceeds ten million euro (€10,000,000) in terms of the applicable national rules on access to documents and data protection:

Provided that the Director shall be obliged to keep these contracts at least for the duration of the same;

(*g*) to afford effective co-operation to other member states leading to the exchange of information which the Director has gathered in the execution of his duties as long as such information is exchanged in observance with Maltese legislation regulating such exchange of information;

(*h*) to make available to other Member States, upon request, any information related to the evidence and documents submitted in accordance with regulations 53(4) and (5), 54 and 55;

(*i*) to draw up and maintain a list of persons who have been blacklisted; and

(*j*) to make available to a Member State, when such is

requested, any information mentioned in Parts VI and VII.

(2) Where the Director or his delegate identify, by their own initiative or upon the receipt of information, specific violations or systematic problems, they shall be empowered to report this matter to the appropriate authority.

(3) In order to ensure compliance with these regulations, the Director may issue administrative orders establishing how procurement procedures, or public contracts, are to be issued, administered, determined and implemented, as the case may be. *Inter alia* such administrative orders may include instructions to the Sectoral Procurement Directorate and the obligation on contracting authorities to submit annual procurement plans.

Additional functions in connection with procurement above certain thresholds.

13. In relation to a procurement procedure carried out by the Director on behalf of a contracting authority with an estimated value which falls under regulation 9(1)(*b*) it shall also be the function of the Director:

(*a*) to establish and approve the general conditions of the procurement documents;

(*b*) to authorise deviations from standard terms and conditions in accordance with the regulations set out herein and which may be included in the procurement documents;

(*c*) to consider an extension or the cancellation of a procurement procedure;

(*d*) to order that a procurement period of any call for offers referred to in these regulations be extended if he considers such an extension justified by the circumstances of the case;

(*e*) to vet and approve, with or without modification, procurement documents before the same are issued and published;

(*f*) to approve, where required under these regulations, modifications which exceed the amount established in regulation 246(3);

(*g*) to approve requests made by the contracting authorities for the extension of contracts if he considers that circumstances so warrant in the public interest and specific provision for such extensions is made in the procurement document;

(*h*) to identify and implement appropriate means to enable him to monitor the proper execution of contracts;

(*i*) to make regulations to award contracts in the name and on behalf of contracting authorities listed in Schedule 2, including the case of an association of authorities of which such contracting authority is a member;

(*j*) to establish the procedure affecting the award of contracts governed by procedures deviating from these

regulations as long as these procedures shall be published by a notice in the Gazette;

(*k*) to publish in the Gazette a notice of all awards of contracts including variations outside the limit of the tender conditions, within six months of their award;

(*l*) to award tenders and sign contracts in the name and on behalf of contracting authorities as provided for in these regulations;

(*m*) to take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Schedule 13; and

(*n*) to make and transmit to the Minister a report, by not later than six months after the end of each financial year, on the performance of the General Contracts Committee, and of the Special Contracts Committee during the financial year being reported upon, which report shall, in particular, provide details regarding the results of the monitoring activities:

Provided that, following the transmission of the report to the Minister, the Director shall ensure that the report is made public.

Report to the Commission.

14. By 18 April 2017 and every three years thereafter the Director shall forward to the Commission a statistical report for procurement as set out in the EU Directive 2014/24.

Cancellation of a procurement procedure. *Amended by: L.N.233 of 2017; L.N. 56 of 2021.*

15. (1) The Director has the right to cancel the award of a contract at any time during a call for tenders or quotations even after the recommended bidder has been decreed and the time establish to file and appeal before the Public Contracts Review Board has lapsed, if it is found that such a contract has been awarded either in breach of these regulations or the award has been made in such a way as to discriminate between economic operators.

(2) (*a*) The Director may decide to cancel any procurement procedure even if an evaluation process has not been concluded by the end of the validity period of the submitted bids.

(*b*) If the Director decides to cancel the tender he shall consult the General Contracts Committee or the Special Contracts Committee as the case may be for its opinion.

(*c*) Should the General Contracts Committee or the Special Contracts Committee, as the case may be, not agree with the recommendation of the Director, the decision of the Director may be referred to the Minister for his approval.

(*d*) In the case of call for tenders administered by the

Sectoral Procurement Directorate, the Director Sectoral Procurement, shall have the right to exercise the same rights of the Director, as established under this sub-regulation, with the exception that instead of consulting with the General Contracts Committee or the Special Contracts Committee he shall consult with the Departmental Contracts Committee responsible for the contracting authority on whose behalf the Sectoral Procurement Directorate is administering the call.

(*e*) If the Departmental Contracts Committee does not agree with the recommendations of the Sectoral Procurement Directorate, the decision of the latter can be referred to the Minister responsible for that Departmental Contracts Committee so that he can give a final decision.

(3) The decision leading to the cancellation of a procurement procedure has to be made in writing and must include the findings and the reasoning that led to this decision.

(4) A copy of this decision must be notified to each economic operator who participated in that particular call, who will have the right to contest it by filing a complaint before the Review Board. The same procedure mentioned in regulation 276 *mutatis mutadis* applies also for this procedure.

(5) The decision of the review board can be appealed before the Court of Appeal as provided in these regulations.

The Contracting Authority

Duties of a contracting authority. *Amended by: L.N.155 of 2017; L.N. 56 of 2021.*

16. (1) In so far as this is not inconsistent with the duties established under sub-regulation (2) and regulation 79, it is the duty of all contracting authorities:

(*a*) to observe and abide to these regulations;

(*b*) to administer their own procurement when the estimated values of such a procurement falls under the threshold established in regulation 9(1)(*a*):

Provided that for entities listed under Schedule 3 this obligation shall extend also to their procurement which meets or exceeds the threshold established under regulation 9(1)(*b*);

(*c*) to draw up procurement documents and all relevant supporting documentation:

Provided that when a contracting authority listed under Schedule 2 needs to publish a procurement process with an estimated value which falls under the threshold established under regulation 9(1)(*b*) the same contracting authority shall forward the procurement document and all relevant supporting documentation to the Director so that they may be vetted, published and administered by the latter;

(*d*) to ensure that any references to nomenclatures in the context of public procurement shall be made using the

Common Procurement Vocabulary;

(*e*) to publish all calls for tenders and quotations, through government's e-procurement platform, unless otherwise provided for in these regulations;

(*f*) to monitor the implementation of the procurement process;

(*g*) to take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators;

(*h*) to indicate in their procurement documents that the award of the contract is subject to the review procedure as set forth in these regulations and to include an extract of the relevant part of the appeals process in the said documents for the guidance of economic operators;

(*i*) to administer and implement all contracts awarded after the procurement and to defend in front of a board or tribunal any dispute that might arise in the execution of the contract;

(*j*) to effect all payments resulting from the execution of the contract;

(*k*) to take appropriate measures to ensure that during the execution of a contract, economic operators comply with the applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Schedule 13;

(*l*) to forward a copy of the contracts identified in regulation 12(1)(*f*) to the Director when the latter so requests; and

(*m*) to institute and to defend any judicial or arbitral proceedings in relation to any contract signed by them or on their behalf.

(2) (*a*) The contracting authorities listed under Schedule 16 have the duty to prepare the procurement documents and all relevant supporting documentation and forward these to the Sectoral Procurement Directorate when the call is going to be published under the open procedure and the estimated value of this call exceeds ten thousand euro (€10,000) but does not exceed seven hundred and fifty thousand euro (€750,000).

When the estimated value but does not exceed seven hundred and fifty thousand euro (€750,000) these documents have to be forwarded to the Director so that he carries out his functions according to regulations 12 and 13.

(*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).

Appointment of an Evaluation Committee. *Amended by: L.N. 56 of 2021.*

17. (1) When an Evaluation Committee is appointed by a contracting authority listed in Schedule 2, the Evaluation Committee shall evaluate the offers submitted by the economic operator and make recommendations through the evaluation report and communicate the report as follows:

(*a*) if the estimated value of the tender falls under the threshold established under regulation 9(1)(*a*) the individual report shall be addressed to the Departmental Contracts Committee and shall be drawn in terms of regulation 113;

(*b*) if the estimated value of the tender falls under the threshold established under regulation 9(1)(*b*) the individual report shall be addressed to the Director and shall be drawn in terms of regulation 241.

(2) When an Evaluation Committee is appointed by a contracting authority listed in Schedule 3, the Evaluation Committee shall draw up an evaluation report and communicate their report to the contracting authority.

(3) When the Evaluation Committee is appointed by the Sectoral Procurement Directorate it has to prepare the evaluation report and communicate the said report to the mentioned Unit.

Contracting authorities not listed under a schedule. *Amended by: L.N. 56 of 2021.*

18. Where a contacting authority or body governed by public law is not listed under any schedule it shall have the same obligations of an authority listed under Schedule 16.

Subsidies provided by contracting authorities.

19. Contracting authorities providing the subsidies referred to in regulation 6 shall ensure compliance with these regulations even where they do not themselves award the subsidised contract or where they award that contract for and on behalf of other entities.

Penalties. *Amended by: L.N. 56 of 2021.*

20. (1) For tenders with an estimated value which falls within the threshold established in regulation 9(1)(*b*) a contracting authority can impose or remit penalties only after obtaining the permission of the Director.

(2) When a contracting authority listed under Schedule 16 is to remit or impose a penalty in respect to a contract with an estimated value which but does not exceed seven hundred and fifty thousand euro (€750,000) it has to obtain the permission of the Permanent Secretary responsible for it instead of that of the Director.

(3) Where a dispute on a penalty is brought before a court or tribunal, the Director or the Permanent Secretary cannot be sued even though he consented to the imposition of the penalty, however for the integrity of the judgment it is sufficient that the dispute is addressed against the contracting authority.

Centralised Purchasing Bodies and Joint Procurement

Centralised purchasing bodies.

21. (1) Contracting Authorities listed in Schedule 4 are authorised to act also as a central purchasing body.

(2) It shall be the function of central purchasing bodies to periodically notify Heads of Departments of the prices and conditions applicable for, and the procedure to be followed in, the procurement of such equipment, stores, works or services.

Centralized purchasing activities.

22. (1) A contracting authority can acquire supplies and, or services intended for contracting authorities, from a central purchasing body.

(2) Contracting authorities can acquire works, supplies and services by using contracts awarded by a central purchasing body, by using dynamic purchasing systems operated by a central purchasing body or, to the extent set out in regulation 170, by using a framework agreement concluded by a central purchasing body offering the centralised purchasing activity referred to in paragraph (*b*) of the definition "centralised purchasing activities" under regulation 2. Where a dynamic purchasing system which is operated by a central purchasing body may be used by other contracting authorities, this shall be mentioned in the call for competition setting up that dynamic purchasing system.

Obligations.

23. (1) When a contracting authority carries out its procurement under regulation 22 they will be deemed to have fulfilled their obligations under these regulations.

(2) A contracting authority also fulfils its obligations pursuant to these regulations where it acquires works, supplies or services:

(*a*) by using contracts awarded by the central purchasing body;

(*b*) by using dynamic purchasing systems operated by the central purchasing body, or to the extent set out in sub-regulation (5);

(*c*) by using a framework agreement concluded by the central purchasing body offering the centralised purchasing activity as defined in paragraph (*b*) of the definition "centralised purchasing activities";

(3) Notwithstanding the provisions of sub-regulation (2), the contracting authority concerned shall be responsible for fulfilling the obligations pursuant to these regulations in respect of the parts it conducts itself, such as:

(*a*) awarding a contract under a dynamic purchasing system, which is operated by a central purchasing body;

(*b*) conducting a reopening of competition under a framework agreement that has been concluded by a central purchasing body;

(*c*) pursuant to paragraphs (*a*) or (*b*) of regulation 173(1)

determining which of the economic operators, party to the framework agreement, shall perform a given task under a framework agreement that has been concluded by a central purchasing body.

(4) All procurement procedures conducted by a central purchasing body shall be performed using electronic means of communication, in accordance with the requirements set out in regulation 48.

(5) Contracting authorities may, without applying the procedures provided for in these regulations, award a public service contract for the provision of centralised purchasing activities to a central purchasing body.

(6) The public service contracts identified under sub-regulation (5) may also include the provision of ancillary purchasing activities.

Occasional joint procurement.

24. (1) After seeking the approval of the Director and subject to the conditions the latter may impose, two or more contracting authorities may agree to perform certain specific procurements jointly.

(2) Where the estimated value of the joint procurement falls under the threshold established under regulation 9(1)(*b*), and unless the Director agrees otherwise, the procurement procedure shall be administered by the Director.

(3) Where the conduct of a procurement procedure in its entirety is carried out jointly in the name and on behalf of all the contracting authorities concerned, they shall be jointly responsible for fulfilling their obligations pursuant to these regulations or Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement as the case may be. This applies also in cases where one contracting authority manages the procedure, acting on its own behalf and on the behalf of the other contracting authorities concerned.

(4) Where the conduct of a procurement procedure is not in its entirety carried out in the name and on behalf of the contracting authorities concerned, they shall be jointly responsible only for those parts carried out jointly. Each contracting authority shall have sole responsibility for fulfilling its obligations pursuant to these regulations or Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement as the case may be in respect of the parts it conducts in its own name and on its own behalf.

Procurement involving contracting authorities from different Member States.

25. (1) A contracting authority may, with the approval of the Director and subject to the conditions the latter may impose, participate in procurement procedures involving contracting authorities from different Member States.

(2) Where the estimated value of the joint procurement falls under the threshold established under regulation 9(1)(*b*) the application of this regulation shall be subject to what is established under regulation 8.

(3) A contracting authority may make use of centralised purchasing activities offered by central purchasing bodies located in another Member State:

Provided that contracting authorities shall not use the means provided in this regulation for the purpose of avoiding the application of mandatory public law provisions in conformity with Union law to which they are subject.

(4) The provision of centralised purchasing activities by a central purchasing body located in another Member State shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.

(5) The national provisions of the Member State where the central purchasing body is located shall also apply to the following:

(*a*) the award of a contract under a dynamic purchasing system;

(*b*) the conduct of a reopening of competition under a framework agreement;

(*c*) the determination pursuant to paragraphs (*a*) or (*b*) of regulation 173(2) of which of the economic operators, party to the framework agreement, shall perform a given task.

(6) Several contracting authorities from different Member States may jointly award a public contract, conclude a framework agreement or operate a dynamic purchasing system.

(7) Several contracting authorities from different Member States may also, to the extent set out in regulation 170, award contracts based on the framework agreement or on the dynamic purchasing system.

(8) Unless the necessary elements have been regulated by an international agreement concluded between the Member States concerned, the participating contracting authorities shall conclude an agreement that determines:

(*a*) the responsibilities of the parties and the relevant applicable national provisions;

(*b*) the internal organisation of the procurement procedure, including the management of the procedure, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.

(9) A participating contracting authority fulfils its obligations pursuant to these regulations when it purchases works, supplies or services from a contracting authority which is responsible for the procurement procedure.

(10) When determining responsibilities and the applicable national law as referred to in sub-regulation (8)(*a*) the participating contracting authorities may allocate specific responsibilities among them and determine the applicable provisions of their respective national laws.

(11) The allocation of responsibilities and the applicable national law shall be referred to in the procurement documents for jointly awarded public contracts.

(12) Where several contracting authorities from different Member States have set up a joint entity, including European Groupings of territorial cooperation under Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation or other entities established under Union law, the participating contracting authorities shall, by a decision of the competent body of the joint entity, agree on the applicable national procurement rules of one of the following Member States:

(*a*) the national provisions of the Member State where the joint entity has its registered office;

(*b*) the national provisions of the Member State where the joint entity is carrying out its activities.

(13) The agreement referred to in sub-regulation (12) may either apply for an undetermined period, when fixed in the constitutive act of the joint entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.

(14) For the purposes of this Part, contracting authorities listed under Schedule 3 do not require the prior approval of the Director but the written consent by the head of that same contracting authority shall suffice.

Mixed Procurement

Mixed procurement.

26. (1) Contracts which have as their subject two or more types of procurement, whether works, services or supplies, all of which are covered by these regulations, shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject of the contract in question.

(2) In the case of mixed contracts which have as their subject-matter different types of procurement, all of which are covered by these regulations, consisting partly of services within the meaning of regulation 162 and partly of other services or of mixed contracts consisting partly of services and partly of supplies, the main subject shall be determined in accordance with which of the estimated values of the respective services or supplies is the highest.

(3) In cases of mixed contracts which have as their subject-matter procurement covered by these regulations and procurement covered by other legal regimes and where the different parts of a given contract are objectively separable the following shall apply:

(*a*) contracting authorities may choose to award separate contracts for the separate parts or to award a single contract. Where contracting authorities choose to award separate contracts for separate parts, the decision as to which legal regime applies to any one of

such separate contracts shall be taken on the basis of the characteristics of the separate part concerned;

(*b*) where contracting authorities choose to award a single contract, these regulations shall, unless otherwise provided in regulation 27, apply to the ensuing mixed contract, irrespective of the value of the parts that would otherwise fall under a different legal regime and irrespective of which legal regime those parts would otherwise have been subject to;

(*c*) in the case of mixed contracts containing elements of supply, works and service contracts and of concessions, the mixed contract shall be awarded in accordance with these regulations, provided that the estimated value of the part of the contract which constitutes a contract covered by these regulations calculated in accordance with regulations 28, 29, 30, 31 and 32, is equal to or greater than the relevant threshold set out in Schedule 5.

(4) In the case of contracts which have as their subject-matter both procurement covered by these regulations and procurement for the pursuit of an activity which is subject to the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations, the applicable rules shall be determined by regulations 5 and 6 of the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations, and this notwithstanding the provisions of sub-regulation (3) of this regulation. S.L. 601.05

(5) Where the different parts of a given contract are objectively not separable, the applicable legal regime shall be determined on the basis of the main subject-matter of that contract.

Mixed procurement involving defence or security aspects. S.L. 601.07

27. (1) This regulation shall apply to cases of mixed contracts which have, as their subject matter, procurement covered by these regulations as well as procurement covered by Article 346 of the TFEU or the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations.

(2) Where the different parts of a given public contract are objectively separable, contracting authorities may choose to award separate contracts for the separate parts or to award a single contract.

(3) Where contracting authorities choose to award separate contracts for separate parts, the decision of which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

(4) Where contracting authorities choose to award a single contract, the following criteria shall apply to determine the applicable legal regime:

(*a*) where part of a given contract is covered by Article 346 of the TFEU, the contract may be awarded without applying these regulations, provided that the award of a single contract is justified for objective reasons;

S.L. 601.07

(*b*) where part of a given contract is covered by the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations, the contract may be awarded in accordance with those regulations, provided that the award of a single contract is justified for objective reasons:

Provided that this paragraph shall be without prejudice to the thresholds and exclusions provided for in the S.L. 601.07 Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations.

(5) The decision to award a single contract shall not, however, be taken for the purpose of excluding contracts from the application S.L. 601.07 of either these regulations or the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations.

(6) The provisions of sub-regulation (4)(*a*) shall apply to mixed contracts to which both paragraphs (*a*) and (*b*) of sub-regulation (4) could otherwise apply.

(7) Where the different parts of a given contract are objectively not separable, the contract may be awarded without applying these regulations where it includes elements to which Article 346 of the TFEU applies; otherwise it may be awarded in accordance with the S.L. 601.07 Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations.

The Contract Value

Regulation for the calculation of the estimated value of procurement.

28. (1) The calculation of the estimated value of a procurement procedure shall be based on the total amount payable, net of VAT, as estimated by the contracting authority, including any form of option and any renewals of the contracts as explicitly set out in the procurement documents.

(2) Where the contracting authority provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the procurement.

(3) Where a contracting authority is comprised of separate operational units, account shall be taken of the total estimated value for all the individual operational units.

(4) Notwithstanding the provisions of sub-regulations (1) and (2), where a separate operational unit is independently responsible for its procurement or certain categories thereof, the values may be estimated at the level of the unit in question.

(5) The choice of the method used to calculate the estimated value of a procurement procedure shall not be made with the intention of excluding it from the scope of these regulations. A procurement procedure shall not be subdivided with the effect of preventing it from falling within the scope of these regulations, unless justified by objective reasons.

(6) That estimated value shall be valid at the moment at which the call for competition is sent, or, in cases where a call for

competition is not foreseen, at the moment at which the contracting authority commences the procurement procedure, for instance, where appropriate, by contacting economic operators in relation to the procurement.

Value of framework agreements.

29. With regard to framework agreements and dynamic purchasing systems, the value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the framework agreement or the dynamic purchasing system.

Value of innovation partnerships.

30. In the case of innovation partnerships, the value to be taken into consideration shall be the maximum estimated value net of VAT of the research and development activities to take place during all stages of the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership.

Value of public works.

31. (1) With regard to public works contracts, the calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies and services that are made available to the contractor by the contracting authority provided that they are necessary for executing the works.

(2) Where a proposed work or a proposed provision of services may result in contracts being awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots.

(3) In the case where the aggregate value of the lots established in sub-regulation (2) is equal to or exceeds the threshold laid down in Schedule 5, these regulations shall apply to the awarding of each lot.

(4) Where a proposal for the acquisition of similar supplies may result in contracts being awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots when applying points (*b*) and (*c*) of Schedule 5.

(5) Where the aggregate value of the lots established in sub-regulation (4) is equal to or exceeds the threshold laid down in Schedule 5, these regulations shall apply to the awarding of each lot.

(6) Notwithstanding the provisions of sub-regulations (2), (3), (4) and (5), contracting authorities may award contracts for individual lots without applying the procedures provided for under these regulations, provided that the estimated value net of VAT of the lot concerned is less than eighty thousand euro (€80,000) for supplies or services or one million euro (€1,000,000) for works. However, the aggregate value of the lots thus awarded without applying these regulations shall not exceed 20% of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed provision of services has been divided.

Value of public supply or service contracts.

32. (1) In the case of public supply or service contracts which are regular in nature or which are intended to be renewed within a

given period, the calculation of the estimated contract value shall be based on the following:

(*a*) either the total actual value of the successive contracts of the same type awarded during the preceding twelve months or financial year adjusted, where possible, to take account of the changes in quantity or value which would occur in the course of the twelve months following the initial contract; or

(*b*) the total estimated value of the successive contracts awarded during the twelve months following the first delivery, or during the financial year where that is longer than twelve months.

(2) With regard to public supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:

(*a*) in the case of fixed-term public contracts, where that term is less than or equal to twelve months, the total estimated value for the term of the contract or, where the term of the contract is greater than twelve months, the total value including the estimated residual value;

(*b*) in the case of public contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.

(3) With regard to public service contracts, the basis for calculating the estimated contract value shall, where appropriate, be the following:

(*a*) insurance services: the premium payable and other forms of remuneration;

(*b*) banking and other financial services: the fees, commissions payable, interest and other forms of remuneration;

(*c*) design contracts: fees, commissions payable and other forms of remuneration.

(4) With regard to public service contracts which do not indicate a total price, the basis for calculating the estimated contract value shall be the following:

(*a*) in the case of fixed-term contracts, where that term is less than or equal to forty-eight months: the total value for their full term;

(*b*) in the case of contracts without a fixed term or with a term greater than forty-eight months: the monthly value multiplied by 48.

Contracts into Lots

Division of contracts into lots.

33. Contracting authorities may decide to award a contract in the form of separate lots and may determine the size and subject-matter of such lots.

Information about decision not to divide contracts into lots.

34. Where a tender has an estimated value which falls under regulation 9(1)(*b*), contracting authorities shall provide an indication of the main reasons for their decision not to subdivide into lots, which shall be included in the procurement documents or the individual report referred to in regulation 113.

Disclosure.

35. Contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, whether tenders may be submitted for one, for several or for all of the lots.

Limitation of lots.

36. Contracting authorities may, even where tenders may be submitted for several or all lots, limit the number of lots that may be awarded to one tenderer, provided that the maximum number of lots per tenderer is stated in the contract notice or in the invitation to confirm interest. Contracting authorities shall indicate in the procurement documents the objective and non-discriminatory criteria or rules they intend to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number.

Combination of lots.

37. Where one or more lots may be awarded to the same tenderer, contracting authorities may award contracts combining several or all lots where they have specified in the contract notice or in the invitation to confirm interest that they reserve the possibility of doing so and indicate the lots or groups of lots that may be combined.

Principles Underlying the Procurement Process

Clarity of the procurement documents.

38. (1) The procurement document shall be written in clear and unambiguous terms so as to enable all interested parties to understand properly the terms and conditions of the process.

(2) If requested in good time, the contracting authorities shall supply to all tenderers taking part in the procurement procedure additional information relating to the specifications and any supporting documents not later than six days before the time limit fixed for the receipt of tenders.

(3) In the event of an accelerated procedure as referred to in regulation 116(3) and regulation 122, the period established under this regulation shall be four days.

(4) The contracting authority or the central government authority may issue clarification notes to explain certain matters, to give additional information, to remove or amend certain inconsistencies or errors and to fill in missing information contained in the procurement document.

(5) When issued in the clarification notes, the additional information and the supporting document shall form integral part of the procurement document.

Equal treatment, transparency and proportionality.

39. (1) Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.

(2) The tenderer must be selected in a transparent manner and according to a prescribed procedure.

(3) The design of the procurement shall not be made with the intention of excluding it from the scope of these regulations or of artificially narrowing competition. Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators.

(4) In so far as they are covered by Annexes 1, 2, 4 and 5 and the General Notes to the European Union's Appendix I to the GPA and by the other international agreements by which the Union is bound, contracting authorities shall accord to the works, supplies, services and economic operators of the signatories to those agreements treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the Union.

Confidentiality. *Amended by: L.N. 56 of 2021.*

40. (1) Subject to the obligations established under these regulations and, or any other law obliging the Director, the contracting authority and the Ministerial Procurement Unit to disclose information, a contracting authority, the Director or the Sectoral Procurement Directorate shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

(2) Without prejudice to the other provisions of these regulations, the following information shall not be considered as confidential:

(*a*) the name of the bidders and the individual names of the members of a group of economic operators who submitted a particular tender;

(*b*) the name of the sub-contractors;

(*c*) documentation submitted by economic operators attesting that they comply with selection criteria; and

(*d*) technical information which is already made available in public.

(3) Contracting authorities may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting authorities make available throughout the procurement procedure.

Publication

Prior information notices.

41. The authority responsible for the tendering process may make known its intentions of planned procurements through the publication of a prior information notice. These notices shall contain the information set out in Schedule 9 part B section I. They shall be published either by the Publications Office of the European Union or by the contracting authorities on their buyer profiles in accordance with paragraph 2(*b*) of Schedule 11. Where the prior information notice is published by the authority responsible for the tendering process on its buyer profile, it shall send a notice of the

publication on their buyer profile to the Publications Office of the European Union in accordance with Schedule 11. These notices shall contain the information set out in Schedule 9 part A.

Contract notices.

42. (1) Contract notices shall be used as a means of calling for competition in respect of all procedures, without prejudice to the provisions of regulation 150.

(2) Contract notices shall contain the information set out in Schedule 9 part C and shall be published in accordance with regulation 44.

Contract award notices.

43. (1) Not later than thirty days after the conclusion of a contract or of a framework agreement, following the decision to award or conclude it, the authority responsible for the tendering process shall send a contract award notice on the results of the procurement procedure.

(2) The notice shall contain the information set out in Schedule 9 part D and shall be published in accordance with regulation 44.

(3) In the case of framework agreements concluded in accordance with regulations 167 to 173, the authority responsible for the tendering process shall not be bound to send a notice of the results of the procurement procedure for each contract based on that agreement:

Provided that the authority responsible for the tendering process shall group notices of the results of the procurement procedure for contracts based on the framework agreement on a quarterly basis. In that case, contracting authorities shall send the grouped notices within thirty days of the end of each quarter.

(4) The authority responsible for the tendering process shall send a contract award notice within thirty days after the award of each contract based on a dynamic purchasing system. It may, however, group such notices on a quarterly basis. In that case, it shall send the grouped notices within thirty days of the end of each quarter.

(5) Certain information on the contract award or the conclusion of the framework agreement may be withheld from publication where its release would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of a particular economic operator, public or private, or might prejudice fair competition between economic operators.

Form and manner on of publication of notices.

44. (1) Notices referred to in regulations 41, 42 and 43 are obligatory only in respect to tenders with an estimated value which meets or exceeds the threshold established under Schedule 5 and shall include the information set out in Schedule 9 in the format of standard forms, including standard forms for corrigenda.

(2) These notices shall also be drawn up, transmitted by electronic means to the Publications Office of the European Union and published in accordance with Schedule 10.

(3) The authority responsible for the tendering process shall be

able to supply proof of the dates on which notices are dispatched.

(4) The confirmation of the receipt of the notice and the publication of the information sent by the Publications Office of the European Union shall constitute proof of publication.

Publication at national level.

45. (1) Unless otherwise authorised by the Director, tenders issued with an estimated value which falls under regulation 9(1)(*b*) shall be published through government's e-procurement platform:

Provided that if the authority responsible for the tendering process does not make use of the government's e-procurement platform it shall advertise the tender on the Gazette.

(2) Notices referred to in regulations 41, 42 and 43 and the information contained therein shall not be published at national level before the publication pursuant to regulation 44:

Provided that publication may in any event take place at the national level where the authority responsible for the tendering process has not been notified of the publication within forty-eight hours after confirmation of the receipt of the notice in accordance with regulation 44.

(3) Notices and advertisements published locally shall not contain information other than that contained in the notices dispatched to the Publications Office of the European Union or published on a buyer profile, but shall indicate the date of dispatch of the notice to the Publications Office of the European Union or its publication on the buyer profile.

(4) Prior information notices shall not be published on a buyer profile before the dispatch to the Publications Office of the European Union of the notice of their publication in that form. They shall indicate the date of that dispatch.

Contest notice.

46. (1) The authority responsible for the tendering process that intends to carry out a design contest with an estimated value which meets or exceeds the threshold established under Schedule 5 shall make known their intention by means of a contest notice.

(2) Where it intends to award a subsequent service contract pursuant to regulation 154(1)(*b*), this shall be indicated in the contest notice. In the case where no contest notice needs to be published the contracting authority must make its intention clear in the procurement documents.

(3) The authority that has held a design contest shall send a notice of the results of the contest in accordance with regulation 44 and shall be able to prove the date of dispatch.

(4) Where the release of information on the outcome of the contest would impede law enforcement, would be contrary to the public interest or would prejudice the legitimate commercial interests of a particular enterprise, whether public or private, or might prejudice fair competition between service providers, such information may be withheld from publication.

(5) The notices referred to in sub-regulations (1) to (4) shall be published in accordance with regulations 44 and 45. They shall

include the information set out respectively in Schedule 9 parts E and F in the format of the standard forms.

Preliminary Market Consultations

Preliminary market consultations.

47. (1) Before launching a procurement procedure, contracting authorities may conduct market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements.

(2) Contracting authorities may, for instance, seek or accept advice from independent experts or authorities or from market participants. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

Communications

Rules applicable to communication.

48. (1) All communication and information exchange under these regulations, including electronic submission, shall be performed using electronic means of communication in accordance with the requirements of this regulation.

(2) The tools and devices to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the ICT products in general use and shall not restrict economic operators' access to the procurement procedure.

(3) Notwithstanding the provisions of sub-regulations (1) and (2), contracting authorities shall not be obliged to require electronic means of communication in the submission process in the following situations:

(*a*) due to the specialised nature of the procurement, the use of electronic means of communication would require specific tools, devices or file formats that are not generally available or supported by generally available applications;

(*b*) the applications supporting file formats that are suitable for the description of the tenders use file formats that cannot be handled by any other open or generally available applications or are under a proprietary licensing scheme and cannot be made available for downloading or remote use by the contracting authority;

(*c*) the use of electronic means of communication would require specialised office equipment that is not generally available to contracting authorities;

(*d*) the procurement documents require the submission of physical or scale models which cannot be transmitted using electronic means.

(4) In respect of communications for which electronic means of communication are not used pursuant to sub-regulation (3), communication shall be carried out by post or other suitable carrier

or by a combination of post or other suitable carrier and electronic means.

(5) The authority responsible for the tendering process is not obliged to require electronic means of communication in the submission process to the extent that the use of means of communication other than electronic means is necessary either because of a breach of security of the electronic means of communications or for the protection of the particularly sensitive nature of information requiring such a high level of protection that it cannot be properly ensured by using electronic tools and devices that are either generally available to economic operators or can be made available to them by alternative means of access within the meaning of sub-regulations (5) and (6).

(6) It shall be the responsibility of the authority responsible for the tendering process requiring, in accordance with sub-regulation (3), means of communication other than electronic means in the submission process to indicate in the individual report referred to in regulations 29 or 241, as the case may be, the reasons for this requirement. Where applicable, the authority responsible for the tendering process shall indicate in the individual report the reasons why use of means of communication other than electronic means has been considered necessary in application of sub-regulation (5).

(7) Oral communication may be used in respect of communications other than those concerning the essential elements of a procurement procedure, provided that the content of the oral communication is documented to a sufficient degree. For this purpose, the essential elements of a procurement procedure include the procurement documents, requests for participation, confirmations of interest and tenders. In particular, oral communications with tenderers which could have a substantial impact on the content and assessment of the tenders shall be documented to a sufficient extent and by appropriate means, such as written or audio records or summaries of the main elements of the communication.

(8) In all communication, exchange and storage of information, the authority responsible for the tendering process shall ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved. It shall examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.

(9) For public works contracts and design contests the authority responsible for the tendering process require the use of specific electronic tools, such as of building information electronic modelling tools or similar. In such cases the authority responsible for the tendering process shall offer alternative means of access, as provided for in sub-regulations (10) and (11), until such time as those tools become generally available within the meaning of sub-regulation (2).

(10) The authority responsible for the tendering process may, where necessary, require the use of tools and devices which are not generally available, provided that the authority responsible for the

tendering process offers alternative means of access.

(11) The authority responsible for the tendering process shall be deemed to offer suitable alternative means of access in any of the following situations, where they:

(*a*) offer unrestricted and full direct access free of charge by electronic means to those tools and devices from the date of publication of the notice in accordance with Schedule 11 or from the date when the invitation to confirm interest is sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which those tools and devices are accessible;

(*b*) ensure that tenderers having no access to the tools and devices concerned, or no possibility of obtaining them within the relevant time limits, provided that the lack of access is not attributable to the tenderer concerned, may access the procurement procedure through the use of provisional tokens made available free of charge online; or

(*c*) support an alternative channel for electronic submission of tenders.

(12) In addition to the requirements set out in Schedule 8, the following rules shall apply to tools and devices for the electronic transmission and receipt of tenders and for the electronic receipt of requests to participate:

(*a*) information on specifications for the electronic submission of tenders and requests to participate, including encryption and time-stamping, shall be available to interested parties;

(*b*) the authority responsible for the tendering process shall specify the level of security required for the electronic means of communication in the various stages of the specific procurement procedure; that level shall be proportionate to the risks attached:

Provided that the requirement established under this paragraph shall be deemed to be satisfied when electronic means of communications are carried out through government's e-procurement platform;

(*c*) where the authority responsible for the tendering process acting within an overall framework concludes that the level of risks, assessed under paragraph (*b*), is such that advanced electronic signatures as defined by Directive 1999/93/EC of the European Parliament and of the Council are required, contracting authorities shall accept advanced electronic signatures supported by a qualified certificate, taking into account whether those certificates are provided by a certificate services provider, which is on a trusted list provided for in Commission Decision 2009/767/EC, created with or without a secure signature creation device, subject to compliance with the following conditions:

(i) the authority responsible for the tendering process shall establish the required advanced signature format on the basis of formats established in Commission Decision 2011/130/EU and shall put in place necessary measures to be able to process these formats technically; in case a different format of electronic signature is used, the electronic signature or the electronic document carrier shall include information on existing validation possibilities. The validation possibilities shall allow the authority responsible for the tendering process to validate online, free of charge and in a way that is understandable for non-native speakers, the received electronic signature as an advanced electronic signature supported by a qualified certificate;

(ii) where a tender is signed with the support of a qualified certificate that is included on a trusted list, the authority responsible for the tendering process shall not apply additional requirements that may hinder the use of those signatures by tenderers.

(13) In respect of documents used in the context of a procurement procedure that are signed by a competent authority or by another issuing entity, the competent issuing authority or entity may establish the required advanced signature format in accordance with the requirements set out in Article 1(2) of Decision 2011/130/EU.

(14) For the purposes of sub-regulation (13), the competent authority or entity shall put in place the necessary measures to be able to process that format technically by including the information required for the purpose of processing the signature in the document concerned. Such documents shall contain in the electronic signature or in the electronic document carrier information on existing validation possibilities that allow the validation of the received electronic signature online, free of charge and in a way that is understandable for non-native speakers.

(15) For the purposes of this Part, contracting authorities listed under Schedule 3 do not require the prior approval of the Director but shall suffice the written consent by the head of that same contracting authority.

Electronic availability of procurement documents.

49. (1) With regard to tenders with an estimated value which falls under Schedule 5, the authority responsible for the tendering process shall by electronic means offer unrestricted and full direct access free of charge to the procurement documents from the date of publication of a notice in accordance with regulation 44 or the date on which an invitation to confirm interest is sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which the procurement documents are accessible.

(2) With regard to tenders with an estimated value which falls under Schedule 5, where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered for one of the reasons stipulated in regulation 48(2), the authority responsible for the tendering process may indicate in the notice or the invitation to confirm interest that the procurement documents concerned will be transmitted by means other than electronic means:

Provided that in such a case, the time limit for the submission of tenders shall be prolonged by five days, except in the cases of duly substantiated urgency referred to in regulations 116(3), 122 and 125.

(3) With regard to tenders with an estimated value which falls under Schedule 5, where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered because the authority responsible for the tendering process intends to apply the provisions of regulation 40(3), it shall indicate in the notice or the invitation to confirm interest which measures aimed at protecting the confidential nature of the information it requires and how access can be obtained to the documents concerned:

Provided that in such a case the time limit for the submission of tenders shall be prolonged by five days, except in the cases of duly substantiated urgency referred to in regulations 116(3), 122 and 125.

Invitations to candidates.

50. (1) In restricted procedures, competitive dialogue procedures, innovation partnerships and competitive procedures with negotiation, contracting authorities shall simultaneously and in writing invite the selected candidates to submit their tenders or, in the case of a competitive dialogue, to take part in the dialogue.

(2) The invitations shall include a reference to the electronic address on which the procurement documents have been made directly available by electronic means. The invitations shall be accompanied by the procurement documents, where those documents have not been the subject of unrestricted and full direct access, free of charge, for the reasons set out in regulation 49(1) and (2) and have not already been made otherwise available. In addition, the invitations referred to in sub-regulation (1) shall include the information set out in Schedule 12.

Electronic catalogues.

51. (1) Where the use of electronic means of communication is required, the authority responsible for the tendering process may require tenders to be presented in the format of an electronic catalogue or to include an electronic catalogue.

(2) Tenders presented in the form of an electronic catalogue may be accompanied by other documents, completing the tender.

(3) Electronic catalogues shall be established by the candidates or tenderers with a view to participating in a given procurement procedure in accordance with the technical specifications and format established by the contracting authority.

(4) Electronic catalogues shall comply with the requirements for electronic communication tools as well as with any additional requirements set by the contracting authority in accordance with regulation 48.

(5) Where the presentation of tenders in the form of electronic catalogues is accepted or required, the authority responsible for the tendering process shall:

(*a*) state so in the contract notice;

(*b*) indicate in the procurement documents all the necessary information pursuant to regulation 48(12) concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.

(6) Where a framework agreement has been concluded with more than one economic operator following the submission of tenders in the form of electronic catalogues, the authority responsible for the tendering process may provide that the reopening of competition for specific contracts takes place on the basis of updated catalogues. In such a case, the authority responsible for the tendering process shall use one of the following methods:

(*a*) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the contract in question; or

(*b*) notify tenderers that they intend to collect from the electronic catalogues which have already been submitted the information needed to constitute tenders adapted to the requirements of the contract in question; provided that the use of that method has been announced in the procurement documents for the framework agreement.

(7) Where authorities responsible for the tendering process reopen competition for specific contracts in accordance with sub-regulation (6)(*b*) they shall notify tenderers of the date and time at which they intend to collect the information needed to constitute tenders adapted to the requirements of the specific contract in question and shall give tenderers the possibility to refuse such collection of information.

(8) Authorities responsible for the tendering process shall allow for an adequate period between the notification and the actual collection of information.

(9) Before awarding the contract, authorities responsible for the tendering process shall present the collected information to the tenderer concerned so as to give it the opportunity to contest or confirm that the tender thus constituted does not contain any material errors.

(10) Authorities responsible for the tendering process may award contracts based on a dynamic purchasing system by requiring that offers for a specific contract are to be presented in the format of an electronic catalogue.

(11) Authorities responsible for the tendering process may also award contracts based on a dynamic purchasing system in accordance with sub-regulation (6)(*b*) and sub-regulations (7), (8) and (9) provided that the request for participation in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting authority.

(12) For the purposes of sub-regulation (11), the catalogue shall be completed subsequently by the candidates, when they are informed of the contracting authority's intention to constitute tenders by means of the procedure set out in sub-regulation (6)(*b*).

Time Limits and Technical Specifications

Setting time limits.

52. (1) When establishing the time limits for the receipt of tenders and requests to participate, authorities responsible for the tendering process shall take account of the complexity of the contract and the time required for the drawing up of procurement documents, without prejudice to the minimum time limits set out in regulations 116, 121, 122, 125, 142 and 132.

(2) Where tenders can be submitted only after a site visit or after on-the-spot inspection of the documents supporting the procurement documents, the time limits for the receipt of tenders shall be longer than the minimum time limits set out in regulations 116, 121, 122, 125, 142 and 132, and shall be fixed so that all economic operators concerned may be aware of all the information needed to produce tenders.

(3) Contracting authorities shall extend the time limits for the receipt of tenders so that all economic operators concerned may be aware of all the information needed to produce tenders in the following cases:

(*a*) where, for whatever reason, additional information, although requested by the economic operator in good time, is not supplied at the latest six days before the time limit fixed for the receipt of tenders. In the event of an accelerated procedure as referred to in regulations 116(3) and 122, that period shall be four days;

(*b*) where significant changes are made to the procurement documents.

(4) The length of the extension shall be proportionate to the importance of the information or change.

(5) Where the additional information has either not been requested in good time or its importance with a view to preparing responsive tenders is insignificant, authorities responsible for the tendering process shall not be required to extend the time limits.

(6) Late submission of tenders shall be disqualified from the process.

Technical specifications.

53. (1) The technical specifications shall be set out in the procurement documents and these shall lay down the characteristics

required of a works, service or supply.

(2) These characteristics may also refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle, even where such factors do not form part of their material substance, so long they are linked to the subject-matter of the contract and are proportionate to its value and its objectives.

(3) The technical specifications may also specify whether the transfer of intellectual property rights will be required.

(4) For all procurement which is intended for use by natural persons, whether general public or staff of the contracting authority, the technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users.

(5) Where mandatory accessibility requirements are adopted by a legal act of the Union, technical specifications shall, as far as accessibility criteria for persons with disabilities or design for all users are concerned, be defined by reference thereto.

(6) Technical specifications shall afford equal access of economic operators to the procurement procedure and shall not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

(7) Without prejudice to mandatory technical rules, to the extent that they are compatible with Union law, the technical specifications shall be formulated in one of the following ways:

(*a*) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

(*b*) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European Technical Assessments, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or - when any of those do not exist - national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’;

(*c*) in terms of performance or functional requirements as referred to in paragraph (*a*), with reference to the technical specifications referred to paragraph (*b*) as a means of presuming conformity with such performance or functional requirements;

(*d*) by reference to the technical specifications referred to in paragraph (*b*) for certain characteristics, and by reference to the performance or functional

requirements referred to in paragraph (*a*) for other characteristics.

(8) Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process which characterises the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to sub-regulation (3) is not possible. Such reference shall be accompanied by the words 'or equivalent'.

(9) Where a contracting authority uses the option of referring to the technical specifications referred to in sub-regulation 7(*b*), it shall not reject a tender on the grounds that the works, supplies or services tendered for do not comply with the technical specifications to which it has referred, once the tenderer proves in its tender by any appropriate means, including the means of proof referred to in regulation 232, that the solutions proposed satisfy in an equivalent manner the requirements defined by the technical specifications.

(10) Where a contracting authority uses the option laid down in sub-regulation (7)(*a*) to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for works, supplies or services which comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down.

(11) In its tender, the tenderer shall prove by any appropriate means, including those referred to in regulation 232 that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority.

Labels.

54. (1) Where contracting authorities and, or the authorities responsible for the tendering process intend to purchase works, supplies or services with specific environmental, social or other characteristics they may, in the technical specifications, the award criteria or the contract performance conditions, require a specific label as means of proof that the works, services or supplies correspond to the required characteristics, provided that all of the following conditions are fulfilled:

(*a*) the label requirements only concern criteria which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

(*b*) the label requirements are based on objectively verifiable and non-discriminatory criteria;

(*c*) the labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate;

(*d*) the labels are accessible to all interested parties;

(*e*) the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

(2) Where contracting authorities do not require the works, supplies or services to meet all of the label requirements, they shall indicate which label requirements are referred to.

(3) Contracting authorities requiring a specific label shall accept all labels that confirm that the works, supplies or services meet equivalent label requirements.

(4) Where an economic operator had demonstrably no possibility of obtaining the specific label indicated by the contracting authority or an equivalent label within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority shall accept other appropriate means of proof, which may include a technical dossier from the manufacturer, provided that the economic operator concerned proves that the works, supplies or services to be provided by it fulfil the requirements of the specific label or the specific requirements indicated by the contracting authority.

(5) Where a label fulfils the conditions provided in sub-regulation (1)(*b*), (*c*), (*d*) and (*e*) but also sets out requirements not linked to the subject-matter of the contract, contracting authorities shall not require the label as such but may define the technical specification by reference to those of the detailed specifications of that label, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

Test reports, certification and other means of proof.

55. (1) The authorities responsible for the tendering process may require that economic operators provide a test report from a conformity assessment body or a certificate issued by such a body as means of proof of conformity with requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

(2) Where the authorities responsible for the tendering process require the submission of certificates drawn up by a specific conformity assessment body, certificates from equivalent other conformity assessment bodies shall also be accepted by the contracting authorities.

(3) The authorities responsible for the tendering process shall accept appropriate means of proof other than those referred to in sub-regulations (1) and (2), such as a technical dossier of the manufacturer where the economic operator concerned had no access to the certificates or test reports referred to in sub-regulations (1) and (2), or no possibility of obtaining them within

the relevant time limits, provided that the lack of access is not attributable to the economic operator concerned and provided that the economic operator concerned thereby proves that the works, supplies or services provided by it meet the requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

The Tenderer/Candidate

Types of tenderers.

56. A tenderer can be either a natural or a legal person or a public entity or group of such persons and, or entities.

Economic operators established in another Member State.

57. Economic operators that, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of Malta, they would be required to be either natural or legal persons:

Provided that in the case of public service and public works contracts as well as public supply contracts covering in addition services or sitting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

Groups of economic operators.

58. (1) Groups of economic operators, including temporary associations, may participate in procurement procedures. They shall not be required by contracting authorities to have a specific legal form in order to submit a tender or a request to participate.

(2) Where necessary, the authorities responsible for the tendering process may clarify in the procurement documents how groups of economic operators are to meet the requirements as to economic and financial standing or technical and professional ability referred to in regulation 217 provided that this is justified by objective reasons and is proportionate.

(3) Any conditions for the performance of a contract by such groups of economic operators, which are different from those imposed on individual participants, shall also be justified by objective reasons and shall be proportionate.

(4) The authorities responsible for the tendering process may require groups of economic operators to assume a specific legal form once they have been awarded the contract, to the extent that such a change is necessary for the satisfactory performance of the contract.

Prior involvement of candidates or tenderers.

59. (1) Where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised the contracting authority or the authority responsible for the tendering process, whether in the context of regulation 47 or not, or has otherwise been involved in the preparation of the procurement procedure, the contracting authority or the authority responsible for the tendering process shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer.

(2) Such measures shall include the communication to the other

candidates and tenderers of relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

(3) Prior to any such exclusion, candidates or tenderers shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition. The measures taken shall be documented in the individual report required by regulations 113 or 241, as the case may be.

Sub-contracting.

60. (1) In the procurement documents, the authority responsible for the tendering process may ask the tenderer to indicate in its tender any share of the contract it may intend to sub-contract to third parties and any proposed subcontractors.

(2) The tenderer as the main contractor is liable for all acts or omissions carried out by his sub-contractors.

(3) In the case of works contracts and in respect of services to be provided at a facility under the direct oversight of the contracting authority, after the award of the contract and at the latest when the performance of the contract commences, the contracting authority shall require the main contractor to indicate to the contracting authority the name, contact details and legal representatives of its sub-contractors, involved in such works or services, in so far as known at this point in time. The contracting authority shall require the main contractor to notify the contracting authority of any changes to this information during the course of the contract as well as of the required information for any new sub-contractors which it subsequently involves in such works or services:

Provided that this sub-regulation shall not apply to suppliers.

(4) Where necessary for the purposes of regulation 191(2) and (3), the required information relating to sub-contractors shall be accompanied by the sub-contractors' self-declarations as provided for in regulation 226.

(5) Contracting authorities may extend the obligations provided for in sub-regulation (3) to:

(*a*) supply contracts, services contracts (other than those concerning services to be provided at the facilities under the direct oversight of the contracting authority) or suppliers involved in works or services contracts;

(*b*) sub-contractors of the main contractor's sub-contractors or further down the subcontracting chain.

(6) Sub-contractors are to observe the obligations established under regulation 13(*m*) during the execution of the contracts.

(7) The contracting authority shall have the right to suspend payments and, or even opt to dissolve the contract if the main

contractor fails to abide by his obligations under this regulation.

The Selected Offer

Award.

61. (1) Contracts with an estimated value which falls within regulation 9(1)(*a*) shall be awarded on the basis of criteria laid down in accordance with regulations 239 and 240 provided that the authority responsible for the tendering process has verified in accordance with regulations 230, 231, 232 and 233 that all of the following conditions are fulfilled:

(*a*) the tender complies with the requirements, conditions and criteria set out in the procurement documents; and

(*b*) the tender is submitted by a tenderer that is not excluded in accordance with Part VI and that meets the selection criteria set out by the contracting authority in accordance with regulation 217.

(2) Contracts with an estimated value which falls under regulation 9(1)(*b*) shall be awarded on the basis of criteria laid down in accordance with regulations 239, 240 and 243 provided that the authority responsible for the tendering process has verified in accordance with regulations 225, 230, 231, 232 and 233 that all of the following conditions are fulfilled:

(*a*) the tender complies with the requirements, conditions and criteria set out in the contract notice or the invitation to confirm interest and in the procurement documents, taking into account, where applicable, regulations 33 to 37;

(*b*) the tender is submitted by a tenderer that is not excluded in accordance with Part VI and that meets the selection criteria set out by the contracting authority in accordance with regulation 217 and, where applicable, the non-discriminatory rules and criteria referred to in regulation 237.

Valid bid.

62. (1) Without prejudice to Part VI and regulation 235(2), the authority responsible for the tendering process must ensure that an economic operator must *ab initio* be eligible to qualify for a tender and must consequently be in possession of all the requirements stipulated in the procurement documents by the closing date for the submission of the same.

(2) Where information or documentation to be submitted by economic operators is or appears to be incomplete or erroneous or where specific documents are missing, contracting authorities in terms of the procurement document may request the economic operators concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit:

Provided that such requests are made in full compliance with the principles of equal treatment and transparency.

(3) The financial bid cannot be changed with the exception for the correction of evident arithmetic errors as may be allowed in the procurement document.

Information on qualitative selection.

63. The submitted tender shall be accompanied by the information for qualitative selection that is requested by the contracting authority.

Part II
Boards, Committees and Tribunals

General Contracts Committee

Establishment of the General Contracts Committee.

64. There shall be a General Contracts Committee whose members shall be appointed by the Prime Minister on such terms and conditions as may be specified in their letter of appointment.

Composition.

65. (1) The General Contracts Committee shall be composed of the Director of Contracts, who shall be *ex officio* chairman, together with not less than four and not more than ten other members who appear to the Prime Minister to have the relevant qualifications or experience.

(2) During the chairman's absence or inability to act as chairman, or during any vacancy in the office of the chairman, the Prime Minister may appoint an officer from among the most senior of officers at the Department of Contracts to act as the chairman of the General Contracts Committee, to exercise all powers and perform all the functions of the chairman.

Term.

66. The members of the General Contracts Committee shall be appointed for a fixed term of not more than three years.

Removal and termination form office.

67. (1) Any member of the General Contracts Committee may during his tenure of office be removed by the Prime Minister where he is satisfied that there has been a clear case of misbehaviour by the member or inability of a member to perform his functions or where such circumstances exist that would disqualify such a member from remaining a member of the General Contracts Committee.

(2) A person shall be disqualified from being appointed to and from remaining a member of the General Contracts Committee if he:

(*a*) is a member of the House of Representatives, or of the European Parliament or of a Local Council;

(*b*) has such a financial or other interest that is likely to prejudice the discharge of his functions as a member of the General Contracts Committee;

(*c*) is legally incapacitated or interdicted;

(*d*) has been adjudged bankrupt or has made a composition or arrangement with his creditors; or

(*e*) has been convicted of a crime affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud.

(3) A member of the General Contracts Committee may resign his office by a letter addressed to the Prime Minister.

Disclosure of interest.

68. A member of the General Contracts Committee who has any direct or indirect interest in any contract dealt with by such committee shall disclose the nature of his interest at the first meeting of that committee after the relevant facts have come to his knowledge and such disclosure shall be recorded in the minutes of that meeting of the committee and the member having an interest as aforesaid shall withdraw from any meetings at which such contract is discussed.

Decisions.

69. (1) Decisions of the General Contracts Committee shall preferably be taken on the basis of unanimity. However, majority decisions shall be final and binding with regard to the award of the contract. The chairman shall in the event of an equality of votes, have a casting vote.

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(2) Without prejudice to the provisions of the Interpretation Act and to any order or direction given by the Minister:

(*a*) the Director may, at his discretion, accept or reject the recommendations of the majority of the members of the General Contracts Committee for the acceptance or rejection of any tender;

(*b*) where:

(i) the Director disagrees with any recommendation of the majority of the members of the General Contracts Committee; or

(ii) any recommendation of the General Contracts Committee differs from that submitted by the Department or other body for whom the procurement is to be made,

the Director may refer the matter for the decision of the Minister:

Provided that the Director shall always refer any matter in which he disagrees with the majority of the members of a General Contracts Committee or a Special Contracts Committee, as referred to in regulation 78, for the decision of the Minister;

(*c*) the Director may, at his discretion, refer any matter for the decision of the Minister provided that any decision taken by the Minister under the Interpretation Act or after any referral to him by the Director and which has a direct influence on the award of any contract by the Director to any particular tenderer shall not deprive in any way the right of any candidate or tenderer and any person having or having had an interest in obtaining a particular public contract to have recourse to the appeals procedures provided for in these regulations.

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(3) Any matter referred for the decision of the Minister shall be so referred in writing and the decision of the Minister shall likewise be communicated in writing.

Secretaries.

70. The Prime Minister shall also appoint persons from among the staff at the Department of Contracts to act as secretaries of the

General Contracts Committee and of other committees, as referred to in this Part, as may be directed by the Director. The secretaries shall not be members of these committees and may not vote.

Meetings.

71. (1) The meetings of the General Contracts Committee shall be called by the chairman who shall preside over such meetings. Any three members of the General Contracts Committee shall constitute a quorum at a meeting thereof.

(2) The meetings of the General Contracts Committee shall be open to the public during the opening of bids. The list of tenders received, together with the respective prices, shall be given publicity by the Director immediately after their opening and scheduling.

(3) The General Contracts Committee and the Special Contracts Committees, established in terms of these regulations shall regulate their own proceedings, unless otherwise provided for herein.

Functions.

72. The General Contracts Committee shall:

(*a*) advise on all matters relating to public contracts, as well as on public procurement of materials, works and services either on its own initiative or on specific issues relating to its functions which may from time to time be referred to it for its advice;

(*b*) evaluate reports and recommendations submitted by contracting authorities and make definite recommendations for the award of contracts ensuring that the best value for money at the lowest possible cost is attained. In this regard, due consideration shall be given to:

(i) the final cost including financing costs to the contracting authority; and

(ii) the impact of each offer on the recurrent expenditure of a contracting authority;

(*c*) report any irregularities that may be brought to its notice or that may be detected in the tendering process and make recommendations thereon to the Minister charged with responsibility for the contracting authority concerned;

(*d*) deal with matters which, according to the contract, have to be referred to it, and hear and mediate disputes between contracting authorities, as the case may be, and contractors, arising out of public contracts;

(*e*) formally investigate complaints concerning public contracts and procurements and make recommendations thereon; and

(*f*) assist the Director in the execution of his duties in accordance with these regulations.

Departmental Contracts Committee

Establishment of the Departmental Contracts Committee. *Amended by: L.N.155 of 2017; L.N. 56 of 2021.*

73. There shall be a Departmental Contracts Committee for contracting authorities listed in Schedule 2 and in Schedule 16, which shall be responsible for procurement processes with an estimated value starting from €10,000 up to the threshold established under regulation 9(1)(*a*):

Provided that in the case of call for tenders published by the Sectoral Procurement Directorate the responsibility for the process shall increase the procurement processes that have an estimated value which but does not exceed seven hundred and fifty thousand euro (€750,000).

Composition. *Amended by: L.N. 233 of 2017.*

74. The Departmental Contracts Committee shall be composed of three members, as follows:

(*a*) a chairman, who shall be the The Head of the Department responsible for Corporate Services, or his representative;

(*b*) a member appointed by the Permanent Secretary of the concerned ministry; and

(*c*) a member representing the Director of Contracts, which member may also be a member of the General Contracts Committee.

Function.

75. The Departmental Contracts Committee shall make definite recommendations for the award of the contract, and a copy of its recommendation shall be forwarded to the Director.

Ad hoc Committees and the Special Contracts Committee

Ad hoc Committees.

76. The Minister may authorise the setting up of committees, to be known as *ad hoc* Committees, in respect of tenders whose estimated value is equal or exceeds the thresholds established under regulation 9(1)(*b*).

Composition and *modus operandi.*

77. (1) Each *ad hoc* Committee shall be composed of the head of the department, or, in his absence, an officer appointed by the Minister from among the most senior of officials at the contracting authority affecting the purchase. This nominee shall be, *ex officio*, chairman of the Committee together with not less than four other members appointed by the Minister, none of whom shall be performing duties at, or be members of the staff of, the department effecting the purchase.

(2) The function of the *ad hoc* Committee shall be indicated by the Minster in their letter of appointment.

Establishment of the Special Contracts Committee, composition and *modus operandi*.

78. (1) Where the Prime Minister determines that the adjudication of tenders for the award of any particular contract requires special expertise, skills or other specialist knowledge, he may appoint a Special Contracts Committee for the award of that public contract.

(2) The members of the Special Contracts Committee shall be appointed for the duration of the adjudication process of the particular call for tenders.

(3) Subject to the provisions of regulation 17(1)(*b*) the provisions of regulations 64 to 72 shall *mutatis mutandis* apply to the Special Contracts Committee.

Added by: L.N. 56 of 2021.

The Office of the Director Sectoral Procurement

Establishment of the Ministerial Procurement Unit. *Amended by: L.N.155 of 2017; L.N.195 of 2019; XXI of 2020; L.N.196 of 2020; L.N. 56 of 2021; L.N. 26 of 2022; L.N. 361 of 2024.*

79. (1) There shall be a Director Sectoral Procurement who shall be responsible for the administration and management of the Sectoral Procurement Directorate.

(2) The functions of the Director Sectoral Procurement shall be:

(*a*) to ensure that these regulations are abided by;

(*b*) to observe and abide by any instruction issued by the Director of Contracts;

(*c*) to ensure that each contracting authority listed under Schedule 16 is assisted in the publication of a call for tenders issued under the open or restricted procedure;

(*d*) to manage and administer the Sectorial Procurement Directorate;

(*e*) to monitor the procurement activities of contracting authorities listed under Schedule 16, as administered and managed by the Sectoral Procurement Directorate, with the aim of ensuring timely processing and award of such calls;

(*f*) to provide information and guidance to contracting authorities listed under Schedule 16, whilst ensuring that such information and guidance are aligned with direction, policies and instructions given by the Director of Contracts;

(*g*) 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 seven hundred and fifty thousand euro (€750,000);

(*h*) to take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators;

(*i*) to indicate in their procurement documents that the award of the contract is subject to the review procedure as set forth in these regulations and to include an extract of the relevant part of the appeals process in the said documents for the guidance of economic operators;

(*j*) to inspect and approve, with or without amendments, tender documents, before these are issued and published;

(*k*) to publish every six (6) months in the Gazette the

following:

(i) a list of contracts recommended for award by the Sectoral Procurement Directorate;

(ii) a list of modifications to contracts which exceed the contract value by more than five percent (5%) provided that the estimated value of the call exceeds ten thousand euro (€10,000) but is below one hundred and forty three thousand (€143,000);

(iii) a list of all modifications to contracts which had an estimated value meeting or exceeding one hundred forty three thousand euro (€143,000) but not exceeding seven hundred and fifty thousand euro (€750,000);

(*l*) to forward the recommendations for the award of contracts to the Departmental Contract Committee;

(*m*) to make recommendations in the name of the contracting authorities according to what is provided for under these regulations;

(*n*) to consider an extension or the cancellation of a procurement procedure; and

(*o*) to send a copy of the contract to the Director of contracts when he so requests.

(3) In spite of what is established in these regulations the Minister may, irrespective of the value of the contract, order that a contracting authority listed under Schedule 16 must forward the call for tenders to the Director so that they are administered by him in accordance with regulation 12 and 13.

(4) The contracts which result from a call for tenders published by the Sectoral Procurement Directorate shall be signed by the head of the contracting authority or another person who is delegated by him in writing on whose behalf the call has been published.

(5) *Repealed by Legal Notice 56 of 2021.*

Public Contracts Review Board

Establishment of the Public Contracts Review Board.

80. There shall be established a Public Contracts Review Board, hereinafter referred to as "the Review Board", to determine issues as contemplated under these regulations.

Composition. *Amended by: L.N. 47 of 2025.*

81. (1) The Review Board shall be composed of a chairman and two permanent members, one of whom shall act as a Vice-chairman, all appointed by the Prime Minister on the advice of the Minister for a period of three years with the possibility of re-appointment.

(2) The Prime Minister may appoint a person, or such number of persons as additional permanent members of the Review Board who shall be appointed for pre-determined periods of time, who shall act instead of any one or more, or all of the permanent members composing the Review Board in accordance with sub-regulation (1), whenever the circumstances so require.

(3) *Deleted by Legal Notice 47 of 2025.*

Removal.

82. The members of the Review Board may be individually removed from office by the Prime Minister on the ground of proved inability to perform the functions of that office whether arising from infirmity of body or mind or any other cause or because of proven misbehaviour.

Remuneration.

83. The members of the Review Board shall receive such remuneration as the Prime Minister may determine.

Secretary.
Substituted by: L.N. 47 of 2025.

84. The Review Board shall be assisted by a secretary who shall also carry out such additional duties as instructed by the chairman:

Provided that when the circumstances so require any one of the additional permanent members appointed in accordance with regulation 81(2) may also act as a secretary.

Disqualification.

85. (1) The chairman or other members of the Review Board shall be disqualified from hearing a case in such circumstances as would disqualify a judge in a civil suit, and in any such case the chairman or member shall be substituted by another member on the panel.

(2) A person shall be disqualified from being appointed or continuing to be a member of the Review Board if he is a member of the House of Representatives or of the European Parliament or of a Local Council or of any other administrative board or tribunal or if he has a financial or other interest as is likely to prejudice the discharge of his functions as a member of the Review Board.

(3) Any member of the Review Board who may have a direct or indirect interest in any contract which becomes the subject of a complaint shall inform the chairman in writing of such interest in which case the member shall be precluded from further participation in the hearing of the complaint.

Exercise of private profession.

86. The members of the Review Board shall not be precluded from the exercise of their respective profession, however, during the term of their appointment they shall be precluded from the exercise of their profession in cases before the Review Board.

Functions.

87. It shall be the function of the Review Board to address in particular:

(*a*) concerns or complaints raised before the closure of a submission of a tender by candidates or persons having an interest in obtaining a particular public contract;

(*b*) complaints raised by tenderers or candidates relating to exclusions, non-compliant offers, contract award decisions or cancellations of a procurement procedure after the closing date and time set for the submission of the said call;

(*c*) requests for the ineffectiveness of a public contract as established in these regulations;

(*d*) to hear and determine any cases assigned to it under these regulations or any other law; and

(*e*) to hear and determine any cases assigned to it in a public call for tenders or quotations, even if such call does not involve procurement.

Liability.

88. The members of the Review Board shall not be held personally liable for any act or omission done in good faith in the course of the exercise of their functions as members of the said board.

Sessions.

89. (1) The sessions of the Review Board during which the complaint is heard shall be held in public and both the complainant and any interested party shall have the right to attend and to be accompanied by any person, professional or otherwise, who they consider suitable to defend their interests.

(2) The secretary of the Review Board shall keep a record of everything done in each session.

(3) The Review Board may postpone a session if it is satisfied that any one of the parties or any witness was prevented from appearing before it owing to illness or absence from Malta.

Powers.
Amended by: L.N. 233 of 2017; L.N. 26 of 2018.

90. (1) The Review Board shall be empowered to order or permit amendments of written pleadings and to engage any expert to assist it in its investigations.

(2) It shall also have the power to determine the procedure for the hearing of all complaints lodged before it and shall ensure that during the public hearing all interested parties are given the opportunity to make their case.

(3) In its decision the Review Board shall have the power to cancel the tendering process if it appears to it that this is the best solution in the circumstances of the case; in this case no party shall have any right to request damages because of the decision cancelling the call.

(4) The Review Board shall have the power to take such interim measures as it shall deem fit.

(5) All communications including those related to the appointments of cases may be transmitted by the Review Board through electronic means.

Added by: L.N. 26 of 2018.

(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.

Experts.

91. (1) When the Review Board appoints an expert for assistance, the latter shall prepare a signed report containing the inquiries made and his findings together with the grounds of such findings.

(2) The Review Board shall allow the parties time to consider the report and to make their submissions thereon.

(3) The experts may be examined and cross-examined on their

report in the same manner as witnesses.

(4) The Review Board is not bound to adopt the report of the expert against its own conviction.

Summoning of witnesses.

92. (1) Upon the request of one of the parties, the Review Board shall have the power to summon witnesses and to administer the oath to any person appearing before it. Should a witness duly notified by a summons signed by the chairman of the Review Board fail to enter an appearance, such person shall be guilty of an offence and liable, on conviction, to a fine (*multa*) of not less than five hundred euro (€500) and not more than five thousand euro (€5,000).

(2) The service of all summons, orders or other acts of the Review Board shall be carried out by registered mail at least five days before the date of the sitting.

(3) All evidence tendered by witnesses that are produced before the Review Board shall be transcribed and put in writing in the records of the proceedings.

Decisions.

93. (1) After appointing the application for hearing, and after listening to the oral submissions made by all parties, the Review Board shall establish a date in which it will deliver the judgment during a public session.

(2) Decisions of the Review Board shall preferably be taken on the basis of unanimity. However, majority decisions shall be deemed to be the final decision of the Review Board. The chairman and the other two members shall have one vote each.

(3) The decision of the Review Board shall be rendered in writing, be signed by all members and be dated. In its decision the Review Board shall indicate the reasons upon which such decision was taken.

(4) In its decision the Review Board shall recommend on whether any deposit submitted by a party should be refunded, in whole or in part, or not.

(5) Unless there is an appeal, the decision of the Review Board shall be final and shall constitute an executive title and may be enforced in terms of article 273 of the Code of Organization and Civil Procedure.

Cap. 12.

Report.

94. The Review Board shall by not later than six months after the end of the financial year, make and submit to the Minister a report dealing with the performance of the Board during the financial year being reported upon. The report shall, in particular, provide details regarding appeals submitted by candidates and tenderers and any person having or having had an interest in obtaining a particular public contract in terms of these regulations and the decisions arrived at by the Review Board.

Commercial Sanctions Tribunal

Establishment of the Commercial Sanctions Tribunal.

95. There shall be established a Commercial Sanctions Tribunal which shall have the function to hear and determine issues relating

to the black listing of persons.

Composition.

96. (1) The Commercial Sanctions Tribunal shall be composed of a chairman and two permanent members, one of whom shall act as a Vice-chairman, all appointed by the Prime Minister on the advice of the Minister for a period of three years with the possibility of re-appointment.

(2) The Prime Minister shall also appoint for a period of three years, with the possibility of re-appointment, a panel of three substitute members to replace the permanent members, in the event that one or more of the permanent members cannot sit in a particular case.

Other applicable regulations. *Amended by: L.N.176 of 2018.*

97. (1) The judicial acts, written pleadings and other documents which are to be filed with the Secretary of the Commercial Sanctions Tribunal may be filed in the Registry of the Civil Courts and Tribunals, Malta.

(2) The provisions of regulations 82, 83, 84, 85, 86, 88, 89, 90, 91 and 92 applicable to the Review Board shall apply *mutatis mutandis* also to the Commercial Sanctions Tribunal.

Copy to the Director of Contracts.

98. Decisions of the Commercial Sanctions Tribunal shall be delivered by the Secretary to the Director of Contracts on the same date in which the decision is delivered.

Report.

99. The Commercial Sanctions Tribunal shall, by not later than six months after the end of the financial year, make and submit to the Minister a report dealing with the performance during the financial year being reported upon. The report shall, in particular, provide details regarding its decisions.

Part III

Rules applicable to Departmental Tenders

Methods of Procurement according to the Contract Value

Contract value under €10,000. *Amended by: L.N.155 of 2017; L.N. 233 of 2017; L.N. 195 of 2019.*

100. (1) Where the estimated value does not exceed five thousand euro (€5,000), the supplies, works or services may be procured departmentally either after obtaining a minimum of three (3) quotations or after the publication in the government's e-procurement platform or through a direct contract at the discretion of the Head of the Contracting Authority, taking into consideration the amount involved, the urgency attached to the procurement or restrictions of choice and availability:

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."

(2) Where the estimated value exceeds five thousand euro (€5,000), but does not exceed ten thousand euro (€10,000), the supplies, works or services may be procured departmentally either after obtaining quotations through government's e-procurement platform or through a direct contract at the discretion of the Head of the Contracting Authority or any person delegated by him in writing, taking into consideration the amount involved, the urgency attached to the procurement or restrictions of choice and availability.

Contract value over €10,000 which does not exceed the threshold. *Amended by: L.N. 195 of 2019.*

101. Where the estimated value exceeds ten thousand euro (€10,000), but does not exceed the threshold established under regulation 9(1)(a), the supplies, works or services may be procured after a departmental call for tenders.

Call for quotations.

102. (1) Unless authorisation in writing is granted by the Director, calls for quotations exceeding five thousand euro (€5,000) and departmental calls for tenders must be published through government's e-procurement platform.

(2) If the authority responsible for the tendering process does not make use of government's e-procurement platform for the call for quotations or the departmental call for tenders with an estimated value which exceeds five thousand euro (€5,000), it must give advice about their publication by means of an advertisement in the Gazette.

Direct order under exceptional cases. *Amended by: L.N. 233 of 2017.*

103. Supplies, works or services valued in excess of ten thousand euro (€10,000) may, in exceptional cases, be procured through a direct contract by any contracting authority upon obtaining the prior written approval of the Minister who may delegate his authority in writing to the Permanent Secretary or any other senior official in his Ministry:

Provided that contracting authorities listed under Schedule 3 shall obtain the prior approval of the Minister responsible for that contracting authority who may delegate his authority in writing to the Permanent Secretary, any senior official in his Ministry or to the Head of the contracting authority instead of the Minister.

Local Councils. Cap. 363.

104. Subject to the relevant regulations under Part VI, Local Councils shall follow the regulations made under the Local Government Act.

Duties of Contracting Authorities

Market consultation.

105. Before a procurement procedure is conducted, contracting authorities may conduct market consultations as referred to in regulation 47.

Call for tenders.

106. A call for tenders should, unless otherwise approved in terms of these regulations, be carried out through an open procedure.

Consent of the Director.

107. The prior written consent of the Director shall be required whenever the authority responsible for the tendering process wishes to carry out a procurement process through a design contest, a framework agreement, an innovation partnership or a restricted procedure. In approving the use of these procedures the Director may impose any condition he may deem appropriate for the correct execution of the said procedure.

Procedures which cannot be availed of.

108. Procurement procedures involving the competitive dialogue, competitive procedure with negotiation, dynamic purchase systems, electronic auctions and negotiated procedure without public notice shall not be permitted.

Access to procurement documents.

109. Unless otherwise provided for in these regulations, the authorities responsible for the tendering process shall, through government's e-procurement platform, offer free of charge unrestricted and full direct access to the procurement documents, from the date of publication of the procurement procedure.

Opening and adjudication of tenders.

110. (1) Tenders shall be opened in public by two officers of the contracting authority. The names of the bidders and the prices quoted shall also be made public either through government's e-procurement platform or on the notice board at the contracting authority's premises.

(2) The provisions of Part VI shall apply for the adjudication of the tenders and quotations submitted.

Variations and penalties.
Amended by: L.N. 195 of 2019.

111. (1) The Minister may allow that variations and the imposition or remission of penalties in respect of such contracts be approved by the Minister charged with responsibility for that contracting authority, who may delegate his authority in writing to the Parliamentary Secretary, the Permanent Secretary or the Head of the contracting authority.

(2) Every six months the Head of the contracting authority shall publish in the Gazette a full list of all departmental contracts awarded by him with a value exceeding five thousand euro (€5,000) and a list of all cases involving variations which exceed the original contract values by more than five per cent. These two lists must include the name of the economic operator, the nature of the contracts, the original contract values and the final contract values, as the case may be:

Provided that, without prejudice to regulation 79, in the case of contracting authorities listed under Schedule 16, the obligation established under this sub-regulation shall apply when these contracting authorities publish calls that are not regulated as an open procedure.

(3) The regulations under this Part shall not apply when a contracting authority is awarding a public contract to another contracting authority or to a central purchasing body unless the contracting authorities in question have any private capital participation.

Conditions of contract.

112. The authority responsible for the tendering process may lay down conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the procurement documents.

Individual reports on procedures for the award of contracts.

113. For every tender or framework agreement issued under this Part contracting authorities shall draw up a written report which shall include at least the following:

(*a*) the name and address of the contracting authority, the subject-matter and value of the public contract or framework;

(*b*) where applicable, the results of the qualitative selection;

(*c*) the names of the selected candidates or tenderers and the reasons for their selection;

(*d*) the names of the candidates or tenderers rejected or excluded and the reasons for their rejection or exclusion;

(*e*) the name of the successful tenderer and the reasons why its tender was selected and, where known, the share of the contract or framework agreement which the successful tenderer intends to subcontract to third parties; and, where known at this point in time, the names of the main contractor's subcontractors, if any; and

(*f*) where applicable, the reasons why the contracting authority has decided not to award a contract or framework agreement.

Part IV
Types of Procurement Procedures

Various Methods of Procurement

Procurement procedures.

114. Contracts may be awarded using the open procedure, the restricted procedure, the competitive procedure with negotiation, the innovation partnership, competitive dialogue, the negotiated procedure without contract notice and design contests.

Open Procedure

Open procedure.

115. In open procedures, any interested economic operator may submit a tender in response to a call for competition.

Contract notice and time limit.
Amended by: L.N. 195 of 2019.

116. (1)(*a*)A call for competition with an estimated value which falls under the threshold established under regulation 9(1)(*b*) shall have a minimum time limit for the receipt of tenders of thirty-five days from the date of

publication.

(*b*) When the estimated value of a call for tenders meets or exceeds the value in Schedule 5 this call shall be made by means of a contract notice and the time limit mentioned in paragraph (*a*) shall commence from the date on which the contract notice was sent to the Publications Office of the European Union.

(*c*) The tender shall be accompanied by the information for qualitative selection that is requested by the authority responsible for the tendering process.

(2) Where the authorities responsible for the tendering process have published a prior information notice, the minimum time limit for the receipt of tenders may be shortened to fifteen days, provided that all of the following conditions are fulfilled:

(*a*) the prior information notice included all the information required for the contract notice in section I of part B of Schedule 9, in so far as that information was available at the time the prior information notice was published;

(*b*) the prior information notice was sent for publication between thirty-five days and twelve months before the date on which the contract notice was sent.

(3) Where a state of urgency duly substantiated renders impracticable the time limit laid down in sub-regulation (1), the authority responsible for the tendering process may, fix a time limit which shall be not less than fifteen (15) days from the date on which the contract notice was sent to the Publications Office of the European Union or from the date on which the tender has been published as the case maybe.

(4) The authority responsible for the tendering process may also reduce by five days the time limit for receipt of tenders established in sub-regulation (1) where it accepts that tenders may be submitted by electronic means in accordance with regulation 48(1), (2) and (10).

(5) In the case of a contract with an estimated value which is less than the threshold established under regulation 9(1)(*a*), the minimum time limit for the receipt of tenders shall be twenty days from the date on which the tender has been published:

Provided that the authority responsible for the tendering process may reduce this time limit to fifteen (15) days in cases of extreme urgency.

Examination of tenders in open procedures.

117. In open procedures, the authorities responsible for the tendering process may decide to examine tenders before verifying the absence of grounds for exclusion and the fulfilment of the selection criteria in accordance with Part VI and regulations 217, 226, 230, 231, 232, 233, 234 and 235. Where they make use of that possibility, they shall ensure that the verification of absence of grounds for exclusion and of fulfilment of the selection criteria is carried out in an impartial and transparent manner so that no

contract is awarded to a tenderer that should have been excluded pursuant to Part VI or that does not meet the selection criteria set out by the contracting authority.

Restricted Procedure

Restricted procedure.

118. (1) In restricted procedures, any economic operator may submit a request to participate in response to a call for competition by providing the information requested by the contracting authority in the procurement document.

(2) Where the estimated value of the restricted procedure meets or exceeds the values established under Schedule 5, the call for competition must include the information set out in Schedule 9, parts B or C, as the case may be, by providing the information for qualitative selection that is requested by the contracting authority.

Publication.

119. (1) The minimum time limit for receipt of requests to participate shall be thirty days from the date on which the call for tenders has been published.

(2) Where the estimated value of the restricted procedure meets or exceeds the values established under Schedule 5 the time limit established above shall begin from the date when the contract notice is sent to the Publication Office of the European Union.

Eligible economic operators.

120. Only those economic operators invited to do so by the contracting authority following its assessment of the information provided may submit a tender. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with regulation 237.

Receipt of tenders.

121. (1) The minimum time limit for the receipt of tenders from the suitable candidates shall be thirty days from the date on which the invitation to tender was sent.

(2) Where contracting authorities have published a prior information notice, the minimum time limit for the receipt of tenders as laid down in sub-regulation (1) may be shortened to ten days, provided that all of the following conditions are fulfilled:

(*a*) the prior information notice included all the information required in section I of part B of Schedule 9, in so far as that information was available at the time the prior information notice was published;

(*b*) the prior information notice was sent for publication between thirty-five days and twelve months before the date on which the contract notice was sent.

(3) The time limit for receipt of tenders provided for in sub-regulation (1) may be reduced by five days where the contracting authority accepts that tenders may be submitted by electronic means in conformity with regulation 48(1) to (6), (10), (11) and (12) to (14).

Accelerated process.

122. Where a state of urgency duly substantiated by the contracting authorities renders impracticable the time limits laid down in the previous regulation, they may fix:

(*a*) a time limit for the receipt of requests to participate which shall not be less than fifteen days from the date on which the contract notice was sent;

(*b*) a time limit for the receipt of tenders which shall not be less than ten days from the date on which the invitation to tender was sent.

Competitive procedure with negotiation

Competitive procedure with negotiation.

123. (1) Upon being requested by the contracting authority, the Director may, subject to any conditions he may deem appropriate to impose, approve in writing the use of the competitive procedure with negotiation in the following situations:

(*a*) with regard to works, supplies or services fulfilling one or more of the following criteria:

(i) the needs of the contracting authority cannot be met without adaptation of readily available solutions;

(ii) they include design or innovative solutions;

(iii) the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of the risks attaching to them;

(iv) the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, common technical specification or technical reference within the meanings of regulation 2;

(*b*) with regard to works, supplies or services where, in response to an open or a restricted procedure, only irregular or unacceptable tenders are submitted. In such situations contracting authorities shall not be required to publish a contract notice where they include in the procedure all of, and only, the tenderers which satisfy the criteria set out in Part VI and regulations 217 to 235 and which, during the prior open or restricted procedure, submitted tenders in accordance with the formal requirements of the procurement procedure.

(2) A call for competition for a competitive procedure with negotiation shall be made by means of a contract notice and any economic operator may submit a request to participate in response to a call for competition containing the information set out in Schedule 9 parts B and C by providing the information for qualitative selection that is requested by the contracting authority.

Subject-matter of the procurement.

124. (1) In the procurement documents, contracting authorities shall identify the subject-matter of the procurement by providing a description of their needs and the characteristics required of the supplies, works or services to be procured and specify the contract

award criteria. They shall also indicate which elements of the description define the minimum requirements to be met by all tenders.

(2) The information provided shall be sufficiently precise to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the procedure.

Time limits.

125. (1) The minimum time limit for receipt of requests to participate shall be thirty days from the date on which the contract notice was sent to the Publication Office of the European Union or from when the call for competition is published, as the case may be, whilst the minimum time limit for the receipt of initial tenders shall be thirty days from the date on which the invitation was sent.

(2) The provisions of regulations 121 and 122 shall apply *mutatis mutandis* also to the competitive procedure with negotiation.

Eligibility.

126. Only those economic operators invited by the contracting authority following its assessment of the information provided may submit an initial tender which shall be the basis for the subsequent negotiations. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with regulation 237.

Negotiating terms.

127. (1) Subject to the provisions of sub-regulation (3), contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tenders within the meaning of sub-regulation (7) to improve the content thereof.

(2) The minimum requirements and the award criteria shall not be subject to negotiations.

(3) Contracting authorities may award contracts on the basis of the initial tenders without negotiation where they have indicated, in the contract notice or in the invitation to confirm interest, as the case may be, that they reserve the possibility of doing so.

(4) During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall inform all tenderers, whose tenders have not been eliminated pursuant to sub-regulation (6), in writing of any changes to the technical specifications or other procurement documents, other than those setting out the minimum requirements. Following these changes, contracting authorities shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate.

(5) In accordance with regulation 40, contracting authorities shall not reveal to the other participants confidential information communicated by a candidate or a tenderer participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

(6) Competitive procedures with negotiation may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in another procurement document. In the contract notice, the invitation to confirm interest or in another procurement document, the contracting authority shall indicate whether it will use that option.

(7) Where the contracting authority intends to conclude the negotiations, it shall inform the remaining tenderers and set a common deadline to submit any new or revised tenders. It shall verify that the final tenders are in conformity with the minimum requirements and comply with regulation 61(2), assess the final tenders on the basis of the award criteria and award the contract in accordance with regulations 238, 239, 240 and 243.

Innovation Partnership

Innovation partnership.

128. (1) Upon being requested by the contracting authority the Director may, subject to any conditions he may deem fit to impose, approve in writing the use of the innovation partnership procedure.

(2) This request must be supported by documents demonstrating that the need of the contracting authority cannot be met by purchasing products, services or works already available on the market.

Request to participate.

129. In an innovation partnership procedure, any economic operator may submit a request to participate in response to a contract notice or call for competition, as the case may be, by providing the information for qualitative selection that is requested by the contracting authority.

Content of the procurement document.

130. In the procurement documents, the contracting authority shall identify the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market. It shall indicate which elements of this description define the minimum requirements to be met by all tenders. The information provided shall be sufficiently precise to enable economic operators to identify the nature and scope of the required solution and decide whether to request to participate in the procedure.

Number of partners.

131. The contracting authority may decide to set up the innovation partnership with one partner or with several partners conducting separate research and development activities.

Time limits.

132. The minimum time limit for receipt of requests to participate shall be thirty days from the date on which the contract notice is sent or from the date when the call for competition is published, as the case may be. Only those economic operators invited by the contracting authority following the assessment of the information provided may participate in the procedure. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with regulation 237. The contracts shall be awarded on the sole basis of

the award criterion of the best price-quality ratio in accordance with regulation 239(2).

Aim.

133. The innovation partnership shall aim at the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the performance levels and maximum costs agreed between the contracting authorities and the participants.

Structure.

134. The innovation partnership shall be structured in successive phases following the sequence of steps in the research and innovation process, which may include the manufacturing of the products, the provision of the services or the completion of the works. The innovation partnership shall set intermediate targets to be attained by the partners and provide for payment of the remuneration in appropriate instalments.

Termination.

135. Based on those targets, the contracting authority may decide after each phase to terminate the innovation partnership or, in the case of an innovation partnership with several partners, to reduce the number of partners by terminating individual contracts, provided that the contracting authority has indicated in the procurement documents those possibilities and the conditions for their use.

Negotiation.

136. (1) Unless otherwise provided for in this regulation, contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender, to improve the content thereof.

(2) The minimum requirements and the award criteria shall not be subject to negotiations.

(3) During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall inform all tenderers whose tenders have not been eliminated, pursuant to sub-regulation (5), in writing of any changes to the technical specifications or other procurement documents other than those setting out the minimum requirements. Following those changes, contracting authorities shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate.

(4) In accordance with regulation 40, contracting authorities shall not reveal to the other participants confidential information communicated by a candidate or tenderer participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

(5) Negotiations during innovation partnership procedures may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. In the contract notice, the invitation to confirm interest or in the procurement documents, the contracting

authority shall indicate whether it will use that option.

Selection.

137. (1) In selecting candidates, contracting authorities shall in particular apply criteria concerning the candidates' capacity in the field of research and development and of developing and implementing innovative solutions.

(2) Only those economic operators invited by the contracting authority following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting authority that cannot be met by existing solutions.

Intellectual property rights.

138. In the procurement documents, the contracting authority shall define the arrangements applicable to intellectual property rights. In the case of an innovation partnership with several partners, the contracting authority shall not, in accordance with regulation 40, reveal to the other partners solutions proposed or other confidential information communicated by a partner in the framework of the partnership without that partner's agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

Execution.

139. The contracting authority shall ensure that the structure of the partnership and, in particular, the duration and value of the different phases reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The estimated value of supplies, services or works shall not be disproportionate in relation to the investment required for their development.

Competitive Dialogue

Competitive dialogue.

140. Upon being requested by the contracting authority, the Director of Contracts may, subject to any conditions he may deem appropriate to impose, approve in writing the use of the competitive dialogue in the following instances:

(*a*) with regard to works, supplies or services fulfilling one or more of the following criteria:

(i) the needs of the contracting authority cannot be met without adaptation of readily available solutions;

(ii) they include design or innovative solutions;

(iii) the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make- up or because of the risks attaching to them;

(iv) the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment,

common technical specification or technical reference as defined in regulation 2;

(*b*) with regard to works, supplies or services where, in response to an open or a restricted procedure, only irregular or unacceptable tenders are submitted. In such situations contracting authorities shall not be required to publish a contract notice where they include in the procedure all of, and only, the tenderers which satisfy the criteria set out under Part VI and regulations 217 to 235 and which, during the prior open or restricted procedure, submitted tenders in accordance with the formal requirements of the procurement procedure.

Request to participate.

141. In a call for completion for a competitive dialogue, any economic operator may submit a request to participate in response to a contract notice or call for competition, as the case may be, by providing the information for qualitative selection that is requested by the contracting authority.

Time limit.

142. The minimum time limit for receipt of requests to participate shall be thirty days from the date on which the contract notice was sent or the call for competition published as the case may be.

Participation.

143. Only those economic operators invited by the contracting authority following the assessment of the information provided may participate in the dialogue. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with regulation 237. The contract shall be awarded on the sole basis of the award criterion of the best price-quality ratio in accordance with regulation 239(2).

Needs and requirements of the contracting authority.

144. Contracting authorities shall set out their needs and requirements in the contract notice and they shall define these needs and requirements in that notice and, or in a descriptive document. At the same time and in the same documents, they shall also set out and define the chosen award criteria and set out an indicative time-frame.

Dialogue.

145. (1) Contracting authorities shall open, with the participants selected in accordance with the relevant provisions of regulation 61(2), Part VI and regulations 217 to 235, a dialogue the aim of which shall be to identify and define the means best suited to satisfying their needs. They may discuss all aspects of the procurement with the chosen participants during this dialogue.

(2) During the dialogue, contracting authorities shall ensure equality of treatment among all participants. To that end, they shall not provide information in a discriminatory manner which may give some participants an advantage over others.

(3) Subject to the provisions of regulation 40, contracting authorities shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate or tenderer participating in the dialogue without its

agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

(4) Competitive dialogues may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria laid down in the contract notice or in the descriptive document. In the contract notice or the descriptive document, the contracting authority shall indicate whether it will use that option.

(5) The contracting authority shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.

(6) Having declared that the dialogue is concluded and having so informed the remaining participants, contracting authorities shall ask each of them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. Those tenders shall contain all the elements required and necessary for the performance of the project.

Clarification, specification, etc.

146. Those tenders may be clarified, specified and optimised at the request of the contracting authority. However, such clarification, specification, optimisation or additional information may not involve changes to the essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document, where variations to those aspects, needs and requirements are likely to distort competition or have a discriminatory effect.

Assessment.

147. Contracting authorities shall assess the tenders received on the basis of the award criteria laid down in the contract notice or in the descriptive document.

Negotiations.

148. At the request of the contracting authority, negotiations with the tenderer identified as having submitted the tender presenting the best price-quality ratio in accordance with regulation 239 may be carried out to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract provided this does not have the effect of materially modifying essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document and does not risk distorting competition or causing discrimination.

Prizes or payments.

149. Contracting authorities may specify prizes or payments to the participants in the dialogue.

Negotiated Procedure

Use of the negotiated procedure without prior publication.

150. (1) Upon being requested in writing by the contracting authority the Director may, subject to any conditions he may deem appropriate to impose, approve the use of the negotiated procedure without prior publication for public works contracts, public supply contracts and public service contracts as specified in the following regulations.

(2) The request made by the contracting authority must duly substantiate the need for the negotiated procedure.

Public works contracts.

151. The negotiated procedure without prior publication may be used for public works 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 works 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 sub-paragraphs (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.

Repetition of similar works.

152. (*a*) If the negotiated procedure is used to carry out repetition of similar works, the basic project shall indicate the extent of possible additional works 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 works or 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 works may be resorted to only during the three years following the conclusion of the original contract.

Public supply contracts. *Substituted by: L.N.155 of 2017.*

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 sub-paragraphs (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.Public service contracts.

Substituted by: L.N.155 of 2017. Amended by: L.N. 233 of 2017.

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 services 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 sub-paragraphs (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*) or new services consisting in the repetition of similar services 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.

Tender considered not to be suitable.

155. A tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting authority's needs and requirements as specified in the procurement documents.

Unsuitable request for participation.

156. A request for participation shall be considered not to be suitable where the economic operator concerned is to be or may be excluded pursuant to Part VI or does not meet the selection criteria set out by the contracting authority pursuant to regulation 217.

Design Contest

Design contest.

157. (1) Design contests apply to:

(*a*) contests organised as part of a procedure leading to the award of a public service contract;

(*b*) contests with prizes or payments to participants.

(2) In the cases referred to in sub-regulation (1)(*a*), the threshold referred to in Schedule 5 is calculated on the basis of the estimated value net of VAT of the public service contract, including any possible prizes or payments to participants.

(3) In the cases referred to in sub-regulation (1)(*b*), the threshold refers to the total amount of the prizes and payments, including the estimated value net of VAT of the public services contract which might subsequently be concluded if the contracting authority has announced its intention to award such contract.

(4) In a design contest which has an estimated value which falls under regulation 9(1)(*a*), the intention to award such a contract is to be mentioned in the procurement document and if applicable in the advertisement published in the Gazette. In the case of a design contest with an estimated value which falls under paragraph 9(1)(*b*), the intention to award such a contract must be announced in the contest notice as established under regulation 46 and the procurement document.

Rules on the organisation of design contests and the selection of participants.

158. (1) When organising design contests, contracting authorities shall apply the rules mentioned in regulations 2, 3, 4, 6 to 8, 13, 16, 26 to 32, 39, 40, 46, 48, 57, 58, 157 to 161 and Part IX.

(2) The admission of participants to design contests shall not be limited:

(*a*) by reference to the territory or part of the territory of a Member State;

(*b*) on the grounds that, they would be required to be either natural or legal persons.

(3) Where design contests are restricted to a limited number of participants, the contracting authorities shall lay down clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

Composition of the jury.

159. The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required from participants in a contest, at least a third of the members of the jury shall have that qualification or an equivalent qualification.

Decisions of the jury.

160. (1) The jury shall be autonomous in its decisions or opinions.

(2) The jury shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.

(3) The jury shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points that may need clarification.

(4) Anonymity shall be observed until the jury has reached its opinion or decision.

(5) Candidates may be invited, if need be, to answer questions that the jury has recorded in the minutes to clarify any aspect of the projects.

(6) Complete minutes shall be drawn up of the dialogue between jury members and candidates.

Reserved Contracts and Contracts For Social and Other Specific Services

Reserved contracts.

161. (1) A contracting authority may reserve the right to

participate in public procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons or may provide for such contracts to be performed in the context of sheltered employment programmes, provided that at least 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.

(2) The call for competition for reserved contracts shall make reference to this regulation.

Contracts for social and other specific services.

162. Public contracts for social and other specific services listed in Schedule 14 shall be awarded in accordance with the following regulations under this Part.

Publication of notices.

163. (1) Contracting authorities intending to award a public contract for the services referred to in regulation 162 shall make known their intention by any of the following means:

(*a*) for public contracts with an estimated value which meets or exceed the threshold established under paragraph (*d*) of Schedule 5:

(i) by means of a contract notice, which shall contain the information referred to in Schedule 9, Part H, in accordance with the standard forms referred to in regulation 44;

Provided that this sub-paragraph shall not apply where a negotiated procedure without prior publication could have been used in conformity with regulation 154 for the award of a public service contract; or

(ii) by means of a prior information notice, which shall be published continuously and contain the information set out in Schedule 9, Part I. The prior information notice shall refer specifically to the types of services that will be the subject of the contracts to be awarded. It shall indicate that the contracts will be awarded without further publication and invite interested economic operators to express their interest in writing.

(*b*) for public contracts with an estimated value which is less than the threshold mentioned under paragraph (*d*) of Schedule 5 by publishing it in the government's e-procurement system.

(2) In respect to public contracts with an estimated value which meets or exceed the threshold established under paragraph (*d*) of Schedule 5 contracting authorities that have awarded a public contract for the services referred to in regulation 162 shall make known the results of the procurement procedure by means of a contract award notice, which shall contain the information referred to in Schedule 9, Part J, in accordance with the standard forms referred to in regulation 44. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within thirty days of the end of each quarter.

(3) The notices referred to in these regulations shall be published in accordance with regulation 44.

Principles for awarding contracts.

164. (1) Contracting authorities shall determine in the respective procurement documents the procedures that are going to be applied in connection with the award of a call for tenders subject to what is stated in the regulations covered by this Part.

(2) Contracting authorities shall ensure that the procedures mentioned in sub-regulation (1) adequately cater for the principles of transparency and equal treatment of economic operators.

(3) In implementing sub-regulations (1) and (2) contracting authorities may take into account the specificities of the services in question.

(4) Contracting authorities shall ensure that the procedures identified in sub-regulation (1) shall be reasonable and proportionate, in particular the time limits allowed for the submission of the offer shall be sufficient to allow bidders to submit an offer.

(5) In establishing the procedures mentioned in sub-regulation (1) contracting authorities may, subject to the provisions of the regulations established under this Part, also decide to apply the regulations established for other procurement procedures.

(6) In relation to the award of contracts that are the subject of these regulations, contracting authorities may take into account the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services, the specific needs of different categories of users, including disadvantaged and vulnerable groups, the involvement and empowerment of users and innovation.

(7) Contracting authorities may also provide that the choice of the service provider shall be made on the basis of the tender presenting the best price-quality ratio, taking into account quality and sustainability criteria for social services.

Reserved contracts for certain services.

165. (1) Contracting authorities may reserve the right for organisations to participate in procedures for the award of public contracts exclusively for those health, social and cultural services referred to in regulation 162, which are covered by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4 and 98133110-8.

(2) An organisation referred to in sub-regulation (1) shall fulfil all of the following conditions:

(*a*) its objective is the pursuit of a public service mission linked to the delivery of the services referred to in sub-regulation (1);

(*b*) profits are reinvested with a view to achieving the organisation's objective. Where profits are distributed

or redistributed, this should be based on participatory considerations;

(*c*) the structures of management or ownership of the organisation performing the contract are based on employee ownership or participatory principles, or require the active participation of employees, users or stakeholders; and

(*d*) the organisation has not been awarded a contract for the services concerned by the contracting authority concerned pursuant to this regulation within the past three years.

(3) The maximum duration of the contract shall not be longer than three years.

(4) The call for competition issued under this Part shall make reference to this regulation.

Procurement by Entities referred to in Schedule 3

Entities referred to in Schedule 3.

166. For the purposes of this Part, contracting authorities listed under Schedule 3 shall administer and determine their own procurement procedure and thus do not require the prior approval of the Director but the written consent by the Head of that same contracting authority shall suffice.

Part V
Aggregation of Procurement

Framework Agreements

Framework agreements. *Amended by: L.N. 56 of 2021.*

167. The authority responsible for the tendering process may conclude framework agreements, provided that they apply the procedures provided for in these regulations.

Duration.

168. The term of a framework agreement shall not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

Parties.

169. These procedures may be applied only between those contracting authorities who are clearly identified for this purpose in the call for competition or the invitation to confirm interest and those economic operators party to the framework agreement as concluded.

Modifications.

170. Contracts based on a framework agreement may under no circumstances entail substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in regulations 171 and 172.

Framework agreement with a single economic operator.

171. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement.

Consultation.

172. For the award of the contracts identified in regulation 173, the authority responsible for the tendering process may consult the

economic operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.

Framework agreement with several economic operators.

173. (1) Where a framework agreement is concluded with more than one economic operator, that framework agreement shall be performed in one of the following ways:

(*a*) following the terms and conditions of the framework agreement, without reopening competition, where it sets out all the terms governing the provision of the works, services and supplies concerned and the objective conditions for determining which of the economic operators, party to the framework agreement, shall perform them; the latter conditions shall be indicated in the procurement documents for the framework agreement;

(*b*) where the framework agreement sets out all the terms governing the provision of the works, services and supplies concerned, partly without reopening of competition in accordance with paragraph (*a*) and partly with reopening of competition amongst the economic operators parties to the framework agreement in accordance with paragraph (*c*), where this possibility has been stipulated by the contracting authorities in the procurement documents for the framework agreement:

Provided that the choice of whether specific works, supplies or services shall be acquired following a reopening of competition or directly on the terms set out in the framework agreement shall be made pursuant to objective criteria, which shall be set out in the procurement documents for the framework agreement. These procurement documents shall also specify which terms may be subject to reopening of competition:

Provided further that the possibilities established under paragraph (*b*) shall also apply to any lot of a framework agreement for which all the terms governing the provision of the works, services and supplies concerned are set out in the framework agreement, regardless of whether all the terms governing the provision of the works, services and supplies concerned under other lots have been set out;

(*c*) where not all the terms governing the provision of the works, services and supplies are laid down in the framework agreement, through reopening competition amongst the economic operators parties to the framework agreement.

(2) The competitions referred to in sub-regulation (1)(*b*) and (*c*) shall be based on the same terms as applied for the award of the framework agreement and, where necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the procurement documents for the framework agreement, in

accordance with the following procedure:

(*a*) for every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of performing the contract;

(*b*) The authorities responsible for the tendering process shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders;

(*c*) tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired;

(*d*) the authorities responsible for the tendering process shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the procurement documents for the framework agreement.

Dynamic Purchase Systems

Dynamic purchasing systems. *Amended by: L.N. 56 of 2021.*

174. (1) For commonly used purchases the characteristics of which, as generally available on the market, meet the requirements of the contracting authorities, contracting authorities may use a dynamic purchasing system.

(2) *Repealed by Legal Notice 56 of 2021.*

(3) The dynamic purchasing system shall be operated as a completely electronic process, and shall be open throughout the period of validity of the purchasing system to any economic operator that satisfies the selection criteria.

(4) It may be divided into categories of products, works or services that are objectively defined on the basis of characteristics of the procurement to be undertaken under the category concerned. Such characteristics may include reference to the maximum allowable size of the subsequent specific contracts or to a specific geographic area in which subsequent specific contracts will be performed.

Applicable rules.

175. (1) In order to procure under a dynamic purchasing system, the authorities responsible for the tendering process shall follow the rules of the restricted procedure as applicable.

(2) All the candidates satisfying the selection criteria shall be admitted to the system, and the number of candidates to be admitted to the system shall not be limited in accordance with regulation 237. Where contracting authorities have divided the system into categories of products, works or services in accordance with regulation 174(3), they shall specify the applicable selection criteria for each category.

(3) Notwithstanding the provisions of regulations 118 to 122:

(*a*) the minimum time limit for receipt of requests to participate shall be thirty days from the date on which

the contract notice is sent to the Publication Office of the European Union or from when the call for competition is published as the case maybe. No further time limits for receipt of requests to participate shall apply once the invitation to tender for the first specific procurement under the dynamic purchasing system has been sent;

(*b*) the minimum time limit for receipt of tenders shall be at least ten days from the date on which the invitation to tender is sent and regulation 121(2) and (3) shall not apply.

Communication.

176. All communications in the context of a dynamic purchasing system shall only be made by electronic means in accordance with regulation 48(1) to (6), (8), (10), (11) and (12).

Obligations of contracting authorities.

177. (1) For the purposes of awarding contracts under a dynamic purchasing system, the authorities responsible for the tendering process shall:

(*a*) publish a call for competition making it clear that a dynamic purchasing system is involved;

(*b*) indicate in the procurement documents at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the dynamic purchasing system, including how the dynamic purchasing system operates, the electronic equipment used and the technical connection arrangements and specifications;

(*c*) indicate any division into categories of products, works or services and the characteristics defining them;

(*d*) offer unrestricted and full direct access, as long as the system is valid, to the procurement documents in conformity with regulation 49.

(2) The authorities responsible for the tendering process shall give any economic operator, throughout the entire period of validity of the dynamic purchasing system, the possibility of requesting to participate in the system under the conditions referred to in regulation 175.

(3) Contracting authorities shall finalise their assessment of the requests identified under sub-regulation (2) in accordance with the selection criteria within ten working days following their receipt.

(4) The deadline established in sub-regulation (3) may be prolonged to fifteen working days in individual cases where justified, in particular because of the need to examine additional documentation or to otherwise verify whether the selection criteria are met.

(5) Notwithstanding the provisions of sub-regulations (2), (3) and (4), as long as the invitation to tender for the first specific procurement under the dynamic purchasing system has not been sent, the authorities responsible for the tendering process may

extend the evaluation period provided that no invitation to tender is issued during the extended evaluation period. The authorities responsible for the tendering process shall indicate in the procurement documents the length of the extended period that they intend to apply.

(6) The authorities responsible for the tendering process shall inform the economic operator concerned at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.

(7) The authorities responsible for the tendering process shall invite all admitted participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with regulation 50. Where the dynamic purchasing system has been divided into categories of works, products or services, the authorities responsible for the tendering process shall invite all participants having been admitted to the category corresponding to the specific procurement concerned to submit a tender.

(8) They shall award the contract to the tenderer that submitted the best tender on the basis of the award criteria set out in the contract notice for the dynamic purchasing system. Those criteria may, where appropriate, be formulated more precisely in the invitation to tender.

Updated self-declarations.

178. (1) The authorities responsible for the tendering process may, at any time during the period of validity of the dynamic purchasing system, require admitted participants to submit a renewed and updated self-declaration as provided for in regulations 225, 226 and 227, within five working days from the date on which that request is transmitted.

(2) The provisions of regulation 229 shall apply throughout the entire period of validity of the dynamic purchasing system.

Period of validity.

179. The authorities responsible for the tendering process shall indicate the period of validity of the dynamic purchasing system in the call for competition. They shall notify the Commission of any change in the period of validity, using the following standard forms:

(a) where the period of validity is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;

(*b*) where the system is terminated, a contract award notice referred to in regulation 43.

Charges.

180. No charges may be billed prior to or during the period of validity of the dynamic purchasing system to the economic operators interested in or party to the dynamic purchasing system.

Electronic Auctions

Electronic auctions. *Amended by: L.N. 56 of 2021.*

181. The authorities responsible for the tendering process may use electronic auctions, in which new prices, revised downwards, and, or new values concerning certain elements of tenders are presented.

Structure.

182. (1) The electronic auction shall be structured as a repetitive electronic process, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

(2) Certain public service contracts and certain public works contracts having as their subject-matter intellectual performances, such as the design of works, which cannot be ranked using automatic evaluation methods, shall not be the object of electronic auctions.

Use of electronic auction in other modes of procurement.

183. (1) In open or restricted procedures or competitive procedures with negotiation with an estimated value falling under regulation 9(1)(*b*), the authorities responsible for the tendering process may decide that the award of a public contract shall be preceded by an electronic auction when the content of the procurement documents, in particular the technical specifications, can be established with precision.

(2) In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework agreement as provided for in regulation 173(2)(*b*) or (*c*) and on the opening for competition of contracts to be awarded under the dynamic purchasing system.

Elements.

184. The electronic auction shall be based on one of the following elements of the tenders:

(*a*) solely on prices where the contract is awarded on the basis of price only;

(*b*) on prices and, or on the new values of the features of the tenders indicated in the procurement documents where the contract is awarded on the basis of the best price-quality ratio or to the tender with the lowest cost using a cost-effectiveness approach.

Disclosure.

185. The authorities responsible for the tendering process which decide to hold an electronic auction shall state that fact in the contract notice or in the invitation to confirm interest as the case maybe. The procurement documents shall include at least the information set out in Schedule 10.

Initial evaluation.

186. Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criterion or criteria and with the weighting fixed for them.

Admissibility of tenders.

187. (1) A tender shall be considered admissible where it has been submitted by a tenderer, who has not been excluded pursuant to Part VI and who meets the selection criteria, and whose tender is

in conformity with the technical specifications without being irregular or unacceptable or unsuitable.

(2) In particular, tenders which do not comply with the procurement documents, which were received late, where there is evidence of collusion or corruption, or which have been found by the contracting authority to be abnormally low, shall be considered as being irregular. In particular tenders submitted by tenderers that do not have the required qualifications, and tenders whose price exceeds the contracting authority's budget as determined and documented prior to the launching of the procurement procedure shall be considered as unacceptable.

(3) A tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting authority's needs and requirements as specified in the procurement documents. A request for participation shall be considered not to be suitable where the economic operator concerned is to be or may be excluded pursuant to Part VI or does not meet the selection criteria set out by the contracting authority pursuant to regulation 217.

Invitation of admissible tenders.

188. (1) All tenderers that have submitted admissible tenders shall be invited simultaneously to participate in the electronic auction using, as of the specified date and time, the connections in accordance with the instructions set out in the invitation. The electronic auction may take place in a number of successive phases. The electronic auction shall not start sooner than two working days after the date on which invitations are sent out.

(2) The invitation shall be accompanied by the outcome of a full evaluation of the relevant tender, carried out in accordance with the weighting provided for in regulation 239(7).

(3) The invitation shall also state the mathematical formula to be used in the electronic auction to determine the automatic re-rankings on the basis of the new prices and, or new values submitted. Except where the most economically advantageous offer is identified on the basis of price alone, that formula shall incorporate the weighting of all the criteria established to determine the most economically advantageous tender, as indicated in the notice used as a means of calling for competition or in other procurement documents. For that purpose, any ranges shall, however, be reduced beforehand to a specified value.

(4) Where variants are authorised, a separate formula shall be provided for each variant.

Communication.

189. Throughout each phase of an electronic auction the authorities responsible for the tendering process shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. They may, where this has been previously indicated, communicate other information concerning other prices or values submitted. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an

electronic auction.

Closing.

190. (1) The authorities responsible for the tendering process shall close an electronic auction in one or more of the following manners:

(*a*) at the previously indicated date and time;

(*b*) when they receive no more new prices or new values which meet the requirements concerning minimum differences, provided that they have previously stated the time which they will allow to elapse after receiving the last submission before they close the electronic auction; or

(*c*) when the previously indicated number of phases in the auction has been completed.

(2) Where the authorities responsible for the tendering process intend to close an electronic auction in accordance with sub-regulation (1)(*c*) possibly in combination with the arrangements laid down in sub-regulation (1)(*b*), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

(3) After closing an electronic auction the authorities responsible for the tendering process shall award the contract in accordance with the provisions of regulation 239 on the basis of the results of the electronic auction.

Part VI
Exclusion and Black Listing of Economic Operators

General Prohibition

Excluded or black listed economic operators.

191. (1) No economic operator or sub-contractor shall be given a public contract if he is subject to any of the exclusion or black listing grounds mentioned under this Part.

(2) If, during a procurement process, a sub-contractor is excluded or black listed, the authority responsible for the tendering process or the Director shall require that the economic operator replaces the excluded or black listed subcontractor.

(3) If the economic operator does not replace the sub-contractor within the time-frame given in writing by the authority responsible for the tendering process or Director, the tender of that economic operator shall be automatically excluded from the award.

Exclusion of Economic Operators

Exclusion on grounds of conviction.

192. (1) The authority responsible for the tendering process shall exclude an economic operator from participation in a procurement procedure where it has established or is otherwise made aware that such an economic operator has been the subject of a conviction by final judgment having the nature of a *res judicata* for one of the following reasons:

(*a*) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA or an equivalent offence under Maltese law or as defined in the national law of the economic operator;

(*b*) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2(1) of Council Framework Decision 2003/568/JHA or an equivalent offence under Maltese law or as defined in the national law of the economic operator;

(*c*) fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests or an equivalent offence under Maltese law or as defined in the national law of the economic operator;

(*d*) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA respectively, or inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision or an equivalent offence under Maltese law or as defined in the national law of the economic operator;

(*e*) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council or an equivalent offence under Maltese law or as defined in the national law of the economic operator;

(*f*) child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council or an equivalent offence under Maltese law or as defined in the national law of the economic operator.

(2) The exclusion of the economic operator shall also operate and apply where the person convicted by final judgment is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein.

(3) Without prejudice to the possibility mentioned in regulation 195, the period of exclusion for the grounds identified under this regulation shall be of five years starting from the date when the judgment has become final.

Exclusion for failure to abide with obligations concerning taxes or social contributions.

193. (1) An economic operator shall likewise be excluded from participation in a procurement procedure where the authority responsible for the tendering process is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions and where this has been established by a local or foreign judicial or administrative decision having final and binding effect.

(2) The authorities responsible for the tendering process are also entitled to exclude an economic operator from participation in a procurement procedure if they can demonstrate by any appropriate means that the economic operator is in breach of its obligations relating to the payment of taxes or social security

contributions, even in the absence of a local or foreign judicial or administrative decision.

(3) The term 'appropriate means' under this regulation includes any certificate, declaration or documentation issued by a competent entity which demonstrate that the economic operator is in breach of its obligations relating to the payment of taxes and, or social security contributions.

(4) The exclusion mentioned under this regulation shall no longer apply if the economic operator fulfils his obligations by paying or by entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines.

Other grounds of exclusion.

194. A contract shall also not be awarded to an economic operator who, during the procurement procedure for that contract:

(*a*) is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under national laws and regulations;

(*b*) is subject to a conflict of interests as referred to under the definition in regulation 2 which cannot be effectively remedied by other less intrusive measures;

(*c*) has been involved in the preparation of the procurement procedure, unless such an exclusion cannot be remedied by other, less intrusive measures.

Removal of exclusion.

195. (1) An economic operator that is in one of the situations referred to in regulations 192 and 194 may provide, in his offer or bid, evidence to the effect that he took sufficient measures to demonstrate his reliability despite the existence of a relevant ground for exclusion. If such evidence at evaluation stage is considered as sufficient by the authority responsible for the tendering process, the economic operator concerned shall not be excluded from the procurement procedure.

(2) The economic operator shall be deemed to have shown his reliability if he proves that he has paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

(3) The measures taken by the economic operators shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered to be insufficient, the economic operator shall receive a statement of the reasons for that decision.

(4) The economic operator shall not be entitled to make use of

the possibility to remove the exclusion as provided in this regulation if the period of exclusion from participating in procurement award procedures has been established by a final judgment.

Exclusion at the evaluation stage.

196. The authority responsible for the tendering process shall exclude economic operators at any time during the procedure leading to the award of the contract when it transpires out that the economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in regulations 192, 193 and 194.

Waiver.

197. On an exceptional basis only, the authority responsible for the tendering process may with the prior approval in writing of the Minister dispense from any exclusion mentioned under this Part for overriding reasons relating to the public interest.

Action to the excluded economic operator.

198. Any economic operator who feels aggrieved by a decision to exclude him from participating in a procurement procedure may file an objection before the Public Contracts Review Board in the same manner as provided for in regulation 270.

Black Listing by the Director

Black listing by the Director.
Amended by: L.N. 195 of 2019.

199. The Director is empowered to black list an economic operator from participating in a procurement procedure where:

(*a*) the economic operator has been declared guilty by any court or tribunal of an offence relating to labour law including those found in the Employment and Industrial Relations Act or any subsidiary legislation made under that Act; or

Cap. 452.

(*b*) the economic operator has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata* in accordance with the laws of Malta, which renders its integrity questionable; or

(*c*) the Director has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition; or

(*d*) the Director has been informed in writing by a contracting authority that an economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement in a public contract, or a public concession contract, which led to early termination of that contract, damages or other comparable sanctions; or

(*e*) the economic operator has been declared guilty by any court or tribunal of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria, has withheld such

information or is not able to submit the supporting documents required pursuant to regulation 226;

(*f*) the economic operator has undertaken to unduly influence the decision-making process of the contracting authority, to obtain confidential information that may confer upon it undue advantages in the procurement procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, award or selection;

(*g*) it can demonstrated by any appropriate means that in the execution of public contracts the economic operator is in violation of applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Schedule 13.

Disclosure of the decision. *Amended by: L.N. 233 of 2017.*

200. The Director shall inform the economic operator in question of his decision to black list him by means of a registered letter or judicial letter as provided for under the Code of Organization and Civil Procedure detailing the appropriate grounds.

Remedy available to the economic operator.

201. (1) Any economic operator who feels aggrieved by such a decision may file an objection before the Commercial Sanctions Tribunal as provided in regulation 205.

(2) In default of an objection by the economic operator the decision of the Director shall be final and the black listing period shall be effective for two years from the date of the decision. In the event of an objection, the decision to black list shall become final from the date when the objection has been finally decided by the Commercial Sanctions Tribunal or the Court of Appeal, as the case may be.

Defence.

202. (1) An economic operator may, before the Commercial Sanctions Tribunal, use as a defence against his black listing, the argument that he has taken measures that are sufficient to demonstrate his reliability despite the existence of a relevant ground for black listing. If such evidence is considered as sufficient, the economic operator concerned shall not be black listed from the procurement procedure.

(2) The economic operator shall prove that he has paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

(3) The measures taken by the economic operators shall be evaluated by the Commercial Sanctions Tribunal taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the Commercial Sanctions Tribunal

shall deem the measures as insufficient, it will include the reasons for such a decision in its judgment.

Effects of black listing.

203. (1) An economic operator which has been black listed by a final judgment from participating in procurement procedures shall not be entitled to make use of the possibility provided for under regulation 202 during the period of exclusion resulting from that judgment.

(2) Once the economic operator has been black listed he shall be excluded from the award of any public contract or any contract, quotation or direct-contract for the period of his black listing.

Action before the Commercial Sanctions Tribunal.

204. The economic operator who has been informed by the Director that he will be black listed can file an appeal before the Commercial Sanctions Tribunal.

Procedure. *Amended by: L.N. 26 of 2018.*

205. (1) The appeal shall be filed within ten days from the date in which the or registered letter or judicial letter identified under regulation 200 shall be notified to the appellant.

(2) The appeal shall be valid only if accompanied by a deposit of four hundred euro (€400).

(3) The Secretary of the Tribunal shall immediately serve a copy of the appeal to the Director thereby informing the latter that an appeal had been filed.

(4) The appeal shall also be affixed to the notice-board of the Tribunal.

(5) The Director may, within ten days from the day on which the appeal is notified to him, file a written reply. The reply shall also be affixed to the notice-board of the Tribunal.

(6) The Director shall forward to the chairman of the Tribunal all documentation pertaining to the black listing of the appellant.

(7) The tribunal shall then set a date for the oral hearing.

(8) When the oral hearing is concluded, the Tribunal, if it does not deliver the decision on the same day, shall reserve decision for the earliest possible date to be fixed for the purpose, but not later than six weeks from the day in which the written pleadings are deemed to be closed:

Provided that for serious and justified reasons expressed in writing by means of an order notified to all the parties, the Tribunal may postpone the judgment for a later period.

(9) The secretary of the board shall keep a record of the grounds of each adjournment and of everything done in each sitting.

Black Listing by the Director of Employment and Industrial Relations

Black listing due to unfair employment conditions.

206. (1) The Director of Employment and Industrial Relations shall request the Commercial Sanctions Tribunal to black list a person, whether natural or legal, from participating in procedures for the award of public contracts if such person:

(*a*) has failed to provide his employees with a written contract of service; or

(*b*) has failed to provide his employees with a detailed pay slip containing all relevant details including amount paid, normal hours worked, overtime hours, hours worked on Sundays and public holidays, hours availed of a leave or sick leave, a breakdown of bonuses and allowances as well as deductions made; or

(*c*) has failed to deposit wages or salaries by direct payment in the employee's bank account; or

(*d*) has failed to provide the relevant bank statements of wages and salaries' deposit and copies of the detailed payslips, which are to be made available as and when required by the Director of Employment and Industrial Relations; or

(*e*) has subcontracted a public contract to another person employing the same employees of the principal contractor to carry out the same or similar duties for the execution of the said public contract.

(2) When the Director of Employment and Industrial Relations requests to black list a legal person, apart from the legal person, he may also request the black listing of natural persons who represent that legal person.

Role and investigations of the Director of Employment and Industrial Relations.

207. It shall be the function of the Director of Employment and Industrial Relations to ensure that the conditions mentioned in regulation 206 are observed by all persons.

Process before the Commercial Sanctions Tribunal for instances provided under regulation 206.

208. With regards to instances provided for under regulation 206, the Director of Employment and Industrial Relations shall proceed for the black listing of a person before the Commercial Sanctions Tribunal by means of an application.

Written pleadings.
Amended by: L.N. 26 of 2018; L.N. 176 of 2018.

209. (1) The application shall contain a statement of the facts and the grounds of the cause for black listing. It shall also contain a detailed report on the findings of the investigations carried out by the Director of Employment and Industrial Relations or a copy of the decision given by the Court.

Amended by: L.N. 26 of 2018.

(2) The application and all the documents supporting the application shall be served on the defendant by or registered letter judicial letter, who shall have twenty days to file a reply. The reply shall be accompanied by a deposit of four hundred euro (€400) payable to the Secretary of the Commercial Sanctions Tribunal and shall contain all documentation in support of the reply.

(3) If the registered letter or judicial letter mentioned in sub-regulation (2) is not notified to the defendant, it shall be the responsibility of the Director of Employment and Industrial Relations to cause a copy of the application and all the documents attached with the application to be served on the defendant, and such service shall be effected through the mode of service established in article 187 of the Code of Organization and Civil Procedure. Cap. 12.

The fees mentioned in paragraph 6 of Tariff A of Schedule A of the Code of Organization and Civil Procedure shall apply to such service. Cap. 12.

(4) The defendant shall cause a copy of the reply to be served on the Director of Employment and Industrial Relations.

(5) The written pleadings shall be deemed to be closed upon the expiration of the time referred to in sub-regulation (3).

Hearing. *Amended by: L.N. 176 of 2018.*

210. (1) The Secretary of the Commercial Sanctions Tribunal shall notify the Director of Employment and Industrial Relations and the defendant of the date on which the first hearing will be held. The notice of hearing shall be communicated by the Secretary to the defendant together with the application and documents mentioned in sub-regulation (2) of regulation 209.

(2) When the hearing is concluded, the Commercial Sanctions Tribunal, if it does not deliver decision on the same day, shall reserve decision for the earliest possible date to be fixed for the purpose, but not later than four months from the date when the written pleadings are deemed to be closed:

Provided that, for serious and justified reasons expressed in writing by means of an order notified to all the parties, the Commercial Sanctions Tribunal may postpone the judgment to a later period.

Evaluation.

211. After evaluating all the evidence and after considering all submissions put forward by the parties, the Commercial Sanctions Tribunal shall decide whether to accede or reject to the request made by the Director of Employment and Industrial Relations for the black listing of the defendant:

Provided that the Commercial Sanctions Tribunal may, after considering measures taken by the defendant to remedy the situation and after taking into account the gravity and particular circumstances of the misconduct, decide to deliver a warning to the defendant, instead of black listing the defendant.

Black listing period.

212. If the Commercial Sanctions Tribunal decides for the black listing of the defendant, the black listing period shall be between six months and one year:

Provided that where the defendant repeats the misconduct the black listing period shall be between one and three years.

Decision.

213. In its decision the Commercial Sanctions Tribunal shall recommend as to whether any deposit, or part thereof, submitted by defendant should be refunded.

Appeal.

214. The final decision of the Commercial Sanctions Tribunal may be appealed before the Court of Appeal and such process shall be regulated *mutatis mutandis* as provided in regulations 284, 285, 286, 288 and 290.

Effects of black listing.

215. (1) The effects of black listing shall commence on the lapse of two months from the day when the decision of the black listing has become final.

(2) All existing contracts signed by the central government authority, contracting authorities and bodies governed by public law with persons who have been black listed in terms of regulation 207 shall be terminated *ipso jure* without any compensation for actual and future losses from the date on which the decision regarding the black listing becomes final.

Offences

Offences.

216. Any person who enters into a contract, whether in his own name or on behalf of others, in contravention of any of the provisions of this Part, and any person who induces any other person to enter into or appear on any such contract as aforesaid or the making thereof, or who aids or abets any of the aforesaid acts, shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding two thousand euro (€2,000).

Part VII

Choice of participants and award of contracts

Selection Criteria

Selection criteria.

217. (1) Selection criteria may relate to:

(*a*) suitability to pursue the professional activity;

(*b*) economic and financial standing;

(*c*) technical and professional ability.

(2) Contracting authorities may only impose criteria referred to under this regulation on economic operators as requirements for participation. Any of the requirements imposed shall be limited to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the technical and professional abilities to perform the contract to be awarded. All requirements shall be related and proportionate to the subject-matter of the contract.

(3) As to the suitability to pursue the professional activity, contracting authorities may require economic operators to be enrolled in one of the professional or trade registers, as described in Annex XI of Directive 2014/24/EU.

(4) In procurement procedures for services, in so far as economic operators have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the contracting authority may require them to prove that they hold such authorisation or membership.

Economic and financial standing.

218. As to economic and financial standing, contracting authorities may impose requirements ensuring that economic operators possess the necessary economic and financial capacity to perform the contract. For that purpose, contracting authorities may require, in particular, that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract. In addition, contracting authorities may require that economic operators provide information on their annual accounts showing the ratios, for instance, between assets and liabilities. They may also require an appropriate level of professional risk indemnity insurance.

Minimum yearly turnover.

219. (1) The minimum yearly turnover that economic operators are required to have shall not exceed two times the estimated contract value, except in duly justified cases such as relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate the main reasons for such a requirement in the procurement documents or the individual report referred to in regulations 113 or 241, as the case may be.

(2) The ratio, for instance, between assets and liabilities may be taken into consideration where the contracting authority specifies the methods and criteria for such consideration in the procurement documents. Such methods and criteria shall be transparent, objective and non-discriminatory.

Contract divided in lots.

220. Where a procurement document including a tender is divided into lots, regulations 217 to 224 shall apply in relation to each individual lot. However, the contracting authority may set the minimum yearly turnover that economic operators are required to have by reference to groups of lots in the event that the successful tenderer is awarded several lots to be executed at the same time.

Framework agreements.

221. Where contracts based on a framework agreement are to be awarded following a reopening of competition, the maximum yearly turnover requirement referred to in regulation 219(1) shall be calculated on the basis of the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the framework agreement. In the case of dynamic purchasing systems, the maximum yearly turnover requirement referred to in regulation 219(1) shall be calculated on the basis of the expected maximum size of specific contracts to be awarded under that system.

Technical and professional ability.

222. (1) As to technical and professional ability, contracting authorities may impose requirements ensuring that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard.

(2) Contracting authorities may require, in particular, that economic operators have a sufficient level of experience demonstrated by suitable references from contracts performed in the past. A contracting authority may assume that an economic operator does not possess the required professional abilities where

the contracting authority has established that the economic operator has conflicting interests which may negatively affect the performance of the contract.

Supplies requiring siting or installation work, services or works.

223. In procurement procedures for supplies requiring siting or installation work, services or works, the professional ability of economic operators to provide the service or to execute the installation or the work may be evaluated with regard to their skills, efficiency, experience and reliability.

Conditions must be specified.

224. Contracting authorities shall indicate the required conditions of participation which may be expressed as minimum levels of ability, together with the appropriate means of proof, in the contract notice or in the invitation to confirm interest.

European Single Procurement Document.

225. (1) At the time of submission of requests to participate or of tenders, both having an estimated value which falls under regulation 9(1)(*b*), contracting authorities shall accept the European Single Procurement Document (ESPD), consisting of an updated self-declaration as preliminary evidence in replacement of certificates issued by public authorities or third parties confirming that the relevant economic operator fulfils the following conditions:

(*a*) it is not in one of the situations referred to in Part VI in which economic operators shall or may be excluded;

(*b*) it meets the relevant selection criteria that have been set out pursuant to regulation 217;

(*c*) where applicable, it fulfils the objective rules and criteria that have been set out pursuant to regulation 237.

(2) Where the economic operator relies on the capacities of other entities pursuant to regulation 235, the ESPD shall also contain the information referred to in sub-regulation (1)(*a*) in respect of such entities.

Content of the ESPD.

226. (1) The ESPD shall consist of a formal statement by the economic operator that the relevant ground for exclusion does not apply and, or that the relevant selection criterion is fulfilled and shall provide the relevant information as required by the contracting authority. The ESPD shall further identify the public authority or third party responsible for establishing the supporting documents and contain a formal statement to the effect that the economic operator will be able, upon request and without delay, to provide those supporting documents.

(2) Where the contracting authority can obtain the supporting documents directly by accessing a database pursuant to regulation 229(3), the EPSD shall also contain the information required for this purpose, such as the internet address of the database, any identification data and, where applicable, the necessary declaration of consent.

Re-use.

227. Economic operators may re-use an ESPD which has already been used in a previous procurement procedure, provided that they

confirm that the information contained therein continues to be correct.

Form.

228. The ESPD shall be drawn up on the basis of a standard form and shall be provided exclusively in electronic form.

Further documents.

229. (1) A contracting authority may ask tenderers and candidates at any moment during the procedure to submit all or part of the supporting documents where this is necessary to ensure the proper conduct of the procedure.

(2) Before awarding the contract, the contracting authority shall, except in respect of contracts based on framework agreements where such contracts are concluded in accordance with regulations 172 and 173, require the tenderer to which it has decided to award the contract to submit up-to-date supporting documents in accordance with regulations 230, 231 and 232 as applicable and, where appropriate, regulation 235. The contracting authority may invite economic operators to supplement or clarify the certificates received pursuant to regulations 230 to 234.

(3) Notwithstanding the provisions of sub-regulations (1) and (2), economic operators shall not be required to submit supporting documents or other documentary evidence where and in so far as the contracting authority has the possibility of obtaining the certificates or the relevant information directly by accessing a national database in any Member State that is available free of charge, such as a national procurement register, a virtual company dossier, an electronic document storage system or a pre-qualification system.

(4) Notwithstanding the provisions of sub-regulations (1) and (2), economic operators shall not be required to submit supporting documents where the contracting authority, having awarded the contract or concluded the framework agreement, already possesses these documents.

Means of proof related to the exclusion and black listing of economic operators.

230. (1) Contracting authorities may require the certificates, statements and other means of proof referred to in this regulation as well as regulations 231 and 232 as evidence for the absence of grounds for exclusion as referred to in Part VI and for the fulfilment of the selection criteria in accordance with regulation 217.

(2) Contracting authorities shall not require means of proof other than those referred to in this regulation and regulations 231, 232 and 234. In respect of regulation 235, economic operators may rely on any appropriate means to prove to the contracting authority that they will have the necessary resources at their disposal.

(3) Contracting authorities shall accept the following as sufficient evidence that none of the cases specified in regulations 192, 193, 194 and 199 apply to the economic operator:

(*a*) as regards regulation 192, the production of an extract from the relevant register, such as judicial records or, failing that, of an equivalent document issued by a competent judicial or administrative authority in the

Member State or country of origin or the country where the economic operator is established showing that those requirements have been met;

(*b*) as regards regulations 193 and 194(*a*), a certificate issued by the competent authority in the Member State or country concerned.

(4) Where the Member State or country in question does not issue the documents or certificates referred to in sub-regulation (3), or where these do not cover all the cases specified in regulations 192, 193 and 194(*a*), they may be replaced by a declaration on oath or, in Member States or countries where there is no provision for declarations on oath, by a solemn declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body, in the Member State or country of origin or in the Member State or country where the economic operator is established.

(5) The Director shall, where relevant, provide an official declaration stating that the documents or certificates referred to in this sub-regulation are not issued or that they do not cover all the cases specified in regulations 192, 193 and 194(*a*). Such official declarations shall be made available through the online repository of certificates (e-Certis).

Means of proof for financial standing.

231. (1) Proof of the economic operator's economic and financial standing may, as a general rule, be provided by one or more of the following:

(*a*) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;

(*b*) the presentation of financial statements or extracts from the financial statements, where publication of financial statements is required under the law of the country in which the economic operator is established;

(*c*) a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last three financial years available, depending on the date on which the undertaking was set up or the economic operator started trading, as far as the information on these turnovers is available.

(2) Where, for any valid reason, the economic operator is unable to provide the references requested by the contracting authority, it may prove its economic and financial standing by any other document which the contracting authority considers appropriate.

Means of proof for technical abilities.

232. Evidence of the economic operators' technical abilities may be provided by one or more of the following means, in accordance with the nature, quantity or importance, and use of the works, supplies or services:

(*a*) by means of the following lists:

(i) a list of the works carried out, at most, over the past five years, accompanied by certificates of satisfactory execution and outcome for the most important works; where necessary in order to ensure an adequate level of competition, contracting authorities may indicate that evidence of relevant works carried out more than five years before will be taken into account;

(ii) a list of the principal deliveries effected or the main services provided over, at the most, the past three years, with the sums, dates and recipients, whether public or private, involved. Where necessary in order to ensure an adequate level of competition, contracting authorities may indicate that evidence of relevant supplies or services delivered or performed more than three years before will be taken into account;

(*b*) an indication of the technicians or technical bodies involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control and, in the case of public works contracts, those upon whom the contractor can call in order to carry out the work;

(*c*) a description of the technical facilities and measures used by the economic operator for ensuring quality and the undertaking's study and research facilities;

(*d*) an indication of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract;

(*e*) where the products or services to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authorities or on their behalf by a competent official body of the country in which the supplier or service provider is established, subject to that body's agreement, on the production capacities of the supplier or the technical capacity of the service provider and, where necessary, on the means of study and research which are available to it and the quality control measures it will operate;

(*f*) the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff, provided that they are not evaluated as an award criterion;

(*g*) an indication of the environmental management measures that the economic operator will be able to apply when performing the contract;

(*h*) a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last three years;

(*i*) a statement of the tools, plant or technical equipment

available to the service provider or contractor for carrying out the contract;

(*j*) an indication of the proportion of the contract which the economic operator intends possibly to subcontract;

(*k*) with regard to the products to be supplied:

(i) samples, descriptions or photographs, the authenticity of which must be certified where the contracting authority so requests;

(ii) certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to technical specifications or standards.

Online repository of certificates (e-Certis).

233. (1) With a view to facilitating cross-border tendering, the Government of Malta shall ensure that the information concerning certificates and other forms of documentary evidence introduced in e-Certis established by the Commission is constantly kept up-to-date.

(2) Contracting authorities shall have recourse to e-Certis and shall require primarily such types of certificates or forms of documentary evidence that are covered by e-Certis.

Quality assurance standards and environmental management standards.

234. (1) Contracting authorities shall, where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures where the economic operator concerned had no possibility of obtaining such certificates within the relevant time limits for reasons that are not attributable to that economic operator provided that the economic operator proves that the proposed quality assurance measures comply with the required quality assurance standards.

(2) Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management systems or standards, they shall refer to the Eco-Management and Audit Scheme (EMAS) of the Union or to other environmental management systems as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States.

(3) Where an economic operator had demonstrably no access to the certificates mentioned in sub-regulation (2), or no possibility of obtaining them within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority shall also accept other evidence of environmental management

measures, provided that the economic operator proves that these measures are equivalent to those required under the applicable environmental management system or standard.

Reliance on the capacities of other entities.

235. (1) With regard to criteria relating to economic and financial standing as set out pursuant to regulations 218 to 221, and to criteria relating to technical and professional ability as set out pursuant to regulations 222 and 223, an economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. With regard to criteria relating to the educational and professional qualifications as set out in regulation 232(f), 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 authority that it will have at its disposal the resources necessary, for example, by producing a commitment by those entities to that effect.

(2) The contracting authority shall, in accordance with regulations 225 to 233, verify whether the entities on whose capacity the economic operator intends to rely, fulfils the relevant selection criteria and whether he falls under any ground established under Part VI. The contracting authority shall require that the economic operator replaces an entity which does not meet a relevant selection criterion, or in respect of which there are grounds for exclusion or has been black listed under Part VI.

(3) Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, the contracting authority may require that the economic operator and those entities be jointly liable for the execution of the contract.

(4) Under the same conditions, a group of economic operators as referred to in regulation 58 may rely on the capacities of participants in the group or of other entities.

(5) In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, contracting authorities may require that certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators as referred to in regulation 58, by a participant in that group.

Official lists.

236. The Minister shall have the authority to establish regulations for drawing up of official lists of approved economic operators and certification by bodies established under public or private law.

Reduction of numbers of candidates, tenders and solutions

Reduction of the number of otherwise qualified candidates to be invited to participate.

237. (1) In restricted procedures, competitive procedures with negotiation, competitive dialogue procedures and innovation partnerships, with an estimated value which falls under regulation 9(1)(b), contracting authorities may limit the number of candidates meeting the selection criteria that they will invite to tender or to conduct a dialogue, provided the minimum number, in accordance with sub-regulation (2), of qualified candidates is available.

(2) The contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, the objective and non-discriminatory criteria or rules they intend to apply, the minimum number of candidates they intend to invite and, where appropriate, the maximum number.

(3) In the restricted procedure the minimum number of candidates shall be five. In the competitive procedure with negotiation, in the competitive dialogue procedure and in the innovation partnership the minimum number of candidates shall be three. In any event the number of candidates invited shall be sufficient to ensure genuine competition.

(4) The contracting authorities shall invite a number of candidates at least equal to the minimum number. However, where the number of candidates meeting the selection criteria and the minimum levels of ability as referred to in regulation 224 is below the minimum number, the contracting authority may continue the procedure by inviting the candidates with the required capabilities. In the context of the same procedure, the contracting authority shall not include economic operators that did not request to participate, or candidates that do not have the required capabilities.

Reduction of the number of tenders and solutions.

238. Where contracting authorities exercise the option of reducing the number of tenders to be negotiated as provided for in regulation 127(4) or of solutions to be discussed as provided for in regulation 146, they shall do so by applying the award criteria stated in the procurement documents. In the final stage, the number arrived at shall make for genuine competition in so far as there are enough tenders, solutions or qualified candidates.

Award of Contract

Award criteria.

239. (1) Without prejudice to regulations or administrative provisions concerning the price of certain supplies or the remuneration of certain services, contracting authorities shall base the award of public contracts on the most economically advantageous tender.

(2) The most economically advantageous tender from the point of view of the contracting authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with regulation 240, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and, or social aspects, linked to the subject-matter of the public contract in question. Such criteria may comprise, for instance:

(*a*) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;

(*b*) organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or

(*c*) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

(3) The cost element may also take the form of a fixed price or cost on the basis of which economic operators will compete on quality criteria only.

(4) Award criteria shall be considered to be linked to the subject-matter of the public contract where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their life cycle, including factors involved in:

(*a*) the specific process of production, provision or trading of those works, supplies or services; or

(*b*) a specific process for another stage of their life cycle.

(5) Award criteria shall be considered to be linked to the subject-matter of the public contract even where the factors established in sub-regulation (4) do not form part of their material substance.

(6) Award criteria shall not have the effect of conferring an unrestricted freedom of choice on the contracting authority. They shall ensure the possibility of effective competition and shall be accompanied by specifications that allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria. In case of doubt, contracting authorities shall verify effectively the accuracy of the information and proof provided by the tenderers.

(7) The contracting authority shall specify, in the procurement documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender, except where this is identified on the basis of price alone.

(8) Those weightings may be expressed by providing for a range with an appropriate maximum spread.

(9) Where weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in decreasing order of importance.

Life-cycle costing.

240. (1) Life-cycle costing shall to the extent relevant cover parts or all of the following costs over the life cycle of a product, service or works:

(*a*) costs, borne by the contracting authority or other users, such as:

(i) costs relating to acquisition;

(ii) costs of use, such as consumption of energy and other resources;

(iii) maintenance costs;

(iv) end of life costs, such as collection and recycling costs;

(*b*) costs imputed to environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified; such costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

(2) Where contracting authorities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the data to be provided by the tenderers and the method which the contracting authority will use to determine the life-cycle costs on the basis of those data.

(3) The method used for the assessment of costs imputed to environmental externalities shall fulfil all of the following conditions:

(*a*) it is based on objectively verifiable and non-discriminatory criteria. In particular, where it has not been established for repeated or continuous application, it shall not unduly favour or disadvantage certain economic operators;

(*b*) it is accessible to all interested parties;

(*c*) the data required can be provided with reasonable effort by normally diligent economic operators, including economic operators from third countries party to the GPA or other international agreements by which the Union is bound.

(4) Whenever a common method for the calculation of life-cycle costs has been made mandatory by a legislative act of the Union, that common method shall be applied for the assessment of life-cycle costs.

(5) A list of the common methods of calculation mentioned in sub-regulation (4) is established in Annex XIII of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement.

Individual reports on procedures for the award of contracts.

241. (1) This regulation shall apply to every contract or framework agreement covered by these regulations, and every time a dynamic purchasing system is established, where the estimated value of such procedures falls under regulation 9(1)(b).

(2) For every contract or framework agreement covered by these regulations, and every time a dynamic purchasing system is established, contracting authorities shall draw up a written report which shall include at least the following:

(*a*) the name and address of the contracting authority, the

subject-matter and value of the contract, framework agreement or dynamic purchasing system;

(*b*) where applicable, the results of the qualitative selection and, or reduction of numbers pursuant to regulations 237 and 238, namely:

(i) the names of the selected candidates or tenderers and the reasons for their selection;

(ii) the names of the candidates or tenderers rejected and the reasons for their rejection;

(*c*) the reasons for the rejection of tenders found to be abnormally low;

(*d*) the name of the successful tenderer and the reasons why its tender was selected and, where known, the share of the contract or framework agreement which the successful tenderer intends to subcontract to third parties; and, where known at this point in time, the names of the main contractor's subcontractors, if any;

(*e*) for competitive procedures with negotiations and competitive dialogues, the circumstances as laid down in regulations 123 to 127 and 140 to 149 which justify the use of those procedures;

(*f*) for negotiated procedures without prior publication, the circumstances referred to in regulations 150 to 156 which justify the use of this procedure;

(*g*) where applicable, the reasons why the contracting authority has decided not to award a contract or framework agreement or to establish a dynamic purchasing system;

(*h*) where applicable, the reasons why other means of communication than electronic means have been used for the submission of tenders;

(*i*) where applicable, conflicts of interests detected and subsequent measures taken.

(3) This report shall not be required in respect of contracts based on framework agreements where these are concluded in accordance with regulations 171, 172 or 173(1)(*a*).

(4) To the extent that the contract award notice drawn up pursuant to regulation 49 or regulation 163(2) contains the information required in this regulation, contracting authorities may refer to that notice.

(5) Contracting authorities shall document the progress of all procurement procedures, whether or not those are conducted by electronic means. To that end, they shall ensure that they keep sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as documentation on communications with economic operators and internal deliberations, preparation of the procurement documents, dialogue or negotiation if any, selection and award of the contract. The documentation shall be kept for a period of at least three years from

the date of award of the contract.

(6) The report, or its main elements, shall be communicated to the Commission or the competent authorities, bodies or structures where they so request.

Informing candidates and tenderers.

242. (1) The authority responsible for the tendering process shall inform each candidate and tenderer of decisions reached concerning the conclusion of a framework agreement, the award of the contract or admittance to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement, not to award a contract for which there has been a call for competition, to recommence the procedure or not to implement a dynamic purchasing system.

(2) On request from the candidate or tenderer concerned, the authority responsible for the tendering process shall as quickly as possible, and in any event within fifteen days from receipt of a written request, inform:

(*a*) any unsuccessful candidate of the reasons for the rejection of its request to participate;

(*b*) any unsuccessful tenderer of the reasons for the rejection of its tender, including, for the cases referred to in regulation 53(9) and (10), the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements;

(*c*) any tenderer that has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement;

(*d*) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers;

(*e*) any unsuccessful tenderer of his right to appeal a decision taken pursuant sub-regulation (1).

(3) Contracting authorities may decide to withhold certain information referred to in sub-regulations (1) and (2), regarding the contract award, the conclusion of framework agreements or admittance to a dynamic purchasing system, where the release of such information would impede law enforcement or would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of a particular economic operator, whether public or private, or might prejudice fair competition between economic operators.

Abnormally Low Tenders and Variant Solutions

Abnormally low tenders.
Amended by: L.N. 196 of 2020.

243. (1) Contracting authorities shall require economic operators to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.

(2) The explanations may in particular relate to:

(*a*) the economics of the manufacturing process, of the services provided or of the construction method;

(*b*) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products or services or for the execution of the work;

(*c*) the originality of the work, supplies or services proposed by the tenderer;

(*d*) compliance with obligations established in regulations 13(*m*) and 16(*k*);

(*e*) compliance with obligations referred to in regulation 60;

(*f*) the possibility of the tenderer obtaining State aid.

(3) Failure by the economic operator to send his explanations within the written time-frame imposed by the contracting authority, shall be deemed as acceptance from the economic operator that his tender is abnormally low.

(4) The contracting authority shall assess the information provided by consulting the tenderer. It may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed, taking into account the elements referred to in sub-regulation (2).

(5) Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with applicable obligations referred to in regulation 13(*m*) and 16(*k*).

(6) Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 of the TFEU. Where the contracting authority rejects a tender in those circumstances, it shall inform the Commission thereof.

Variants.

244. (1) For tenders having an estimated value which falls under the provisions of regulation 9(1)(b), contracting authorities may authorise or require tenderers to submit variants. They shall indicate in the contract notice whether or not they authorise or require variants. Variants shall not be authorised without such indication and shall be linked to the subject-matter of the contract.

(2) Contracting authorities authorising or requiring variants shall state in the procurement documents the minimum requirements to be met by the variants and any specific requirements for their presentation, in particular whether variants may be submitted only where a tender, which is not a variant, has also been submitted. They shall also ensure that the chosen award criteria can be applied to variants meeting those minimum requirements as well as to conforming tenders which are not

variants.

(3) Only variants meeting the minimum requirements laid down by the contracting authorities shall be taken into consideration.

(4) In procedures for awarding public supply or service contracts, contracting authorities that have authorised or required variants shall not reject a variant on the sole ground that it would, where successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

Part VIII
Performance of Contracts

Contract Performance and Modifications

Conditions for performance of contracts.

245. Contracting authorities may lay down conditions relating to the performance of a contract, provided that they are linked to the subject-matter of the contract within the meaning of regulation 239(4) and (5) and indicated in the call for competition or in the procurement documents. Those conditions may include economic, innovation-related, environmental, social or employment-related considerations.

Modification of contracts during their term.

246. (1) For tenders with an estimated value which falls within regulation 9(1)(*b*) and upon the prior approval of the Director a contracting authority can order modifications to the contract or framework agreement without a new procurement procedure, in any of the following cases:

(*a*) where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses, or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract or the framework agreement;

(*b*) for additional works, services or supplies by the original contractor that have become necessary and that were not included in the initial procurement where a change of contractor:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority:

Provided that, any increase in price shall not exceed 50% of the value of the original contract;

(*c*) where all of the following conditions are fulfilled:

(i) the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee;

(ii) the modification does not alter the overall nature of the contract;

(iii) any increase in price is not higher than 50% of the value of the original contract or framework agreement;

(*d*) where a new contractor replaces the one to which the contracting authority had initially awarded the contract as a consequence of either:

(i) an unequivocal review clause or option in conformity with paragraph (*a*); or

(ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of these regulations; or

(iii) in the event that the contracting authority itself assumes the main contractor's obligations towards its subcontractors;

(*e*) where the modifications, irrespective of their value, are not substantial within the meaning of sub-regulation (5).

(2) The Director or the contracting authorities having modified a contract in the cases set out under paragraphs (*b*) and (*c*) of sub-regulation (1) shall publish a notice to that effect in the Official Journal of the European Union. Such notice shall contain the information set out in Schedule 9 part G and shall be published in accordance with regulation 43.

(3) Without any need to verify whether the conditions set out under paragraphs (*a*) to (*d*) of sub-regulation (5) are met or ask for the approval of the Director, contracts may equally be modified without a new procurement procedure in accordance with these regulations being necessary where the value of the modification is below both of the following values:

(*a*) the thresholds set out in Schedule 5; and

(*b*) 10% of the initial contract value for service and supply contracts and 15% of the initial contract value for works contracts:

Provided that the modification may not alter the overall nature of the contract or framework agreement. Where several successive modifications are made, the value shall be assessed on the basis of the net cumulative value of the successive modifications.

(4) For the purpose of the calculation of the price mentioned in sub-regulations (3) and (1)(*b*) and (*c*), the updated price shall be the reference value when the contract includes an indexation clause.

(5) A modification of a contract or a framework agreement during its term shall be considered to be substantial within the meaning of sub-regulation (1)(*e*), where it renders the contract or the framework agreement materially different in character from the one initially concluded. In any event, without prejudice to the provisions of sub-regulations (1) and (3), a modification shall be considered to be substantial where one or more of the following conditions is met:

(*a*) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of candidates other than those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the procurement procedure;

(*b*) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;

(*c*) the modification extends the scope of the contract or framework agreement considerably;

(*d*) where a new contractor replaces the one to which the contracting authority had initially awarded the contract in cases other than those provided for under sub-regulation (1)(*d*).

(6) A new procurement procedure in accordance with these regulations shall be required for other modifications of the provisions of a public contract or a framework agreement during its term than those provided for under sub-regulation (1) and (3).

Approval of modifications.

247. (1) When a modification, repetition of works or services or additional deliveries are requested of a tender with an estimated value which falls under regulation 9(1)(*b*) and which cumulatively are to exceed the amounts established under Schedule 5 and also the 10% of the initial contract value for contracts or services and supplies or exceed the 15% of the initial contract value for works as the case may be, the contracting authority shall seek the approval of the Director which shall precede the commencement of the modification.

(2) In exceptional circumstances where the urgent nature of the modification to be carried out is such that the contracting authority cannot request the approval of the Director provided for under sub-regulation (1), the contracting authority may proceed with the modification subject that it adheres to the conditions mentioned in these regulations and acquires from the Director at least a preliminary permission.

(3) The contracting authority shall, within a time-frame specified by the Director, furnish the latter with all the relevant

information as indicated in regulation 248 and failure to do so will lead to the automatic revocation of the preliminary permission as well as to the consequences mentioned in these regulations.

(4) Following the submission of the request in terms of regulation 248, the Director will review the information submitted and shall give his approval only if the modification carried out respects the conditions in regulation 246.

Form of request for modification.

248. (1) Requests for modifications of a tender with an estimated value which falls under regulation 9(1)(b) shall be submitted to the Director only by contracting authorities.

(2) In its request for approval the contracting authority shall provide the following:

(*a*) the reasons which brought about the need for this modification;

(*b*) the effect on the total cost of the tender and any effect on the recurrent expenditure that will ensue;

(*c*) the time-frame expected for the execution of the modification;

(*d*) the written consent of the contractor to carry out the modification;

(*e*) the legal basis for such a request whether it is being made under regulation 246 or regulations 151, 152, 153 or 154.

Decision of the Director.

249. In granting or refusing such a request for modification, the Director shall assess whether the request is one that is allowed under these regulations. The Director shall establish under which regulation this modification is being approved and where possible he must determine the procedure to be followed in future by the contracting authority in order to avoid the necessity of modifications.

Record of the modifications.

250. The Director is to keep a full record of modification requests, including the name of the contractor involved and details of the documents specified in regulation 248.

Modification without approval.

251. When a modification is carried out without seeking the prior approval of the Director, the Director cannot be requested to give a retroeffective approval of the modification and thus shall abstain from taking any cognisance of it. The responsibility of this unapproved modification shall vest in the head of that contracting authority in accordance with the Fiscal Responsibility Act.

Cap. 534.

Refusal by the Director.

252. If the Director refuses to give his approval for a request for modification, the contracting authority shall execute the contract as issued in the procurement documents:

Provided that where this is not possible the contract is to be terminated and a fresh procurement process be carried out in line with what is established under these regulations.

Decision of the Director is final.

253. The decision of the Director relating to the refusal of a modification is final and cannot be contested by the contracting authority in a court or tribunal.

Unlawful modifications.

254. Any modification carried out against the expressed refusal of the Director shall be deemed to be founded on an unlawful consideration and the contractor shall have no right for compensation with respect to that modification unless he shows that he was unaware of the refusal of the Director.

Action to recoup payments.
Amended by: L.N. 212 of 2023.

255. Following a request by the Director, the State Advocate on behalf of the Government may institute civil proceedings in a court of law for the restoration of payments received by a contractor in bad faith in relation to modifications which have been prohibited by the Director. Such action shall not be subject to any prescriptive period.

Duty on contractors.

256. A contractor shall desist from executing a modification which requires the approval of the Director unless the contracting authority provides him with a written confirmation of the said approval. If the contractor carries out the modification nonetheless, he shall be deemed to have acted in bad faith and thus he shall not be entitled to any compensation with respect to that modification, so long as such modification was not approved by the Director or when the contracting authority proceeded with the modification without seeking the prior approval of the Director. Any payments received by the contractor in this regard may be restored in the same manner as provided in regulation 255.

Financial rate of the modification.

257. When approving a modification, the Director must indicate the financial rate or any sum which should be paid by the contracting authority in respect of that modification and the time-frame when such modification should be executed.

Disputes on modifications.

258. (1) Disputes between the contracting authority and the contractor on whether a particular task forms part of the contract or else constitutes a modification to the original contract shall not delay or suspend the continuation of contract, however the contractor shall have the right to assert his claim against the contracting authority to receive additional payment for that task if it results that it does not form part of the original contract.

(2) Such action for additional compensation by the contractor shall be barred by prescription on the lapse of two years to be reckoned from the day when the contractor becomes aware or could have become aware of that task.

Increase in prices.

259. 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.

Entities listed in Schedule 3 and authorities listed under Schedule 16. *Amended by: L.N. 233 of 2017; L.N. 56 of 2021.*

260. (1) Contracting authorities falling under Schedule 3 shall obtain the prior approval of the head of their contracting authority instead of that of the Director when carrying out a modification.

(2) Contracting authorities falling under Schedule 16 must, as long as the call for tenders has been published by the Sectoral Procurement Directorate, obtain the prior approval of, or the preliminary permission from, their Permanent Secretary instead of that of the Director when carrying out modifications.

Termination of Contacts

Termination of contracts. *Amended by: L.N. 56 of 2021.*

261. (1) Contracting authorities *inter alia* can terminate any contract during its term, where:

(*a*) the contract has been subject to a substantial modification, which would have required a new procurement procedure pursuant to regulation 246;

(*b*) the contractor has, at the time of contract award, been in one of the situations referred to in regulation 192 and should therefore have been excluded from the procurement procedure;

(*c*) the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties and Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC that has been declared by the Court of Justice of the European Union in a procedure pursuant to Article 258 of the TFEU;

(*d*) the contractor fails to discharge any obligation which he has contracted.

(2) If the contracting authority has no valid reason for the termination, it is to compensate the contractor for all his expenses and work and to pay him a sum to be fixed by the court, according to circumstances, but not exceeding the profits which the contractor could have made by the contract.

(3) If the contracting authority has valid reason for the termination, it is to pay the contractor only such sum which shall not exceed the actual proven expenses and work of the contractor.

(4) Any payment made in advance to the contractor before the termination of the contract shall be applied to the sums due in terms of sub-regulations (2) or (3) and the contractor shall return any resulting excess to the contracting authority.

(5) The contract shall be immediately terminated when the contracting authority informs the contractor, by any means whatsoever, of its decision to terminate the contract, and this without the need of any authorization or confirmation by any court or board.

(6) Contracting authorities listed under Schedule 16 must, in so far as the call for tenders has been published by the Sectoral Procurement Directorate, obtain the approval of their Permanent Secretary before terminating a contract.

(7) (*a*) The Director has the right to issue a decision terminating any contract or agreement that could have been reached or signed with a contractor if it transpires that the award of that contract has been made in breach of these regulations or else by discriminating between economic operators.

(*b*) The decision leading to the termination of the contract in accordance with this sub-regulation must be made in writing and must include the findings and the reasons.

(*c*) A copy of this decision must be delivered to the contractor, who has the right to contest it by filing a compliant before the Review Board as explained under regulation 283.

(*d*) The termination of the contract will remain suspended as long as the time limit for the submission of the complaint in front of the Review Board or the Court of Appeal lapses and during the duration of these same procedures.

(*e*) A contractor shall have no right to be compensated for the actual loss or loss of profits, where the decision to terminate the contract is confirmed, with the exception that the contractor will have the right to receive compensation he deserves for the work that he demonstrates to have carried out.

Part IX
Remedies

Remedies before Closing Date of a Call for Competition

Remedies before closing date of a call for competition. *Amended by: L.N. 301 of 2019; L.N. 196 of 2020.*

262. (1) Prospective candidates and tenderers may, within the first two-thirds of the time period allocated in the call for competition for the submission of offers, file a reasoned application before the Public Contracts Review Board:

(*a*) to set aside or ensure the setting aside of decisions including clauses contained in the procurement document and clarification notes taken unlawfully at this stage or which are proven to be impossible to perform; or

(*b*) to determine issues relating to the submission of an offer through the government's e-procurement platform; or

(*c*) to remove discriminatory technical, economic or financial specifications which are present in the call for competition, in the contract documents, in clarifications notes or in any other document relating to the contract award procedure; or

(*d*) to correct errors or to remove ambiguities of a particular term or clause included in a call for competition, in the contract documents, in clarifications notes or in any other document relating to the contract award procedure; or

(*e*) to cancel the call for competition on the basis that the call for competition is in violation of any law or is likely to violate a particular law if it is continued.

(2) The application shall only be valid if accompanied by a deposit equivalent to zero point five per cent (0.50%) of the estimated value set by the contracting authority of the whole tender or if the tender is divided into lots according to the estimated value of the tender set by the contracting authority for each lot submitted by the tenderer, provided that in no case shall the deposit be more than fifty thousand euro (€50,000) which may be refunded as the Public Contracts Review Board may decide in its decision.

Publication of the application.

263. (1) The application by the complainant shall be affixed on the notice board of the Public Contracts Review Board and shall also be published on the website of the same board.

(2) The Public Contracts Review Board shall notify the contracting authority and, or the Director about this request.

(3) It shall be the responsibility of the prospective candidates or tenderers to visit the website of the Public Contracts Review Board and be aware of the latest information published online.

Reply to the application.

264. The contracting authority and any interested party may, within five days from the date when the application is uploaded on the website of the Public Contracts Review Board, file a written reply. Such replies shall also be affixed to the notice board of the Review Board and uploaded online.

Decision by the Public Contracts Review Board.

265. The Public Contracts Review Board shall decide the application with urgency after hearing the parties, provided that not more than one sitting may be fixed for such purpose. The final decision of the Public Contracts Review Board may be appealed by the aggrieved party before the Court of Appeal as provided in regulations 284, 285, 286, 288 and 290.

Suspension of the process.

266. Pending the decision of the Public Contracts Review Board the process of the call for tenders shall be suspended.

New deadline for the submission of tenders.

267. In its final decision the Public Contracts Review Board must always establish the new deadline for the submission of tenders.

Implementation.

268. The contracting authority shall abide by the decision of the Public Contracts Review Board in the shortest time possible and where the contracting authority fails to implement the decision of the Public Contracts Review Board the latter may report the matter to the Minister responsible for that contracting authority.

Charges for this type of application.

269. *Deleted by Legal Notice 196 of 2020.*

Appeals from decisions taken after the closing date for the submissions of an offer

Appeals from decisions taken after the closing date for the submissions of an offer.

270. Where the estaimated value of the public contract meets or exceeds five thousand euro (€5,000) any tenderer or candidate concerned, or any person, having or having had an interest or who has been harmed or risks being harmed by an alleged infringement or by any decision taken including a proposed award in obtaining a contract, a rejection of a tender or a cancellation of a call for tender after the lapse of the publication period, may file an appeal by means of an objection before the Public Contracts Review Board, which shall contain in a very clear manner the reasons for their complaints.

Filing of the application.

271. The objection shall be filed within ten calendar days following the date on which the contracting authority or the authority responsible for the tendering process has by fax or other electronic means sent its proposed award decision or the rejection of a tender or the cancellation of the call for tenders after the lapse of the publication period.

Communication to the tenderer or candidate.

272. The communication to each tenderer or candidate concerned of the proposed award or of the cancellation of the call for tenders shall be accompanied by a summary of the relevant reasons relating to the rejection of the tender as set out in regulation 242 or the reasons why the call for tenders is being cancelled after the lapse of the publication period, and by a precise statement of the exact standstill period.

Deposit.

273. The objection shall only be valid if accompanied by a deposit equivalent to 0.50 per cent of the estimated value set by the contracting authority of the whole tender or if the tender is divided into lots according to the estimated value of the tender set by the contracting authority for each lot submitted by the tenderer, provided that in no case shall the deposit be less than four hundred euro (€400) or more than fifty thousand euro (€50,000) which may be refunded as the Public Contracts Review Board may decide in its decision.

Service on the Director, the Ministerial Procurement Unit and contracting authority. *Amended by: L.N. 56 of 2021.*

274. The Secretary of the Public Contracts Review Board shall immediately notify the Director, the Sectoral Procurement Directorate and, or the contracting authority, as the case may be, that an objection had been filed with his authority thereby immediately suspending the award procedure.

Suspension of the process. *Amended by: L.N. 56 of 2021.*

275. The Department of Contracts, the Sectoral Procurement Directorate or the contracting authority involved, as the case may be, shall be precluded from concluding the contract during the period of ten calendar days allowed for the submission of appeals. The award process shall be completely suspended if an appeal is eventually submitted.

Procedure of the appeal. *Amended by: L.N. 56 of 2021.*

276. The procedure to be followed in submitting and determining appeals as well as the conditions under which such appeals may be filed shall be the following:

(*a*) any decision by the General Contracts Committee, the Sectoral Procurement Directorate or the Special

Contracts Committee or by the contracting authority, shall be made public by affixing it to the notice-board of the Department of Contracts, the Sectoral Procurement Directorate or of the office of the contracting authority, as the case may be, or by uploading it on government's e-procurement platform prior to the award of the contract if the call for tenders is administered by the Department of Contracts;

(*b*) the appeal of the complainant shall also be affixed to the notice-board of the Public Contracts Review Board and shall be communicated by fax or by other electronic means to all participating tenderers;

(*c*) the contracting authority and any interested party may, within ten calendar days from the day on which the appeal is affixed to the notice board of the Review Board and uploaded where applicable on the government's e-procurement platform, file a written reply to the appeal. These replies shall also be affixed to the notice board of the Review Board and where applicable they shall also be uploaded on the government's e-procurement platform;

(*d*) the authority responsible for the tendering process shall within ten days forward to the chairman of the Public Contracts Review Board all documentation pertaining to the call for tenders in question including files and tenders submitted;

(*e*) the secretary of the Review Board shall inform all the participants of the call for tenders, the Department of Contracts, the Sectoral Procurement Directorate and the contracting authority of the date or dates, as the case may be, when the appeal will be heard;

(*f*) when the oral hearing is concluded, the Public Contracts Review Board, if it does not deliver the decision on the same day, shall reserve decision for the earliest possible date to be fixed for the purpose, but not later than six weeks from the day of the oral hearing:

Provided that for serious and justified reasons expressed in writing by means of an order notified to all the parties, the Public Contracts Review Board may postpone the judgment for a later period;

(*g*) the secretary of the Review Board shall keep a record of the grounds of each adjournment and of everything done in each sitting;

(*h*) after evaluating all the evidence and after considering all submissions put forward by the parties, the Public Contracts Review Board shall decide whether to accede or reject the appeal or even cancel the call if it appears to it that this is best in the circumstances of the case.

Ineffectiveness of a contract

Ineffectiveness of a contract.

277. (1) An interested party or a tenderer may file an application before the Public Contracts Review Board to declare that a contract with an estimated value which meets or exceeds the threshold established under Schedule 5 is ineffective.

(2) An interested party may only request the Public Contracts Review Board to declare a signed contract ineffective if the authority responsible for the tendering process has awarded a contract without prior publication of a contract notice in the Official Journal of the European Union without this being permissible in accordance with Directive 2014/23/EC, Directive 2014/24/EC and Directive 2014/25/EC.

(3) Any tenderer may also request the Public Contracts Review Board to declare a contract ineffective in the following two instances:

(*a*) when, notwithstanding an appeal is lodged before the Public Contracts Review Board, the authority responsible for the tendering process concludes the contract before a final decision is given by the Public Contracts Review Board; or

(*b*) when the contract is concluded by a contracting authority or the authority responsible for the tendering process before the expiry of the period for the filing of an appeal as provided for in regulation 271.

(4) The provisions of sub-regulation (2) shall not apply where:

(a) the authority responsible for the tendering process or the contracting authority considers that the award of a contract without prior publication of a contract notice in the Official Journal of the European Union is permissible in accordance with Directive 2014/24/EC and Directive 2014/25/EC;

(*b*) the authority responsible for the tendering process or the contracting authority has published in the Official Journal of the European Union a notice as described in Article 3a of Directive 89/665 or Article 3a of Directive 92/13 expressing its intention to conclude the contract, and;

(*c*) the contract has not been concluded before the expiry of a period of at least ten calendar days with effect from the day following the date of the publication of this notice.

(5) An interested party or a bidder cannot proceed before a court or tribunal to challenge an award or a lack of award of a call for tender processed according to these regulations and they cannot ask for damages unless they have first resorted to all the remedies afforded under these regulations.

Request for compensation.

278. Apart from the declaration for the ineffectiveness of a contract the applicant may request the Public Contracts Review Board to liquidate and order the authority responsible for the

tendering process and the contracting authority to compensate him for actual damages suffered.

Deposit and service.

279. The application must be served to the authority responsible for the tendering process, the contracting authority and to all signatories of the contract sought to be declared ineffective, who shall have twenty days to file a reply.

Decision of the Public Contracts Review Board.

280. (1) If the Public Contracts Review Board declares a contract to be ineffective, it shall impose penalties on the authority responsible for the tendering process and the contracting authority after assessing in its decision all relevant factors, including the seriousness of the infringement and the behaviour of those authorities.

(2) The Public Contracts Review Board may not consider a contract ineffective, even though it has been awarded illegally, on the grounds mentioned in regulation 277, if the Public Contracts Review Board finds, after having examined all relevant aspects, that the overriding reasons relating to a general interest require that the effects of the contract shall be maintained.

Penalties.

281. The penalties imposed by the Public Contracts Review Board shall consist of:

(*a*) the imposition of fines on the authority responsible for the tendering process and the contracting authority or the central government authority, as the case may be, in the amount of fifteen per cent of the tender value but not exceeding fifty thousand euro (€50,000); or

(*b*) the shortening of the duration of the contract:

Provided that the award of damages prescribed in regulation 278 shall not be considered as an appropriate alternative penalty for the purposes of this regulation.

Admissibility of applications.

282. Applications for the ineffectiveness of a contract shall be deemed admissible if they are made:

(*a*) before the expiry of at least thirty calendar days with effect from the day following the date on which:

(i) the authority responsible for the tendering process or the contracting authority published a contract award notice, provided that this notice includes justification of the decision to award the contract without prior publication of a contract notice in the Official Journal of the European Union; or

(ii) the authority responsible for the tendering process or the contracting authority informed the tenderers and candidates concerned of the signing of the contract; and

(*b*) in any other case before the expiry of a period of at least six months with effect from the day following the date of the signing of the contract.

Appeal from adecision cancelling a contract.

283. (1) When the Director issues a decision cancelling a contract or an agreement according to regulation 261(7) he has to deliver this decision to the contractor affected by the cancellation. The contractor shall have ten days from the notification of this decision to file a motivated objection before of the Review Board.

(2) This objection is valid only if accompanied by a deposit of four hundred euro (€400), which deposit can be forfeited or may be refunded in whole or in part according to the decision taken by the Review Board in its decision.

(3) The Secretary of the Review Board shall immediately notify the Director that an objection had been filed with his authority, thereby immediately suspending the decision cancelling the contract.

(4) The filed objection shall be affixed to the notice-board of the Review Board.

(5) The Director has the right to file a written reply to the objection within ten days from the date he is notified with a copy of the objection, which reply is also to be affixed on the notice board of the Review Board.

(6) The secretary of the Review Board shall inform all interested parties of the date or dates, as the case may be, when the objection will be heard.

(7) When the oral hearing is concluded, the Public Contracts Review Board, if it does not deliver the decision on the same day, shall reserve decision for the earliest possible date to be fixed for the purpose, but not later than six weeks from the day of the oral hearing:

Provided that for serious and justified reasons expressed in writing by means of an order notified to all the parties, the Review Board may postpone the judgment for a later period.

(8) The Secretary of the Review Board shall keep a record of the grounds of each adjournment and of everything done in each sitting.

(9) After evaluating all the evidence and after considering all submissions put forward by the parties, the Review Board shall decide whether to accede, reject the appeal on the cancellation of the contract.

(10) Any decision taken in terms of this regulation is subject to an appeal before the Court of Appeal according to the time-frames and obligations established under these regulations.

Court of Appeal

Appeal to the Court of Appeal.

Cap. 12.

284. Any party who feels aggrieved by a decision taken by the Review Board may appeal to the Court of Appeal as constituted in accordance with article 41(1) of the Code of Organization and Civil Procedure by means of an application filed in the registry of that court within twenty calendar days from the date on which that decision has been made public.

Parties to the appeal.

285. The appeal application shall be addressed against the authority responsible for the tendering process, the contracting authority, the recommended tenderer, if any, and any other party involved in the proceedings before the Public Contracts Review Board, who may file a written reply within twenty days from the date of service:

Provided that if the appellant fails to try to serve the appeal application on all the parties above-mentioned within two weeks of the filing of the appeal, the Court, after hearing during the first sitting of the appeal the reasons why service was not effected, may declare by means of a decree delivered in open court that the appeal is deserted with expenses to be borne by the appellant.

Hearing.
Amended by: L.N. 360 of 2022.

286. (1) The Court of Appeal shall set down the cause for hearing at an early date, in no case later than two months from the date on which the appeal is brought before it and shall cause notice of such date to be given to the parties to the suit who, on their part, shall assume the responsibility to visit the court registry and be aware of the latest information regarding the appointment for the hearing of the case.

(2) After appointing the application for hearing, and after listening to the oral submissions made by all parties, the Court shall decide the application on its merits, within the shortest time possible but not any later than four months from the day when the appeal had been filed and the parties have been duly notified. Pending the decision of the Court the process of the call for tenders shall be suspended.

(3) In its decision the court has the power to cancel the tendering process if it appears to it that this is the best solution in the circumstances of the case; in this case no party will have the right to request damages because of the decision cancelling the call.

(4) The Court of Appeal shall have the power to order that the service of any judicial act be made by means of electronic mail. In that case, the date of service shall be the same date of transmission of the electronic mail.

Appeal by the Director or contracting authority.

287. The Department of Contracts and a contracting authority may only refer a matter to the Court of Appeal in relation to a decision taken by the Review Board relating to the ineffectiveness of a contract or the award of damages.

Frivolous and vexatious applications.

288. If, during the hearing of the appeal, the Court finds that the application is frivolous and vexatious, the Court may impose on the party so guilty a penalty, to be paid to the contracting authority, of between one thousand euro (€1,000) and five thousand euro (€5,000).

Extension of time limits.
S.L. 12.09

289. (1) The Court vacations mentioned in Court Practice and Procedure and Good Order Rules shall not hold back the hearing of the appeals filed under these regulations, during the court vacations.

(2) In any case the Court may, for serious and necessary

reasons, by means of a decree, extend for a reasonable period the judicial time limits that are imposed on it according to these regulations.

Re-trial.

290. No application for a re-trial from a decision of the Court of Appeal may be made if, after the final decision has been given, the public contract has been signed between the contracting authority and the recommended tenderer and no request for the suspension of the execution of the decision has been made.

Schedule 1
List of contracting authorities

Amended by:
L.N.155 of 2017;
L.N. 233 of 2017;
L.N. 26 of 2018;
L.N. 263 of 2018;
XXVIII.2018.43;
L.N. 413 of 2020.
Substituted by:
L.N. 56 of 2021.
Amended by:
XVII.2024.32;
L.N. 112 of 2024;
L.N. 110 of 2025.

• Office of the Prime Minister/Permanent Secretary's Office/Department responsible for Corporate Services

- Ministry for Health/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Foreign and European Affairs/Permanent Secretary's Office/ Department responsible for Corporate Services
- Ministry for Finance and Employment/Permanent Secretary's Office/ Department responsible for Corporate Services
- Ministry for Energy, Enterprise and Sustainable Development/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Education/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for the National Heritage, the Arts and Local Government/ Permanent Secretary's Office/Department responsible for Corporate Services
- Minister within the Office of the Prime Minister/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Transport, Infrastructure and Capital Projects/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Social Justice and Solidarity, the Family and Children's Rights/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Justice, Equality and Governance/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Agriculture, Fisheries, Food and Animal Rights/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Social Accommodation/Permanent Secretary's Office/

Department responsible for Corporate Services

- Ministry for the Economy and Industry/Permanent Secretary's Office/ Department responsible for Corporate Services
- Ministry for Tourism and Consumer Protection/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for the Environment, Climate Change and Planning/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Gozo/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Home Affairs, National Security and Law Enforcement/ Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Senior Citizens and Active Ageing/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Research, Innovation and the Co-Ordination of Post COVID-19 Strategy/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Inclusion and Social Wellbeing/Permanent Secretary's Office/ Department responsible for Corporate Services
- Agency for the Welfare of Asylum Seekers
- Aġenzija Appoġġ
- Aġenzija Sapport
- Aġenzija Żgħażagħ
- Agriculture and Rural Payments Agency
- Animal Health and Welfare Department
- Animal Welfare Directorate
- Aquatic Resources Malta
- Armed Forces of Malta
- Arts Council Malta
- Asset Recovery Bureau
- Attorney General
- Authority for Transport in Malta

- Automated Revenue Management Services Ltd.
- Benefits Compliance Directorate
- Board of Management and Administration of the Office of the Arbiter for Financial Services
- Broadcasting Authority
- Building and Construction Agency
- Building Industry Consultative Council
- Building Regulation Board
- Building Regulation Office
- Bureau of Air Accident Investigation
- Casma Ltd
- Central Bank of Malta
- Central Business District Foundation
- Central Procurement and Supplies Unit
- Centre for Creativity Foundation (St James Cavalier)
- Civil Protection Department
- Cleansing and Maintenance Department
- Commerce Department
- Commission for the Rights of Persons with Disability
- Commission on Gender Based Violence and Domestic Violence
- Commissioner for Refugees
- Commissioner for Revenue
- Community Malta Agency
- Continental Shelf Department
- Conventions Malta
- Cooperatives Board
- Correctional Services Agency
- Cottonera Foundation

- Courts Services Agency
- Customs Department
- Department for Local Government
- Department of Active Ageing and Community Care
- Department of Contracts
- Department of Fisheries and Aquaculture
- Department of Information
- Directorate Sectorial Procurement
- EcoGozo Regional Development Directorate
- Education Malta Foundation
- Electoral Office
- Embryo Protection Authority
- Employment Commission
- Energy and Water Agency
- Engineering Resourcing Ltd
- English Language Teaching Council
- Environment and Resources Authority
- eSkills Malta Foundation
- Esplora
- EuroMedITI Ltd
- European Union Programmes Agency
- Examinations
- Festivals Malta Agency
- Film Finance Malta Ltd
- Finance Malta
- Financial Intelligence Analysis Unit
- Financial Services Tribunal

- Fiscal Advisory Council
- Fondazzjoni għac-Ċelebrazzjonijiet Nazzjonali Maltin
- Fondazzjoni Ċentru għal Kreattività
- Fondazzjoni Patrimonju Malti
- Foundation for Educational Services
- Foundation for Information Technology Accessibility
- Foundation for Medical Services
- Foundation for Social Welfare Services
- Foundation for Tomorrow's Schools
- Foundation for Tourism Zone Development
- Funds and Programme Division
- Gaming Malta Foundation
- Government Printing Press
- Gozo Channel (Holdings) Ltd
- Gozo Channel (Operations) Ltd
- Gozo Fibre Optic Cable Co Ltd
- Gozo General Hospita
- Gozo Heliport Ltd
- Grand Harbour Regeneration Corporation p.l.c.
- Heritage Malta
- Housing Authority
- Housing Maintenance and Embellishment Co Ltd
- Human Rights Directorate
- Identity Malta Agency
- Income Support and Compliance Division
- INDIS Malta Ltd
- Industrial and Employment Relations

- Information and Data Protection Commissioner
- Infrastructure Malta
- Institute for Education
- Institute for the Public Services
- Institute for Tourism Studies
- Internal Audit and Investigation Directorate
- International Energy Service Centre
- International Engineering Services Ltd
- IP Holding
- Jobs Plus
- Joint Office
- Junior College
- Justice Department
- Kordin Grain Terminal Co Ltd
- Land Registration Agency
- Lands Authority
- Leap
- Legal Aid Agency
- Local Councils
- Local Enforcement Systems Agency
- Malpro Ltd
- Malta Air Traffic Services Ltd
- Malta Arbitration Centre
- Malta Business Registry
- Malta College of Arts, Science and Technology (MCAST)
- Malta Communications Authority
- Malta Competition and Consumer Affairs Authority

- Malta Council for Culture and the Arts
- Malta Council for Economic and Social Development
- Malta Development Bank
- Malta Digital Innovation Authority
- Malta Electronic Certification Services Ltd
- Malta Enterprise
- Malta - EU Steering and Action Committee Agency
- Malta Film Commission
- Malta Financial Services Authority
- Malta Food Agency
- Malta Foundation for the Wellbeing of Society
- Malta Gaming Authority
- Malta Government Investments Ltd
- Malta Government Technology Investment Ltd
- Malta Information Technology Agency
- Malta International Contemporary Art
- Malta Investment Management Co Ltd
- Malta Libraries
- Malta Mediation Centre
- Malta Residence Visa Agency
- Malta Space Task Force
- Malta Statistics Authority
- Malta Stock Exchange
- Malta Tourism Authority
- Maltese National Commission for UNESCO
- Management Efficiency Unit
- Manoel Theatre

- Masons' Board
- Mater Dei Hospital
- Medicines Authority
- Mediterranean Academy for Diplomatic Studies
- Mediterranean Conference Centre
- Mediterranean Offshore Bunkering Co Ltd
- Melita TransGas Co Ltd
- National Aerospace Centre Agency
- National Archives
- National Blockchain Strategy Foundation
- National Book Council
- National Commission for Further and Higher Education
- National Commission for the Promotion of Equality for Men and Women
- National Commission on Active Ageing
- National Coordinating Committee on Combating Money Laundering and Funding of Terrorism
- National Development and Social Fund Agency
- National Employment Authority
- National Literacy Agency
- National Orchestra Ltd
- Notary to Government
- Occupational Health and Safety Authority
- Office of the Chief Information Officer (Gozo)
- Office of the Chief Information Officer (MAFA)
- Office of the Chief Information Officer (MTIP)
- Office of the Commissioner for Children
- Office of the Commissioner for Mental Health
- Office of the Commissioner for Older Persons

- Office of the Commissioner for Voluntary Organisations
- Office of the Regulator IIP
- Operations Division Gozo
- Permanent Commission against Corruption
- Petromal Co Ltd
- Planning and Priorities Co-ordination Division
- Planning Authority
- Plant Protection Directorate
- Police Department
- Privatisation Unit
- Projects and Development Directorate (Gozo)
- Projects Malta Ltd
- Projects Plus Ltd
- Property Malta Foundation
- Property Management Services Ltd
- Public Abattoir
- Public Broadcasting Services Ltd
- Public Contracts Review Board
- Public Service Commission
- Public Works Department
- Regulator for Energy and Water Services
- Resource Support Services Ltd
- Resources, Recovery and Recycling Agency
- Responsible Gaming Foundation
- Restoration Directorate
- Riżorsi Agrikoli Malta
- RSS Ltd

- Rural Affairs Department
- Rural Gozo Directorate
- Safe City Ltd
- Science Malta
- Sedqa
- Services Gozo Directorate
- Servizz.gov Agency
- Social Care Standards Authority
- Social Project Management Ltd
- Social Security Department
- SportMalta
- St. Vincent de Paul (SVP)
- Start-up Malta Foundation
- State Advocate
- Strategy and Support Services Division
- Superintendence of Cultural Heritage
- Tisbiħ Malta
- Tourism and Economic Development Directorate
- Trade Malta Ltd
- Treasury Department
- University of Malta
- Valletta Culture Agency
- WasteServ (Malta) Ltd
- Welfare Committee
- Yachting Malta Ltd
- ŻFIN Malta

Amended by:
L.N.155 of 2017;
L.N. 233 of 2017;
L.N. 26 of 2018;
L.N. 263 of 2018;
L.N. 413 of 2020;
L.N. 446 of 2020.
Substituted by:
L.N. 56 of 2021.
Amended by:
L.N. 110 of 2025.

Schedule 2
Contracting Authorities falling within the competence of the Department of Contracts

- Ministry for Health/Permanent Secretary's Office/ Department responsible for Corporate Services
- Central Procurement and Supplies Unit
- Department of Contracts
- Foundation for Medical Services
- Gozo General Hospital
- Mater Dei Hospital
- Medicines Authority
- Occupational Health and Safety Authority
- Office of the Commissioner for Mental Health
- Embryo Protection Authority

Schedule 3
List of Contracting Authorities who shall administer their own public procurement

Amended by:
XXVIII.2018.43;
L.N. 446 of 2020;
X.2023.13;
L.N. 227 of 2023;
L.N. 112 of 2024.

- EuroMedITI Ltd.
- Grand Harbour Regeneration Corporation P.L.C.
- INDIS Malta Ltd
- Malta Information Technology Agency (MITA)
- Malta Government Technology Investments Limited (MGTIL)
- MGI/MIMCOL

- Local Councils
- Infrastructure Malta
- Housing Authority
- Enemalta plc
- Water Services Corporation
- Science Malta

Schedule 4
List of Central Purchasing Bodies

- Department of Contracts
- Malta Information Technology Agency (MITA)

Schedule 5
Values of thresholds pursuant to regulation 9

Amended by:
L.N. 26 of 2018;
L.N. 196 of 2020;
L.N. 26 of 2022;
L.N. 361 of 2024.

The value of the thresholds, net of VAT, applicable to public contracts, is:

(*a*) €5,538,000 for public works contracts;

(*b*) €143,000 for public supply and service contracts awarded by central government authorities and design contests organised by such authorities; where public supply contracts are awarded by contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning prosducts covered by Schedule 7;

(*c*) €221,000 for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities; that threshold shall also apply to public supply contracts awarded by central government authorities that operate in the field of defence, where those contracts involve products not covered by Schedule 7;

(*d*) €750,000 for public service contracts for social and other specific services listed in Schedule 14.

Schedule 6
Central Government Authorities

Department of Contracts

Schedule 7
List of Products referred to in Schedule 5 paragraph (B)
with regard to Contracts awarded by Contracting Authorities
in the field of Defence

This list is to reflect Annex 1 point 3 of the GPA

Chapter 25:	Salt, sulphur, earths and stone, plastering materials, lime and cement
Chapter 26:	Metallic ores, slag and ash
Chapter 27:	Mineral fuels, mineral oils and products of their distillation, bituminous substances, mineral waxes except: ex 27.10: special engine fuels
Chapter 28:	Inorganic chemicals, organic and inorganic compounds of precious metals, of rare-earth metals, of radioactive elements and of isotopes except: ex 28.09: explosives ex 28.13: explosives ex 28.14: tear gas ex 28.28: explosives ex 28.32: explosives ex 28.39: explosives ex 28.50: toxic products ex 28.51: toxic products ex 28.54: explosives
Chapter 29:	Organic chemicals except: ex 29.03: explosives ex 29.04: explosives ex 29.07: explosives ex 29.08: explosives ex 29.11: explosives ex 29.12: explosives ex 29.13: toxic products ex 29.14: toxic products ex 29.15: toxic products ex 29.21: toxic products ex 29.22: toxic products ex 29.23: toxic products ex 29.26: explosives ex 29.27: toxic products ex 29.29: explosives
Chapter 30:	Pharmaceutical products
Chapter 31:	Fertilisers
Chapter 32:	Tanning and dyeing extracts, tannings and their derivatives, dyes, colours, paints and varnishes, putty, fillers and stoppings, inks
Chapter 33:	Essential oils and resinoids, perfumery, cosmetic or toilet preparations
Chapter 34:	Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and 'dental waxes'
Chapter 35:	Albuminoidal substances, glues, enzymes
Chapter 37:	Photographic and cinematographic goods
Chapter 38:	Miscellaneous chemical products, except: ex 38.19: toxic products
Chapter 39:	Artificial resins and plastic materials, celluloses esters and ethers, articles thereof, except: ex 39.03: explosives
Chapter 40:	Rubber, synthetic rubber, factice, and articles thereof, except: ex 40.11: bullet-proof tyres
Chapter 41:	Raw hides and skins (other than fur skins) and leather
Chapter 42:	Articles of leather, saddlery and harness, travel goods, handbags and similar containers, articles of animal gut (other than silk-worm gut)
Chapter 43:	Fur skins and artificial fur, manufactures thereof
Chapter 44:	Wood and articles of wood, wood charcoal
Chapter 45:	Cork and articles of cork
Chapter 46:	Manufactures of straw of esparto and of other plaiting materials, basketware and wickerwork
Chapter 47:	Paper-making material
Chapter 48:	Paper and paperboard, articles of paper pulp, of paper or of paperboard
Chapter 49:	Printed books, newspapers, pictures and other products of the printing industry, manuscripts, typescripts and plans
Chapter 65:	Headgear and parts thereof

Chapter 66:	Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof
Chapter 67:	Prepared feathers and down and articles made of feathers or of down, artificial flowers, articles of human hair
Chapter 68:	Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials
Chapter 69:	Ceramic products
Chapter 70:	Glass and glassware
Chapter 71:	Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery
Chapter 73:	Iron and steel and articles thereof
Chapter 74:	Copper and articles thereof
Chapter 75:	Nickel and articles thereof
Chapter 76:	Aluminium and articles thereof
Chapter 77:	Magnesium and beryllium and articles thereof
Chapter 78:	Lead and articles thereof
Chapter 79:	Zinc and articles thereof
Chapter 80:	Tin and articles thereof
Chapter 81:	Other base metals employed in metallurgy and articles thereof
Chapter 82:	Tools, implements, cutlery, spoons and forks, of base metal, parts thereof, except: ex 82.05: tools ex 82.07: tools, parts
Chapter 83:	Miscellaneous articles of base metal
Chapter 84:	Boilers, machinery and mechanical appliances, parts thereof, except: ex 84.06: engines ex 84.08: other engines ex 84.45: machinery ex 84.53: automatic data-processing machines ex 84.55: parts of machines under heading No 84.53 ex 84.59: nuclear reactors
Chapter 85:	Electrical machinery and equipment, parts thereof, except: ex 85.13: telecommunication equipment ex 85.15: transmission apparatus
Chapter 86:	Railway and tramway locomotives, rolling-stock and parts thereof, railway and tramway tracks fixtures and fittings, traffic signalling equipment of all kinds (not electrically powered), except: ex 86.02: armoured locomotives, electric ex 86.03: other armoured locomotives ex 86.05: armoured wagons ex 86.06: repair wagons ex 86.07: wagons
Chapter 87:	Vehicles, other than railway or tramway rolling-stock, and parts thereof, except: ex 87.08: tanks and other armoured vehicles ex 87.01: tractors ex 87.02: military vehicles ex 87.03: breakdown lorries ex 87.09: motorcycles ex 87.14: trailers
Chapter 89:	Ships, boats and floating structures, except: ex 89.01A: warships
Chapter 90:	Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus, parts thereof, except: ex 90.05: binoculars ex 90.13: miscellaneous instruments, lasers ex 90.14: telemeters ex 90.28: electrical and electronic measuring instruments ex 90.11: microscopes ex 90.17: medical instruments ex 90.18: mechano-therapy appliances ex 90.19: orthopaedic appliances ex 90.20: X-ray apparatus
Chapter 91:	Manufacture of watches and clocks
Chapter 92:	Musical instruments, sound recorders or reproducers, television image and sound recorders or reproducers, parts and accessories of such articles
Chapter 94:	Furniture and parts thereof, bedding, mattresses, mattress supports, cushions and similar stuffed furnishings, except: ex 94.01A: aircraft seats

Chapter 95:	Articles and manufactures of carving or moulding material
Chapter 96:	Brooms, brushes, powder-puffs and sieves
Chapter 98:	Miscellaneous manufactured articles

Schedule 8

Requirements relating to Tools and Devices for the Electronic Receipt of Tenders, Requests for Participation as well as Plans and Projects in Design Contests

Tools and devices for the electronic receipt of tenders, requests for participation as well as plans and projects in design contests must at least guarantee, through technical means and appropriate procedures, that:

(*a*) the exact time and date of the receipt of tenders, requests to participate and the submission of plans and projects can be determined precisely;

(*b*) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;

(*c*) only authorised persons may set or change the dates for opening data received;

(*d*) during the different stages of the procurement procedure or of the design contest access to all data submitted, or to part thereof, must be possible only for authorised persons;

(*e*) only authorised persons must give access to data transmitted and only after the prescribed date;

(*f*) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith;

(*g*) where the access prohibitions or conditions referred to under paragraphs (*b*), (*c*), (*d*), (*e*) and (*f*) are infringed or there is an attempt to do so, it may be reasonably ensured that the infringements or attempts are clearly detectable.

Schedule 9

Information to be included in Notices

PART A

Information to be included in notices of the publication of a prior information notice on a buyer profile

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

2. Type of contracting authority and main activity exercised.

3. Where appropriate, indication that the contracting authority is a centralised purchasing body; or that any other form of joint procurement is or may be involved.

4. CPV codes.

5. Internet address of the 'buyer profile' (URL).

6. Date of dispatch of the notice of the publication of the prior information notice on the buyer profile.

PART B

Information to be included in prior information notices (as referred to in regulation 41)

I. Information to be included in all cases

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

2. E-mail or internet address at which the 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 49(1), an indication of how the procurement documents can be accessed.

3. Type of contracting authority and main activity exercised.

4. Where appropriate, indication that the contracting authority is a centralised purchasing body or that any other form of joint procurement is or may be involved.

5. CPV codes; where the contract is divided into lots, this information shall be provided for each lot.

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

7. Brief description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services.

8. Where this notice is not used as a means of calling for competition, estimated date(s) for publication of a contract notice or contract notices in respect of the contract(s) referred to in this prior information notice.

9. Date of dispatch of the notice.

10. Any other relevant information.

11. Indication whether the contract is covered by the GPA.

II. Additional information to be supplied where the notice is used as a means of calling for competition

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

2. Type of award procedure (restricted procedures, whether or not involving a dynamic purchasing system, or competitive procedures with negotiation).

3. Where appropriate, indication whether a framework agreement is involved.

4. As far as already known, time-frame for delivery or provision of products, works or services and duration of the contract.

5. As far as already known, conditions for participation, including:

(*a*) where appropriate, indication whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes;

(*b*) where appropriate, indication whether the provision of the service is reserved by law, regulation or administrative provision to a particular profession;

(*c*) brief description of selection criteria.

6. As far as already known, brief description of criteria to be used for award of the contract.

7. As far as already known, estimated total magnitude for contract(s); where the contract is divided into lots, this information shall be provided for each lot.

8. Time limits for receipt of expressions of interest.

9. Address where expressions of interest shall be transmitted.

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

11. Where appropriate, 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. Information whether the contract is related to a project and /or programme financed by Union funds.

13. Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning time limits for review procedures, 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.

PART C

Information to be included in contract notices (as referred to in regulation 42

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

2. E-mail or internet address at which the 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 49, an indication of how the procurement documents can be accessed.

3. Type of contracting authority and main activity exercised.

4. Where appropriate, indication that the contracting authority is a central purchasing body or that any other form of joint procurement is involved.

5. CPV codes; where the contract is divided into lots, this information shall be provided for each lot.

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

7. Description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services. Where the contract is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.

8. Estimated total order of magnitude of contract(s); where the contract is divided into lots, this information shall be provided for each lot.

9. Admission or prohibition of variants.

10. Time-frame for delivery or provision of supplies, works or services and, as far as possible, duration of the contract:

(*a*) in the case of a framework agreement, indication of the planned duration of the framework agreement, stating, where appropriate, the reasons for any duration exceeding four years; as far as possible, indication of value or order of magnitude and frequency of contracts to be awarded, number and, where appropriate, proposed maximum number of economic operators to participate;

(*b*) in the case of a dynamic purchasing system, indication of the planned duration of that system; as far as possible, indication of value or order of magnitude and frequency of contracts to be awarded.

11. Conditions for participation, including:

(*a*) where appropriate, indication whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes;

(*b*) where appropriate, indication whether the provision of the service is reserved by law, regulation or administrative provision to a particular profession; reference to the relevant law, regulation or administrative provision;

(*c*) a list and brief description of criteria regarding the personal situation of economic operators that may lead to their exclusion and of selection criteria; minimum level(s) of standards possibly required; indication of required information (self-declarations, documentation).

12. Type of award procedure; where appropriate, reasons for use of an accelerated procedure (in open and restricted procedures and competitive procedures with negotiation).

13. Where appropriate, indication whether:

(*a*) a framework agreement is involved,

(*b*) a dynamic purchasing system is involved,

(*c*) an electronic auction is involved (in the event of open or restricted procedures or competitive procedures with negotiation).

14. Where the contract is to be subdivided into lots, indication of the possibility of tendering for one, for several or for all of the lots; indication of any possible limitation of the number of lots that may be awarded to any one tenderer. Where the contract is not subdivided into lots, indication of the reasons therefor, unless this information is provided in the individual report.

15. In the case of a restricted procedure, a competitive procedure with negotiation, a competitive dialogue or an innovation partnership, where recourse is made to the option of reducing the number of candidates to be invited to submit tenders, to negotiate or to engage in dialogue: minimum and, where appropriate, proposed maximum number of candidates and objective criteria to be used to choose the candidates in question.

16. In the case of a competitive procedure with negotiation, a competitive dialogue or an innovation partnership, indication, where appropriate, of recourse to a staged procedure in order gradually to reduce the number of tenders to be negotiated or solutions to be discussed.

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

18. Criteria to be used for award of the contract or contracts. Except where the most economically advantageous offer is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting shall be indicated where they do not appear in the specifications or, in the event of a competitive dialogue, in the descriptive document.

19. Time limit for receipt of tenders (open procedures) or requests to participate (restricted procedures, competitive procedures with negotiation, dynamic purchasing systems, competitive dialogues, innovation partnerships).

20. Address to which tenders or requests to participate shall be transmitted.

21. In the case of open procedures:

(*a*) time frame during which the tenderer must maintain its tender,

(*b*) date, time and place for the opening of tenders,

(*c*) persons authorised to be present at such opening.

22. Language or languages in which tenders or requests to participate must be drawn up.

23. Where appropriate, indication whether:

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

(*b*) electronic ordering will be used,

(*c*) electronic invoicing will be accepted,

(*d*) electronic payment will be used.

24. Information whether the contract is related to a project and/or programme financed by Union funds.

25. Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning deadlines for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

26. Date(s) and reference(s) of previous publications in the Official Journal of the European Union relevant to the contract(s) advertised in this notice.

27. In the case of recurrent procurement, estimated timing for further notices to be published.

28. Date of dispatch of the notice.

29. Indication whether the contract is covered by the GPA.

30. Any other relevant information.

PART D

Information to be included in contract award notices (as referred to in regulation 43)

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

2. Type of contracting authority and main activity exercised.

3. Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of joint procurement is involved.

4. CPV codes.

5. NUTS code for the main location of works in case of works contracts or NUTS code for the main place of delivery or performance in supply and service contracts.

6. Description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services. Where the contract is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.

7. Type of award procedure; in the case of negotiated procedure without prior publication, justification.

8. Where appropriate, indication whether:

(*a*) a framework agreement was involved,

(*b*) a dynamic purchasing system was involved.

9. Criteria referred to in regulation 239 which were used for award of the contract or contracts. Where appropriate, indication whether the holding of an electronic auction was involved (in the event of open or restricted procedures or competitive procedures with negotiation).

10. Date of the conclusion of the contract(s) or of the framework agreement(s) following the decision to award or conclude it/them.

11. Number of tenders received with respect of each award, including:

(*a*) number of tenders received from economic operators which are small and medium enterprises,

(*b*) number of tenders received from another Member State or from a third country,

(*c*) number of tenders received electronically.

12. For each award, name, address including NUTS code, telephone, fax number, email address and internet address of the successful tenderer(s) including:

(*a*) information whether the successful tenderer is small and medium enterprise,

(*b*) information whether the contract was awarded to a group of economic operators (joint venture, consortium or other).

13. Value of the successful tender (tenders) or the highest tender and lowest tender taken into consideration for the contract award or awards.

14. Where appropriate, for each award, value and proportion of contract likely to be subcontracted to third parties.

15. Information whether the contract is related to a project and /or programme financed by Union funds.

16. Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

17. Date(s) and reference(s) of previous publications in the Official Journal of the European Union relevant to the contract(s) advertised in this notice.

18. Date of dispatch of the notice.

19. Any other relevant information.

PART E

Information to be included in design contest notices (as referred to in regulation 46)

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

2. E-mail or internet address at which the 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 49 an indication of how the procurement documents can be accessed.

3. Type of contracting authority and main activity exercised.

4. Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of joint procurement is involved.

5. CPV codes; where the contract is divided into lots, this information shall be provided for each lot.

6. Description of the principal characteristics of the project.

7. Number and value of any prizes.

8. Type of design contest (open or restricted).

9. In the event of an open design contest, time limit for the submission of projects.

10. In the event of a restricted design contest:

(*a*) number of participants contemplated,

(*b*) names of the participants already selected, if any,

(*c*) criteria for the selection of participants,

(*d*) time limit for requests to participate.

11. Where appropriate, indication that the participation is restricted to a specified profession.

12. Criteria to be applied in the evaluation of the projects.

13. Indication whether the jury's decision is binding on the contracting

authority.

14. Payments to be made to all participants, if any.

15. Indication whether any contracts following the design contest will or will not be awarded to the winner or winners of the design contest.

16. Date of dispatch of the notice.

17. Any other relevant information.

PART F

Information to be included in notices of the results of a contest (as referred to in regulation 46(3) and (4))

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

2. Type of contracting authority and main activity exercised.

3. Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of joint procurement is involved.

4. CPV codes.

5. Description of the principal characteristics of the project.

6. Value of the prizes.

7. Type of design contest (open or restricted).

8. Criteria which were applied in the evaluation of the projects.

9. Date of the jury decision.

10. Number of participants.

(*a*) Number of participants who are SMEs.

(*b*) Number of participants from abroad.

11. Name, address including NUTS code, telephone, fax number, email address and internet address of the winner(s) of the contest and indication whether the winner(s) are small and medium enterprises.

12. Information whether the design contest is related to a project or programme financed by Union funds.

13. Date(s) and reference(s) of previous publications in the Official Journal of the European Union relevant to the project(s) concerned by this notice.

14. Date of dispatch of the notice.

15. Any other relevant information.

PART G

Information to be included in notices of modifications of a contract during its term (as referred to in regulation 246 (1) and (2))

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

2. CPV codes.

3. NUTS code for the main location of works in case of works contracts or NUTS code for the main place of delivery or performance in supply and service contracts.

4. Description of the procurement before and after the modification: nature and extent of the works, nature and quantity or value of supplies, nature and extent of services.

5. Where applicable, increase in price caused by the modification.

6. Description of the circumstances which have rendered necessary the modification.

7. Date of contract award decision.

8. Where applicable, the name, address including NUTS code, telephone, fax number, email address and internet address of the new economic operator or operators.

9. Information whether the contract is related to a project and/or programme financed by Union funds.

10. Name and address of the oversight body and the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

11. Date(s) and reference(s) of previous publications in the Official Journal of the European Union relevant to the contract(s) concerned by this notice.

12. Date of dispatch of the notice.

13. Any other relevant information.

PART H

Information to be included in contract notices concerning contracts for social and other specific services (as referred to in regulation 163(1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, email and internet address of the contracting authority.

2. NUTS code for the main location of works in the case of works or NUTS code for the main place of delivery or performance in the case of supplies and services.

3. Brief description of the contract in question including CPV codes.

4. Conditions for participation, including:

- where appropriate, indication whether the contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,
- where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.

5. Time limit(s) for contacting the contracting authority in view of participation.

6. Brief description of the main features of the award procedure to be applied.

PART I

Information to be included in prior information notices for social and other specific services (as referred to in regulation 163(1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, email and internet address of the contracting authority.

2. Brief description of the contract in question including the estimated total value of the contract and CPV codes.

3. As far as already known:

(*a*) NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services;

(*b*) time-frame for delivery or provision of supplies, works or services and duration of the contract;

(*c*) conditions for participation, including:

- where appropriate, indication whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes;
- where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession;

(*d*) brief description of the main features of the award procedure to be applied.

4. A reference to the fact that interested economic operators shall advise the contracting authority of their interest in the contract or contracts and time limits for receipt of expressions of interest and address to which expressions of interest shall be transmitted.

PART J

Information to be included in contract award notices concerning contracts for social and other specific services (as referred to in regulation 163(2))

1. Name, identification number (where provided for in national legislation), address including NUTS code, email and internet address of the contracting authority.

2. Brief description of the contract in question including CPV codes.

3. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services.

4. Number of tenders received.

5. Price or range of prices (maximum/minimum) paid.

6. For each award, name, address including NUTS code, email address and internet address of the successful economic operator or operators.

7. Any other relevant information.

Schedule 10

Information to be included in the Procurement Documents relating to Electronic Auctions
(Regulation 185)

Where contracting authorities have decided to hold an electronic auction, the procurement documents shall include at least the following details:

(*a*) the features, the values for which will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;

(*b*) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;

(*c*) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;

(*d*) the relevant information concerning the electronic auction process;

(*e*) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;

(*f*) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

Schedule 11
Features concerning Publication

1. Publication of notices

The notices referred to in regulations 41, 42, 43, 46 and 169 shall be sent by the contracting authorities to the Publications Office of the European Union and published in accordance with the following rules:

Notices referred to in regulations 41, 42, 43, 46 and 169 shall be published by the Publications Office of the European Union or by the contracting authorities in the event of a prior information notice published on a buyer profile in accordance with regulation 41.

In addition, contracting authorities may publish this information on the Internet on a 'buyer profile' as referred to in paragraph 2(b) hereunder.

The Publications Office of the European Union shall give the contracting authority the confirmation referred to in regulation 44(4).

2. Publication of complementary or additional information

(*a*) except where otherwise provided for in regulation 49(2) and (3), contracting authorities shall publish the procurement documents in their entirety on the internet;

(*b*) the buyer profile may include prior information notices as referred to in regulation 41, information on ongoing invitations to tender, scheduled purchases, contracts concluded, procedures cancelled and any useful general information, such as a contact point, a telephone and a fax number, a postal address and an e-mail address. The buyer profile may also include prior information notices used as a means of calling for competition, which are published at national level pursuant to

regulation 45.

3. Format and procedures for sending notices electronically

The format and procedure for sending notices electronically as established by the Commission are made accessible at the Internet address 'http://simap.europa.eu'.

Schedule 12

Contents of the Invitations to submit a Tender, to Participate in the Dialogue or to confirm Interest
(Regulation 242)

1. The invitation to submit a tender or to participate in the dialogue provided for under regulation 242 must contain at least:

(*a*) a reference to the call for competition published;

(*b*) the deadline for the receipt of the tenders, the address to which the tenders must be sent and the language or languages in which the tenders must be drawn up;

(*c*) in the case of competitive dialogue the date and the address set for the start of consultation and the language or languages used;

(*d*) a reference to any possible adjoining documents to be submitted, either in support of verifiable declarations by the tenderer in accordance with regulations 225, and 230 to 232 and, where appropriate, regulation 234 or to supplement the information referred to in those regulations, and under the conditions laid down in regulations 225, and 230 to 232 and regulation 234;

(*e*) the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, where they are not given in the contract notice, in the invitation to confirm interest, in the technical specifications or the descriptive document.

However, in the case of contracts awarded through a competitive dialogue or an innovation partnership, the information referred to in paragraph (*b*) shall not appear in the invitation to participate in the dialogue or to negotiate but it shall appear in the invitation to submit a tender.

Schedule 13

List of International Social and Environmental Conventions

- ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;
- ILO Convention 98 on the Right to Organise and Collective Bargaining;
- ILO Convention 29 on Forced Labour;
- ILO Convention 105 on the Abolition of Forced Labour;
- ILO Convention 138 on Minimum Age;
- ILO Convention 111 on Discrimination (Employment and Occupation);
- ILO Convention 100 on Equal Remuneration;

- ILO Convention 182 on Worst Forms of Child Labour;
- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its 3 regional Protocols.

Schedule 14
Services referred
(Regulation 162)

CPV Code	Description
79611000-0; 75200000-8; 75231200-6; 75231240-8; 79622000-0 [Supply services of domestic help personnel]; 79624000-4 [Supply services of nursing personnel] and 79625000-1 [Supply services of medical personnel] from 85000000-9 to 85323000-9; 85143000-3, 98133100-5, 98133000-4 and 98200000-5 and 98500000-8 [Private households with employed persons] and 98513000-2 to 98514000-9 [Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services]	Health, social and related services
85321000-5 and 85322000-2, 75000000-6 [Administration, defence and social security services], 75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 Education and training services to 80660000-8; from 92000000-1 to 92342200-2; from 92360000-2 to 92700000-8; 79950000-8 [Exhibition, fair and congress organisation services], 79951000-5 [Seminar organisation services], 79952000-2 [Event services], 79952100-3 [Cultural event organisation services], 79953000-9 [Festival organisation services], 79954000-6 [Party organisation services], 79955000-3[Fashion shows organisation services], 79956000-0 [Fair and exhibition organisation services]	Administrative, social, educational, healthcare and cultural services

CPV Code	Description
75300000-9	Compulsory social security services provided that these services are not covered by these regulations where they are organised as non-economic services of general interest. A contracting authority is free to organise the provision of compulsory social services or of other services as services of general interest or as non- economic services of general interest.
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services
98000000-3; 98120000-0; 98132000-7; 98133110-8 and 98130000-3	Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services.
98131000-0	Religious services
55100000-1 to 55410000-7; 55521000-8 to 55521200-0 [55521000-8 Catering services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service]. 55520000-1 Catering services, 55522000-5 Catering services for transport enterprises, 55523000-2 Catering services for other enterprises or other institutions, 55524000-9 School catering services 55510000-8 Canteen services, 55511000-5 Canteen and other restricted-clientele cafeteria services, 55512000-2 Canteen management services, 55523100-3 School-meal services	Hotel and restaurant services
79100000-5 to 79140000-7; 75231100-5	Legal services, to the extent not excluded pursuant to regulation 18(1)(c) to (g), 21(c)
75200000-8 to 75231000-4	Provision of services to the community
75231210-9 to 75231230-5; 75240000-0 to 75252000-7; 794300000-7; 98113100-9	Prison related services, public security and rescue services, to the extent not excluded pursuant to regulation 18(1)

CPV Code	Description
79700000-1 to 79721000-4 [Investigation and security services, Security services, Alarm- monitoring services, Guard services, Surveillance services, Tracing system services, Absconder-tracing services, Patrol services, Identification badge release services, Investigation services and Detective agency services] 79722000-1[Graphology services], 79723000-8 [Waste analysis services]	Investigation and security services
98900000-2 [Services provided by extra-territorial organisations and bodies] and 98910000-5 [Services specific to international organisations and bodies]	International services
64000000-6 [Postal and telecommunications services], 64100000-7 [Post and courier services], 64110000-0 [Postal services], 64111000-7 [Postal services related to newspapers and periodicals], 64112000-4 [Postal services related to letters], 64113000-1 [Postal services related to parcels], 64114000-8 [Post office counter services], 64115000-5 [Mailbox rental], 64116000-2 [Post-restante services], 64122000-7 [Internal office mail and messenger services]	Postal Services
50116510-9 [Tyre-remoulding services], 71550000-8 [Blacksmith services]	Miscellaneous services

Schedule 15
List of the Activities

In the event of any difference of interpretation between the CPV and the NACE, the CPV nomenclature will apply

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: construction of new buildings and works, restoring and common repairs.	45000000
	45.1		Site preparation		45100000

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.11	Demolition and wrecking of buildings; earth moving	This class includes: - demolition of buildings and other structures, - clearing of building sites, - earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc., - site preparation for mining, - overburden removal and other development and preparation of mineral properties and sites. This class also includes: - building site drainage, - drainage of agricultural or forestry land.	45110000

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.12	Test drilling and boring	This class includes: - test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes. This class excludes: - drilling of production oil or gas wells, see 11.20, - water well drilling, see 45.25, - shaft sinking, see 45.25, - oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20.	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.21	General construction of buildings and civil engineering works	This class includes: - construction of all types of buildings construction of civil engineering constructions, - bridges, including those for elevated highways, viaducts, tunnels and subways, - long-distance pipelines, communication and power lines, - urban pipelines, urban communication and power lines, - ancillary urban works, - assembly and erection of prefabricated constructions on the site. This class excludes: - service activities incidental to oil and gas extraction, see 11.20, - erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28,	45210000 Except: - 45213316 45220000 45231000 45232000

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
				- construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23, - building installation, see 45.3, - building completion, see 45.4, - architectural and engineering activities, see 74.20, - project management for construction, see 74.20.	
		45.22	Erection of roof covering and frames	This class includes: - erection of roofs, - roof covering, - waterproofing.	45261000

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.23	Construction of highways, roads, airfields and sport facilities	This class includes: - construction of highways, streets, roads, other vehicular and pedestrian ways, - construction of railways, - construction of airfield runways, - construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, - painting of markings on road surfaces and car parks.	45212212 and DA03 45230000 except: - 45231000 - 45232000 - 45234115
				This class excludes: - preliminary earth moving, see 45.11.	
		45.24	Construction of water projects	This class includes construction of: - waterways, harbour and river works, pleasure ports (marinas), locks, etc., - dams and dykes, - dredging, - subsurface work.	45240000

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.25	Other construction work involving special trades	This class includes: - construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment, - construction of foundations, including pile driving, - water well drilling and construction, shaft sinking, - erection of non-self-manufactured steel elements, - steel bending, - bricklaying and stone setting, - scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms, - erection of chimneys and industrial ovens.	45250000 45262000
				This class excludes: - renting of scaffolds without erection and dismantling, see 71.32.	
	45.3		Building installation		45300000

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.31	Installation of electrical wiring and fittings	This class includes: installation in buildings or other construction projects of: - electrical wiring and fittings, - telecommunications systems, - electrical heating systems, - residential antennas and aerials, - fire alarms, - burglar alarm systems, - lifts and escalators, - lightning conductors, etc.	45213316 45310000 Except: - 45316000
		45.32	Insulation work activities	This class includes: - installation in buildings or other construction projects of thermal, sound or vibration insulation. This class excludes: - waterproofing, see 45.22.	45320000
		45.33	Plumbing	This class includes: - installation in buildings or other construction projects of:	45330000

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
				- plumbing and sanitary equipment, - gas fittings, - heating, ventilation, refrigeration or air-conditioning equipment and ducts, - sprinkler systems. This class excludes: - installation of electrical heating systems, see 45.31.	
		45.34	Other building installation	This class includes: - installation of illumination and signalling systems for roads, railways, airports and harbours, - installation in buildings or other construction projects of fittings and fixtures n.e.c.	45234115 45316000 45340000
	45.4		Building completion		45400000
		45.41	Plastering	This class includes: - application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.	45410000

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.42	Joinery installation	This class includes: - installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials,	45420000
				- interior completion such as ceilings, wooden wall coverings, movable partitions, etc. This class excludes: - laying of parquet and other wood floor coverings, see 45.43.	
		45.43	Floor and wall covering	This class includes: - laying, tiling, hanging or fitting in buildings or other construction projects of: - ceramic, concrete or cut stone wall or floor tiles, - parquet and other wood floor coverings carpets and linoleum floor coverings, - including of rubber or plastic, - terrazzo, marble, granite or slate floor or wall coverings, - wallpaper.	45430000

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.44	Painting and glazing	This class includes: - interior and exterior painting of buildings, - painting of civil engineering structures, - installation of glass, mirrors, etc. This class excludes: - installation of windows, see 45.42.	45440000
		45.45	Other building completion	This class includes: - installation of private swimming pools, - steam cleaning, sand blasting and similar activities for building exteriors, - other building completion and finishing work n.e.c. This class excludes: - interior cleaning of buildings and other structures, see 74.70.	45212212 and DA04 45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	This class excludes: - renting of construction or demolition machinery and equipment without operators, see 71.32.	45500000

Amended by:
L.N.155 of 2017;
L.N.233 of 2017;
L.N. 26 of 2018;
L.N. 263 of 2018.
Substituted by:
L.N. 56 of 2021.
Amended by:
XVII.2024.33;
L.N.112 of 2024;
L.N. 110 of 2025.

Schedule 16

List of Contracting Authorities who shall administer their own public procurement in accordance with the provisions of these regulations

- Office of the Prime Minister/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Foreign and European Affairs/Permanent Secretary's Office/ Department responsible for Corporate Services
- Ministry for Finance and Employment/Permanent Secretary's Office/ Department responsible for Corporate Services
- Ministry for Energy, Enterprise and Sustainable Development/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Education/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for the National Heritage, the Arts and Local Government/ Permanent Secretary's Office/Department responsible for Corporate Services
- Minister within the Office of the Prime Minister/ Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Transport, Infrastructure and Capital Projects/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Social Justice and Solidarity, the Family and Children's Rights/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Justice, Equality and Governance/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Agriculture, Fisheries, Food and Animal Rights/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Social Accommodation/Permanent Secretary's Office/ Department responsible for Corporate Services
- Ministry for the Economy and Industry/Permanent Secretary's Office/ Department responsible for Corporate Services

- Ministry for Tourism and Consumer Protection/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for the Environment, Climate Change and Planning/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Gozo/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Home Affairs, National Security and Law Enforcement/ Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Senior Citizens and Active Ageing/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Research, Innovation and the Co-Ordination of Post COVID-19 Strategy/Permanent Secretary's Office/Department responsible for Corporate Services
- Ministry for Inclusion and Social Wellbeing/Permanent Secretary's Office/ Department responsible for Corporate Services
- Agency for the Welfare of Asylum Seekers
- Aġenzija Appoġġ
- Aġenzija Sapport
- Aġenzija Żgħażagħ
- Agriculture and Rural Payments Agency
- Animal Health and Welfare Department
- Animal Welfare Directorate
- Aquatic Resources Malta
- Armed Forces of Malta
- Arts Council Malta
- Asset Recovery Bureau
- Attorney General
- Authority for Transport in Malta
- Automated Revenue Management Services Ltd.
- Board of Management and Administration of the Office of the Arbiter for Financial Services

- Broadcasting Authority
- Building and Construction Agency
- Building Industry Consultative Council
- Building Regulation Board
- Bureau of Air Accident Investigation
- Casma Ltd
- Central Bank of Malta
- Central Business District Foundation
- Centre for Creativity Foundation (St James Cavalier)
- Civil Protection Department
- Cleansing and Maintenance Department
- Commerce Department
- Commission for the Rights of Persons with Disability
- Commission on Gender Based Violence and Domestic Violence
- Commissioner for Refugees
- Commissioner for Revenue
- Community Malta Agency
- Continental Shelf Department
- Conventions Malta
- Cooperatives Board
- Correctional Services Agency
- Cottonera Foundation
- Courts Services Agency
- Customs Department
- Department for Local Government
- Department of Active Ageing and Community Care
- Department of Fisheries and Aquaculture

- Department of Information
- Directorate Sectorial Procurement
- EcoGozo Regional Development Directorate
- Education Malta
- Electoral Office
- Employment Commission
- Energy and Water Agency
- Engineering Resourcing Ltd
- English Language Teaching Council
- Environment and Resources Authority
- eSkills Malta Foundation
- Esplora
- European Union Programmes Agency
- Examinations
- Festivals Malta Agency
- Film Finance Malta Ltd
- Finance Malta
- Financial Intelligence Analysis Unit
- Financial Services Tribunal
- Fiscal Advisory Council
- Fondazzjoni għac-Ċelebrazzjonijiet Nazzjonali Maltin
- Fondazzjoni Ċentru għal Kreattività
- Fondazzjoni Patrimonju Malti
- Foundation for Educational Services
- Foundation for Information Technology Accessibility
- Foundation for Social Welfare Services
- Foundation for Tomorrow's Schools

- Foundation for Tourism Zone Development
- Funds and Programme Division
- Gaming Malta Foundation
- Government Printing Press
- Gozo Channel (Holdings) Ltd
- Gozo Channel (Operations) Ltd
- Gozo Fibre Optic Cable Co Ltd
- Gozo Heliport Ltd
- Heritage Malta
- Housing Authority
- Housing Maintenance and Embellishment Co Ltd
- Human Rights Directorate
- Identity Malta Agency
- Income Support and Compliance Division
- Industrial and Employment Relations
- Information and Data Protection Commissioner
- Information Management Unit (MAFA)
- Institute for Education
- Institute for the Public Services
- Institute for Tourism Studies
- Internal Audit and Investigation Directorate
- International Energy Service Centre
- International Engineering Services Ltd
- IP Holding
- Jobs Plus
- Joint Office
- Junior College

- Justice Department
- Kordin Grain Terminal Co Ltd
- Land Registration Agency
- Lands Authority
- Leap
- Legal Aid Agency
- Local Enforcement Systems Agency
- Malpro Ltd
- Malta Air Traffic Services Ltd
- Malta Arbitration Centre
- Malta Business Registry
- Malta College of Arts, Science and Technology (MCAST)
- Malta Communications Authority
- Malta Competition and Consumer Affairs Authority
- Malta Council for Culture and the Arts
- Malta Council for Economic and Social Development
- Malta Development Bank
- Malta Digital Innovation Authority
- Malta Electronic Certification Services Ltd
- Malta Enterprise
- Malta - EU Steering and Action Committee Agency
- Malta Film Commission
- Malta Financial Services Authority
- Malta Food Agency
- Malta Foundation for the Wellbeing of Society
- Malta Gaming Authority
- Malta International Contemporary Art

- Malta Libraries
- Malta Mediation Centre
- Malta Residence Visa Agency
- Malta Space Task Force
- Malta Statistics Authority
- Malta Stock Exchange
- Malta Tourism Authority
- Maltese National Commission for UNESCO
- Management Efficiency Unit
- Manoel Theatre
- Masons' Board
- Mediterranean Academy for Diplomatic Studies
- Mediterranean Conference Centre
- Mediterranean Offshore Bunkering Co Ltd
- Melita TransGas Co Ltd
- National Aerospace Centre Agency
- National Archives
- National Blockchain Strategy Foundation
- National Book Council
- National Commission for Further and Higher Education
- National Commission for the Promotion of Equality for Men and Women
- National Commission on Active Ageing
- National Coordinating Committee on Combating Money Laundering and Funding of Terrorism
- National Development and Social Fund Agency
- National Employment Authority
- National Literacy Agency
- National Orchestra Ltd

- Notary to Government
- Office of the Chief Information Officer (Gozo)
- Office of the Chief Information Officer (MAFA)
- Office of the Chief Information Officer (MTIP)
- Office of the Commissioner for Children
- Office of the Commissioner for Older Persons
- Office of the Commissioner for Voluntary Organisations
- Office of the Regulator IIP
- Operations Division Gozo
- Permanent Commission against Corruption
- Petromal Co Ltd
- Planning and Priorities Co-ordination Division
- Planning Authority
- Plant Protection Directorate
- Police Department
- Privatisation Unit
- Projects and Development Directorate (Gozo)
- Projects Malta Ltd
- Projects Plus Ltd
- Property Malta Foundation
- Property Management Services Ltd
- Public Abattoir
- Public Broadcasting Services Ltd
- Public Contracts Review Board
- Public Service Commission
- Public Works Department
- Regulator for Energy and Water Services

- Resource Support Services Ltd
- Resources, Recovery and Recycling Agency
- Responsible Gaming Foundation
- Restoration Directorate
- Riżorsi Agrikoli Malta
- RSS Ltd
- Rural Affairs Department
- Rural Gozo Directorate
- Safe City Ltd
- Sedqa
- Services Gozo Directorate
- Servizz.gov Agency
- Social Care Standards Authority
- Social Project Management Ltd
- Social Security Department
- SportMalta
- St. Vincent de Paul (SVP)
- Start-up Malta Foundation
- State Advocate
- Strategy and Support Services Division
- Superintendence of Cultural Heritage
- Tisbiħ Malta
- Tourism and Economic Development Directorate
- Trade Malta Ltd
- Authority for Transport in Malta
- Treasury Department
- University of Malta

- Valletta Culture Agency
- WasteServ (Malta) Ltd
- Welfare Committee
- Yachting Malta Ltd
- ŻFIN Malta