

L.N. 130 of 2006

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

Public Contracts (Amendment) (No. 2) Regulations, 2006

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

Citation and
commencement.

L.N. 177 of 2005.

1. (1) The title of these regulations is the Public Contracts (Amendment) (No. 2) Regulations, 2006 and they shall be read and construed as one with the Public Contracts Regulations, 2005, hereinafter referred to as “the principal regulations”.

(2) These regulations shall be deemed to have come into force on the 1 June, 2006.

Amends
regulation 2 of
the principal
regulations.

2. The words “, unless the context otherwise requires” in regulation 2 of the principal regulations, shall be deleted.

Amends
regulation 3 of
the principal
regulations.

3. For regulation 3 of the principal regulations there shall be substituted the following:-

“3. These regulations shall provide for the regulation of public contracts awarded by contracting authorities including those listed in Schedule 1 and categorised in Schedule 2 and Schedule 3. Contracting authorities not specifically listed in Schedule 1 shall be deemed for the purpose of these regulations to be included in Schedule 2.”.

Amends
regulation 5 of
the principal
regulations.

4. Immediately after the words “public interest” in paragraph (j) of regulation 5 of the principal regulations, there shall be added the words “and specific provision for such extensions is made in the tender document”.

Amends
regulation 15 of
the principal
regulations.

5. Regulation 15 of the principal regulations shall be amended as follows:-

(a) in sub-regulation (4) (a) thereof, for the words “thus the applicability of these regulations:” there shall be substituted the words “where the aggregate value of the lots is equal to or exceeds the thresholds laid down in terms of regulation 11, the regulations applicable to public contracts whose value exceeds the threshold shall apply to the award of each lot:”;

(b) in sub-regulation (4) (b) thereof, immediately after the words “estimating the contract value” there shall be added the words “and in the event that the aggregate value of the lots is equal to or exceeds the thresholds laid down in terms of regulation 11, the regulations applicable to public contracts whose value exceeds the threshold shall apply to the award of each lot”;

(c) in sub-regulation (5) thereof, paragraph (b) shall be deleted; and

(d) in sub-regulation (8) thereof -

(i) in paragraph (a) thereof, for the words “premium payable;” there shall be substituted the words “premium payable and other types of remuneration;”; and

(ii) in paragraph (c) thereof, for the words “of the fee or commission payable;” there shall be substituted the words “the fee or commission payable and other types of remuneration.”.

6. In paragraph (a) of regulation 16 (1) of the principal regulations, immediately after the words “implementation or exploitation”, there shall be added the words “of a work by the signatory States or services intended for the implementation or exploitation”. Amends regulation 16 of the principal regulations.

7. Regulation 27 of the principal regulations shall be amended as follows:- Amends regulation 27 of the principal regulations.

(a) for the words “regulations 51 and 52” in sub-regulation (2) thereof, there shall be substituted the words “regulations 50 and 51”;

(b) immediately after the words “relating to” in sub-regulation (4) thereof, there shall be added the words “the subject matter of”; and

(c) sub-regulation (5) thereof shall be amended as follows:-

(i) immediately after the words “the relative weighting” there shall be added the words “which can be expressed by providing for a range with an appropriate maximum spread”;

(ii) the first proviso to the sub-regulation shall be deleted; and

(iii) for the words “Provided further that” in the second proviso thereto there shall be substituted the word “Provided that”.

Amends
regulation 28 of
the principal
regulations.

8. For sub-regulation (1) of regulation 28 of the principal regulations, there shall be substituted the following:-

“(1) A contracting authority shall be entitled to reject tenders which appear to be abnormally low in relation to the activity to be carried out:

Provided that the contracting authority shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements by consulting the tenderer taking account of the explanations received.”.

Amends
regulation 34 of
the principal
regulations.

9. In sub-regulation (1) of regulation 34 of the principal regulations, after the words “calendar year”, there shall be added the words “as well as the number and total value of contracts awarded pursuant to the derogations to the World Trade Organisation Agreement on Government Procurement”.

Amends
regulation 40 of
the principal
regulations.

10. For the first and second provisos to sub-regulation (8) of regulation 40 of the principal regulations, there shall be substituted the following:-

“Provided that all documents shall, at the option of each economic operator, either be collected by the economic operators from the place indicated in the contract notice or shall be dispatched to them provided that they would have prior to dispatch made good the costs of such dispatch.”.

Amends
regulation 44 of
the principal
regulations.

11. For the words “Member States” in paragraphs (b) and (c) of sub-regulation (5) of regulation 44 of the principal regulations, there shall be substituted the words “Contracting authorities”.

Amends
regulation 46 of
the principal
regulations.

12. For sub-regulation (2) of regulation 46 of the principal regulations, there shall be substituted the following:-

“(2) (a) Contracting authorities shall indicate in the contract notice whether or not they authorise variants; variants shall not be authorised without this indication.

(b) Contracting authorities authorising variants shall state in the contract documents the minimum requirements to be

met by the variants and any specific requirements for their presentation.

(c) Only variants meeting the minimum requirements laid down by the contracting authorities shall be taken into consideration.”.

13. In paragraph (c) of sub-regulation (1) of regulation 49 of the principal regulations, immediately after the words “the force of res judicata” there shall be added the words “in accordance with the laws of Malta”.

Amends regulation 49 of the principal regulations.

14. For the words “producing an economic operator” in sub-regulation (2) of regulation 50 of the principal regulations, there shall be substituted the words “producing an undertaking”.

Amends regulation 50 of the principal regulations.

15. Immediately after the words “and regulation 49” in sub-regulation (2) of regulation 52 of the principal regulations, there shall be added the words “, and the matters referred to in regulations 50 and 51”.

Amends regulation 52 of the principal regulations.

16. Immediately after the words “to non-Member State countries” in paragraph (b) of sub-regulation (2) of regulation 53 of the principal regulations, there shall be added the words “as well as the number and total value of contracts awarded pursuant to the derogations to the World Trade Organisation Agreement on Government Procurement”.

Amends regulation 53 of the principal regulations.

17. For the words “if the value of the services in question exceeds that of the works covered by the contract” in sub-regulation (3) of regulation 54 of the principal regulations, there shall be substituted the words “if the works are only incidental to the services being the principal object of the contract”.

Amends regulation 54 of the principal regulations.

18. For regulation 55 of the principal regulations, there shall be substituted the following:-

Amends regulation 55 of the principal regulations.

“55. Where contracting authorities require the production of certificates drawn up by independent bodies attesting to the compliance of the economic operator with certain quality assurance standards, contracting authorities shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators.”.

Amends
regulation 58 of
the principal
regulations.

19. For paragraph (a) of sub-regulation (1) of regulation 58 of the principal regulations, there shall be substituted the following:-

“(a) in the event of irregular tenders or the submission of tenders which are unacceptable in terms of regulations 27, 30(1), 31, 46, 60 and 62 in response to an open or restricted procedure or a competitive dialogue insofar as the original terms of the contract are not substantially altered. In such cases a contracting authority may refrain from publishing an EU contract notice where it includes in the negotiated procedure all and only the tenderers who satisfy the criteria of regulations 49 to 52 and who during the preceding open or restricted procedure have submitted tenders in accordance with the formal requirements of the tendering procedure;”.

Amends
regulation 65 of
the principal
regulations.

20. For paragraph (a) of sub-regulation (1) of regulation 65 of the principal regulations, there shall be substituted the following:-

“(a) A contracting authority may award public supply contracts, by negotiated procedure after prior publication of an EU contract notice, in the event of irregular tenders or the submission of tenders which are unacceptable in terms of regulations 27, 30(1), 31, 46, 60 and 62 in response to an open or restricted procedure or a competitive dialogue in so far as the original terms of the contract are not substantially altered. The contracting authority shall in these cases publish an EU contract notice, unless they include in such negotiated procedures all and only the economic operators satisfying the criteria of regulations 49 to 52 which, during the prior open or restricted procedure, have submitted tenders in accordance with the formal requirements of the tendering procedure.”.

Amends
regulation 70 of
the principal
regulations.

21. In sub-regulation (4) of regulation 70 of the principal regulations, for the words from “notice, except” to the words “shall apply.”, there shall be substituted the words “notice and, except where regulation 40(4) applies, regulation 40(6) shall apply.”.

Amends
regulation 71 of
the principal
regulations.

22. For paragraph (a) of sub-regulation (1) of regulation 71 of the principal regulations, there shall be substituted the following:-

“(a) in the event of irregular tenders or the submission of tenders which are unacceptable in terms of regulations 27, 30(1), 31, 46, 60 and 62 in response to an open or restricted procedure or a competitive dialogue in so far as the original terms of the contract are not substantially altered. In such cases a contracting authority may refrain from publishing an EU contract notice where it includes in the negotiated procedure all and only the tenderers who satisfy

the criteria of regulations 49 to 52 and who during the preceding open or restricted procedure have submitted tenders in accordance with the formal requirements of the tendering procedure;”.

23. Regulation 73 of the principal regulations shall be amended as follows:-

Amends
regulation 73 of
the principal
regulations.

(a) the words “45 and” in the third paragraph thereof, shall be deleted; and

(b) for the words “regulations 40, 45” in the fourth paragraph thereof, there shall be substituted the words “regulations 4, 39, 40, 43(2), 43(3), 43(4), 44, 48”.

24. For sub-regulation (3) of regulation 77 of the principal regulations, there shall be substituted the following:-

Amends
regulation 77 of
the principal
regulations.

“(3) In granting or refusing such a request for variation, the Director shall take account of whether any force majeure, or unforeseen or unforeseeable events prevail and shall specify whether such a variation could have been avoided. The Director shall determine the procedure to be followed in future by the contracting authority in order to avoid the necessity of variations.”.

25. In regulation 78 of the principal regulations, for the words “concerned:” there shall be substituted the words “concerned. Such approval shall be granted only where any force majeure, unforeseen or unforeseeable events prevail:”.

Amends
regulation 78 of
the principal
regulations.

26. Regulation 83 of the principal regulations shall be amended as follows:-

Amends
regulation 83 of
the principal
regulations

(a) for the words “fourteen working days” wherever they occur in sub-regulation (1) thereof, there shall be substituted the words “ten calendar days”; and

(b) for the words “fourteen-day period” in paragraph (c) of sub-regulation (2) thereof, there shall be substituted the words “ten-day period”.

27. In paragraph (a) of ANNEX II of Schedule 9 to the principal regulations, for the words “Notices referred to in regulations 48, 70 (3) and (9) and 57 (6) are sent by the contracting authorities to the Office for Official Publications of the European Communities in the format required by Commission Directive 2001/78/EC of 13 September 2001 on the use of standard forms in the publication of public contract notices

Amends
Schedule 9 to
the principal
regulations.

(OJ L 285, 29.10.2001, p. 1).”, there shall be substituted the words “Notices referred to in regulations 48, 70 (3) and (9) and 57 (6) must be sent by the contracting authorities to the Office for Official Publications of the European Communities in the format established by implementing measures to be adopted by the Commission in accordance with the procedure referred to in Article 77(2) of European Union Directive 2004/18/EC.”.