
L.N. 229 of 2009**FINANCIAL ADMINISTRATION AND AUDIT ACT
(CAP. 174)****Public Contracts (Amendment) (No. 2) Regulations, 2009**

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

1. The title of these regulations is the Public Contracts (Amendment) (No. 2) Regulations, 2009 and they shall be read and construed as one with the Public Contracts Regulations, 2005, hereinafter referred to as “the principal regulations”. Citation. L.N. of 2009.

2. The following proviso shall be entered immediately after the words “concession contracts” in sub-regulation 2 of regulation 16 of the principal regulations: Amendment to regulation 16(2).

“Provided that contracting authorities shall have the option of subjecting their decisions with respect to:

the rejection or admission of candidates to a restricted or negotiated procedure leading to the award of a public service concession contract; or/and

the discarding or failure to discard of a tender submitted in reply to a call for tenders for the award of a public service concession contract when the tenders are submitted in separate packages; or/and

the rejection or award of a tender submitted in reply for a call for tenders for the award of a public service concession contract or the award of a public service concession contract;

to the appeals procedure set forth in Part XII and XIII of these regulations, which procedures shall be subject to any amendments as may be stipulated by the contracting authority in the call for competition

preceding a restricted or negotiated procedure or in the call for tenders.

Amendment to
regulation 33(2).

3. Sub-regulation (2) of regulation 33 of the principal regulations shall be deleted in toto and replaced by the following new clause:

It shall be the function of the Board to hear and determine complaints and/or objections:

submitted by any person having or having had an interest in being selected to participate in a call for tenders or in negotiations with a contracting authority for a particular public supply, public service or public works contract and who has been or risks being harmed by an alleged infringement by those authorities listed in Schedule 1 and whose value exceeds €47,000, in accordance with the procedures laid down in Parts XII and XIII; and

submitted by any person having or having had an interest in being selected to participate in a call for tenders or in negotiations with a contracting authority for a particular public service concession contract and who has been or risks being harmed by an alleged infringement by a contracting authority of the procedure listed in the call for competition but only where the call for competition specifically stipulates that decisions of the contracting authority may be appealed from in terms of these regulations subject to any amendments as may be stipulated by the contracting authority in the call for competition; and

complaints submitted by any person having or having had an interest in obtaining a particular public supply, public service or public works contract and who has been or risks being harmed by an alleged infringement by those authorities listed in Schedule 1 and whose value exceeds €47,000, in accordance with the procedures laid down in Parts XII and XIII; and

complaints submitted by any person having or having had an interest in obtaining a particular public service concession contract and who has been or risks being harmed by an alleged infringement by a

contracting authority of the procedure listed in the call for tenders but only where the call for tenders specifically stipulates that decisions of the contracting authority may be appealed from in terms of these regulations, subject to any amendments as may be stipulated by the contracting authority in the call for tenders.

4. The following new sub-regulation shall be included immediately after sub-regulation (3) of regulation 33 of the principal regulations and shall be numbered sub-regulation (4):

Addition to
Regulation 33.

“Every contracting authority which exercises the option stipulated in the proviso of sub-regulation (2) of regulation 16 shall indicate in the call for competition and/or the call for tenders that the award of the contract is subject to the appeals procedure as set forth in these regulations subject to the amendments provided in such call for competition or call for tenders. The document shall include a copy of Parts XII and/or XIII, as the case may be, as amended for the particular call for competition or call for tenders for the guidance of candidates or tenderers, as the case may be.”

5. The words “within a period of 10 days from the final decision of the Appeals Board” shall be added immediately after the words “Civil Court” in the first sentence of sub-regulation (19) of regulation 84 of the principal regulations.

Amendment to
regulation 84(19).

