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ARRANGEMENT OF REGULATIONS

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L.N. 163 of 2020

PUBLIC FINANCE MANAGEMENT ACT (CAP. 601)

Procurement of Property Regulations, 2020

BY VIRTUE of the powers conferred by article 4 of the Public Finance Management Act, the Minister for Finance and Financial Services has made the following regulations:-

PART I

General Provisions

Citation

1. The title of these regulations is the Procurement of Property Regulations, 2020. Citation.

Interpretation and scope

2. For the purposes of these regulations - Interpretation.

"authorities responsible for the administration of government land and properties" shall mean the Lands Authority as established under article 5 of the Lands Authority Act and the Joint Office as established under article 4 of the Ecclesiastical Entities (Properties) Act; Cap. 563. Cap. 358.

"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 bodies or authorities; 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;

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"black listed person" means a black-listed person as defined under the Public Procurement Regulations; S.L. 601.03.

"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 who 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;

"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;

"Contracts Committees" means the General Contracts Committee as defined under the Public Procurement Regulations; S.L. 601.03.

"direct contracts" means contracts awarded without the need to publish a prior call for competition;

"Director" means the Director of Contracts as established under the Public Procurement Regulations; S.L. 601.03.

"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 who submitted a bid under, and regulated by, these regulations;

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

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

"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;

"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 technical

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specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by tenderers, information on generally applicable obligations and any additional documents including clarifications;

"procurement of property" means the acquisition by whatever title, whether real or personal, of immovable property by a contracting authority;

"Review Board" means the Public Contracts Review Board as established under the Public Procurement Regulations; S.L. 601.03.

"the Schedule" means Schedule 1 - List of Contracting Authorities - annexed to the Public Procurement Regulations. S.L. 601.03.

3. The scope of these regulations is to regulate the manner in which government carries out the procurement of property. Scope.

4. These regulations shall not apply to the following; Non-applicability.

(a) the procurement of property which is regulated by any other law;

(b) the procurement of property outside the territory of Malta;

(c) the procurement of property between contracting authorities or bodies governed by public law;

(d) the procurement of property by whatever title that is declared to be secret or is 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; and

(e) the procurement of property authorized under a government scheme published in the Gazette.

5. These regulations shall apply to the procurement of property carried out after the date of entry into force of these regulations. Transitory provisions.

6. (1) Without prejudice to the applicability of the other provisions of these regulations, the procurement process regulated under these regulations: Administration of the process.

(a) that has an estimated value which does not exceed the threshold of five hundred thousand euro (€500,000) has to

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be published, administered and determined by the contracting authority on its own without the need to involve the Director;

(b) that has an estimated value of which exceeds the threshold of five hundred thousand euro (€500,000)) shall be published, administered and determined by the Director on behalf of the contracting authority.

(2) The Minister shall, from time to time, by regulations determine the thresholds applicable under these regulations.

The Office of the Director of Contracts

Applicability of regulations. S.L. 601.03

7. Regulations 10 and 11 of the Public Procurement Regulations shall *mutatis mutandis* apply to these regulations.

Functions of the Director.

8. (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 of property with the aim of ensuring adherence to these regulations;

(b) to establish and regulate the procedure to be followed during meetings of the General 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 or bodies governed by public law on the award and performance of contracts regulated by these regulations as he may deem necessary;

(d) to draw up and maintain a list of persons who have been black-listed.

(2) Where the Director or his delegate identify, on 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) When the Director becomes aware that the conditions established under these regulations are not adhered to he may take any action necessary including directing the contracting authority to cancel the procurement procedure, or to terminate or rescind the

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ensuing contract.

Applicability of regulations. S.L. 601.03

9. Regulation 13 of the Public Procurement Regulations shall *mutatis mutandis* apply to these regulations.

Cancellation of a procurement procedure.

10. (1) The Director has the right to cancel the award of a contract at any time during a call for tenders even after the recommended bidder has been chosen and the time established to file an appeal before the Public Contracts Review Board has lapsed, if it is found that such a contract has been awarded in breach of these regulations.

(2) 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.

(3) A copy of this decision must be notified to each bidder who participated in that particular call, and the bidder shall have the right to contest the decision by filing a complaint before the Review Board.

S.L. 601.03.

(4) The procedure mentioned in regulation 276 of the Public Procurement Regulations shall *mutatis mutandis* apply to this regulation.

(5) There shall be an appeal to the Court of Appeal from the decision of the Review Board.

The Contracting Authority

Duties of a contracting authority.

11. (1) It shall be the duty of all contracting authorities:

(a) to observe and abide by these regulations;

(b) to draw up procurement documents and all relevant supporting documentation as well as to publish and administer, without the involvement of the Director, calls for tenders, where the estimated value of such tenders is in accordance with the threshold established under regulation 6(1)(a);

(c) to forward the procurement document and all relevant supporting documentation to the Director so that they may be vetted, published and administered by the latter when the estimated value of the procurement process is in accordance with the threshold established under regulation 6(1)(b);

(d) to publish all calls for tenders, through government's e-procurement platform, unless otherwise

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provided for in these regulations;

(e) 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 bidders;

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

(g) to administer and implement all contracts awarded by them or on their behalf and to defend before a board or tribunal any dispute that might arise in the execution of the contract;

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

(i) to forward immediately to the Director any information which the latter may request.

(2) Contracts which result from tenders the estimated value of which is in accordance with the threshold established under regulation 6(1)(a) shall be signed by the head of the contracting authority.

The Evaluation Committee and the evaluation report

Appointment and duties of an Evaluation Committee.

12. (1) The evaluation of a call for tenders shall be carried out by an Evaluation Committee which shall be appointed as follows:

(a) for tenders which have an estimated value which is in accordance with the threshold established under regulation 6(1)(a), the Evaluation Committee shall be approved by the head of the contracting authority;

(b) for tenders which have an estimated value which is in accordance with the threshold established under regulation 6(1)(b), the Evaluation Committee shall be recommended by the head of the contracting authority and approved by the Director.

(2) The Evaluation Committee shall evaluate the offers submitted by the bidders in reply to the publication of a procurement document and make recommendations through the evaluation report.

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(3) The evaluation report shall be communicated as follows:

(a) for tenders with an estimated value which is in accordance with the threshold established under regulation 6(1)(a), the Evaluation Committee shall communicate the report to the Departmental Contracts Committee which is empowered to make definitive recommendations on the award or cancellation of the procurement process;

(b) for tenders with an estimated value which is in accordance with the threshold established under regulation 6(1)(b), the Evaluation Committee shall communicate the report to the Director who shall be empowered to make definitive recommendations on the award or cancellation of the procurement process.

Written report.

13. Contracting authorities shall, for every tender, 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 call for tenders;

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

(c) the names of the selected tenderer and the reasons for his selection;

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

(e) where applicable, the reasons why the contracting authority has decided not to award a contract.

Classification of Contracting Authorities and Joint Procurement

Contracting authorities not listed under the Schedule.

14. (1) For the purposes of these regulations, the Schedule lists the contracting authorities or bodies governed by public law which are obliged to follow these regulations.

(2) A body governed by public law or a contracting authority, which is not listed under the Schedule, shall have the same obligations of an authority listed under the said Schedule.

Joint procurement.

15. (1) After obtaining the prior written approval of the Director and subject to the conditions the latter may impose, two or more contracting authorities may jointly procure property in terms of these regulations.

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(2) The procurement procedure shall be administered by the contracting authority or by the Director, as the case may be, in terms of regulation 6 depending on the estimated value of the joint procurement.

(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.

(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.

The Contract Value

Calculation of the estimated value of procurement.

16. (1) The calculation of the estimated value of a procurement procedure shall be based on the total amount payable, excluding any tax, 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) The estimated value referred to in sub-regulation (1) 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 bidders in relation to the procurement.

(3) Where a procurement process for the procurement of property may result in contracts being awarded in the form of separate lots, in order to determine the estimated value the contracting authority shall take into account the cumulative value of all lots when applying the provisions of regulation 6.

Contracts into Lots

Division into lots.

17. 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, indicating in the procurement document whether the offer can be submitted for one, for several or for all of the lots.

Limitation of lots.

18. 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

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per tenderer is stated in the procurement document.

General Principles

Clarity of the procurement documents.

19. (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 four days before the time limit fixed for the receipt of tenders.

(3) The authority administering the procurement process may publish 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.

(4) When published in the clarification notes, the additional information and the supporting document shall automatically form an integral part of the procurement document.

Equal treatment, transparency and proportionality.

20. (1) Contracting authorities shall treat bidders equally 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 in these regulations and in the procurement documents.

Confidentiality.

21. (1) Subject to the obligations established under these regulations and, or any other law, a contracting authority or the Director shall not disclose information forwarded to it by bidders which information they have designated as confidential.

(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 and any information related to the bidders' capacity to qualify for a particular procurement procedure;

(b) the premises procured under these regulations;

(c) the price for which the contract is awarded; and

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(d) information which is already available to the public.

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

Availability of the procurement documents.

22. (1) The authority responsible for the tendering process shall, unless otherwise approved by the Director, by electronic means offer unrestricted and full direct access free of charge to the procurement documents from the date of publication of the procurement documents on the government's e-procurement platform.

(2) Where the Director approves that the publication be carried out without using government's e-procurement platform, the authority responsible for the tendering process is still obliged to offer unrestricted and full direct access free of charge to the procurement documents from the date after the publication in the Gazette.

Technical specifications.

23. (1) The technical specifications and use of the property to be used shall be set out in the procurement documents which shall lay down the characteristics required in the said property.

(2) Technical specifications shall afford equal access of bidders to the procurement procedure and shall not have the effect of creating unjustified obstacles.

(3) The technical specifications shall as far as possible be formulated in terms of performance or functional requirements, including environmental characteristics or location, 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.

(4) Where a label, standard or brand is quoted, the contracting authority must ensure that the reference to such standards, labels or brands is accompanied by the words 'or equivalent'.

The Tenderer

Types of tenderers.

24. A tenderer may either be a natural or a legal person or a public entity or group of such persons and, or entities provided that such person is allowed at law to dispose of the property which is the subject of the tender.

Groups of economic operators.

25. Groups of economic operators, including temporary associations, may participate in procurement procedures.

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The Selected Offer

Procedural guarantees.

26. (1) A procurement procedure published under these regulations shall be awarded on the basis of the award criteria set out by the authority responsible for the tendering process provided that all the following conditions are fulfilled:

(a) the offer complies with the minimum requirements set in the procurement document;

(b) the tenderer is not excluded from participating in the award procedure in accordance with Part VI of the Public Procurement Regulations; and S.L. 601.03.

(c) the tenderer is not black listed in terms of Part VI of the Public Procurement Regulations. S.L. 601.03.

(2) The minimum requirements referred to in sub-regulation (1)(a) shall *inter alia* include conditions and characteristics (particularly technical, physical, functional and legal) that any tender should meet or possess.

Valid bid. S.L. 601.03.

27. (1) Without prejudice to Part VI of the Public Procurement Regulations, the authority responsible for the tendering process must ensure that a bidder 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 bidders is or appears to be incomplete or erroneous or where specific documents are missing, contracting authorities may, in terms of the procurement document, request the bidder concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit:

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

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

Prior involvement of a tenderer.

28. Where a tenderer either directly or indirectly has advised the contracting authority or the authority responsible for the tendering process, on the future procurement of property, such tenderer shall be precluded from participating in the ensuing procurement procedure.

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Part II

Boards, Committees and Tribunals

General Contracts Committee

General Contracts Committee. S.L.601.03.

29. Regulations 64 to 72 of the Public Procurement Regulations shall *mutatis mutandis* apply to these regulations.

Departmental Contracts Committee

Departmental Contracts Committee. S.L. 601.03.

30. There shall be a Departmental Contracts Committee which shall be responsible, unless otherwise regulated in these regulations, to make final recommendations for the award of procurement processes where the estimated value of such process is in accordance with the threshold established under regulation 6(1)(a).

Composition of Departmental Contracts Committee.

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

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

(b) one member appointed by the Permanent Secretary of the Ministry concerned; and

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

Secretary.

32. The Departmental Contracts Committee shall be assisted by a Secretary who shall be appointed by the Permanent Secretary of the Ministry concerned.

Recommendation.

33. The Departmental Contracts Committee shall send a copy of its recommendation to the Director.

Public Contracts Review Board

Public Contracts Review Board. S.L. 601.03.

34. Regulations 80 to 94 of the Public Procurement Regulations shall *mutatis mutandis* apply to these regulations.

Part III

Publication, Tendering Procedure and Time Limits

Internal consultation prior to publication.

35. (1) Before publishing a procurement procedure, contracting authorities must consult with the authorities responsible for the administration of government land and properties.

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(2) If such authorities are of the opinion that they have in their portfolio a property which at least fulfils the requirements of the contracting authority, the latter shall be obliged to make use of such property instead of issuing a call for tenders.

(3) If the authorities responsible for the administration of government land and properties are of the opinion that in their portfolio there is no such property, they shall declare so and the contracting authority shall be authorised to carry on with such procurement in line with what is established under these regulations.

Preliminary market consultations.

36. (1) Before publishing a procurement procedure, contracting authorities may conduct market consultations with a view to preparing the procurement and informing bidders 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 principle of transparency and equal treatment.

Choice of procedure.

37. (1) The authority responsible for the tendering process shall have the freedom to organise the procedure leading to the choice of a successful bidder provided such choice complies with these regulations.

(2) Such procedure must be clearly identified in the procurement document.

(3) The design of the procurement process shall ensure that information is not provided in a discriminatory manner which may give some tenderers an advantage over others.

(4) Unless otherwise approved by the Director the tendering process for the procurement of property shall be published using government's e-procurement platform.

(5) Where the Director approves that the tendering process is not published through the government's e-procurement platform, such tendering process is to be advertised at least on the Gazette.

Records.

38. The authority responsible for the tendering process shall provide for appropriate recording of the stages of the procedure using the means it deems appropriate.

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Negotiations.

39. (1) If the tender document provides for it, the contracting authority may hold negotiations with tenderers.

(2) The tender document must identify which clauses and requirements are subject to negotiations. In determining these areas the authority administering the procurement process shall ensure that the subject-matter of the procurement process, the award criteria and the minimum requirements shall not be changed during the course of the negotiations.

Time limits for receipt of tenders.

40. (1) When fixing the time limits for the receipt of tender offers, the authority responsible for the tendering process shall take into account in particular the complexity of the requirements established in the procurement documents without prejudice to the minimum time limits set out in this regulation.

(2) The tendering process may be either in a single stage or in successive stages.

(3) The minimum time limit for the receipt of tender offers in the case of a single stage process or for the initial submission in the case of a tender with successive stages, shall be thirty days from the date on which the procurement document was published on the government's e-procurement platform or from the next day on which an advert has been published on the Gazette, as the case may be.

(4) When the estimated value of a procurement procedure is in accordance with the threshold established under regulation 6(1)(a), the contracting authority must obtain the prior written approval of the Permanent Secretary responsible for it, or any person delegated by him in writing, to reduce the time limits established under sub-regulation (3) by fifteen days:

Provided that the Permanent Secretary or his delegate may, in granting such an approval, impose any condition he may deem fit.

(5) When the estimated value of a tendering process is in accordance with the threshold established under regulation 6(1)(b), a contracting authority must obtain the prior written approval of the Director to reduce the time limit established under sub-regulation (3) by fifteen days:

Provided that the Director may, in granting such an approval, impose any condition he may deem fit.

Direct contracts.

41. Notwithstanding anything included under these regulations, a contracting authority may procure property through a direct contract upon obtaining the prior written approval as provided

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hereunder:

(a) when the estimated value of a tendering process is in accordance with the threshold established under regulation 6(1)(a), a contracting authority must obtain 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;

(b) when the estimated value of a tendering process is in accordance with the threshold established under regulation 6(1)(b), a contracting authority must obtain prior written approval of the Director.

Part IV

Exclusion and Black Listing of Economic Operators

Applicability of Part VI of the Public Procurement Regulations. S.L. 601.03.

42. Part VI of the Public Procurement Regulations shall, *mutatis mutandis*, apply to these regulations.

Part V

Eligibility, Choice of participants and award of contracts

Eligibility

Eligibility.

43. (1) The authority responsible for the tendering process shall in the procurement document request bidders to declare that they do not fall under any grounds established under regulation 42.

(2) Contracting authorities may at any stage of the procurement process require the certificates, statements and other means of proof as evidence for the absence of grounds for exclusion and for the fulfilment of the selection criteria and the award criteria.

(3) Contracting authorities may also at any stage of the procurement process require proof of title over the proposed property subject to the procurement and capacity to dispose such property.

Choice of Participants

Selection criteria.

44. Contracting authorities may impose selection criteria in order to ensure that bidders are suitable for the execution of the contract.

Licenses and permits.

45. As to suitability, contracting authorities may *inter alia* impose requirements ensuring that the property being procured is covered by the licences and permits necessary for the intended use of

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the property.

Means of proof.

46. The authority responsible for the tendering process shall indicate the required conditions of participation which may be expressed as minimum levels, together with the appropriate means of proof, in the procurement documents.

Award

Award criteria.

47. (1) Tenders shall be awarded on the basis of objective criteria which comply with the principles set out in these regulations and which ensure that tenders are assessed in conditions of effective competition so as to identify an overall economic advantage for the contracting authority.

(2) The award criteria shall be linked to the subject-matter of the contract, and shall not confer an unrestricted freedom of choice on the contracting authority.

(3) The award criteria are to be published in the procurement document.

(4) The award criteria may include, *inter alia*, environmental, social or innovation-related criteria and location of the property.

(5) The award criteria shall be accompanied by requirements, which allow the information provided by the tenderers to be effectively verified.

(6) The contracting authority shall verify whether tenders properly meet the award criteria and shall detail its reasoning in the evaluation report.

(7) Once established, the award criteria cannot be altered under any circumstance.

Information to bidders.

48. (1) The authority administering the procurement process shall as soon as possible inform each tenderer of decisions taken concerning the award of a call issued under these regulations. The issued information shall include the name of the successful tenderer, the grounds for any decision to reject his tender and the grounds for any decision not to award a contract for which there has been a public call.

(2) Further to the provisions of sub-regulation (1), on request from the party concerned, the authority responsible for the administration of the procurement process shall as quickly as possible, and in any case within fifteen days from receipt of a written

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request, inform any tenderers that have submitted a tender of the characteristics and relative advantages of the tender selected.

(3) The authority responsible for the administration of the procurement process may decide to withhold certain information referred to in sub-regulation (1), regarding the contract, where the release of such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of bidders, whether public or private, or might prejudice fair competition between such operators.

Part VI

Rules on Performance of Contracts

Application of contractual obligations

Enforcement of a contract.

49. Contracting authorities shall ensure that the obligations established in a call for tenders and the ensuing contract are adhered to.

Modifications

Modifications.

50. (1) Modifications to the contracts are to be limited as far as practicable; however contracting authorities may, subject to the following conditions, carry out modifications to the contracts.

(2) In the case of call for tenders with an estimated value which is in accordance with the threshold established under regulation 6(1)(a), the contracting authority may carry out modifications to the contract provided that it obtains the written prior approval of its Permanent Secretary or his delegate.

(3) In the case of call for tenders with an estimated value which falls under regulation 6(1)(b), the contracting authority may carry out modifications to the contract provided that it obtains the written prior approval of the Director.

Information.

51. In its request for approval the contracting authority shall provide the following information:

(a) the reasons which brought about the need for the modification;

(b) the effect on the total cost of the tender and any effect on the recurrent expenditure that will ensue;

(c) the written consent of all the parties to the contract to carry out the modification.

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Approval of modification.

52. (1) In granting or refusing a request for a modification, the Permanent Secretary or the Director, as the case may be, shall assess whether the request is justified and whether the modification is cost-effective.

(2) The Permanent Secretary or the Director, as the case may be, is to keep a full record of the process of modification requests, including the respective approval therefor.

(3) The decision of the Permanent Secretary or the Director, as the case may be, relating to the refusal of a modification shall be final and shall not be contested by the contracting authority in a court or tribunal.

(4) In granting or refusing a request for a modification, the Permanent Secretary or the Director, as the case may be, may issue any instruction they may deem fit to the contracting authority who shall be obliged to implement such instructions.

Modification without approval.

53. When a modification is carried out without seeking the prior written approval of the Director or of the respective Permanent Secretary, as the case may be, the Director or the Permanent Secretary cannot be requested to give a retroactive 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.

Unlawful modifications.

54. Any modification carried out against the express refusal of the Permanent Secretary or the Director, as the case may be, shall be deemed to be founded on an unlawful consideration and the other parties in the contract shall have no right for compensation with respect to that modification unless they show that they were unaware of the refusal of the Permanent Secretary or the Director.

Action to recover payments.

55. Following a request by the Permanent Secretary or the Director, as the case may be, the State Advocate may, on behalf of the government, institute civil proceedings in a court of law for the restoration of payments received by an owner in bad faith in relation to modifications which have been prohibited in terms of these regulations. Such action shall not be subject to any prescriptive period.

Duty on owners.

56. An owner shall desist from acceding to a modification which requires the prior written approval of the Director or the Permanent Secretary, as the case may be, unless the contracting authority provides him with a written confirmation of the said approval. If the owner agrees to the modification nonetheless, he shall

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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 in terms of these regulations or when the contracting authority proceeded with the modification without seeking the prior written approval of the Director or the respective Permanent Secretary, as the case may be. Any payments received by the owner in this regard may be restored in the same manner as provided in regulation 55.

Termination or Rescission of a Contract

Termination or rescission of any contract by the Director.

57. (1) The Director has the right to issue a decision terminating or rescinding any contract or agreement that could have been reached or signed with an owner if it transpires that the award of that contract has been made in breach of these regulations.

(2) The decision leading to the termination or rescission of the contract in accordance with this regulation shall be made in writing and must include the findings and the reasons.

(3) A copy of the decision must be delivered to the owner, who has the right to contest it by filing a complaint before the Review Board as provided for in regulation 60.

(4) The termination or rescission of the contract will remain suspended as long as the time limit for the submission of the complaint before the Review Board or the Court of Appeal lapses and during the duration of these same proceedings.

(5) The owner 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 owner shall have the right to receive compensation he deserves for the occupation of the property until the decision of termination is confirmed.

(6) Should the decision of rescission of the contract be confirmed, then the effects of rescission as provided for under the Civil Code shall apply.

Cap. 16.

Part VII

Appeals

Remedies before closing date of a call for competition

Remedies before closing date of a call for competition. S.L. 601.03.

58. Regulations 262 to 269 of the Public Procurement Regulations shall *mutatis mutandis* apply to these regulations.

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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. S.L. 601.03.

59. Regulations 270 to 276 of the Public Procurement Regulations shall *mutatis mutandis* apply to these regulations.

Appeal from a Decision terminating or rescinding a Contract.

Appeal from a decision cancelling or rescinding a contract. S.L. 601. 03

60. Regulation 283 of the Public Procurement Regulations shall *mutatis mutandis* apply to these regulations.

Court of Appeal

Court of Appeal. S.L. 601. 03

61. Regulations 284 to 290 of the Public Procurement Regulations shall *mutatis mutandis* apply to these regulations.

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