

SUBSIDIARY LEGISLATION 174.04
PUBLIC PROCUREMENT REGULATIONS

1st June, 2010

LEGAL NOTICE 296 of 2010, as amended by Legal Notices 47, 104, 255 and 312 of 2012, 65 and 397 of 2013, and 55, 132, 293 of 2014; Act XXV of 2015; and Legal Notice 68 of 2015.

ARRANGEMENT OF REGULATIONS

		Regulations
Part I	General Provisions	1 - 17
Part II	Rules governing public contracts whose value does not exceed one hundred and twenty thousand euro (€120,000)	18 - 21
Part III	Rules governing public contracts whose value exceeds one hundred and twenty thousand euro (€120,000) but does not exceed the thresholds	22 - 23
Part IV	Rules common to public contracts whose value exceeds one hundred and twenty thousand euro (€120,000)	24 - 36
Part V	Rules governing public contracts whose estimated value equals or exceeds the threshold	37 - 54
Part VI	Types of Contract	55 - 76
Part VII	Public procurement of entities operating in the water, energy, transport and postal services sector	77
Part VIII	Variation orders	78 - 79
Part IX	Contracts Committees	80
Part X	Functions of the Contracts Committees	81
Part XI	Procurement Committees	82
Part XII	Separate packages in tender offer	83
Part XIII	Procedure for the submission of appeals	84
Part XIV	Review Board	85
Part XV	Miscellaneous	86

SCHEDULES

Schedule 1	Complete list of Contracting Authorities	
Schedule 2	Contracting Authorities falling within the competence of the Department of Contracts	
Schedule 3	List of Contracting Authorities who shall administer their own public procurement in accordance with the provisions of these regulations	
Schedule 4	List of Central Government Authorities	
Schedule 5	List of Contracting Authorities who can publish tenders without vetting by the Department of Contracts	
Schedule 6	Public Works Contracts Activities	
Schedule 7	Services within the meaning of regulation 57(1)	
Schedule 8	Services within the meaning of regulation 57(2)	
Schedule 9	Value of thresholds pursuant to regulation 12	
Schedule 10	Public Contract Notices	
Schedule 11	List of products in the Field of Defence	
Schedule 12	Requirements relating to devices for the electronic receipt of tenders, requests for participation and plans and projects in contests	

PART I

General Provisions

Citation. **1.** The title of these regulations is the Public Procurement Regulations.

Interpretation.
Amended by:
L.N. 68 of 2015.

2. For the purposes of these regulations -

"affiliated undertaking" means any undertaking over which an undertaking awarded a works concession may exercise, directly or indirectly, a dominant influence or which may exercise a dominant influence over the concessionaire or which, in common with the concessionaire, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation or the rules which govern it. A dominant influence on the part of an undertaking shall be presumed when, directly or indirectly in relation to another undertaking, it:

- (a) holds the major part of the undertaking's subscribed capital, or
- (b) controls the majority of the votes attaching to shares issued by the undertakings, or
- (c) can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body;

"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;

"body governed by public law" means any body:

- (a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; and
- (b) having legal personality; and
- (c) financed, for the most part, by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies, or having 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;

"call for tenders" means a contest for the award of a public contract made pursuant to a formal notice or an EU notice;

"candidate" means an economic operator who has sought an invitation to take part in a restricted or negotiated procedure or a competitive dialogue;

"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 purchasing body" means the Department of Contracts;
- "central government authorities" means the authorities listed in Schedule 4;
- "Commercial Sanctions Tribunal" means the tribunal established in regulation 6H;
- "the Commission" means the Commission of the European Union;
- "common procurement vocabulary" or "CPV" designates the reference nomenclature applicable to public contracts. In the event of varying interpretations owing to possible differences between CPV and NACE nomenclatures or between CPV and CPC (provisional version) nomenclatures, the NACE or the CPC nomenclature respectively shall take precedence;
- "competitive dialogue" means a procedure in which any economic operator may request to participate and whereby the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender. For the purpose of recourse to the procedure, a public contract is considered to be "particularly complex" where the contracting authorities are not objectively able to define the technical means in accordance with regulation 46(2)(b), (c) or (d), capable of satisfying their needs or objectives, and, or they are not objectively able to specify the legal and, or financial make-up of a project;
- "concessionaire" means a person entrusted with a public works concession;
- "contracting authority" means the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or bodies governed by public law;
- "contract notice" means a notice to be published in the Official Journal of the European Union and in the Gazette;
- "contractor" means a natural or legal person or public entity or group of such persons and, or bodies which offers on the market the execution of works and, or a work;
- "Contracts Committees" means the General Contracts Committee and, or the Special Contracts Committee;
- "Departmental Adjudication Boards" means boards or committees appointed by contracting authorities with the purpose of evaluating tenders received and for making recommendations thereon;
- "Departmental Contracts Committee" means the Committee set up in terms of regulation 9(1)(b) with the purpose of making definite recommendations for the award of public contracts whose value does not exceed one hundred and twenty thousand euro (€120,000);
- "departmental tender" means tenders issued by contracting authorities pursuant to Part II;

"design contest" means those procedures which enable the contracting authority to acquire, mainly in the fields of area planning, architecture and civil engineering, or data processing, a plan or design selected by a body 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 Head of the Department of Contracts;

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

"dynamic purchasing system" means a completely electronic process for making commonly used purchases, the characteristic of which, as generally available on the market, meet the requirements of the contracting authority, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification;

"economic operator" shall cover equally the concepts of contractor, supplier and service provider;

"electronic auction" means a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and, or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods. Certain service contracts and certain works contracts having as their subject-matter intellectual performances, such as the design of works, may not be the object of electronic auctions;

"electronic means" means using 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;

"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, in particular with regard to the prices and, where appropriate, the quantity envisaged, governing the contracts to be awarded during a given period;

"General Contracts Committee" means the committee defined in regulation 9(a);

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

"Member State" means a member state of the European Union as described in the term "Commission" herein;

"the Minister" means the Minister responsible for finance;

"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;

"non-compliant tender" means a tender which does not conform to the terms and conditions specified in the notice or EU notice to tender or in the tender documents themselves;

"notice" means a notice published in the Gazette;

"open procedures" means those procedures whereby any interested economic operator may submit a tender;

"periodic indicative notice" means the EU prior information notice referred to in regulation 49;

"pre-contractual remedy" means a remedy sought from the Director of Contracts or from the Public Contracts Review Board following a decision taken prior to the date of the closing of the tender;

"public contract" means any contract 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 as defined in this regulation;

"public service concession contract" means a public services contract except for the fact that the consideration for the services to be provided consists either solely of the right to exploit the service or in this right together with payment;

"public services contract" means a public contract other than a public works or supply contract having as their object the provision of services referred to in Schedules 7 and 8. A public contract having as its object both products and services within the scope of Schedules 7 and 8 shall be considered to be a public service contract if the value of the services in question exceeds that of the products covered by the contract. A public contract having as its object services within the meaning of Schedules 7 and 8 and including activities within the meaning of Schedule 6 that are only incidental to the principal object of the contract shall be considered to be a public services contract;

"public supply contract" means a public contract other than a public works contract having as its object the purchase, lease, rental or hire purchase, with or without option to buy, of products. A public contract having as its object the supply of products and which also covers, as an incidental matter, siting and installation, shall be considered to be a public supply contract;

"public undertaking" means any undertaking over which the contracting authority may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the contracting authority shall be presumed when these authorities, directly or indirectly, in relation to an undertaking -

- (a) hold the majority of the undertakings subscribed capital, or
- (b) control the majority of the votes attaching to shares issued by the undertaking, or

- (c) can appoint more than half of the members of the undertakings administrative, managerial or supervisory body;

"public works concession" means a public works contract, except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the construction, or in this right together with payment;

"public works contract" means a public contract which has as its object either the execution, or both the execution and the design, of works related to one of the activities referred to in Schedule 6, or a work, as defined in this regulation, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority;

"relevant state" means a state with which the European Union has entered into an agreement on public procurement including in particular the Agreement on the European Economic Area, Europe Agreements, bilateral agreements and, where it applies, the Government Procurement Agreement of the World Trade Organisation;

"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 board defined in regulation 34;

"service provider" means a natural or legal person or public entity or group of such persons and, or bodies which offers services on the market;

"Special Contracts Committee" means the committee defined in regulation 10;

"supplier" means a natural or legal person or public entity or group of such persons and, or bodies which offers products on the market;

"technical specifications" has the meaning assigned to it pursuant to regulation 46;

"tenderer" means an economic operator who 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 a review procedure;

"third country" means a state not being a member of the European Union;

"thresholds" means the amounts listed in Schedule 9 and determined in accordance with regulation 12;

"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 of itself to fulfil an economic and technical function;

"working days" means days when work is effected in Malta;

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

3. These regulations provide for the regulation of public contracts awarded by contracting authorities listed in Schedule 1 and categorised in Schedule 2, Schedule 3, Schedule 4 and Schedule 5 on the coordination of procedures for the award of public works contracts, public supply contracts, works concessions, and public service contracts, unless such contracts are excluded in accordance with regulation 17. Contracting authorities not specifically listed in Schedule 1 shall be deemed, for the purpose of these regulations, to be included in Schedule 2. These regulations further provide for the implementation of Directive 2007/66/EC of the European Parliament and of the Council of 11th December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts.

Scope.
Amended by:
L.N. 312 of 2012.

4. (1) Contracting authorities shall ensure that there is no discrimination between economic operators, and that all economic operators are treated equally and transparently in all calls for tenders whatever their estimated value.

Non-discrimination and confidentiality.

(2) Contracting authorities shall ensure that there is no discrimination between undertakings claiming injury in the context of a procedure for the award of a contract as a result of the distinction made by this regulation between national rules implementing Community law and other national rules.

(3) The provisions of regulation 35(2) shall apply to all contracting authorities irrespective of the value of the contract.

(4) Contracting authorities shall respect fully the confidential nature of any information furnished by economic operators. Such information includes in particular, technical or trade secrets and the confidential aspects of tenders:

Provided that this shall be without prejudice to the provisions in this regulation concerning the obligations to the advertising of awarded contracts and the information supplied to candidates and tenderers in terms of this regulation and of law.

(5) In the context of provision of technical specifications to interested candidates and tenderers, of qualification of candidates and selection of tenderers and of award of contracts, contracting authorities may impose requirements with a view to protecting the confidential nature of information which they make available.

5. (1) There shall be a Director of Contracts who shall be responsible for the running of the Department of Contracts and generally for the administration of the procurement procedures as laid down in these regulations.

Director of
Contracts.

(2) In the exercise of his functions, the Director of Contracts and his immediate family shall not be held personally liable for any act or omission done in good faith. For the purpose of this sub-regulation, "immediate family" shall mean the spouse and children of the Director.

Functions of the
Director of
Contracts.
Amended by:
L.N. 68 of 2015.

6. (1) Unless otherwise provided for in these regulations, it shall be the function of the Director of Contracts:

(a) to ensure that these regulations are observed by all parties involved:

Provided that contracting authorities shall be responsible for the implementation of the provisions of the contract:

Provided further that any penalties which ensue due to decisions taken by a contracting authority shall be within the responsibility of the contracting authority concerned;

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

(c) to obtain information from the authorities listed in Schedule 1 to which these regulations apply on the award of contracts whose value is less than one hundred and twenty thousand euro (€120,000) including but not limited to variation orders, penalties, imposed or remitted, and generally as he may deem necessary in order to enable him to ensure conformity with these regulations.

(2) In relation to tenders issued under Part IV and Part V, in addition to sub-regulation (1), it shall be the function of the Director of Contracts:

(a) to establish and, or to approve the general conditions of tender documents;

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

(c) to consider the cancellation of the tender in the event that the evaluation process has not been concluded by the end of the validity period of the submitted bids; any non-conclusion of the evaluation process by the end of the second extension to the validity period will automatically lead to the cancellation of the tender:

Provided that the Director shall consult the General Contracts Committee for its opinion:

Provided further that should the Contracts Committee not agree with the recommendation of the Director, the

decision of the Director may be referred to the Minister for his approval;

- (d) to ensure that tender conditions and specifications do not give an undue advantage or disadvantage to any particular tenderer and any person having or having had an interest in obtaining a particular public contract;
- (e) to order that a tendering period of any call for tenders referred to in these regulations be extended if he considers such an extension justified by the circumstances of the case;
- (f) to vet and approve, with or without modification, tender documents before the same are issued and published;
- (g) to approve, where appropriate, as provided in Part VIII, variations which affect the original values of contracts by more than 5 per cent;
- (h) to approve extensions in the duration of contracts awarded by him if he considers that circumstances so warrant in the public interest and specific provision for such extensions is made in the tender document;
- (i) to identify and implement appropriate means to enable him to monitor the proper execution of contracts awarded by him and, on the advice of the General Contracts Committee, to impose or remit, as appropriate, penalties and damages due on such contracts;
- (j) to institute and to defend any judicial or arbitral proceedings that may be necessary in relation to any contract awarded by him;
- (k)
 - (i) to issue calls for tenders and to award period contracts for the provision of equipment, stores, works or services which are of a common use nature for contracting authorities listed under Schedule 2; and
 - (ii) 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:

Provided that Heads of Departments shall obtain such equipment, stores, works or services directly from the contractor in accordance with such conditions and procedures notified by the Director as provided herein;

- (l) to make regulations to award tenders 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:

Provided that the authorities listed in Schedule 2 shall -

- (i) draw up the tender documents;

- (ii) effect payment of the awarded tender; and
- (iii) monitor the implementation of the tender:

Provided further that regulations affecting the award of tenders that may be governed by procedures deviating from these regulations shall be published by a notice in the Gazette;

- (m) to publish in the Gazette a notice of all awards of tenders including variations outside the limit of the tender conditions, within six months of their award;
- (n) to draw up and maintain a list of persons who have been blacklisted.

Black-listing.
Added by:
L.N. 68 of 2015.

6A. (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:

Cap. 452.

- (a) has been declared guilty by any Court or Tribunal of an offence in terms of the Employment and Industrial Relations Act or any subsidiary legislation made under that Act; or
- (b) has failed to provide his employees with a written contract of service; or
- (c) 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
- (d) has failed to deposit wages or salaries by direct payment in the employee's bank account; or
- (e) 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 Industrial and Employment Relations; or
- (f) 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) In the case mentioned in sub-regulation (1)(a), the black listing shall extend to the legal person, on whose behalf the person has been found guilty of an offence.

Role and investigations of the Director of Employment and Industrial Relations.
Added by:
L.N. 68 of 2015.

6B. It shall be the function of the Director of Employment and Industrial Relations to ensure that the conditions mentioned in regulation 6A are observed by all persons.

6C. (1) 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.

Black listing procedure.
Added by:
L.N. 68 of 2015.

(2) If the black listing is based on the grounds mentioned in regulation 6A(1)(a), the Director of Employment and Industrial Relations shall request the black listing of both the natural person and the legal person on whose behalf the former was found guilty of an offence.

(3) 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.

(4) The application and all the documents supporting the application shall be served on the defendant by registered mail, 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.

(5) The defendant shall cause a copy of the reply to be served on the Director of Employment and Industrial Relations.

(6) The written pleadings shall be deemed to be closed upon the expiration of the time referred to in sub-regulation (4).

6D. (1) After the expiry of the time allowed for the written pleadings, the Secretary of the Commercial Sanctions Tribunal shall immediately notify the Director of Employment and Industrial Relations and the defendant of the date on which the first hearing will be held. The first sitting shall be appointed within fifteen days from the date the written pleadings have been closed.

Procedure before the Commercial Sanctions Tribunal.
Added by:
L.N. 68 of 2015.

(2) The parties shall appear before the Commercial Sanctions Tribunal either in person or by agent on the day and at the time fixed for the hearing, make their submissions and produce such evidence as the Commercial Sanctions Tribunal may allow:

Provided that the Commercial Sanctions Tribunal may postpone the hearing of the case 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.

(3) Upon the request of one of the parties, the Commercial Sanctions Tribunal 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 Commercial Sanctions Tribunal fail to enter an appearance before the Commercial Sanctions Tribunal, 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).

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

(5) All evidence tendered by witnesses that are produced before the Commercial Sanctions Tribunal shall be transcribed and put in writing in the records of the proceedings.

(6) 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 mentioned in regulation 6C 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.

(7) 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 offence or misconduct, decide to deliver a warning to the defendant, instead of black listing the defendant.

(8) If the Commercial Sanctions Tribunal decides for the black listing of the defendant, the black listing period shall be as follows:

- (a) in case of an offence under regulation 6A(1)(a), the period of black listing shall be between of two years;
- (b) in the case of a misconduct under regulation 6A(1)(b) to (f), the period of black listing shall be between six months and one year:

Provided that where the defendant is a recidivist in contravention of regulation 6A(1)(a), the black listing period shall be between two and three years. In the case were the defendant is a recidivist in contravention of regulation 6A(1)(b) to (f), the black listing period shall be between one and three years.

(9) In its decision the Commercial Sanctions Tribunal shall recommend as to whether any deposit, or part thereof, submitted by defendant should be refunded.

6E. (1) Any person who feels aggrieved by a decision taken by the Commercial Sanctions Tribunal may appeal to the Court of Appeal (Superior Jurisdiction) 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 days from when the decision was read in public.

(2) A copy of the appeal application shall be served on the other party, who may file a written reply within twenty days from the date of service.

(3) The Court of Appeal shall set down the cause for hearing at

Appeal from the
decision of the
Commercial
Sanctions
Tribunal.
Added by:
L.N. 68 of 2015.
Cap. 12.

an early date, in no case later than three 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.

(4) 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.

(5) The Court, for serious and necessary reasons, may by virtue of a decree extend for a reasonable time the judicial terms mentioned under this regulation.

6F. (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.

Effects of black listing.
Added by:
L.N. 68 of 2015.

(2) All existing contracts signed by contracting authorities and bodies governed by public law with persons who have been black listed in terms of these regulations 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.

(3) A contracting authority included in Schedules 1, 2 and 3 or a body governed by public law shall be prohibited from carrying out any procurement with a blacklisted person. Any contract duly signed with persons included in the blacklist shall be deemed to be null and void.

(4) 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 regulation, 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).

6G. (1) The Director of Contracts shall keep and maintain an updated list of all black listed persons.

Creation of a black list.
Added by:
L.N. 68 of 2015.

(2) Whosoever, for commercial reasons, with intent of submitting a tender, needs to verify whether a person is black listed, may, upon payment of fifty euro (€50) and with the explicit consent in writing of the person concerned, forward a request in writing to the Department of Contracts to confirm or otherwise whether the person indicated is blacklisted. The Department of Contracts shall, within three working days, reply to such a request.

6H. (1) 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 and determine the period during which a person shall be black listed.

Commercial Sanctions Tribunal.
Added by:
L.N. 68 of 2015.

(2) The decision of the Commercial Sanctions Tribunal shall be

rendered in writing, be signed by all members of the Commercial Sanctions Tribunal and be dated.

(3) The Commercial Sanctions Tribunal shall indicate the reasons upon which such decision was taken, and the decision shall be read in public.

(4) The Commercial Sanctions Tribunal shall be composed of a Chairman and two members who shall be appointed by the Prime Minister on the advice of the Minister for Finance, for a period of three years.

(5) The members of the Commercial Sanctions Tribunal may be individually removed from office 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 proved misbehaviour.

(6) The Commercial Sanctions Tribunal shall be assisted by a Secretary.

(7) The Chairman or other member of the Commercial Sanctions Tribunal shall be disqualified from hearing a review 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 person appointed for the purpose by the Prime Minister on the advice of the Minister for Finance.

(8) A person shall be disqualified from being appointed or continuing to be a member of the Commercial Sanctions Tribunal if he is a member of the House of Representatives, a member of a Local Council or if he has a financial or other interest as is likely to prejudice the discharge of his functions as a member of the same Commercial Sanctions Tribunal.

(9) The members of the Commercial Sanctions Tribunal shall receive such remuneration as the Prime Minister may determine and this shall be paid from the Consolidated Fund.

(10) The members of the Commercial Sanctions Tribunal 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 Commercial Sanctions Tribunal.

(11) The sessions of the Commercial Sanctions Tribunal shall be held in public and all parties involved shall have the right to attend and to be accompanied by any person, professional or otherwise, who they consider suitable to defend their interests.

(12) The Commercial Sanctions Tribunal shall be empowered to call witnesses, to administer oaths and to engage any government official or non-governmental expert to assist it as it deems fit.

(13) The Chairman, in agreement with the members of the Commercial Sanctions Tribunal, shall have the power to determine the procedure for the hearing and shall ensure that during the public hearing all interested parties are given the opportunity to make their case.

(14) Unless there is an appeal, the decision of the Commercial Sanctions Tribunal shall constitute an executive title and may be enforced in terms of article 273 of the Code of Organization and Civil Procedure.

Cap. 12.

(15) Decisions of the Commercial Sanctions Tribunal shall preferably be taken on the basis of unanimity. However, majority decisions shall be final and binding. The Chairman and the other two members shall have one vote each.

(16) Decisions of the Commercial Sanctions Tribunal shall be delivered by the Chairman to the Director of Contracts on the same date in which the decision is delivered.

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

7. (1) The Department of Contracts shall be responsible for the provision of pre-contractual remedies to candidates and tenderers and any person having or having had an interest in obtaining a particular contract in relation to all public contracts having a value of less than one hundred and twenty thousand euro (€120,000). Such remedies shall be provided by the Director of Contracts or by any other official within the Department of Contracts duly authorized by the Director.

Remedies -
competence of the
Department of
Contracts.
*Amended by:
L.N. 65 of 2013.*

(2) In terms of this regulation the Director shall:

- (a) take, at the earliest opportunity, interim measures with the aim of correcting an alleged infringement or preventing further damages to the interests concerned, including measures to suspend or to ensure the suspension of the procedure for award of a public contract or the implementation of any decision taken by the contracting authority:

Provided that in the exercise of these powers the Director may take into account the probable consequences of the measures for all interests likely to be harmed, as well as the public interest, and may decide not to grant such measures where their negative consequences could exceed their benefits:

Provided further that a decision not to grant interim measures shall not prejudice any other claim of the person seeking these measures;

- (b) either set aside or ensure the setting aside of decisions taken unlawfully, including the removal of discriminatory technical, economic or financial specifications in the invitation to tender, the contract documents or in any other document relating to the contract award procedure;
- (c) take at the earliest opportunity, measures other than those provided for in paragraphs (a) and (b) with the aim of correcting any identified infringement and

preventing injury to the interests concerned and to report to the Minister on cases where a contracting authority fails to correct any infringement in response to his instructions;

(d) in the event of a cancellation of a call for tenders, the Director shall have the authority to order a refund of the cost incurred by any tenderer and person having or having had an interest in acquiring a copy of the tender documents or, if the tender is to be re-issued, to ensure that such a tenderer and any such person having or having had an interest in obtaining a particular public contract obtains the new tender document free of charge.

(3) (a) Any interested person who feels aggrieved by a decision taken by the Director of Contracts in terms of this regulation may, on a point of law, appeal to the Court of Appeal (Superior Jurisdiction) 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 decision on which that decision has been made public.

(b) A copy of the appeal application shall be served on the Director of Contracts who may file a written reply within twenty days from the date of service.

(c) 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 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.

(d) After appointing the application for hearing, the Court shall decide the application on its merits after hearing the submissions of all parties, 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.

Cap. 12.

Discretion to refer.
Cap. 249.

8. (1) 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 Special Contracts Committee 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.

Cap. 249.

(2) 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.

9. There shall be:

- (a) (i) 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;
- (ii) the members of the General Contracts Committee shall be appointed for a fixed term of not more than three years, and may be re-appointed;
- (iii) 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; and
- (iv) the provisions of Part IX shall apply to the General Contracts Committee; and
- (b) a Departmental Contracts Committee, who shall be composed of three members, as follows:
 - (i) a Chairman, who shall be the Director Corporate Services, or his representative;
 - (ii) a member appointed by the Permanent Secretary

General Contracts Committee and Departmental Contracts Committee.

of the concerned ministry; and

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

Special Contracts Committee.

10. (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, until the tender is awarded or else until the Director of Contracts declares that the award of the public contract is withdrawn.

(3) Subject to the provisions of this regulation, regulation 9 shall apply to members of a Special Contracts Committee as it applies to members of the General Contracts Committee.

(4) The provisions of Part IX shall apply to the Special Contracts Committee.

Contracts Committee.

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

(2) Decisions shall be taken by a simple majority of the votes of the members present and voting. The Chairman shall in the event of an equality of votes, have a casting vote.

(3) The meetings of the Contracts Committees shall be open to the public during the opening of bids. The list of tenders received, together with the respective prices, except offers submitted in terms of regulation 33, shall be given publicity by the Director immediately after their opening and scheduling.

(4) The Contracts Committees established in terms of these regulations shall regulate their own proceedings, unless otherwise provided for herein. The Chairman of any committee established by virtue of these regulations shall have a casting vote.

(5) The Contracts Committees shall have the function to assist the Director in the execution of his duties in accordance with these regulations. In the discharge of their functions, the Contracts Committees shall be regulated by the provisions of these regulations generally and in particular by the provisions of Part X.

Thresholds.

12. 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.

13. Where a contracting authority intends to issue a call for tenders leading to the award of a public contract, the estimated value of which falls within the provisions of regulation 15(b) and (c), then the contracting authority shall prior to its issue and publication send to the Director a copy of the tender document including all other relevant and supporting documentation.

Requirement of approval before issue and publication of tender.

14. (1) The Director of Contracts shall, by not later than six months after the end of each financial year, make and transmit to the Minister a report dealing generally with the performance of the General Contracts Committee, and of the Special Contracts Committee 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 General Contracts Committee.

Annual report.

(2) The Minister shall lay a copy of every such annual report on the Table of the House at the earliest opportunity.

15. Without prejudice to the applicability of the other provisions of these regulations, public contracts -

Applicability.

- (a) the estimated value of which does not exceed one hundred and twenty thousand euro (€120,000), shall be subject to Part II;
- (b) the estimated value of which exceeds one hundred and twenty thousand euro (€120,000) but which does not exceed the thresholds, shall be subject to Parts III and IV;
- (c) the estimated value of which equals or exceeds the thresholds, shall be subject to Parts IV, V, VI Section A, VI Section B, VI Section C and VII as may be applicable.

In calculating the estimated values of public contracts the contracting authority shall use the provisions laid down in regulation 16.

16. (1) In calculating the estimated value, the contracting authority shall consider the estimated value of remuneration due to the successful tenderer net of VAT. This estimation shall take account of the estimated total amount, including any form of option and any renewals of the contract. Where the contracting authority provided for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the contract. The estimate must be valid at the moment at which the contract notice is sent or in cases where such notice is not required, at the moment at which the contracting authority commences the contract awarding procedure.

Rules for calculating applicable estimated value.

(2) Contracting authorities shall not establish an estimated value of a public contract with the intention of avoiding the application, in part or in whole, of these regulations.

(3) Contracting authorities shall not adopt any mechanism,

including sub-division of public contracts, the purpose of which is to circumvent the application, in part or in whole, of these regulations.

- (4) (a) Where a proposed work or purchase of services may result in contracts being awarded at the same time in the form of separate lots, each one the subject of a contract, the value of each lot must be taken into account for the purpose of calculating the estimated value of the public contract and where the aggregate value of the lots is equal to or exceeds the thresholds laid down in terms of regulation 12, the regulations applicable to public contracts whose value exceeds the threshold shall apply to the award of each lot:

Provided that in the case of a public services or a works contract, contracting authorities may treat the separate lots as separate contracts in respect of any lot which has an estimated value, net of VAT, of less than eighty thousand euro (€80,000) for services and one million euro (€1,000,000) for works and provided that the total value of such lots does not exceed 20 per cent of the total value of lots as a whole.

- (b) Where a proposal for the acquisition of similar supplies may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of such lots for the purpose of estimating the contract value and in the event that the aggregate value of the lots is equal to or exceeds the thresholds laid down in terms of regulation 12, the regulations applicable to public contracts whose value exceeds the threshold shall apply to the award of each lot. However, contracting authorities may treat the separate lots as separate contracts for lots the estimated value of which is less than eighty thousand euro (€80,000) net of VAT provided that the aggregate cost of those lots does not exceed 20 per cent of the aggregate value of the lots as a whole.

(5) Where a public supplies contract or a public services contract is a regular contract, a series of contracts, or a contract which is to be renewed within a given time, the estimated value of the public contract shall be established on the basis of:

- (a) either the actual aggregate value of similar contracts concluded over the previous fiscal year or twelve months, adjusted where possible, for anticipated changes in quantity or value over the twelve months following the initial contract; or
- (b) the estimated aggregate value during the twelve months following the first delivery or during the term of the contract, where this is in excess of twelve months:

Provided that the choice of the method used to calculate the

estimated value of a public contract may not be made with the intention of avoiding the application of the more onerous obligations under this regulation.

(6) Where a public services contract does not specify a total price, the basis for calculating the estimated value of the public contract value shall be:

- (a) in the case of fixed-term public contracts, where their term is forty-eight months or less, by the total contract value for its duration;
- (b) in the case of public contracts of indefinite duration, or with a term of more than forty-eight months, by the monthly installment multiplied by forty-eight.

(7) Where a public supply contract is for the lease, rental or hire purchase of products, the basis for calculating the estimated value of the public supply contract shall be:

- (a) in the case of fixed term public contracts, where their term is twelve months or less, the total contract value for its duration, or, where the term exceeds twelve months, its total value including the estimated residual value;
- (b) in the case of contracts for an indefinite period or in cases where there is doubt as to the duration of the contracts, the monthly value multiplied by forty-eight.

(8) For public service contracts, the value to be taken as a basis for calculating the estimated value of a contract shall, where appropriate, be the following:

- (a) as regards insurance services, the premium payable and other types of remuneration;
- (b) as regards banking and other financial services, the fees, commissions, interest and other types of remuneration;
- (c) as regards contracts which involve design, the fee or commission payable and other types of remuneration.

(9) For the purposes of calculating the estimated value of a public works contract, the contracting authority shall take into account not only the value of the works but also the estimated value of the supplies needed to carry out the works made available to the contractor by the contracting authorities.

(10) For the purposes of calculating the estimated value of a contract including both supplies and services, account shall be taken of the total value of the supplies and services, regardless of their respective values. The calculation shall include the value of siting and installation operations.

(11) The basis of calculating the value of a framework agreement and dynamic purchasing systems shall be the estimated maximum value net of VAT of all the contracts envisaged for the total term of the framework agreement or the dynamic purchasing system.

Non-applicability.
Amended by:
L.N. 255 of 2012;
L.N. 65 of 2013;
L.N. 397 of 2013.

17. (1) These regulations shall not apply to:
- (a) public contracts governed by different procedural rules and awarded in pursuance of an international agreement concluded between Malta and one or more third countries covering supplies or works intended for the joint implementation or exploitation of a work by the signatory States or services intended for the implementation or exploitation of a project by the signatory states:
Provided that the international agreement has been concluded in conformity with the Treaty establishing the European Community and has been notified to the Commission;
 - (b) public contracts governed by different procedural rules and awarded pursuant to the particular procedure of an international organisation;
 - (c) public contracts, which are declared to be secret, when their performance must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the EU Member State concerned, or when the protection of the essential interests of the Member State so require;
 - (d) undertakings in a Member State or a third country in pursuance of an international agreement relating to the stationing of troops and concerning the undertakings of a Member State or of a third country;
 - (e) public contracts for the principal purpose of permitting the contracting authorities to provide or exploit public telecommunications networks or to provide to the public one or more telecommunications services;
 - (f) public service contracts for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; nevertheless financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this regulation;
 - (g) public service contracts for the acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters and contracts for broadcasting time;
 - (h) public service contracts for arbitration and conciliation services;
 - (i) public service contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by the contracting authorities to raise money or capital, and central bank services;
 - (j) public service contracts for employment contracts;
 - (k) public service contracts for research and development

services other than those where 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;

- (d) public supply or service or works contracts, between one contracting authority and another, that are financed by the Central Government.

(2) Without prejudice to the application of regulation 65(2), these regulations shall not apply to public service concession contracts:

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

- (a) the rejection or admission of candidates to a restricted or negotiated procedure leading to the award of a public service concession contracts; and, or
- (b) 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; and, or
- (c) 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 review's procedure set forth in Parts XII and XIII, 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.

(3) These regulations shall not apply to 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 administrative provision which is compatible with the EC Treaty.

(4) Contracting authorities shall not be obliged to supply information, the disclosure of which is deemed contrary to the essential interests of Malta's security.

PART II

Rules governing public contracts whose value does not exceed one hundred and twenty thousand euro (€120,000)

18. Where the estimated value of a public contract does not exceed one hundred and twenty thousand euro (€120,000) only the relevant provisions of Part I and the whole of Part II shall apply. Applicability.

19. (1) Without prejudice to sub-regulations (2) and (3), all public contracts, the estimated value of which does not exceed one hundred and twenty thousand euro (€120,000), shall be regulated and administered by the contracting authority, which shall nevertheless ensure that all the applicable provisions contained in Part I and Part II are complied with. Scope.

(2) Following the evaluation of a tender by the Departmental Adjudicating Board, an evaluation report shall be drawn up and communicated to the Departmental Contracts Committee.

(3) 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 of Contracts.

Procurement
procedures for
contracting
authorities.

20. (1) Except where the Minister otherwise directs or approves, the procedure for the procurement of equipment, stores, works or services by the contracting authorities listed in Schedule 2 shall be as follows:

- (a) where the estimated value does not exceed two thousand and five hundred euro (€2,500), the equipment, stores, works or services may be procured departmentally either after obtaining quotations or direct from the open market at the discretion of the Head of Department taking into consideration the amount involved, the urgency attached to the procurement and restrictions of choice and availability;
- (b) where the estimated value exceeds two thousand and five hundred euro (€2,500) but does not exceed six thousand euro (€6,000), the equipment, stores, works or services may be procured departmentally after a call for tenders, or after obtaining quotations, or direct from the open market, taking into consideration the amount involved, the urgency attached to the procurement and restrictions of choice and availability, and shall be approved by the Minister responsible for that department, or by such member of the department as may be authorised by that Minister;
- (c) purchases of the same or closely similar material in different lots under paragraphs (a) and (b) during a period of six months shall not exceed a total value of twenty-five thousand euro (€25,000);
- (d) where the estimated value exceeds six thousand euro (€6,000) but not one hundred and twenty thousand euro (€120,000), the equipment, stores, works or services may be procured after a departmental call for tenders or after publishing a call for quotations in the Gazette. The tenders and quotations shall be opened in public by three senior officers of the said department and the prices quoted shall also be made public. The provisions of regulation 28 shall apply for the adjudication of the tenders and quotations submitted:

Provided that the Minister may by regulations allow limits higher than one hundred and twenty thousand euro (€120,000) up to the thresholds, in the case of particular departments, and may authorise, as and when he deems appropriate, the setting up of procurement committees as provided for in these regulations:

Provided further that 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 department, who may delegate his authority in writing to the Parliamentary Secretary, the Permanent Secretary or the Head of Department.

(2) Every six months the Head of Department shall publish in the Gazette a full list of all departmental contracts awarded by him and a list of all cases involving variations which exceed the original contract values by more than 5 per cent. In such cases details should include the nature of the contracts, the original contract values and the final contract values.

(3) In all cases in which the authorities listed in Schedule 2 wish to adopt the restricted procedure in order to carry out their procurement under this regulation, the prior consent of the Director of Contracts shall be required.

(4) Without prejudice to sub-regulation (1)(d) direct contracts valued in excess of six thousand euro (€6,000) may, in exceptional cases, be placed by any contracting authority listed in Schedule 2 after such an authority obtains 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.

(5) The financial limits referred to in this regulation may be varied by order of the Minister published by regulations.

(6) Contracting authorities operating in terms of an enabling law shall follow the procedures stipulated in that law in the award of direct contracts.

21. (1) Where the estimated value of the public contract exceeds twelve thousand euro (€12,000) and is issued by an authority listed in Schedule 1, any tenderer or candidate concerned shall have a right to make a complaint to the Review Board in accordance with this regulation.

Right of recourse.
Amended by:
L.N. 312 of 2012;
L.N. 65 of 2013.

(2) (a) The contracting authority shall be obliged to issue a notice and affix an advertisement, in a prominent place at its premises, indicating the awarded public contract, the financial aspect of the award and the name of the successful tenderer. The contracting authority shall, by electronic means or by fax, inform the tenderer or candidate concerned of the publication of the award. The contracting authority shall be precluded from concluding the contract during the period allowed for the submission of appeals.

(b) The award process shall be completely suspended if an appeal is eventually submitted.

(3) Any tenderer or candidate concerned who is aggrieved by the award indicated by the contract authority may, within five working days from the date of notification, file a letter of objection, together with a deposit, with the contracting authority, clearly setting forth any reason for his complaint. The deposit to be paid in respect of tenders valued at less than forty-seven thousand euro (€47,000) shall be four hundred euro (€400), while those between

forty-seven thousand euro (€47,000) and one hundred and twenty thousand euro (€120,000) shall be 0.5% of the estimated value of the tender, with a minimum deposit of four hundred euro (€400). The letter by the complaining tenderer shall be affixed on the notice board of the contracting authority and shall be brought to the attention of the recommended tenderer.

(4) After the expiry of the period allowed for the submission of a complaint, the contracting authority shall deliver the letter of complaint, the deposit receipt and all documents relating to the public contract in question to the Review Board who shall examine the matter in a fair and equitable manner. In its deliberation the Review Board shall have the authority to obtain, in any manner it deems appropriate, any other information not already provided by the contracting authority. The Review Board shall determine the complaint by upholding or rejecting it. The written decision of the Review Board shall be affixed on the notice board of the contracting authority and copies thereof shall be forwarded to the Director of Contracts and all the parties involved.

Cap. 12.

(5) (a) Any tenderer or candidate who feels aggrieved by a decision taken by the Review Board may appeal to the Court of Appeal (Superior Jurisdiction) 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 decision on which that decision has been made public.

(b) A copy of the appeal application shall be served on the contracting authority and on the recommended tenderer, if any, who may file a written reply within twenty days from the date of service.

(c) 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 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.

(d) 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.

(6) Tender documents issued in terms of this Part shall include a clause informing tenderers that the award of the contract is subject to the right of recourse as provided for in this regulation, a copy of which should be reproduced in the documents.

(7) The Minister shall have the authority by order to extend the

provisions of this regulation in order that recourse as provided in this regulation be made available also by authorities listed in Schedule 3 and to prescribe the procedure by which such recourse is to be granted.

PART III

Rules governing public contracts whose value exceeds one hundred and twenty thousand euro (€120,000) but does not exceed the thresholds

22. (1) In addition to this Part, Part I, Part IV and regulations 40 to 42 also apply to public contracts where the estimated value exceeds one hundred and twenty thousand euro (€120,000) but does not exceed the thresholds: Applicability.

Provided that contract notices shall be published only in the Gazette and in such form as stipulated by the Director.

(2) Except where the Minister otherwise directs or approves, the procedure for the award of a public contract shall be that as stipulated in Parts I and IV. The Minister may delegate his authority in writing to the Permanent Secretary or to any other senior official in his Ministry.

23. All public contracts, the estimated value of which exceeds one hundred and twenty thousand euro (€120,000) but does not exceed the thresholds, shall be subject to the regulatory and other functions of the Department and Director of Contracts: Award procedure.

Provided that public contracts required by a contracting authority listed in Schedule 2 shall be issued, administered and determined by the Department of Contracts, which for the purposes of these regulations shall act on behalf of the contracting authority:

Provided further that public contracts required by those contracting authorities listed in Schedule 3 shall be issued, administered and determined by the contracting authorities therein listed subject to the provisions set out in these regulations including but not limited to the right of appeal.

PART IV

Rules common to public contracts whose value exceeds one hundred and twenty thousand euro (€120,000)

24. This Part shall apply to all public contracts whose value is in excess of one hundred and twenty thousand euro (€120,000). Applicability.

25. (1) Subject to the other provisions of these regulations, procurement of services, supplies and works shall be made by public contract after a call for tenders in accordance with these regulations. Award procedures.

(2) Subject to the other provisions of these regulations, in awarding a public contract, a contracting authority shall apply the open or restricted procedures as defined in these regulations.

(3) In the specific circumstances expressly provided for in regulation 48, contracting authorities may award their public

contracts by means of the competitive dialogue.

(4) In the specific cases and circumstances referred to expressly in regulations 59, 60, 66, 67, 72 and 73 the contracting authorities may apply a negotiated procedure, with or without publication of the contract notice.

(5) In all cases in which the authorities listed in Schedule 2 wish to adopt the restricted or negotiated procedure in order to carry out their procurement, the prior consent of the Director shall be required.

(6) In all cases in which the authorities listed in Schedule 3 and Schedule 5 wish to adopt the restricted or negotiated procedure in order to carry out their procurement, prior approval from the Minister responsible for that authority, or from a senior official in that Ministry duly delegated in writing by his Minister to grant such approval, shall be required.

(7) In restricted and negotiated procedures with a call for competition the contracting authorities shall, on the basis of information given relating to the candidate's personal position as well as of the information and formalities necessary for the purposes of regulation 50, select the candidates whom they will invite to submit a tender or to negotiate.

Framework agreements.

26. (1) Contracting authorities may conclude framework agreements.

(2) For the purpose of concluding framework agreements, contracting authorities shall follow the rules of procedure referred to herein for all phases up to the award of contracts based on the framework agreement:

- (a) the parties to the framework agreement shall be chosen by applying the award criteria in accordance with regulation 28;
- (b) contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in sub-regulations (3) and (4). Such procedures shall be applied only between the contracting authorities and the economic operators originally party to the framework agreement;
- (c) when awarding contracts based on a framework agreement, the parties may under no circumstances make substantial amendments to the terms laid down in that framework agreement, in particular in the case referred to in sub-regulation (3);
- (d) the term of a framework agreement may not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement;
- (e) contracting authorities may not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

(3) 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. For the award of those contracts, contracting authorities may consult in writing the operator party to the framework agreement, requesting it to supplement its tender as necessary.

- (4) (a) Where a framework agreement is concluded with several economic operators, the latter must be at least three in number, insofar as there is a sufficient number of economic operators to satisfy the selection criteria and, or of admissible tenders which meet the award criteria.
 - (b) Contracts based on framework agreements concluded with several economic operators may be awarded:
 - (i) either by application of the terms laid down in the framework agreement without reopening competition; or
 - (ii) where not all the terms are laid down in the framework agreement, when the parties are again in competition on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the procedure contained in paragraph (c).
 - (c) (i) For every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of performing the contract.
 - (ii) Contracting authorities 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.
 - (iii) Tenders shall be submitted in writing, and their content shall remain confidential until the stipulated time-limit for reply has expired.
 - (iv) Contracting authorities shall award each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.
27. (1) Contracting authorities may use dynamic purchasing systems.
- (2) (a) In order to set up a dynamic purchasing system, contracting authorities shall follow the rules of the open procedure in all its phases up to the award of contracts to be concluded under this system. All tenderers satisfying the selection criteria and having submitted an indicative tender which complies with the specification and any possible additional documents shall be admitted to the system. Indicative tenders may be improved at any time provided that they continue to comply with the specification.

Dynamic purchasing systems.

- (b) With a view to setting up the system and to the award of contracts under that system, contracting authorities shall use solely electronic means in accordance with regulation 45.
- (3) For the purposes of setting up the dynamic purchasing system, contracting authorities shall:
 - (a) publish a contract notice making it clear that a dynamic purchasing system is involved;
 - (b) indicate in the specification, amongst other matters, the nature of the purchases envisaged under the system, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications;
 - (c) offer by electronic means, on publication of the notice and up to the expiry of the system, unrestricted, direct dynamic purchasing systems and full access to the specification and to any additional documents and shall indicate in the notice the internet address at which such documents may be consulted.

(4) Contracting authorities shall give any economic operator, throughout the entire period of the dynamic purchasing system, the possibility of submitting an indicative tender and of being admitted to the system under the conditions referred to in sub-regulation (2).

They shall complete evaluation within a maximum of fifteen days from the date of submission of the indicative tender. However, they may extend the evaluation period provided that no invitation to tender is issued in the meantime. The contracting authority shall inform the tenderer referred to herein at the earliest possible opportunity of its admittance to the dynamic purchasing system or of the rejection of its indicative tender.

(5) Each specific contract must be subject to an invitation to tender. Before issuing the invitation to tender, contracting authorities shall publish a simplified contract notice inviting all interested economic operators to submit an indicative tender, in accordance with sub-regulation (4), within a time-limit that may not be less than fifteen days from the date on which the simplified notice was sent. Contracting authorities may not proceed with tendering until they have completed evaluation of all the indicative tenders received by that deadline.

(6) Contracting authorities shall invite all tenderers admitted to the system to submit a tender for each specific contract to be awarded under the system. To that end they shall set a time-limit for the submission of tenders. They shall award the contract to the tenderer which submitted the best tender on the basis of the award criteria set out in the contract notice for the establishment of the dynamic purchasing system. Those criteria may, if appropriate, be formulated more precisely in the invitation referred to herein.

(7) A dynamic purchasing system may not last for more than four years, except in duly justified exceptional cases. Contracting

authorities may not resort to this system to prevent, restrict or distort competition. No charges may be billed to the interested economic operators or to parties to the system.

28. (1) Contracts shall be awarded on the basis of the criteria laid down in this regulation and regulation 29, taking into account regulation 47, after the suitability of the economic operators not excluded under regulations 50 and 52(4) and (5) has been checked by contracting authorities in accordance with the criteria of economic and financial standing, of professional and technical knowledge or ability referred to in regulations 36, 51, 52 and 53 and, where appropriate, with the non-discriminatory rules and criteria referred to in sub-regulation (3).

Award criteria.

(2) Contracting authorities may require candidates and tenderers to meet minimum capacity levels in accordance with regulations 51 and 52. The extent of the information referred to in regulations 51 and 52 and the minimum levels of ability required for a specific contract must be related and proportionate to the subject-matter of the contract. The minimum levels shall be referred to in the contract notice.

(3) Contracting authorities shall determine the award of public contracts on the following criteria:

- (a) the most economically advantageous offer; or
- (b) the lowest price offered compliant with the tender specifications.

(4) Where the award is made to the most economically advantageous offer, various criteria relating to the subject matter of the contract, including but not limited to, price, delivery date, delivery period or period of completion, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, technical merit, profitability, after-sales service and technical assistance shall be taken into consideration.

(5) Where the contract is to be awarded on the basis of the most economically advantageous offer, the contracting authority shall, in the contract documents or, in the case of a competitive dialogue, in the descriptive document, indicate all the criteria it intends to apply in the determination of the award, indicating the relative weighting which can be expressed by providing for a range with an appropriate maximum spread:

Provided that where, in the opinion of the contracting authority, weighting is not possible for demonstrable reasons, the contracting authority shall indicate in the contract notice or contract documents or, in the case of a competitive dialogue, in the descriptive document, the criteria in descending order of importance.

29. (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:

Special considerations relating to rules governing award criteria.

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.

(2) The contracting authority may take into consideration the tenderer's explanations relating to the economics of the manufacturing process, or to the technical solutions proposed, or to the exceptionally favourable conditions available to it, to the originality of the tenderer's proposal, compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed, and the possibility of the tenderer obtaining state aid:

Provided that where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained state aid, the tender can 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 granted legally. Contracting authorities shall inform the Commission and the Director when they reject a tender in these circumstances.

(3) If the documents relating to a public contract provide for its award at the lowest price tendered, the contracting authority shall communicate to the Director any reasons for the rejection of tenders which it considers to be too low.

(4) Tenders shall be submitted in writing. However, when authorised by the contracting authority, tenders may be submitted by any means provided that -

- (a) each tender contains all the information necessary for its evaluation;
- (b) the confidentiality of tenders is maintained pending their evaluation;
- (c) where necessary, for reasons of legal proof, such tenders are confirmed as soon as possible in writing or by dispatch of a certified copy;
- (d) tenders are opened after the time limit for their submission has expired.

Use of electronic auctions.

- 30.** (1) Contracting authorities may use electronic auctions.
- (2) (a) In open, restricted or negotiated procedures in the case referred to in regulation 39(1), the contracting authorities may decide that the award of a public contract shall be preceded by an electronic auction when the contract specifications can be established with precision.
- (b) 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 26(2)(b) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in regulation 27.

- (c) The electronic auction shall be based:
 - (i) either solely on prices when the contract is awarded to the lowest price, or
 - (ii) on prices and, or on the new values of the features of the tenders indicated in the specification when the contract is awarded to the most economically advantageous tender.

(3) Contracting authorities which decide to hold an electronic auction shall state that fact in the contract notice. The specifications shall include, *inter alia*, 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.

(4) Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with any award criterion set and with the weighting fixed for them. All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and, or new values; the invitation shall contain all relevant information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction. The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

(5) When the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tenderer, carried out in accordance with a weighting established by a range with an appropriate maximum spread. Such invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices and, or new values submitted. That formula shall incorporate

the weighting of all the criteria fixed to determine the most economically advantageous tender, as indicated in the contract notice or in the specifications; for that purpose, any ranges shall, however, be reduced beforehand to a specified value. Where variants are authorised, a separate formula shall be provided for each variant.

(6) Throughout each phase of an electronic auction the contracting authorities shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specifications. 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.

(7) Contracting authorities shall close an electronic auction in one or more of the following manners:

- (a) in the invitation to take part in the auction they shall indicate the date and time fixed in advance;
- (b) when they receive no more new prices or new values which meet the requirements concerning minimum differences. In that event, the contracting authorities shall state in the invitation to take part in the auction the time which they will allow to elapse after receiving the last submission before they close the electronic auction;
- (c) when the number of phases in the auction, fixed in the invitation to take part in the auction, has been completed.

When the contracting authorities have decided to close an electronic auction in accordance with paragraph (c), possibly in combination with the arrangements laid down in paragraph (b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

(8) After closing an electronic auction, contracting authorities shall award the contract in accordance with regulation 28 on the basis of the results of the electronic auction. Contracting authorities may not have improper recourse to electronic auctions nor may they use them in such a way as to prevent, restrict or distort competition or to change the subject-matter of the contract, as put up for tender in the published contract notice and defined in the specification.

Sub-contracting
and conditions for
performance.

31. (1) In the contract documents, the contracting authority may ask the tenderer to indicate in his tender any share of the contract which he intends to sub-contract to third parties and any proposed sub-contractors. Such indication shall be without prejudice to the tenderer's liability.

(2) In the contract documents, contracting authorities may lay down special conditions relating to the performance of a contract, provided that these are compatible with Community law and are

indicated in the contract notice or in the specifications. The conditions governing the performance of a contract may, in particular, concern social and environmental considerations.

32. (1) Groups of economic operators may submit tenders or put themselves forward as candidates. These groups shall not be required by contracting authorities to assume a specific legal form; however, the group selected may be required to do so when it has been awarded the contract, to the extent that this change is necessary for the satisfactory performance of the contract.

Joint and group tendering.

(2) In the case of public service and public works and public supply contracts covering in addition services and, or siting and installation operations, legal persons may be required to indicate, in the tender or in a request for participation, the names and relevant professional qualifications of the staff to be responsible for the performance of the public contract in question.

33. Where, in accordance with a call for tenders, an offer consists of separate packages, the procedure set out in Part XII shall be followed.

Separate packages.

34. (1) There shall be established a Public Contracts Review Board to be known as the Review Board which shall be regulated in terms of Part XIV.

Review Board.

(2) It shall be the function of the Board to hear and determine 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 any authority listed in Schedule 1 and whose value exceeds twelve thousand euro (€12,000), in accordance with the procedures laid down in these regulations.

(3) Every contracting authority listed in Schedule 1 shall indicate in its tender documents that the award of the contract is subject to the review procedure as set forth in these regulations. The document shall include a copy of Parts XII or XIII, as the case may be, for the guidance of tenderers.

(4) Without prejudice to regulation 17(2), it shall likewise be the function of the Board to hear and determine complaints submitted by any person having or having had an interest in obtaining a public service concession contract when recourse to the Board is so specified in the call for tender.

35. (1) Contracting authorities listed in Schedule 3 shall, by not later than June of each year, send to the Director a report in relation to each public contract awarded by it during the previous calendar year as well as the number and total value of contracts awarded pursuant to the derogations to the World Trade Organisation Agreement on Government Procurement. This report shall include, apart from the details contained in regulation 44(4):

Statistical and other reports.

- (a) the value, estimated if necessary, of the consideration payable under the contract;
- (b) whether the open, negotiated or restricted procedure was used;

- (c) if the restricted procedure was used, pursuant to which procedures was it used;
- (d) the principal category of service, supply or work to be carried out; and
- (e) the nationality of the person to whom the contract was awarded.

(2) A contracting authority shall send to the Director a report containing such information as the Director may from time to time require in respect of any particular public contract irrespective of its value.

Official lists.

36. (1) Economic operators registered in the official lists of their country may, for each contract, submit to the contracting authority a certificate of registration issued by the competent authority. This certificate shall state the reference which enabled them to be registered in the list and the classification given in this list.

(2) Certified registration in official lists of economic operators by the competent bodies in EU Member States shall constitute a presumption of suitability corresponding to the undertaking's classification.

(3) Information which can be deduced from registration in official lists may not be questioned. However, with regard to the payment of social security contributions, an additional certificate may be required of any registered undertaking whenever a contract is offered.

(4) The contracting authorities shall apply the above provisions only in favour of economic operators established in the Member State holding the official list.

(5) When economic operators from other Member States are being registered in a local official list, no proof or statement can be required in addition to those required of national undertakings.

PART V

Rules governing public contracts whose estimated value equals or exceeds the threshold

Applicability.

37. (1) Public contracts whose estimated value is equal to the threshold or is in excess thereof shall be governed by Part I, Part IV and this Part and shall be awarded using the open procedure, the restricted procedure or, in the exceptional cases foreseen in regulations 59, 60, 66, 67, 72 and 73, the negotiated procedure:

Provided that public contracts required by those contracting authorities listed in Schedule 2 shall be issued, administered and determined by the Department of Contracts, which for the purposes of these regulations shall act on their behalf; and public contracts required by those contracting authorities listed in Schedule 3 shall be issued, administered and determined by the contracting authorities therein listed subject to the provisions set out in these regulations.

(2) This Part shall also apply to public contracts awarded by

contracting authorities in the field of defence, subject to Article 296 of the E.C. Treaty.

- 38.(1)(a)** In restricted procedures, negotiated procedures with publication of a contract notice and in the competitive dialogue procedure, contracting authorities may limit the number of suitable candidates they will invite to tender, to negotiate or to conduct a dialogue with, provided a sufficient number of suitable candidates is available. The contracting authorities shall indicate in the contract notice 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. Number of tenders.
- (b)** In the restricted procedure the minimum shall be five. In the negotiated procedure with publication of a contract notice and the competitive dialogue procedure the minimum shall be three. In any event the number of candidates invited shall be sufficient to ensure genuine competition.
- (c)** The contracting authorities shall invite a number of candidates at least equal to the minimum number set in advance. Where the number of candidates meeting the selection criteria and the minimum levels of ability is below the minimum number, the contracting authority may continue the procedure by inviting the candidates having the required capabilities. In the context of this same procedure, the contracting authority may not include other economic operators who did not request to participate, or candidates who do not have the required capabilities.

(2) Where the contracting authorities exercise the option of reducing the number of solutions to be discussed or of tenders to be negotiated, as provided for in regulation 48(4), 59(4), 66(4) and 72(4), they shall do so by applying the award criteria stated in the contract notice, in the specifications or in the descriptive document. In the final stage, the number arrived at shall make for genuine competition insofar as there are enough solutions or suitable candidates.

39. (1) Contracting authorities may award a public contract by negotiated procedure, after prior publication of an EU contract notice in the cases mentioned in regulations 59, 66 and 72. Negotiated procedures.

(2) Contracting authorities may award a public contract by negotiated procedure, without prior publication of an EU contract notice in the cases mentioned in regulations 60, 67 and 73.

(3) The authorities listed in Schedule 2 shall require the consent of the Director if they wish to adopt the negotiated or restricted procedures in order to carry out their procurement under this regulation.

(4) The authorities listed in Schedule 3 and Schedule 5 which wish to adopt the restricted or negotiated procedures in order to

carry out their procurement under this regulation, shall require the prior consent from the Minister responsible for that authority, or from an official in that Ministry duly delegated in writing by his Minister.

- (5) (a) In all instances where the negotiated procedure in accordance with this regulation is to be adopted, the matter may be referred by the Director of Contracts or the contracting authority to the Minister who shall appoint an *ad hoc* committee with the responsibility of conducting the negotiated procedure, in accordance with this regulation, on behalf of the contracting authority.
- (b) The *ad hoc* committee shall be composed of such number of persons as the Minister may deem appropriate after having due regard to the complexity of the particular contract.
- (c) The *ad hoc* committee shall ensure that the provisions of this regulation are duly observed, and shall identify the tenderer who submitted the most economic advantageous tender.
- (d) The *ad hoc* committee shall operate under the supervision of the Director of Contracts.

Time limits for receipt of requests to participate and for receipt of tenders.

40. When fixing the time-limits for the receipt of tenders and requests to participate, contracting authorities shall take account in particular of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set out in regulation 41.

Minimum time limits.

41. (1) In the case of open procedures, the minimum time limit for the receipt of tenders shall be fifty-two days from the date on which the contract notice was sent.

(2) In the case of restricted procedures, negotiated procedures with publication of a contract notice referred to in regulation 39(1) and the competitive dialogue:

- (a) the minimum time-limit for receipt of requests to participate shall be thirty-seven days from the date on which the contract notice is sent;
 - (b) in the case of restricted procedures, the minimum time-limit for the receipt of tenders shall be forty days from the date on which the invitation is sent.
- (3) (a) When contracting authorities have published a prior information notice, the minimum time-limit for the receipt of tenders under sub-regulations (1) and (2)(b) may, as a general rule, be shortened to thirty-six days, but under no circumstances to less than twenty-two days.
- (b) The time limit shall run from the date on which the contract notice was sent in open procedures, and from the date on which the invitation to tender was sent in restricted procedures.

- (c) The shortened time-limit as contained herein shall be permitted provided that the prior information notice has included all the information required for the contract notice in Annex I A in Schedule 10, insofar as that information is available at the time the notice is published and that the prior information notice was sent for publication between fifty-two days and twelve months before the date on which the contract notice was sent.

(4) Where notices are drawn up and transmitted by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Annex II in Schedule 10, the time-limits for the receipt of tenders referred to in sub-regulations (1) and (3) in open procedures, and the time limit for the receipt of the request to participate referred to in sub-regulation (2)(a), in restricted and negotiated procedures and the competitive dialogue, may be shortened by seven days.

(5) The time-limits for receipt of tenders referred to in sub-regulations (1) and (2)(b) may be reduced by five days where the contracting authority offers unrestricted and full direct access by electronic means to the contract documents and any supplementary documents from the date of publication of the notice in accordance with Schedule 10, Annex II, specifying the text of the notice and the internet address at which the documentation is accessible. This reduction may be added to that referred to in sub-regulation (4).

(6) If for whatever reason, the specifications and the supporting documentation or additional information, although requested in good time, are not supplied within the time-limits set in sub-regulation (8) and in regulation 44, or where tenders can be made only after a visit to the site or after on-the-spot inspection of documents supporting the contract documents, the time-limits for the receipt of tenders shall be extended so that all economic operators concerned may be aware of all the information needed to produce tenders.

(7) In the case of restricted procedures and negotiated procedures with publication of a contract notice referred to in regulation 39(1), where urgency renders impracticable the time-limits laid down in this regulation, contracting authorities may fix:

- (a) a time-limit for the receipt of requests to participate which may not be less than fifteen days from the date on which the contract notice was sent, or less than ten days if the notice was sent by electronic means, in accordance with the format and procedures for transmission indicated in point 3 of Annex II of Schedule 10; and
- (b) in the case of restricted procedures, a time-limit for the receipt of tenders which shall be not less than ten days from the date of invitation to tender.

(8) In open procedures, when contracting authorities do not offer unrestricted and full direct access by electronic means in accordance with sub-regulation (5) to the specifications and

supporting documentation, the specifications and supplementary documents shall be sent to economic operators by the contracting authority within six days from the date of receipt of the request to participate, provided that the request was made in good time before the deadline for submission of tenders:

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.

(9) Insofar as it has been requested in good time, additional information relating to the contract documents shall be supplied by the contracting authorities or competent departments not later than six days before the final date fixed for the receipt of tenders.

Time limit for a public works concession contract.

42. Where a contracting authority intends to award a public works concession contract, the provisions of regulation 71 shall apply.

Application of Council Regulation 1182/71.

43. The calculation of the time limits under this Part shall be made in accordance with Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits.

Invitation and information.

44.(1) (a) In restricted procedures, competitive dialogue procedures and negotiated procedures with publication of a contract notice within the meaning of regulation 39(1), contracting authorities shall simultaneously and in writing invite the selected candidates to submit their tenders or to negotiate or, in the case of a competitive dialogue, to take part in the dialogue.

(b) The invitation to the candidates shall include:

- (i) either a copy of the specifications or of the descriptive document and any supporting documents, or
- (ii) a reference to accessing the specifications and the other documents indicated in sub-paragraph (i), when they are made directly available by electronic means in accordance with regulation 41(5).

(c) Where an entity other than the contracting authority responsible for the award procedure has the specifications, the descriptive document and, or any supporting documents, the invitation shall state the address from which those specifications, that descriptive document and those documents may be requested and, if appropriate, the deadline for requesting such documents, and the sum payable for obtaining them and any payment procedures. The competent department shall send that documentation to the economic operator without delay upon receipt of a request.

(d) The additional information on the specifications, the

descriptive document or the supporting documents shall be sent by the contracting authority or the competent department not less than six days before the deadline fixed for the receipt of tenders, provided that it is requested in good time. In the event of a restricted or an accelerated procedure, that period shall be four days.

- (e) In addition, the invitation to submit a tender, to participate in the dialogue or to negotiate must contain at least:
- (i) a reference to the contract notice published;
 - (ii) 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;
 - (iii) in the case of competitive dialogue, the date and the address set for the start of consultation and the language or languages used;
 - (iv) a reference to any other adjoining documents to be submitted, either in support of verifiable declarations by the tenderer in accordance with regulation 28(1) and (2) and regulation 38 or to supplement the information referred to in that regulation, and under the conditions laid down in regulations 51 and 52;
 - (v) the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, if they are not given in the contract notice, the specifications or the descriptive document:

Provided that, in the case of contracts awarded in accordance with the provisions of regulation 48, the information referred to in paragraph (E)(ii) shall not appear in the invitation to participate in the dialogue but it shall appear in the invitation to submit a tender.

- (2) (a) Contracting authorities shall as soon as possible inform candidates and tenderers of decisions reached concerning the conclusion of a framework agreement, the award of contracts or admittance to a dynamic purchasing system, and shall do so in writing if requested by candidates or tenderers.
- (b) Contracting authorities shall inform candidates and tenderers of the grounds for any decision not to conclude a framework agreement or award a contract for which there has been call for competition, or of their decision to recommence the procedure or implement a dynamic purchasing system, and shall do so in writing if requested by candidates or tenderers.
- (c) In all cases mentioned in paragraphs (a) and (b), the contracting authorities shall inform the Director of the matters referred to therein.

(3) The contracting authority shall, within fifteen days of the date on which the request is received by a party concerned, inform:

- (a) any unsuccessful candidate, of the reasons for rejection of its application;
- (b) any unsuccessful tenderer, of the reasons for the rejection of his tender, including, for the cases referred to in regulations 46(3) and (4), the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirement;
- (c) any tenderer who has submitted 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:

Provided that contracting authorities may decide to withhold certain information on the contract award, referred to in this regulation, where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

(4) For every contract, framework agreement and every establishment of a dynamic purchasing system, the contracting authority shall take appropriate steps to document the progress of award procedures and shall draw up a written report which shall include at least the following and shall be forwarded to the Director, and to the Commission if the Commission so requests:

- (a) the name and address of the contracting authority, the subject-matter and value of the contract, framework agreement or dynamic purchasing system;
- (b) the names of the successful candidates or tenderers and the reasons for their selection;
- (c) the names of the candidates or tenderers rejected and the reasons for their rejection;
- (d) the reason for rejection of tenders found to be abnormally low;
- (e) the name of the successful tenderer and the reasons why his tender was selected and, if known, any share of the contract or the framework agreement which the successful tenderer may intend to subcontract to third parties;
- (f) if the contracting authority has used negotiated procedures, the circumstances which justify the use of such procedures;
- (g) as far as the competitive dialogue is concerned, the circumstances as laid down in regulation 48 justifying the use of this procedure;
- (h) if necessary, the reasons why the contracting authority has decided not to award a contract or framework

agreement or to establish a dynamic purchasing system.

45. (1) All communication and information exchange may be by post, by fax, by electronic means in accordance with sub-regulations (4) and (5), by telephone in the cases and circumstances referred to in sub-regulation (6), or by a combination of those means, according to the choice of the contracting authority. Communication.

(2) The means of communication chosen must be generally available and thus not restrict economic operators' access to the tendering procedure.

(3) Communication and the exchange and storage of information shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved, and that the contracting authorities examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.

(4) The tools to be used for communicating by electronic means, as well as their technical characteristics, must be non-discriminatory, generally available and interoperable with the information and communication technology products in general use.

(5) The following rules are applicable to devices for the electronic transmission and receipt of tenders and to devices for the electronic receipt of requests to participate:

- (a) information regarding the specifications necessary for the electronic submission of tenders and requests to participate, including encryption shall be available to interested parties. Moreover, the devices for the electronic receipt of tenders and requests to participate shall conform to the requirements of Schedule 11;
- (b) contracting authorities may, in compliance with Article 5 of Directive 1999/93/EC, require that electronic tenders be accompanied by an advanced electronic signature in conformity with paragraph 1 thereof;
- (c) contracting authorities may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification service provision for such devices;
- (d) tenderers or candidates shall undertake to submit, before expiry of the time limit laid down for submission of tenders or requests to participate, the documents, certificates and declarations referred to in regulations 50 to 53 and regulation 36 if they do not exist in electronic format.

(6) The following rules shall apply to the transmission of requests to participate:

- (a) requests to participate in procedures for the award of public contracts may be made in writing or by

telephone;

- (b) where requests to participate are made by telephone, a written confirmation must be sent before expiry of the time limit set for their receipt;
- (c) contracting authorities may require that requests for participation made by fax must be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof. Any such requirement, together with the time limit for sending confirmation by post or electronic means, must be stated by the contracting authority in the contract notice.

Technical specifications.

46.(1) (a) Contracting authorities shall set out technical specifications for public contracts and these shall be included in the contract documents. Whenever possible these technical specifications should be defined so as to take into account accessibility criteria for people with disabilities or design for all users.

- (b) Technical specifications shall afford equal access for tenderers and not have the effect of creating unjustified obstacles to the opening of public procurement to competition.

(2) Without prejudice to the legally binding technical rules in Malta, and insofar as these are compatible with Community law, the technical specifications shall be formulated:

- (a) either by reference to technical specifications as defined in sub-regulation (7) and, in order of preference, to national standards transposing European Standards, European Technical Approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or, when these do not exist, to national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the products. Each reference shall be accompanied with the words "or equivalent"; or
- (b) in terms of performance or functional requirements. The latter may include environmental characteristics. However, such parameters must be sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract; or
- (c) in terms of performance or functional requirements as mentioned in paragraph (b), with reference to specifications mentioned in paragraph (a) as a means of presuming conformity with such performance or functional requirements; or
- (d) by referring to the specifications mentioned in paragraph (a) for certain characteristics, and by referring to the performance or functional

requirements mentioned in paragraph (b) for other characteristics.

(3) Where a contracting authority makes use of the option of referring to the specifications in sub-regulation (2)(a), it cannot reject a tender on the grounds that the products and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in his tender to the satisfaction of the contracting authority, by whatever appropriate means, that the solutions which he proposes satisfy in an equivalent manner the requirements defined by the technical specifications. An appropriate means might be constituted by a technical dossier of the manufacturer or a test report from a recognised body.

(4) Where a contracting authority uses the option laid down in sub-regulation (2) to prescribe in terms of performance or functional requirements, it may not reject a tender for works, products or services which comply with a national standard transposing a European Standard, with a European Technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, if these specifications address the performance or functional requirements which it has laid down. In his tender the tenderer must prove to the satisfaction of the contracting authority and by any appropriate means that the work, product or service in compliance with the standard meets the performance or functional requirements of the contracting authority. An appropriate means might be constituted by a technical dossier of the manufacturer or a test report from a recognised body.

(5) Where contracting authorities lay down environmental characteristics in terms of performance or functional requirements as referred to in sub-regulation (2)(b), they may use the detailed specifications, or if necessary, parts thereof, as defined by European, national or multi-national eco-labels, or by any other eco-label, provided that:

- (a) those specifications are appropriate to define the characteristics of the supplies or services that are the object of the contract;
- (b) the requirements for the label are drawn up on the basis of scientific information;
- (c) the eco-labels are adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate; and
- (d) they are accessible to all interested parties:

Provided that contracting authorities may indicate that the products and services bearing the eco-labels are presumed to comply with the technical specifications laid down in the contract documents; however they must accept any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report from a recognised body.

- (6) Unless such specifications are justified by the subject-

matter of the contract, contracting authorities shall not introduce into the contractual clauses relating to a given contract technical specifications which mention products of a specific make or source or of a particular process or to trade marks, patents, types, or of 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-regulations (2) and (3) is not possible. Such reference shall be accompanied by the words "or equivalent".

(7) For the purposes of this regulation the following terms mean:

"technical specifications", in the case of public works contracts means the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a work, material, product or supply, which permits a work, a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting authority. These characteristics shall include levels of environmental performance, design for all requirements (including accessibility for disabled persons) and conformity assessments, performance, safety or dimensions, including procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling and production processes and methods. They shall also include rules relating to design and costing, the test, inspection and acceptances 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;

"technical specifications", in the case of public supply or service contracts, means a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of 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 and conformity assessment procedures;

"standard" means a technical specification approved by a recognized standardizing body, for repeated or continuous application compliance with which is not compulsory and which falls into one of the following categories:

- (a) International standard - a standard adopted by an international standards organisation and made available to the general public;
- (b) European standard - a standard adopted by a European standards organisation and made available to the general public;

- (c) National standard - a standard adopted by a national standards organisation and made available to the general public;

"European technical approval" means a favourable technical assessment of the fitness for use of a product for a particular purpose, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European Technical Approvals are issued by an approval body designated for this purpose by the Member State;

"common technical specification" means a technical specification laid down in accordance with a procedure recognized by the Member States to ensure uniform application in all Member States which has been published in the Official Journal of the European Union;

"technical reference" means any product produced by European standardisation bodies, other than official standards, according to procedures adopted for the development of market needs;

"recognised bodies" means, within the context of this regulation, test and calibration laboratories, and certification and inspection bodies, which comply with applicable European Standards.

47. (1) Where the criterion for the award of the contract is that of the most economically advantageous tender, contracting authorities may authorise tenderers to submit variants.

Variants.

(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.

(3) In the procedures for awarding public supply or services contracts, contracting authorities which have authorised variants may not reject a variant on the sole ground that it would, if successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

48. (1) In case of particularly complex contracts, where contracting authorities consider that the use of the open or restricted procedure will not allow the award of the contract, the latter may make use of the competitive dialogue in accordance with this regulation:

Competitive dialogue.

Provided that a public contract shall be awarded on the sole basis of the award criterion for the most economically advantageous tender.

(2) Contracting authorities shall publish a contract notice setting out their needs and requirements, which they shall define in that notice and or in a descriptive document.

(3) (a) Contracting authorities shall open, with the candidates selected in accordance with the relevant provisions of regulations 28, 36, 50, 51, 52 and 53, 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 contract with the chosen candidates during this dialogue.

(b) During the dialogue, contracting authorities shall ensure equality of treatment among all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.

(c) Contracting authorities may not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without the candidate's agreement.

(4) Contracting authorities may provide for the procedure to 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 in the contract notice or the descriptive document. The contract notice or the descriptive document shall indicate that recourse may be had to this option.

(5) The contracting authority shall continue such dialogue until it can identify the solution or solutions, if necessary after comparing them, which are capable of meeting its needs.

(6) Having declared that the dialogue is concluded and having so informed the participants, contracting authorities shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. These tenders shall contain all elements required and necessary for the performance of the project. These tenders may be clarified, specified and fine-tuned at the request of the contracting authority. However, such clarification, specification, fine-tuning or additional information may not involve changes to the basic features of the tender or the call for tender, variations which are likely to distort competition or have a discriminatory effect.

(7) Contracting authorities shall assess the tenders received on the basis of the award criteria laid down in the contract notice or the descriptive document and shall choose the most economically advantageous tender in accordance with regulation 28(3), (4) and (5). At the request of the contracting authority, the tenderer identified as having submitted the most economically advantageous tender may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided this does not have the effect of modifying substantial aspects of the tender or of the call for tender and does not risk distorting competition or causing discrimination.

(8) The contracting authorities may specify prices or payments to the participants in the dialogue.

- (9) (a) In all instances where the competitive dialogue in accordance with this regulation is to be adopted, the matter may be referred by the Director of Contracts or the contracting authority to the Minister who shall appoint an *ad hoc* committee with the responsibility of conducting the competitive dialogue, in accordance with this regulation, on behalf of the contracting authority.
- (b) The *ad hoc* committee shall be composed of such number of persons as the Minister may deem appropriate after having due regard to the complexity of the particular contract.
- (c) The *ad hoc* committee shall ensure that the provisions of this regulation are duly observed, and shall identify the tenderer who submitted the most economically advantageous tender.
- (d) The *ad hoc* committee shall operate under the supervision of the Director of Contracts.

49. (1) Contracting authorities shall make known, by means of an EU prior information notice published by the Commission or by themselves on their "buyer profile" as described in point 2(b) of Annex II in Schedule 10: EU notices.

- (a) where supplies are concerned, the estimated total value of the contracts or the framework agreements by product area which they intend to award over the following twelve months, where the total estimated value, taking into account regulations 12 and 16, is equal to or greater than seven hundred thousand euro (€700,000). The product area shall be established by the contracting authorities by reference to the CPV nomenclature;
- (b) where services are concerned, the estimated total value of the contracts or the framework agreements in each of the categories of services listed in Schedule 7 which they intend to award over the following twelve months, where such estimated value, taking into account regulations 12 and 16, is equal to or greater than seven hundred thousand euro (€700,000);
- (c) where works are concerned, the essential characteristics of the contracts or the framework agreements which they intend to award, the estimated value of which is equal to or greater than the threshold specified in regulation 12, taking into account regulation 16.

The notices referred to in paragraphs (a) and (b) shall be sent to the Commission or published on the buyer profile as soon as possible after the beginning of the budgetary year.

The notice referred to in paragraph (c) shall be sent to the

Commission or published on the buyer profile as soon as possible after the decision approving the planning of the works contracts or the framework agreements that the contracting authorities intend to award.

Contracting authorities who publish a prior information notice on their buyer profiles shall send the Commission, electronically, a notice of the publication of the prior information notice on a buyer profile, in accordance with the format and detailed procedures for sending notices indicated in point 3 of Annex II in Schedule 10.

Publication of the notices referred to in paragraphs (a), (b) and (c) shall be compulsory only where the contracting authorities take the option of shortening time-limits for the receipt of tenders as laid down in regulation 41(3).

This sub-regulation shall not apply to negotiated procedures without the prior publication of a contract notice.

(2) Where contracting authorities intend to award a public contract or a framework agreement by open, restricted or, under the conditions laid down in regulation 39, by negotiated procedure with the publication of a contract notice or, under the conditions laid down in regulation 48, a competitive dialogue, they shall make known their intention by means of an EU contract notice.

(3) (a) Contracting authorities which wish to set up a dynamic purchasing system shall make known their intention by means of a contract notice.

(b) Contracting authorities wishing to award a contract based on a dynamic purchasing system shall make known their intention by means of a simplified contract notice.

(4) (a) Contracting authorities which have awarded a public contract or concluded a framework agreement shall send a notice of the results of the award procedure no later than forty-eight days after the award of the contract or the conclusion of the framework agreement.

(b) In the case of framework agreements concluded in accordance with regulation 26, the contracting authorities are not bound to send a notice of the results of the award procedure for each contract based on that agreement.

(c) Contracting authorities shall send a notice of the result of the award of contracts based on a dynamic purchasing system within forty-eight days of the award of each contract. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within forty-eight days of the end of each quarter.

(d) In the case of public service contracts listed in Schedule 8, the contracting authorities shall indicate in the notice whether they agree to its publication.

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

(5) Notices shall include the information mentioned in Annex I A in Schedule 10 and, where appropriate, any other information deemed useful by the contracting authority in the format of standard forms adopted by the Commission.

(6) The contracting authorities shall send the contract notices to the Commission either by electronic means in accordance with the format and procedures for transmission indicated in Annex II of Schedule 10, paragraph 3, or by other means. In the event of recourse to the accelerated procedure set out in regulation 41(7), notices must be sent either by telefax or by electronic means, in accordance with the format and procedures for transmission indicated in Annex II of Schedule 10, paragraph 3. Notices shall be published in accordance with the technical characteristics for publication set out in point 1(a) and (b) of Annex II of Schedule 10.

(7) Contract notices shall be published in full in an official language of the Community as chosen by the contracting authority. A summary of the contract notice shall be published in the other languages of the Community.

(8) Notices drawn up and transmitted by electronic means in accordance with the format and procedures for transmission indicated in Annex II of Schedule 10, paragraph 3 shall be published no later than five days after they are sent. Notices which are not transmitted by electronic means in accordance with the format and procedures for transmission indicated in Annex II of Schedule 10, paragraph 3 shall be published not later than twelve days after their dispatch or in the case of the accelerated procedure referred to in regulation 41(7), not later than five days after they are sent.

(9) Notices shall not be published in the Gazette or in the press before the date of dispatch of the contract notices to the Commission. They shall state the date of dispatch of the contract notice and shall not contain information other than that dispatched to the Commission or published on a buyer profile in accordance with sub-regulation (1).

(10) The contracting authorities must be able to supply proof of the date of dispatch. Confirmation by the Commission of the publication of the notice sent shall constitute proof of publication.

(11) The content of contract notices not sent by electronic means in accordance with the format and procedures for transmission indicated in Annex II of Schedule 10, paragraph 3 shall be limited to approximately six hundred and fifty words.

(12) Contracting authorities may arrange for the publication in accordance with this regulation notices announcing public

contracts which are not subject to the publication requirement laid down herein.

Qualitative
selection criteria.
Amended by:
L.N. 68 of 2015.

50. (1) Any economic operator may be excluded from participating in a public contract where the economic operator:

- (a) is bankrupt or is being wound up, or whose affairs are being administered by the court, who has entered into an arrangement with creditors or who has suspended business activities or who is in any analogous situation arising from a similar procedure under national laws and regulations;
- (b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or for an arrangement with creditors or of any other similar proceedings under national laws or regulations;
- (c) has been convicted of an offence concerning his professional conduct by a judgement which has the force of *res judicata* in accordance with the laws of Malta;
- (d) has been declared guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate;
- (e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the law of Malta or the country in which he is established;
- (f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of Malta or the country in which he is established;
- (g) is guilty of serious misrepresentation in supplying the information required under these regulations or has not supplied such information.

(2) Where the contracting authority requires proof from the candidate or tenderer that none of the cases quoted in sub-regulation (1)(a), (b), (c), (e) and (f) applies to him, it shall accept, as sufficient evidence, relevant certification issued by a competent judicial or administrative body in the country of origin or the country whence that person comes showing that these requirements have been met.

(3) Where the certification referred to in sub-regulation (2) is not available, it may be replaced by a declaration on oath or by a solemn declaration made by the person concerned before a Commissioner for Oaths in Malta or before a judicial or administrative authority, a notary or a competent professional or trade body, in that person's country of residence.

(4) Any candidate or tenderer who has been the subject of a conviction by final judgment of which the contracting authority is aware for one or more of the reasons listed below, shall be excluded from participation in a public contract:

- (a) participation in a criminal organisation, as defined in

Article 2(1) of Council Joint Action 98/733/JHA;

- (b) corruption, as defined in Article 3 of the Council Act of 26 May 1997 and Article 3(1) of Council Joint Action 98/742/JHA respectively;
- (c) fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities;
- (d) money laundering, as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering:

Provided that the Director may authorise a derogation from the application of this sub-regulation for overriding requirements in the general interest.

For the purposes of this sub-regulation, the contracting authorities shall, where appropriate, ask candidates or tenderers to supply the documents referred to in sub-regulations (2) and (3) and may, where they have doubts concerning the personal situation of such candidates or tenderers, also apply to the competent authorities to obtain any information they consider necessary on the personal situation of the candidates or tenderers concerned.

Where the information concerns a candidate or tenderer established in a Member State other than Malta, the contracting authority may seek the cooperation of the competent authorities.

Having regard to the national laws of the Member State where the candidates or tenderers are established, such requests shall relate to legal and, or natural persons, including, if appropriate, company directors and any person having powers of representation, decision or control in respect of the candidate or tenderer.

51. (1) Proof of the economic operator's economic and financial standing may, as a general rule, be furnished *inter alia*, by one or more of the following:

Evidence of financial and economic standing.

- (a) appropriate statements from banks, or where appropriate, evidence of relevant professional indemnity insurance;
- (b) the presentation of balance-sheets or extracts therefrom, where publication of the balance sheets is required under company law in the country in which the economic operator is established;
- (c) a statement of the economic operator's overall turnover and, where appropriate, its turnover in respect of the products, works or services to which the contract relates for the three previous financial years depending on the date on which the economic operator was set up or the economic operator started trading, as far as the information on these turnovers is available.

(2) 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. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing an undertaking by those entities to that effect.

(3) Under the same conditions, a group of economic operators as referred to in regulation 32 may rely on the capabilities of participants in the group or of other entities.

(4) Contracting authorities shall specify, in the contract notice or in the invitation to tender, which references mentioned in sub-regulation (1) have been chosen and which must be provided, and of any others it deems fit.

(5) In the event that a candidate or tenderer is, for any valid reason, unable to provide the references requested by a contracting authority, its economic and financial standing may be substantiated by any other document which the contracting authority considers appropriate.

Evidence of
technical capacity.

52. (1) The technical and, or professional abilities of the economic operators shall be assessed and examined in accordance with sub-regulation (2).

(2) Evidence of the economic operators' technical abilities may be furnished by one or more of the following means according to the nature, quantity or importance, and use of the works, supplies or services:

- (a) (i) a list of the works carried out over the past five years, accompanied by certificates of satisfactory execution for the most important works. These certificates shall indicate the value, date and site of the works and shall specify whether they were carried out according to the rules of the trade and properly completed. Where appropriate, the competent authority shall submit these certificates to the contracting authority direct;
- (ii) a list of the principal deliveries effected or the main services provided in the past three years, with the sums, dates and recipients, whether public or private, involved. Evidence of delivery and services provided shall be given:
 - where the recipient was a contracting authority, in the form of certificates issued or countersigned by the competent authority;
 - where the recipient was a private purchaser, by the purchaser's certification or, failing this, simply by a declaration by the economic operator;
- (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 supplier or service provider for ensuring quality and the economic operator's study and research facilities;
- (d) 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, if necessary, on the means of study and research which are available to it and the quality control measures it will operate;
- (e) the educational and professional qualifications of the service provider or contractor and, or those of the economic operator's managerial staff and, in particular, those of the person or persons responsible for providing the services or managing the work;
- (f) for public works contracts and public services contracts, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract:

Provided that should contracting authorities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the Community Eco-Management and Audit Scheme (EMAS) or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators;

- (g) a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last three years;
- (h) a statement of the tools, plant or technical equipment available to the service provider or contractor for carrying out the contract;
- (i) an indication of the proportion of the contract which the services provider intends possibly to subcontract;
- (j) with regard to the products to be supplied:

- (i) samples, descriptions and, or photographs, the authenticity of which must be certified if 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 specifications or standards.

(3) 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. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for the execution of the contract, for example, by producing an undertaking by those entities to place the necessary resources at the disposal of the economic operator.

(4) In so far as economic operators for a public contract either have to possess a particular authorization or to be members of a particular organization in their home country in order to be able to perform the service, supply or work concerned, the contracting authority may require them to prove that they hold such authorization or membership.

(5) Any economic operator may be requested to prove his enrolment, as prescribed in his country of establishment, in one of the professional or trade registers or to provide a declaration or certificate as described in sub-regulation (10).

(6) Under the same conditions a group of economic operators as referred to in regulation 32 may rely on the abilities of participants in the group or in other entities.

(7) In procedures for awarding public contracts having as their object supplies requiring siting or installation work, the provision of services and, or the execution of works, the ability of economic operators to provide the service or to execute the installation or the work may be evaluated in particular with regard to their skills, efficiency, experience and reliability.

(8) The contracting authority shall specify, in the notice or in the invitation to tender, which references under sub-regulations (2) and (3) it wishes to receive.

(9) The extent of the information referred to in regulation 51 and in sub-regulations (1), (2), (3), (4), (5) and (6) must be confined to the subject matter of the public contract.

(10) The contracting authority shall take into consideration the legitimate interests of candidates and tenderers as regards the protection of their technical or trade secrets.

(11) The Department of Contracts shall designate the authorities and bodies competent to issue the documents, certificates or declarations referred to in this regulation and shall forthwith inform the Commission and other Member States thereof.

(12) A list of the relevant professional and trade registers and

authorities from which the relevant declarations or certificates may be obtained shall be kept by the Department of Contracts and shall be made available to the public.

53. (1) 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.

Supplemental information.

(2) Contracting authorities may invite the candidates or tenderers to supplement or clarify the certificates and documents submitted in terms of sub-regulation (1) and regulation 50, and the matters referred to in regulations 51 and 52.

54. (1) The Director of Contracts shall prepare and forward to the Commission a statistical report on the contracts awarded by contracting authorities listed in Schedule 1 during the preceding year, not later than the 31st October of each year.

Report of Commission.

(2) The statistical report shall detail at least:

- (a) the estimated overall value of contracts awarded below the thresholds by each contracting authority or category of contracting authorities, and
- (b) the number and value of contracts awarded above the thresholds by each contracting authority or category of contracting authorities,

subdivided as far as possible by procedure, category of works, product or service using the CPV nomenclatures, and the nationality of the tenderer to whom the contract has been awarded and, in the case of negotiated procedures, subdivided in accordance with regulation 39 and the number and value of contracts awarded to each Member State and to non-Member State countries as well as the number and total value of contracts awarded pursuant to the derogations to the World Trade Organisation Agreement on Government Procurement.

PART VI

Types of Contract

Section A

Public services contracts

55. (1) Public services contracts and the organisation of design contests, where the estimated value of the contract or the design contest at the dispatch of the EU contract notice or equivalent time if such a notice is not required is equal to or exceeds the threshold value, shall be awarded in terms of these regulations, save for Parts II, III, VI Section B, VI Section C and

Scope.
Amended by:
L.N. 104 of 2012;
L.N. 55 of 2014.

VII which shall not apply thereto.

(2) This Part shall also apply to public service contracts, the estimated value of which is equal to or exceeds the threshold value of two hundred and seven thousand euro (€207,000) net of VAT, issued in connection with a subsidised public works contract in terms of regulation 70(2), by an authority not being a contracting authority, where fifty per cent or more of the value of the public service contract is subsidised directly by a contracting authority. Contracting authorities awarding such subsidies shall ensure compliance with this regulation both when they themselves award the contract for and on behalf of those other entities and where the public contract is awarded by one or more entities other than themselves.

(3) This Part shall also apply to public contracts intended to cover both works listed in Schedule 6 and services listed in Schedules 7 and 8, if the works are only incidental to the services being the principal object of the contract.

- (4) (a) Public contracts which have as their object the services listed in Schedule 7 shall be awarded in accordance with these regulations.
- (b) Public contracts which have as their object the services listed in Schedule 8 shall be subject solely to regulations 46 and 49(4).
- (c) Contracts which have as their object services listed both in Schedule 6 and in Schedule 8 shall be awarded in accordance with these regulations where the value of the services listed in Schedule 7 is greater than the value of the services listed in Schedule 8. In other cases, contracts shall be awarded in accordance with regulations 46 and 49(4).

Application.

56. 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.

Two-tier application.

57. (1) Where a public service contract is to be awarded in respect of a service classified under Schedule 7, the contracting authority shall apply all the relevant provisions of these regulations applicable to public contracts whose estimated value is equal to or exceeds the threshold.

(2) A contracting authority shall observe the provisions of regulation 46 in awarding a public service contract in respect of a service classified under Schedule 8. It shall dispatch an EU award notice to the Office for Official Publications and it shall indicate in the EU notice whether or not it intends it to be published.

(3) Where a public service contract is to be awarded in respect of services classified under Schedule 6 and services classified under Schedule 8, it shall be classified as being for services classified under Schedule 6, if the estimated value of the services classified under Schedule 7 exceeds the estimated value of the services classified under Schedule 8.

58. (1) The rules for the organisation of design contests as set out herein shall be communicated to those interested in participating in the contest.

Design contracts.
Amended by:
L.N. 104 of 2012;
L.N. 55 of 2014.

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

- (a) by reference to Malta or part of Malta;
- (b) on the grounds that the participants are required to be either natural or legal persons.

(3) Design contests shall be organised by:

- (a) contracting authorities which are central government authorities, starting from a threshold equal to or greater than one hundred and thirty-four thousand euro (€134,000);
- (b) contracting authorities which are not central government authorities, starting from a threshold equal to or greater than two hundred and seven thousand euro (€207,000);
- (c) by all the contracting authorities, starting from a threshold equal to or greater than two hundred and seven thousand euro (€207,000) where contests concern services in category 8 of Schedule 7, category 5 telecommunications services, the positions of which in the CPV are equivalent to reference Nos CPC 7524, 7525 and 7526 and, or services listed in Schedule 8.

(4) This regulation shall apply to:

- (a) design contests organised as part of a procedure leading to the award of a public service contract;
- (b) design contests with prizes and, or payments to participants.

In the cases referred to in paragraph (a) the threshold refers to the estimated value net of VAT of the public services contract, including any possible prizes and, or payments to participants. In the cases referred to in paragraph (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 under regulation 60(c) if the contracting authority does not exclude such an award in the contest notice.

(5) This regulation shall not apply to:

- (a) design contests within the meaning of the Public Procurement of Entities operating in Water, Energy, Transport, and Postal Services Sector Regularions which are organised by contracting authorities

S.L. 174.06

exercising one or more of the activities referred to in regulations 3 to 7 of the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations and are organised for the pursuit of such activities; nor shall it apply to contests excluded from the scope of this regulation:

Provided that this regulation shall continue to apply to design contests awarded by contracting authorities carrying out one or more of the activities referred to in Article 6 of Directive 2004/17/EC and awarded for those activities, insofar as the option referred to in the second sub-paragraph of Article 71 thereof to defer its application is applied;

- (b) contests which are organised in the same cases as those referred to in regulation 17 for public service contracts.
- (6)
- (a) Contracting authorities which wish to carry out a design contest shall make known their intention by means of a contest notice.
 - (b) Contracting authorities which have held a design contest shall send a notice of the results of the contest in accordance with regulation 49 and must be able to prove the date of dispatch.
 - (c) Where the release of information on the outcome of the contest would impede law enforcement, be contrary to the public interest, prejudice the legitimate commercial interests of a particular enterprise, whether public or private, or might prejudice fair competition between service providers, such information need not be published.
- (7)
- (a) The notices referred to in sub-regulation (6) shall contain the information referred to in Annex I D of Schedule 10 in accordance with the standard model notices adopted by the Commission.
 - (b) The notices shall be published in accordance with regulation 49(6) to (11).
- (8)
- (a) Regulation 45(1), (2) and (4) shall apply to all communications relating to contests.
 - (b) Communications, exchanges and the storage of information shall be such as to ensure that the integrity and the confidentiality of all information communicated by the participants in a contest are preserved and that the jury ascertains the contents of plans and projects only after the expiry of the time limit for their submission.
 - (c) The following rules shall apply to devices for the electronic receipt of plans and projects:
 - (i) the information relating to the specifications which is necessary for the presentation of plans and projects by electronic means, including

encryption, shall be available to the parties concerned. In addition, the devices for the electronic receipt of plans and projects shall comply with the requirements of Schedule 12;

- (ii) contracting authorities may introduce or maintain voluntary arrangements for accreditation intended to improve the level of the certification service provided for such devices.

(9) 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.

(10) The panel 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 panel shall have that qualification or an equivalent qualification.

- (11) (a) The panel shall be autonomous in its decisions or opinions.
- (b) It shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.
- (c) It 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 which may need clarification.
- (d) Anonymity must be observed until the panel has reached its opinion or decision.
- (e) Candidates may be invited, if need be, to answer questions which the panel has recorded in the minutes to clarify any aspects of the projects.
- (f) Complete minutes shall be drawn up of the dialogue between panel members and candidates.

59. (1) Pursuant to regulation 39(1), a contracting authority may award public service contracts by negotiated procedure, after prior publication of an EU contract notice:

After prior
publication of an
EU contract notice.

- (a) in the event of irregular tenders or the submission of tenders which are unacceptable in terms of regulations 28, 31(1), 32, 47, 61 and 63 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 50 to 53 and who during the preceding open or restricted procedure have submitted tenders in

accordance with the formal requirements of the tendering procedure;

- (b) in exceptional cases, when the nature of the services or the risks involved do not permit prior overall pricing;
- (c) when the nature of the services to be procured, in particular in the case of intellectual services and services falling within category 6 of Schedule 7, is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selecting the best tender according to the rules governing open or restricted procedures.

(2) In the cases referred to in sub-regulation (1), contracting authorities shall negotiate with tenderers the tenders submitted by them in order to adapt them to the requirements which they have set in the contract notice, the specifications and additional documents, if any, and to seek out the best tender in accordance with regulation 28.

(3) During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. In particular they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.

(4) Contracting authorities may provide for the negotiated procedure to take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria in the contract notice or the specifications. The contract notice or the specifications shall indicate whether recourse has been had to this option.

Without prior
publication of an
EU contract notice.

60. A contracting authority may award public service contracts by negotiated procedure without prior publication of an EU contract notice:

- (a) when no tenders or no suitable tenders or no applications have been submitted in response to an open or restricted procedure, provided that the initial conditions of the contract are not substantially altered and on condition that a report is communicated to the Commission at its request;
- (b) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the services may be provided only by a particular economic operator;
- (c) where the contract concerned is awarded subsequent to a design contest and must be awarded to the successful candidate or to one of the successful candidates in which case they shall be invited to participate in the negotiations;
- (d) in so far as is strictly necessary, when the time-limits for open, restricted or negotiated procedures referred to in regulations 40 and 41 cannot be respected for reasons of extreme urgency occasioned by unforeseeable events. The circumstances invoked to

justify urgency must not be attributable to the contracting authority;

- (e) in so far as is strictly necessary, for additional services not included in the project initially considered or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the performance of the service described therein, on condition that the award is made to the economic operator carrying out such service:
- (i) when such additional services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authority, or
 - (ii) when such additional services, although separable from the performance of the original contract, are strictly necessary for its completion:

Provided that the aggregate estimated value of contracts awarded for additional services may not exceed fifty per cent of the amount of the principal contract;

- (f) in so far as is strictly necessary, for new services consisting in the repetition of similar services entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that such services conform to a basic project for which a contract was originally awarded in accordance with the open or restricted procedure:

Provided that where a contracting authority intends to award a series of tenders for the same project, EU notice must initially be given stating that the negotiated procedure might be adopted, and must stipulate the total estimated cost of subsequent services which shall be taken into consideration by the contracting authority when they apply the provisions of regulation 16. This procedure may be used only during the three years following the conclusion of the original contract.

61. (1) The contracting authority may state in the contract documents, or be obliged by the Director of Contracts to do so, the body or bodies from which a candidate or tenderer may obtain the appropriate information on the obligations relating to taxes, to environmental protection, to the employment protection provisions and to the working conditions which are in force in Malta, or the region or locality in which the services are to be provided and which shall be applicable to the services provided during the performance of the contract.

Information.

(2) A contracting authority which supplies the information referred to in sub-regulation (1) shall request the tenderers or candidates in the contract award procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the

service is to be provided. This shall be without prejudice to the application of regulation 29.

Rejection of variants.

62. Contracting authorities which have admitted variants pursuant to regulation 47 may not reject a variant on the sole grounds that it would lead, if successful, to a supply contract rather than a public service contract within the meaning of this regulation.

Entitlement to carry out a service.

63. Candidates or tenderers who, under the law of the Member State in which they are established, are entitled to carry out the relevant service activity, shall not be rejected solely on the grounds that, under the law of Malta, they would have been required to be either natural or legal persons.

Third countries.

64. For the purposes of the award of public contracts by contracting authorities, contracting authorities shall apply in their relations conditions as favourable as those which they grant to economic operators of third countries in implementation of the Agreement on Government Procurement, concluded in the framework of the Uruguay Round multilateral negotiations. The Department of Contracts shall to this end consult with the Advisory Committee for Public Contracts set up by Article 1 of Decision 71/306/EEC.

Section B

Public supply contracts

Scope.

65. (1) Public supply contracts where the estimated value of the contract is equal to or exceeds the threshold value, shall be awarded in terms of these regulations, save for Parts II, III, VI Section A, VI Section C and VII which shall not apply thereto.

(2) When a contracting authority grants to a body other than a contracting authority, regardless of its legal status, special or exclusive rights to engage in a public service activity, the instrument granting this right shall stipulate that the body in question must observe the principle of non-discrimination by nationality when awarding public supply contracts to third parties.

(3) This Part shall apply to public supply contracts for which the estimated value equals or exceeds the threshold concerned at the dispatch of the EU contract notice for publication.

After prior publication of an EU contract notice.

66. (1) (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 28, 31(1), 32, 47, 61 and 63 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 50 to 53 which, during the prior open or restricted procedure, have submitted tenders in accordance with the formal

requirements of the tendering procedure.

- (b) In exceptional cases, when the nature of the supplies or the risks attaching thereto do not permit prior overall pricing.

(2) In the cases referred to in sub-regulation (1), contracting authorities shall negotiate with tenderers the tenders submitted by them in order to adapt them to the requirements which they have set in the contract notice, the specifications and additional documents, if any, and to seek out the best tender in accordance with regulation 28.

(3) During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. In particular they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.

(4) Contracting authorities may provide for the negotiated procedure to take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria in the contract notice or the specifications. The contract notice or the specifications shall indicate whether recourse has been had to this option.

67. A contracting authority may award its public supply contracts by negotiated procedure without prior publication of an EU contract notice, in the following cases:

Without prior publication of an EU contract notice.

- (a) in the event that no tenders or suitable tenders or no applications have been submitted in response to an open or restricted procedure, provided the initial terms of the contract are not substantially altered and on condition that a report is communicated to the Commission at its request;
- (b) when the products involved are manufactured purely for the purpose of research, experiment, study or development. This provision does not extend to quantity production to establish commercial viability or for the recovery of research and development costs;
- (c) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator;
- (d) in so far as is strictly necessary when the time-limits for open, restricted or negotiated procedures referred to in regulations 40 and 41 cannot be respected for reasons of extreme urgency occasioned by events unforeseeable by the contracting authority provided that the circumstances invoked to justify urgency must not be attributable to the contracting authority;
- (e) in respect of additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the

contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. The length of such contracts as well as that of recurrent contracts may not, as a general rule, exceed three years;

- (f) for supplies quoted and purchased on a commodity market;
- (g) for the purchase of supplies on particularly advantageous terms, from either a supplier which is definitely winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under the laws of Malta.

Rejection of variants.

68. Contracting authorities which have admitted variants pursuant to regulation 47 may not reject a variant on the sole grounds that it would lead, if successful, to a service contract rather than a public supply contract within the meaning of this regulation.

Third countries.

69. For the purposes of the award of public contracts by contracting authorities, contracting authorities shall apply in their relations conditions as favourable as those which they grant to economic operators of third countries in implementation of the Agreement on Government Procurement, concluded in the framework of the Uruguay Round multilateral negotiations. The Department of Contracts shall to this end consult with the Advisory Committee for Public Contracts set up by Article 1 of Decision 71/306/EEC.

Section C

Public works contracts

Scope.
Amended by:
L.N. 104 of 2012;
L.N. 55 of 2014.

70. (1) Public works contracts and public works concessions where the estimated value of the contract or concession, at the dispatch of the EU contract notice for publication, is equal to or exceeds the threshold value, shall be awarded in terms of these regulations, save for Parts II, III, VI Section A, VI Section B and VII which shall not apply thereto.

(2) This Part shall also apply to public works contracts issued by an authority not being a contracting authority where those contracts involve civil engineering activities or building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings or buildings used for administrative purposes, the estimated value of which is equal to or exceeds the threshold value of five million one hundred eighty-six thousand euro (€5,186,000) net of VAT, but where fifty per cent or more of the value of the public works contract is subsidised by a contracting authority. Contracting authorities awarding such subsidies shall ensure compliance with this regulation both when they themselves award the contract for and on behalf of those other entities and where the public contract is awarded by one or more entities other than themselves.

71. (1) Public works concession contracts concluded by the contracting authorities where the value of the contracts is equal to or greater than five million one hundred eighty-six thousand euro (€5,186,000) shall be governed by this regulation. The value shall be calculated in accordance with the rules applicable to public works contracts defined in regulation 16.

Public works concession.
Amended by:
L.N. 104 of 2012;
L.N. 55 of 2014.

(2) This regulation shall not apply to public works concessions which are awarded:

(a) in the cases referred to in regulation 17 in respect of public works contracts;

(b) by contracting authorities exercising one or more of the activities referred to in regulations 3 to 7 of the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations, where those concessions are awarded for carrying out those activities:

S.L. 174.06

Provided that this Part shall continue to apply to public works concessions awarded by contracting authorities carrying out one or more of the activities referred to in regulation 6 of the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations and awarded for those activities.

S.L. 174.06

(3) (a) Contracting authorities which wish to award a public works concession contract shall make known their intention by means of a notice.

(b) Notices of public works concessions shall contain the information referred to in Annex I C of Schedule 10 and, where appropriate, any other information deemed useful by the contracting authority, in accordance with the standard forms adopted by the Commission.

(c) Notices shall be published in accordance with regulation 49(6) to (12).

(4) When contracting authorities resort to a public works concession, the time limit for the presentation of applications for the concession shall be not less than fifty-two days from the date of dispatch of the notice and, except where regulation 41(4) applies, regulation 41(6) shall apply.

(5) The contracting authority may:

(a) either require the concessionaire to award contracts representing a minimum of 30 per cent of the total value of the work for which the concession contract is to be awarded, to third parties, at the same time providing the option for candidates to increase this percentage, this minimum percentage being specified in the concession contract,

(b) or request the candidates for concession contracts to specify in their tenders the percentage, if any, of the total value of the work for which the concession contract is to be awarded which they intend to assign

to third parties.

(6) This regulation shall not apply to additional works not included in the concession project initially considered or in the initial contract but which have, through unforeseen circumstances, become necessary for the performance of the work described therein, which the contracting authority has awarded to the concessionaire, on condition that the award is made to the economic operator performing such work:

- (a) when such additional works cannot be technically or economically separated from the initial contract without major inconvenience to the contracting authorities, or
- (b) when such works, although separable from the performance of the initial contract, are strictly necessary for its completion:

Provided that the aggregate value of contracts awarded for additional works may not exceed fifty per cent of the amount of the original works concession contract.

(7) Where the concessionaire is a contracting authority it shall comply with the provisions laid down by this regulation for public works contracts in the case of works to be carried out by third parties.

- (8) (a) Public works concessionaires which are not contracting authorities shall apply the advertising rules defined in sub-regulation (9) when awarding works contracts to third parties where the value of such contracts is equal to or greater than five million one hundred eighty-six thousand euro (€5,186,000). Advertising shall not, however, be required where a works contract satisfies the conditions listed in regulation 39(2). The values of contracts shall be calculated in accordance with the rules applicable to public works contracts laid down in regulation 16.
- (b) Groups of undertakings which have been formed to obtain the concession or economic operators related to them shall not be considered third parties.

"Related undertaking" shall mean any undertaking over which the concessionaire can exert a dominant influence, whether directly or indirectly, or any undertaking which can exert a dominant influence on the concessionaire or which, as the concessionaire, is subject to the dominant influence of another undertaking as a result of ownership, financial participation or the rules which govern it. A dominant influence on the part of an undertaking is presumed when, directly or indirectly in relation to another undertaking, such undertaking -

- (i) holds a majority of the undertaking's subscribed capital;
- (ii) controls a majority of the votes attached to the

- shares issued by the undertaking; or
- (iii) can appoint more than half of the undertaking's administrative, management or supervisory body. The exhaustive list of such undertakings shall be included in the application for the concession. That list shall be brought up to date following any subsequent changes in the relationship between the undertakings.
- (9) (a) Works concessionaires which are not contracting authorities and which wish to award works contracts to a third party shall make known their intention by way of a contract notice.
- (b) Notices shall contain the information referred to in Annex I C of Schedule 10 and, where appropriate, any other information deemed useful by the works concessionaire, in accordance with the standard form adopted by the Commission.
- (c) The notice shall be published in accordance with regulation 49.
- (d) Regulation 49(12) on the voluntary publication of notices shall also apply.

(10) In works contracts awarded by a works concessionaire which is not a contracting authority, the time limit for the receipt of requests to participate, fixed by the concessionaire, shall be not less than thirty-seven days from the date on which the contract notice was dispatched and the time limit for the receipt of tenders not less than forty days from the date on which the contract notice or the invitation to tender was dispatched. Regulation 41(4), (5) and (6) shall apply.

72. (1) A contracting authority may award its public works contracts by negotiated procedure, after prior publication of an EU contract notice:

After prior publication.

- (a) in the event of irregular tenders or the submission of tenders which are unacceptable in terms of regulations 28, 31(1), 32, 47, 61 and 63 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 50 to 53 and who during the preceding open or restricted procedure have submitted tenders in accordance with the formal requirements of the tendering procedure;
- (b) when the works involved are carried out only for the purpose of research, experiment or development but not for the purposes of establishing commercial viability or for the recovery of research and development costs;

(c) in exceptional cases, when the nature of the works or the risks attaching thereto do not permit prior overall pricing.

(2) In the cases referred to in sub-regulation (1), contracting authorities shall negotiate with tenderers the tenders submitted by them in order to adapt them to the requirements which they have set in the contract notice, the specifications and additional documents, if any, and to seek out the best tender in accordance with regulation 28.

(3) During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. In particular they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.

(4) Contracting authorities may provide for the negotiated procedure to take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria in the contract notice or the specifications. The contract notice or the specifications shall indicate whether recourse has been had to this option.

Without prior publication.

73. A contracting authority may award its public works contracts by negotiated procedure without prior publication of an EU contract notice:

- (a) in the event that no tenders or no suitable tenders or no applications have been submitted in response to an open or restricted procedure, provided that the initial terms of the contract are not substantially altered and provided that a report is communicated to the Commission at its request;
- (b) when, for technical or artistic reasons or for reasons connected with the protection of exclusive rights, the works may be awarded only to a particular economic operator;
- (c) when the time-limits for open, restricted or negotiated procedures referred to in regulations 40 and 41 cannot be respected for reasons of extreme urgency occasioned by unforeseeable events. The circumstances invoked to justify urgency must not be attributable to the contracting authority;
- (d) for additional works not included in the project initially considered or in the original contract but which have, through unforeseen circumstances, become necessary for the carrying out of the work described therein, on condition that the award is made to the economic operator performing such works:
 - (i) when such additional works cannot be technically or economically separated from the original contract without major inconvenience to the contracting authority, or
 - (ii) when such works, although separable from the performance of the original contract, are strictly

necessary to its completion:

Provided that the aggregate value of contracts awarded for additional works may not exceed fifty per cent of the amount of the original contract;

- (e) for new works consisting in the repetition of similar works entrusted to the economic operator to whom the same contracting authority awarded an original contract, provided that such works conform to a basic project for which the original contract was awarded in accordance with the open or restricted procedures:

Provided that where a contracting authority intends to award a series of tenders for the same project, EU notice must initially be given stating that the negotiated procedure might be adopted, and must stipulate the total estimated cost of subsequent works which shall be taken into consideration by the contracting authority when applying the provisions of regulation 16. This procedure may be used only during the three years following the conclusion of the original contract.

74. In the case of public contracts relating to the design and construction of a subsidised housing scheme whose size and complexity, and the estimated duration of the work involved, require that planning be based from the outset on close collaboration within a team comprising representatives of the contracting authorities, experts and the contractor to be responsible for carrying out the works, a special award procedure may be adopted for selecting the contractor most suitable for integration into the team.

Design and construction of public housing contracts.

In particular, contracting authorities shall include in the EU contract notice as accurate as possible a description of the works to be carried out so as to enable interested contractors to form a valid idea of the project.

Furthermore, contracting authorities shall, in accordance with the qualitative selection criteria referred to in regulations 50 to 53, set out in such EU contract notice the personal, technical and financial conditions to be fulfilled by candidates.

Where such procedure is adopted, contracting authorities shall apply regulations 4, 40, 41, 44(2), 44(3), 44(4), 45, 49 and 50 to 53.

75. (1) The contracting authority may state in the contract documents, or be obliged by the Director of Contracts to do so, the body or bodies from which a tenderer or candidate may obtain the appropriate information on the obligations relating to taxes, to environmental protection, to the employment protection provisions and to the working conditions which are in force in Malta, or the region or locality in which the works are to be carried out and which shall be applicable to the works carried out on site during the performance of the contract.

Information.

(2) A contracting authority which supplies the information referred to in sub-regulation (1) shall request the tenderers or

candidates in the contract award procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the works are to be carried out. This shall be without prejudice to the application of regulation 29 concerning abnormally low tenders.

Third countries.

76. For the purposes of the award of public contracts by contracting authorities, contracting authorities shall apply in their relations conditions as favourable as those which they grant to economic operators of third countries in implementation of the Agreement on Government Procurement, concluded in the framework of the Uruguay Round multilateral negotiations. The Department of Contracts shall to this end consult with the Advisory Committee for Public Contracts set up by Article 1 of Decision 71/306/EEC.

PART VII

Public procurement of entities operating in the water, energy, transport and postal services sector

Scope.

77. The public procurement of entities operating in the water, energy, transport and postal services sector shall, where the estimated value of a public contract is equal to or exceeds the threshold value as described in regulation 16 of the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations, be governed by the said Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations.

S.L. 174.06

PART VIII

Variation Orders

Contracts awarded by authorities listed in Schedule 2.

78. (1) Without prejudice to the provisions of Parts IV, V, VI Section A, VI Section B, VI Section C and VII, in all cases where variation orders individually or in their totality exceed by more than five per cent the awarded contract value, the prior approval of the Director is to be sought before a commitment is made by the contracting authority with the contractor.

(2) When requesting such an approval, the contracting authority shall present a document specifying the background to the cause of such a variation, the effect on the total cost of the tender and any effect on the recurrent expenditure that will ensue.

(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.

(4) The Director is to keep a full record of variation requests, including the name of the contractor involved and details of the documents specified in sub-regulations (2) and (3).

79. Approval for variations, having a financial effect as indicated in regulation 78(1) on contracts awarded by contracting authorities listed in Schedule 3, shall require the prior approval of the Minister responsible for that authority who may delegate his authority in writing to the Parliamentary Secretary, the Permanent Secretary or the Head of the authority concerned. Such approval shall be granted only where any *force majeure*, unforeseen or unforeseeable events prevail:

Contracts awarded by authorities listed in Schedule 3.

Provided that a list of all variations catered for under this Part is to be published in the Gazette every six months by the Director and by Heads of contracting authorities.

PART IX

Contracts Committees

80. (1) The Contracts Committees, referred to in regulations 9 and 10, 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.

Contracts Committees.

(2) The Prime Minister shall also appoint persons from among the staff at the Department of Contracts to act as secretaries of these committees as may be directed by the Director. The secretaries shall not be members of these committees and may not vote.

(3) 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 Committees, to exercise all powers and perform all the functions of the Chairman.

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

- (a) is a member of the House of Representatives; or
- (b) has such a financial or other interest as is likely to prejudice the discharge of his functions as a member of the Contracts Committees.

(5) A member of either of these committees may resign his office by letter addressed to the Prime Minister.

(6) A member of either 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; 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.

(7) The provisions of regulation 85(9) shall apply *mutatis mutandis* to the Contract Committees.

PART X

Functions of the Contracts Committees

Functions of the
Contracts
Committees.

- 81.** The Contracts Committees shall:
- (a) advise on all matters relating to public contracts, as well as on public procurement of materials, works and services either on their 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 the Contracts Committee, and hear and determine disputes between contracting authorities as the case may be, and contractors, arising out of public contracts; and
 - (e) formally investigate complaints concerning public contracts and procurements and make recommendations thereon:

Provided that such complaints are not the subject of a separate inquiry or investigation by the Director in the exercise of his functions or else have to be heard and determined by the Review Board.

PART XI

Procurement Committees

Procurement
Committees.

82. (1) The Minister may authorise the setting up of committees, to be known as Procurement Committees, in respect of tenders whose estimated value exceeds one hundred and twenty thousand euro (€120,000).

(2) Each Procurement 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 effecting 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.

(3) The provisions of regulations 9, 11(2), 11(3), 11(4) and 14, shall apply *mutatis mutandis* to the setting up and the functions of each Procurement Committee, its chairman and its members.

PART XII

Separate packages in tender offer

83. (1) Contracting authorities listed in Schedule 1 shall ensure that for all tenders awarded by the open or restricted procedures with an estimated value of over fifteen million euro (€15,000,000) or, at the discretion of the Director of Contracts, on tenders of a lower estimated value or on tenders awarded through the negotiated or competitive dialogue procedures, the tender conditions stipulate that tenders shall only qualify for consideration if they are submitted in separate and sealed packages as follows:

Separate packages
in tender offer.
Amended by:
L.N. 293 of 2014.

- (a) Package One: a copy of an original and valid tender bond (Bid Bond), duly executed in the form, for the amount and for the validity period stipulated in the official tender document:

Provided that the original bid-bond shall be submitted by the tenderer as and when requested by the contracting authority and, or the central government authority, as the case may be;

- (b) Package Two: technical specifications including supportive literature, details, designs, samples and any other matter as requested in the tender documents; and
- (c) Package Three: completed price schedules and, or bills of quantities, form of tender, payment terms or other financial arrangements; any covering letter which may provide other pertinent details of a commercial nature.

(2) In the process of adjudicating the tender, the packages for all tenderers shall be opened in public and in the sequence enumerated in the sub-regulation (1). When at any stage, any tenderer fails to comply with the tendering procedural requirements and, or with the specifications, the remaining packages in his tender offer are to be discarded unopened:

Provided that the Director of Contracts or, with his authorization, any contracting authority, shall have the right to seek clarifications on points of a technical nature to enable a proper evaluation of any tender, which, however, would at that stage have already been declared to be basically compliant.

(3) Any decision leading to the discarding of any tender during any stage of the process is to be given publicity at the office of the contracting authority or at the Department of Contracts as the case may be and the affected tenderer is to be informed of the decision within two working days of its publication.

(4) A complaint by the affected tenderer and any person having or having had an interest in obtaining a particular public contract must reach the Review Board within ten calendar days from the date of notification of the decision, which complaint shall be communicated by the Secretary of the Review Board to the

Department of Contracts at once. The complaint submitted to the Review Board shall be accompanied by a deposit of 0.5% of the estimated value of the tender as submitted by the tenderer, which deposit shall only be refundable if the Review Board finds in the tenderer's or other person having or having had an interest in obtaining a particular public contract's favour:

Provided that the deposit shall in no case be less than ten thousand euro (€10,000) or more than fifty-eight thousand euro (€58,000).

(5) The review is to be effected by the Public Contracts Review Board before the next stage of the adjudication process is commenced.

(6) The procedure to be followed by the Board when carrying out the review shall consist in a complete and detailed re-examination of the reasons brought forward by the adjudication board of any department or contracting authority for the discarding of any particular tender.

(7) In fulfilling this obligation the Chairman of the Review Board shall have the right to put appropriate questions to the Head of any department or contracting authority as well as the members of the respective adjudication boards and to have recourse to all pertinent documentation.

(8) The Chairman of the Review Board shall also have the right to seek expert advice from outside the department or contracting authority involved.

(9) The decision of the Board shall be final and binding on all parties and the award procedure shall proceed in accordance with its decision.

(10) Any tenderer or any other person having or having had an interest in obtaining a particular public contract whose complaint under this Part is not upheld shall have the right to have recourse to the procedure for appeals as provided for in Part XIII when the offer reaches the final stage of the award procedure, that is, the opening and the publication of the financial proposals:

Provided that any rights granted to tenderers by virtue of regulation 85(6) shall also apply to appeals decided by the Review Board under this Part:

Provided further that any tenderers whose complaint have been heard in terms of sub-regulation (4) may request a substitute of the members of the Review Board when appealing in terms of sub-regulation (10).

PART XIII

Procedure for the submission of appeals

84. (1) 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 or a cancellation of a call for tender, may file a notice of objection with the Review

Board.

The notice shall be filed within ten calendar days following the date on which the contracting authority has by fax or other electronic means sent its proposed award decision.

The communication to each tenderer of the proposed award shall be accompanied by a summary of the relevant reasons relating to the rejection of the tender as set out in regulation 44(3), and by a precise statement of the exact standstill period.

The notice of objection shall only be valid if accompanied by a deposit equivalent to 0.75 per cent of the estimated value of the whole tender prior to publication or if the tender is divided into lots according to the estimated value of the tender for each lot submitted by the tenderer, provided that in no case shall the deposit be less than one thousand and two hundred euro (€1,200) or more than fifty-eight thousand euro (€58,000). The Secretary of the Review Board shall immediately notify the Director that an objection had been filed with his authority thereby immediately suspending the award procedure. The Department of Contracts 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.

(2) The procedure to be followed in submitting and determining complaints as well as the conditions under which such complaints may be filed shall be the following:

- (a) any decision by the General Contracts Committee (or a Special Contracts Committee) and by a contracting authority, shall be made public at the Department of Contracts or at the office of the contracting authority prior to the award of the contract;
- (b) the notice of objection duly filed in accordance with sub-regulation (1) shall be made public by the Review Board not later than the next working day following its filing;
- (c) within three working days of the publication of the replies the Secretary of the Review Board shall prepare a report (the Analysis Report) analysing the letter of objection. This report shall be circulated to the persons who file an objection and interested parties. After the preparatory process is duly completed, the Head of the contracting authority shall forward to the Chairman of the Review Board all documentation pertaining to the call for tenders in question including files, tenders submitted, copies of deposit receipts, any motivated letter, who shall then proceed as stipulated in Part XIV;
- (d) the Director or the Head of the contracting authority shall publish a copy of the decision of the Review Board at his department or at the premises of the relevant contracting authority, as the case may be.

Copies of the decision shall be forwarded by the Secretary of the Board to the complaining tenderer, any persons who had registered or had an implied interest, the Director of Contracts and to the contracting authority concerned.

PART XIV

Public Contracts Review Board

Review Board.
Amended by:
L.N. 65 of 2013.

85. (1) The Review Board established in terms of regulation 34(1) shall be responsible for addressing:

- (a) pre-contractual concerns raised by candidates and any person having or having had an interest in obtaining a particular public contract in relation to all public contracts exceeding one hundred and twenty thousand euro (€120,000);
- (b) complaints raised in terms of regulation 21 and the procedure established therein by tenderers and candidates concerned following the publication by a contracting authority of a notice relating to an award of a contract;
- (c) complaints raised by tenderers or candidates concerned relating to a contract award decision or a cancellation of a contract;
- (d) complaints raised in terms of regulation 34(4).

(2) In addressing complaints under sub-regulation (1), the Review Board shall:

- (a) take, at the earliest opportunity, interim measures with the aim of correcting an alleged infringement or preventing further damage to the interests concerned, including measures to suspend or to ensure the suspension of the contracting procedure or the implementation of any decision taken by the contracting authority;
- (b) either set aside or ensure the setting aside of decisions taken unlawfully, including the removal of discriminatory technical, economic or financial specifications in the invitation to tender, the contract documents or in any other document relating to the contract award procedure;
- (c) award damages to persons harmed by an infringement on the submission of proof relating to the damage sustained:

Provided that the Review Board may decide not to grant interim measures, if after having taken into consideration the probable consequences of the measures for all interests likely to be harmed, together with the public interest involved, the negative consequences of the measures are to exceed their benefits.

- (3) (a) In its review, and unless otherwise specified in this regulation, the Board shall consider a contract to be ineffective, and thus shall declare the contract as null

from the date of the decision by the Review Board:

- (i) if the contracting authority 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 2004/18/EC and Directive 2004/17/EC;
 - (ii) when, notwithstanding a complaint is lodged before the Review Board, a contracting authority or the central government authority concludes the contract before a final decision is given by the Review Board;
 - (iii) when the contract is concluded by a contracting authority or the central government authority before the expiry of the period for the filing of a complaint as provided for in regulations 83(4) and 84(1).
- (b) In addition to the declaration of ineffectiveness of the contract, if the Board establishes an infringement as contemplated in paragraph (a)(i), (ii) or (iii), the Board shall impose penalties as described in paragraph (c) after assessing all relevant factors, including the seriousness of the infringement and the behaviour of the contracting authority or the central government authority, as the case may be.
- (c) Penalties shall consist of:
- (i) the imposition of fines on 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
 - (ii) the shortening of the duration of the contract:

Provided that the award of damages prescribed in sub-regulation (2)(c) shall not be considered as an appropriate alternative penalty for the purposes of this sub-regulation:

Provided further that the Review Board may not consider a contract ineffective, even though it has been awarded illegally on the grounds mentioned in paragraph (a)(i), (ii) and (iii), if the 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.

(4) The decision of the Board shall be rendered in writing, be signed by all members of the Board and be dated; the Board shall indicate the reasons upon which such decision was taken, and the decision shall be notified to the interested parties.

Cap. 12.

- (5) (a) Any tenderer or candidate who feels aggrieved by a decision taken by the Review Board in terms of this regulation may appeal to the Court of Appeal (Superior Jurisdiction) 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 decision on which that decision has been made public.
- (b) A copy of the appeal application shall be served on the contracting authority, on the Director of Contracts and on the recommended tenderer, if any, who may file a written reply within twenty days from the date of service.
- (c) 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.
- (d) 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.
- (e) The Department of Contracts and a contracting authority may only refer a matter to the Court of Appeal (Superior Jurisdiction) in relation to a decision taken by the Board relating to sub-regulation (2)(c) and sub-regulation (3).
- (6) Without prejudice to any other provision of these regulations, the Review Board shall not receive complaints in terms of sub-regulation (3)(a)(i), (ii) and (iii) which:
- (a) are filed later than thirty calendar days with effect from the day following the date on which:
- (i) the contracting authority or central government authority published a contract award notice in accordance with regulation 49:
Provided that where the contracting authority or the central government authority, as the case may be, publishes a contract award notice as stated above, without having published a contract notice, it must include a justification for such contract award notice; or
- (ii) the contracting authority or central government authority informed the tenderers and candidates concerned of the conclusion of the contract in terms of regulation 84(1); and

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- (b) in any case not provided for in paragraph (a) before the expiry of a period of at least six months with effect from the day following the date of the conclusion of the contract.
- (7) (a) The Review Board shall be composed of a Chairman and two members who shall be appointed by the Prime Minister for a period of up to three years with the possibility of re-appointment.
- (b) The Prime Minister may appoint a substitute, or such number of substitutes, as Chairman and as members of the Review Board to act on different Review Boards, in which case the members shall serve for pre-determined periods of time, in accordance with such distribution of duties, including provisions for inability of members to serve and other circumstances, as the Prime Minister may establish.
- (c) The Chairman of the Review Board may be individually removed from office 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 proved misbehaviour.
- (d) The Review Board shall be assisted by a Secretary.
- (e) The Chairman or other member of the Board shall be disqualified from hearing a review 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 person appointed for the purpose by the Prime Minister.
- (f) 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 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.
- (g) The members of the Review Board shall receive such remuneration as the Prime Minister may determine.
- (h) 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.
- (i) The Review Board shall be empowered to call witnesses, to administer oaths and to engage any government official or non-governmental expert to assist it in its investigations.
- (j) 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.

- (k) (i) The Chairman shall have the power to determine the procedure for the hearing of all complaints lodged with the Review Board and shall ensure that during the public hearing all interested parties are given the opportunity to make their case.
- (ii) The Review Board shall have the power to take such interim measures as it shall deem fit.
- (l) 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.
- (m) The Chairman shall appoint the public hearing at the earliest possible date after the referral to him of the Analysis Report in terms of regulation 84(2)(c) and the relative documentation by the Head of the contracting authority, and all public hearing sessions shall be concluded within ten working days from the date of the first session.
- (8) (a) In default of an appeal lodged in terms of sub-regulation (5), the decision of the Review Board shall be final and the Director of Contracts or the Head of a contracting authority shall have the authority to proceed with the award of the contract as soon as the decision of the Board is published and notified to the interested parties.
- (b) The decision of the Board shall constitute an executive title and may be enforced in terms of article 273 of the Code of Organization and Civil Procedure.
- Cap. 12. (9) Decisions of the Review Board 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 and the other two members shall have one vote each.
- (10) Decisions of the Review Board shall be submitted by the Chairman to the Director of Contracts or the contracting authority in writing within three working days after the holding of the last public session. Should the Review Board be unable, for valid reasons, to meet this time-limit, the Prime Minister or a person delegated by him shall extend the period in question if such extension is considered warranted by the circumstances of the case.
- (11) All decisions taken by the Review Board shall be rendered in writing. It shall contain all the facts and reasons on which the Review Board's decision is taken. All decisions shall be concluded with definite recommendations which shall be binding on the Director of Contracts or the Head of the contracting authority and all the tenderers involved.
- (12) In its decision the Review Board shall recommend on whether any deposit submitted by a tenderer in terms of regulation 84 should be refunded, in whole or in part, or not.

(13) 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.

PART XV

Miscellaneous

86. A tender which has been issued prior to the 1 June 2010 but whose award is granted on or after the 1 June 2010, shall continue to be regulated by the laws which were in force before the 1 June 2010, including any review on any decision thereon.

Transitory
provision.

*Substituted by:
L.N. 47 of 2012.
Amended by:
L.N. 132 of 2014;
XXV. 2015.41.*

SCHEDULE 1

Complete List of Contracting Authorities

OFFICE OF THE PRIME MINISTER	Permanent Secretary's Office / Department of Corporate Services Malta Standards Authority Broadcasting Authority Centre for Development, Research and Training Internal Audit and Investigations Directorate Planning and Priorities Co-ordination Directorate EuroMedITI Ltd Armed Forces of Malta Industrial Projects and Services Ltd Information Public Service Commission Government Printing Press Electoral Office
MINISTRY OF FOREIGN AFFAIRS	Permanent Secretary's Office / Department of Corporate Services Mediterranean Academy for Diplomatic Studies International Institute on Ageing
MINISTRY FOR GOZO	Permanent Secretary's Office / Department of Corporate Services Projects and Development Customer Services
MINISTRY FOR INFRASTRUCTURE, TRANSPORT AND COMMUNICATIONS	Permanent Secretary's Office / Department of Corporate Services Malta Information Technology Agency (MITA) Malta Communications Authority Grand Harbour Regeneration Corporation p.l.c. Malta Government Technology Investments Limited (MGTIL) Transport Malta

<p>MINISTRY FOR RESOURCES AND RURAL AFFAIRS</p>	<p>Permanent Secretary's Office / Department of Corporate Services Paying Agency Malta Resources Authority / Regulator for Energy and Water Services Building and Engineering Construction and Maintenance EU Affairs Department Cleansing and Maintenance Department Building Construction Industry Department Financial Management Department Project Design and Implementation Department Agriculture and Fisheries Regulation Department Strategy and Support Division Services Division Building Industry Consultative Council Manufacturing and Services Fisheries Control Food and Veterinary Services Oil Exploration WasteServ Malta Ltd. Rural Development and Aquaculture</p>
<p>MINISTRY FOR EDUCATION AND EMPLOYMENT</p>	<p>Permanent Secretary's Office / Department of Corporate Services European Union Programmes Agency National Archives Department of Regulatory Compliance Directorate for EU and International Affairs Directorate for Quality and Standards in Education Directorate for Educational Services Examinations Foundation for Tomorrow's Schools Foundation for Educational Services <i>Fondazzjoni Patrimonju Malti</i> Institute for Tourism Studies Junior College Employment and Training Corporation Malta College of Arts, Science and Technology National Commission for Higher Education Maltese National Commission for UNESCO <i>Kunsill Malti għall-Isports</i> Libraries</p>

	<p>National Pool tal-Qroqq Public Broadcasting Services Ltd. University of Malta Malta Council for Science and Technology</p>
<p>MINISTRY OF FINANCE, THE ECONOMY AND INVESTMENT</p>	<p>Permanent Secretary's Office / Department of Corporate Services Lotteries and Gaming Authority Malta Statistics Authority Malta Financial Services Authority Malta Stock Exchange Customs Department Contracts Department Lotteries Department Inland Revenue Department Treasury Department Economic Policy Division VAT Division Gozo Channel Co Ltd. Financial Intelligence Analysis Unit Enemalta Corporation Water Services Corporation Malta Air Traffic Services Ltd. (MATS) Malta Enterprise Malta Industrial Parks Ltd. MGI/MIMCOL Tax Compliance Unit Collective Bargaining Unit Privatisation Unit Capital Transfer Duty</p>
<p>MINISTRY FOR HOME AND PARLIAMENTARY AFFAIRS</p>	<p>Permanent Secretary's Office / Director Corporate Services Local Government Department Police Department Local Councils Organisation for the Integration and Welfare of Asylum Seekers (OIWAS) Civil Protection Civil Registration Public Registry Land Registry Correctional Services</p>

<p>MINISTRY FOR HEALTH, THE ELDERLY AND COMMUNITY CARE</p>	<p>Permanent Secretary's Office Elderly and Community Care Occupational Health and Safety Authority National Blood Transfusion Centre Foundation for Medical Services Health Mater Dei Hospital Mount Carmel Hospital Zammit Clapp Hospital</p>
<p>MINISTRY FOR TOURISM, CULTURE AND THE ENVIRONMENT</p>	<p>Permanent Secretary's Office / Directorate Corporate Services Malta Tourism Authority Malta Environment and Planning Authority Mediterranean Conference Centre St James Cavalier Creativity Centre Heritage Malta National Council for Culture and the Arts National Orchestra Ltd Superintendence of Cultural Heritage Manoel Theatre</p>
<p>MINISTRY FOR JUSTICE, DIALOGUE AND THE FAMILY</p>	<p>Permanent Secretary's Office / Director Corporate Services <i>Access</i> <i>Appogg</i> Attorney General National Employment Authority Housing Authority Malta Arbitration Centre Foundation for Social Welfare Services Benefit Fraud and Investigations Judicial Welfare Committee Data Protection Commission Commission on Domestic Violence Commission for the Promotion of Equality for Men and Women National Commission on the abuse of drugs, alcohol and other dependencies National Commission for Persons with Disability National Commission for the Family</p>

	Malta Council for Economic and Social Development Industrial and Employment Relations <i>Sapport</i> <i>Sedqa</i> Social Security Social Welfare Standards Office of the Commissioner for Voluntary Organisations Office of the Commissioner for Children
MINISTRY FOR FAIR COMPETITION, SMALL BUSINESS AND CONSUMERS	Permanent Secretary's Office / Director Corporate Services Medicines Authority Cooperatives Board Consumer and Competitive Division Commerce Division Malta National Laboratory Notary to Government Government Property Division Joint Office

SCHEDULE 2

*Substituted by:
L.N. 47 of 2012.
Amended by:
L.N. 132 of 2014;
XXV. 2015.41.*

Contracting Authorities falling within the competence of
the Department of Contracts

OFFICE OF THE PRIME MINISTER	Permanent Secretary's Office / Department of Corporate Services Malta Standards Authority Broadcasting Authority Centre for Development, Research and Training Internal Audit and Investigations Directorate Planning and Priorities Co-ordination Directorate Armed Forces of Malta Industrial Projects and Services Ltd Information Public Service Commission Government Printing Press Electoral Office
MINISTRY OF FOREIGN AFFAIRS	Permanent Secretary's Office / Department of Corporate Services Mediterranean Academy for Diplomatic Studies International Institute on Ageing
MINISTRY FOR GOZO	Permanent Secretary's Office / Department of Corporate Services Projects and Development Customer Services
MINISTRY FOR INFRASTRUCTURE, TRANSPORT AND COMMUNICATIONS	Permanent Secretary's Office / Department of Corporate Services Malta Communications Authority Transport Malta
MINISTRY FOR RESOURCES AND RURAL AFFAIRS	Permanent Secretary's Office / Department of Corporate Services Paying Agency Malta Resources Authority / Regulator for Energy and Water Services Building and Engineering Construction and Maintenance

	<p>EU Affairs Department Cleansing and Maintenance Department Building Construction Industry Department Financial Management Department Project Design and Implementation Department Agriculture and Fisheries Regulation Department Strategy and Support Division Services Division Building Industry Consultative Council Manufacturing and Services Fisheries Control Food and Veterinary Services Oil Exploration WasteServ Malta Ltd. Rural Development and Aquaculture</p>
<p>MINISTRY FOR EDUCATION AND EMPLOYMENT</p>	<p>Permanent Secretary's Office / Department of Corporate Services European Union Programmes Agency National Archives Department of Regulatory Compliance Directorate for EU and International Affairs Directorate for Quality and Standards in Education Directorate for Educational Services Examinations Foundation for Tomorrow's Schools Foundation for Educational Services <i>Fondazzjoni Patrimonju Malti</i> Institute for Tourism Studies Junior College Employment and Training Corporation Malta College of Arts, Science and Technology National Commission for Higher Education Maltese National Commission for UNESCO <i>Kunsill Malti għall-Isports</i> Libraries National Pool tal-Qroqq Public Broadcasting Services Ltd. University of Malta Malta Council for Science and Technology</p>

MINISTRY OF FINANCE, THE ECONOMY AND INVESTMENT	Permanent Secretary's Office / Department of Corporate Services Lotteries and Gaming Authority
	Malta Statistics Authority Malta Financial Services Authority Malta Stock Exchange Customs Department Contracts Department Lotteries Department Inland Revenue Department Treasury Department Economic Policy Division VAT Division Gozo Channel Co Ltd. Financial Intelligence Analysis Unit Enemalta Corporation Water Services Corporation Malta Air Traffic Services Ltd. (MATS) Malta Enterprise Malta Industrial Parks Ltd. Tax Compliance Unit Collective Bargaining Unit Privatisation Unit Capital Transfer Duty
MINISTRY FOR HOME AND PARLIAMENTARY AFFAIRS	Permanent Secretary's Office / Director Corporate Services Local Government Department Police Department Organisation for the Integration and Welfare of Asylum Seekers (OIWAS) Civil Protection Civil Registration Public Registry Land Registry Correctional Services
MINISTRY FOR HEALTH, THE ELDERLY AND COMMUNITY CARE	Permanent Secretary's Office / Director Corporate Services Elderly and Community Care Occupational Health and Safety Authority National Blood Transfusion Centre Foundation for Medical Services

	<p>Health Mater Dei Hospital Mount Carmel Hospital Zammit Clapp Hospital</p>
<p>MINISTRY FOR TOURISM, CULTURE AND THE ENVIRONMENT</p>	<p>Permanent Secretary's Office / Director Corporate Services Malta Tourism Authority Malta Environment and Planning Authority Mediterranean Conference Centre St James Cavalier Creativity Centre Heritage Malta National Council for Culture and the Arts National Orchestra Ltd Superintendence of Cultural Heritage Manoel Theatre</p>
<p>MINISTRY FOR JUSTICE, DIALOGUE AND THE FAMILY</p>	<p>Permanent Secretary's Office / Director Corporate Services <i>Aċċess</i> <i>Appoġġ</i> Attorney General National Employment Authority Housing Authority Malta Arbitration Centre Foundation for Social Welfare Services Benefit Fraud and Investigations Judicial Welfare Committee Data Protection Commission Commission on Domestic Violence Commission for the Promotion of Equality for Men and Women National Commission on the abuse of drugs, alcohol and other dependencies National Commission for Persons with Disability National Commission for the Family Malta Council for Economic and Social Development Industrial and Employment Relations <i>Sapport</i> <i>Sedqa</i> Social Security</p>

	Social Welfare Standards Office of the Commissioner for Voluntary Organisations Office of the Commissioner for Children
MINISTRY FOR FAIR COMPETITION, SMALL BUSINESS AND CONSUMERS	Permanent Secretary's Office / Director Corporate Services Medicines Authority Cooperatives Board Consumer and Competitive Division Commerce Division Malta National Laboratory Notary to Government Government Property Division Joint Office

SCHEDULE 3

*Substituted by:
L.N. 47 of 2012.*

List of Contracting Authorities who shall administer their own public procurement in accordance with the provisions of these Regulations

OFFICE OF THE PRIME MINISTER	EuroMedITI Ltd.
MINISTRY FOR INFRASTRUCTURE, TRANSPORT AND COMMUNICATIONS	Grand Harbour Regeneration Corporation P.L.C. Malta Information Technology Agency (MITA) Malta Government Technology Investments Limited (MGTIL)
MINISTRY OF FINANCE, THE ECONOMY AND INVESTMENT	MGI/MIMCOL
MINISTRY FOR HOME AND PARLIAMENTARY AFFAIRS	Local Councils

SCHEDULE 4

List of Central Government Authorities

MINISTRY OF FINANCE, THE ECONOMY AND INVESTMENT	Contracts Department
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SCHEDULE 5

List of Contracting Authorities who can publish tenders without vetting
by the Department of Contracts

Enemalta Corporation

Water Services Corporation

SCHEDULE 6

Public Works Contracts Activities

1. General building and civil engineering work (without any particular specification) and demolition work
2. General building and civil engineering work (without any particular specification)
3. Demolition work
4. Construction of flats, office blocks, hospitals and other buildings, both residential and non-residential
5. General Building Contractors
6. Roofing
7. Construction of chimneys, kilns and furnaces
8. Waterproofing and damp-proofing
9. Restoration and maintenance of outside walls, repainting, cleaning, etc.
10. Erection and dismantlement of scaffolding
11. Other specialised activities relating to construction work (including carpentry)
12. Civil engineering: construction of roads, bridges, etc.
13. General civil engineering works
14. Earth-moving (navyying)
15. Construction of bridges, tunnels and shafts, drilling
16. Hydraulic engineering, harbours
17. Road building including specialised construction of airports and runways
18. Specialised construction work relating to water (i.e. to irrigation, land drainage, water supply, sewage disposal, sewerage, etc.)
19. Specialised activities in other areas of civil engineering

20. Installation (fittings and fixtures)
21. General installation work
22. Gas fitting and plumbing, and the installation of sanitary equipment
23. Installation of heating and ventilating apparatus (central heating, air conditioning, ventilation)
24. Sound and heat insulation, insulation against vibration
25. Electrical fittings
26. Installation of aerials, lightning conductors, telephones, etc.
27. Building completion work
28. General building completion work
29. Plastering
30. Joinery, primarily engaged in on the site assembly and/or installation (including the laying of parquet flooring)
31. Painting, glazing, paper hanging
32. Tiling and otherwise covering floors and walls
33. Other building completion work (putting in fireplaces).

SCHEDULE 7

Services within the meaning of regulation 57(1)

CPA Reference No	Subject	CPC Reference No
	1. Maintenance and Repair Services	
17.40.90	Repair services of tarpaulins and camping equipment	88690.1
17.52.90	Repair services of nets and ropework	88690.2
28.21.90	Repair and maintenance services of tanks, reservoirs and containers of metal	88610.1
28.22.90	Repair and maintenance services of central heating boilers	88610.2
28.30.91	Installation services of steam generators, except central heating hot water boilers, including related pipe system	88610.3
28.30.92	Repair and maintenance services of steam generators, except central heating hot water boilers	88610.4
29.11.91	Installation services of engines and turbines, except aircraft, vehicle and cycle engines	88620.1
29.11.92	Repair and maintenance services of engines and turbines, except aircraft, vehicle and cycle engines	88620.2
29.12.91	Installation services of pumps and compressors	88620.3
29.12.92	Repair and maintenance services of pumps and compressors	88620.4
29.13.90	Repair and maintenance services of taps and valves	88620.5
29.21.91	Installation services of furnaces and furnace burners	88620.6

CPA Reference No	Subject	CPC Reference No
29.22.91	Installation services of lifting and handling equipment, except of lifts and escalators	88620.8
29.21.92	Repair and maintenance services of furnaces and furnace burners	88620.7
29.22.92	Repair and maintenance services of lifting and handling equipment	88620.9a
29.23.91	Installation services of non-domestic cooling and ventilation equipment	88620.9b
29.23.92	Repair and maintenance services of non-domestic cooling and ventilation equipment	88620.9c
29.24.91	Installation services of other general purpose machinery n.e.c.	88620.9d
29.24.92	Repair and maintenance services of other general purpose machinery n.e.c.	88620.9e
29.32.91	Installation services of agricultural and forestry machinery	88620.9f
29.32.92	Repair and maintenance services of agricultural and forestry machinery	88620.9g
29.40.91	Installation services of machine-tools	88620.9h
29.40.92	Repair and maintenance services of machine-tools	88620.9i
29.51.91	Installation services of machinery for metallurgy	88620.9j
29.51.92	Repair and maintenance services of machinery for metallurgy	88620.9k
29.52.91	Installation services of machinery for mining, quarrying and construction	88620.9l
29.52.92	Repair and maintenance services of machinery for mining, quarrying and construction	88620.9m
29.53.91	Installation services of machinery for food, beverage and tobacco processing	88620.9n
29.53.92	Repair and maintenance services of machinery for food, beverage and tobacco processing	88620.9o
29.54.91	Installation services of machinery for textile, apparel and leather production	88620.9p
29.54.92	Repair and maintenance services of machinery for textile, apparel and leather production	88620.9q
29.55.91	Installation services of machinery for paper and paperboard production	88620.9r
29.55.92	Repair and maintenance services of machinery for paper and paperboard production	88620.9s
29.56.91	Installation services of other special purpose machinery n.e.c.	88620.9t
29.56.92	Repair and maintenance services of other special purpose machinery n.e.c.	88620.9u
29.60.91	Installation services of weapons and weapons systems	88620.9v
29.60.92	Repair and maintenance services of weapons and weapons systems	88620.9w
30.01.90	Installation services of office machinery	88630.1
30.02.90	Installation services of computers and other information processing equipment	88630.2
31.10.91	Installation services of electric motors, generators and transformers	88640.1

CPA Reference No	Subject	CPC Reference No
31.10.92	Repair, maintenance and rewinding services of electric motors, generators and transformers	88640.2
31.20.91	Installation services of electricity distribution and control apparatus	88640.3
31.20.92	Repair and maintenance services of electricity distribution and control apparatus	88640.4
31.62.91	Installation services of other electrical equipment n.e.c., except electrical signalling equipment for motorways, roads and airports	88640.5
31.62.92	Repair and maintenance services of other electrical equipment n.e.c.	88640.6
32.20.91	Installation services of television and radio transmitters	88650.1
32.20.92	Repair and maintenance services of television and radio transmitters	88650.2
32.30.91	Installation services of professional radio, television, sound and video equipment	88650.3
32.30.92	Repair and maintenance services of professional radio, television, sound and video equipment	88650.4
33.10.91	Installation services of medical and surgical equipment and apparatus	88660.1
33.10.92	Repair and maintenance services of medical and surgical equipment and apparatus	88660.2
33.20.91	Installation services of instruments and apparatus for measuring, checking, testing, navigating and other purposes	88660.3
33.20.92	Repair and maintenance services of instruments and apparatus for measuring, checking, testing, navigating	88660.4
33.40.90	Repair and maintenance services of professional photographic, cinematographic and optical instruments	88660.5
33.50.91	Installation services of industrial time measure instruments and apparatus	88660.6
33.50.92	Repair and maintenance services of industrial time measure instruments and apparatus	88660.7
35.11.91	Repair and maintenance services of ships and floating platforms and structures	88680.1
35.11.92	Reconditioning of ships	88680.2
35.11.93	Demolition of ships	88680.3
35.12.90	Repair and maintenance services of pleasure and sporting boats	88680.4
35.20.91	Repair and maintenance services of railway and tramway locomotives and rolling stock	88680.5
35.20.92	Reconditioning of railway and tramway locomotives and rolling stock	88680.6
35.30.91	Repair and maintenance services of aircraft and aircraft engines	88680.7
35.30.92	Reconditioning of aircraft	88680.8
36.30.90	Repair and maintenance services of musical instruments	88690.3

CPA Reference No	Subject	CPC Reference No
50.2	Maintenance and repair services of motor vehicles	611d 611e 611f
50.40.40	Maintenance and repair services of motorcycles	61220
52.7	Repair services of personal and household goods	633a 633b 633c 633d
	2. Land transportation services,⁽¹⁾ including armoured car services and courier services, except transport of mail	
60.21.2	Urban and suburban regular passenger transportation, other than by railways	712a
60.21.3	Inter-urban passenger transportation, other than by railways	712b
60.21.4	Other scheduled passenger land transportation	712c
60.22	Taxi services and rental services of passenger cars with operator	712d
60.23	Other land passenger transportation services	712e
60.24.1	Freight transportation services by road, specialized vehicles	712f
60.24.22	Transportation of other freight	71239.3
60.24.3	Rental services of commercial freight vehicles with operator	712h
64.12	Courier services other than national post services	751b
74.60.14	Armoured car services	87304
	3. Air transport services of passengers and freight, except transport of mail	
62.10.10	Scheduled passenger transportation services by air	73110
62.10.22	Transportation of containerized freight, scheduled	73220.1
62.10.23	Transportation of other freight by air, scheduled	73290.1
62.20.10	Non-scheduled passenger transportation services by air	73120
62.20.20 (part)	Non-scheduled freight transportation services by air	73210.1 73290.2
62.20.30	Rental services of aircrafts with crew	73400
62.30.10	Space transportation services	73300
	4. Transport of mail by land and air	
60.24.21	Mail transportation	71235
62.10.21	Mail transportation by air, scheduled	73210.1
62.20.20 (part)	Non-scheduled freight transportation services by air	73210.1 73290.2
	5. Telecommunications services⁽²⁾	
64.20.1	Data and message transmitting services	752a
64.20.2	Other telecommunications services	752b
	6. Financial services: (a) insurance services (b) banking and investment services⁽³⁾	
66	Insurance and pension funding services, except compulsory social security services	812a 812b 812c

CPA Reference No	Subject	CPC Reference No
67.2	Services auxiliary to insurance and pension funding	814
65	Financial intermediation services, except insurance and pension funding services	811a 811d 811b 811e 811c
67.1	Services auxiliary to financial intermediation, except to insurance and pension funding	813a 813b 813c
	7. Computer and related services	
72.10.10	Hardware consultancy services	84100
72.20.2	Programming services of packaged software products	841b
72.20.3	Software consultancy and other supply services	842a
72.3	Data processing services	842b 843
72.4	Database services	844
72.5	Maintenance and repair services of office, accounting and computing machinery	845
72.6	Other computer-related services	849
	8. Research & Development services⁽⁴⁾	
73	Research and development services	851 852
	9. Accounting, auditing and book-keeping services	
74.12.1	Accounting and auditing services	862a
74.12.2	Book-keeping services, except tax returns	862b
	10. Market research and public opinion polling services	
74.13	Market research and public opinion polling services	864
	11. Management consultant services⁽⁵⁾ and related services	
74.14	Business and management consultancy services	865, 866a
74.15	Management holdings services	866b
	12. Architectural services; engineering services and integrated engineering services; urban planning and landscape architectural services; related scientific and technical consulting services; technical testing and analysis services	
74.20.2	Architectural services	867a
74.20.3	Engineering services	867b
74.20.4	Integrated engineering services for turnkey projects	867c
74.20.5	Urban planning and landscape architectural services	867d
74.20.6	Project management services related to construction and civil engineering works	-
74.20.7	Engineering-related scientific and technical consulting services	867e
74.3	Technical testing and analysis services	867f
	13. Advertising Services	
74.4	Advertising services	871

CPA Reference No	Subject	CPC Reference No
	14. Building-cleaning services and property management services	
70.3	Real estate agency services on a fee or contract basis	822a 822b
74.7	Industrial cleaning services	874
	15. Publishing and printing services on a fee or contract basis	
22.21	Newspaper printing services	884h
22.22.3	Printing services, other than printing of newspaper	884i
22.23	Bookbinding and finishing services	884j
22.24.1	Composition and plate-making services	884k
22.25	Other services related to printing	884l
22.3	Reproduction services of recorded media	884m 884n 884o
	16. Sewage and refuse disposal services; sanitation and similar services	
90	Sewage and Refuse disposal services, sanitation and similar services	940a 940b 940c

- (1) Except for rail transport services covered by Category 18.
- (2) Except voice telephony, telex, radiotelephony, paging and satellite services.
- (3) Except contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services.
- (4) Except research and development service contracts other than those where the 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.
- (5) Except arbitration and conciliation services.

SCHEDULE 8

Services within the meaning of regulation 57(2)

CPA Reference No	Subject	CPC Reference No
	17. Hotel and restaurant services	
55	Hotel and restaurant services	64
	18. Rail transport services	
60.1	Railway transportation services	711a 711b 711c
60.21.1	Urban and suburban passenger railway transportation	711d

CPA Reference No	Subject	CPC Reference No
	19. Water transport services	
61	Water transport services	72
	20. Supporting and auxiliary transport services	
63	Supporting and auxiliary transport services; travel agency services	74
	21. Legal Services	
74.11	Legal services	861
	22. Personnel placement and supply services	
74.5	Labour recruitment and provision of personnel services	872
	23. Investigation and security services except armoured car services	
74.60.11	Investigation services	87301
74.60.12	Security consultation services	87302
74.60.13	Alarm monitoring services	87303
74.60.15	Guard services	87305
74.60.16	Other security services	87309
	24. Education and vocational education services	
80	Education services	92
	25. Health and social services	
85	Health and social work services	93
	26. Recreational, cultural and sporting services	
92.11.3	Motion picture and video tape production and related services	961a
92.12	Motion picture or video tape distribution services	961b
92.13	Motion picture projection services	961c
92.2	Radio and television services	961d
92.31.2	Artistic and literary creation and interpretation services	961e
92.32.1	Arts facilities operation services	961f
92.33.1	Fair and amusement park services	961g
92.34	Other entertainment services	961h
92.4	News agency services	962
92.5	Library, archives, museums and other cultural services	963a 963b 963c
92.6	Sporting services	964a 964b
92.7	Other recreational services	964c 964d
	27. Other services	

Amended by:
L.N. 104 of 2012;
L.N. 55 of 2014.

SCHEDULE 9

Values of thresholds pursuant to regulation 12

1. The values of the thresholds applicable to Public Contracts are as follows net of Value Added Tax:

- (a) €134,000 for public supply and service contracts other than those covered by point (b) third indent; awarded by contracting authorities which are listed as central government authorities in Schedule 4 (Central Government Authorities); in the case of public supply contracts awarded by contracting authorities operating in the field of defence, this shall apply only to contracts involving products covered by Schedule 11;
- (b) €207,000
 - For public supply and service contracts awarded by contracting authorities other than those listed in Schedule 4 (Central Government Authorities);
 - For public supply contracts awarded by contracting authorities which are listed in Schedule 4 (Central Government Authorities) and operate in the field of defence, where these contracts involve products not listed in Schedule 11;
 - For public service contracts awarded by any contracting authority in respect of the services listed in Category 8 of Schedule 7, Category 5 telecommunication services CPC reference 7524, 7525 and 7526 and, or the services listed in Schedule 8.
- (c) €5,186,000 for public works contracts.

SCHEDULE 10

PUBLIC CONTRACT NOTICES

ANNEX I A

INFORMATION WHICH MUST BE INCLUDED
IN PUBLIC CONTRACT NOTICESNOTICE OF THE PUBLICATION OF A PRIOR INFORMATION NOTICE
ON A BUYER PROFILE

1. Country of the contracting authority
2. Name of the contracting authority
3. Internet address of the "buyer profile" (URL)
4. CPV Nomenclature reference No(s)

PRIOR INFORMATION NOTICE

1. The name, address, fax number and email address of the contracting authority and, if different, of the service from which additional information may be obtained and, in the case of services and works contracts, of the services, e.g. the relevant governmental internet site, from which information can be obtained concerning the general regulatory framework for taxes, environmental protection,

employment protection and working conditions applicable in the place where the contract is to be performed.

2. Where appropriate, indicate whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes.

3. In the case of public works contracts: the nature and extent of the works and the place of execution; if the work is to be subdivided into several lots, the essential characteristics of those lots by reference to the work; if available, an estimate of the range of the cost of the proposed works; Nomenclature reference No(s).

In the case of public supply contracts: the nature and quantity or value of the products to be supplied, Nomenclature reference No(s).

In the case of public services contracts: the total value of the proposed purchases in each of the service categories in Annex II A; Nomenclature reference No(s).

4. Estimated date for initiating the award procedures in respect of the contract or contracts, in the case of public service contracts by category.

5. Where appropriate, indicate whether a framework agreement is involved.

6. Where appropriate, other information.

7. Date of dispatch of the notice or of dispatch of the notice of the publication of the prior information notice on the buyer profile.

8. Indicate whether the contract is covered by the Agreement.

CONTRACT NOTICES

Open and restricted procedures, competitive dialogues, procedures, negotiated procedures:

1. Name, address, telephone and fax number, email address of the contracting authority.

2. Where appropriate, indicate whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes.

3. (a) The award procedure chosen;

(b) Where appropriate, the reasons for use of the accelerated procedure (in restricted and negotiated procedures);

(c) Where appropriate, indicate whether a framework agreement is involved;

(d) Where appropriate, indicate whether a dynamic purchasing system is involved;

(e) Where appropriate, the holding of an electronic auction (in the event of open, restricted or negotiated procedures, in the situation covered by regulations 59(1)(a), 66(1)(a) and 72(1)(a))

4. Form of the contract.

5. Place of execution/performance of the works, for delivery of products or of the provision of services.

6. (a) Public works contracts:

- nature and extent of the works and general nature of the work.

Indication in particular of options concerning supplementary

works, and, if known, the provisional timetable for recourse to these options as well as the number of possible renewals, if any. If the work or the contract is subdivided into several lots, the size of the different lots;

Nomenclature reference number(s),

- information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects,
- in the event of a framework agreement, indication also of the planned duration of the framework agreement, the estimated total value of the works for the entire duration of the framework agreement and, as far as possible, the value and the frequency of the contracts to be awarded.

(b) Public supply contracts:

- nature of the products to be supplied, indicating in particular whether tenders are requested with a view to purchase, lease rental, hire or hire purchase or a combination of these, nomenclature reference number.

Quantity of products to be supplied, indicating in particular options concerning supplementary purchases and, if known, the provisional timetable for recourse to these options as well as the number of renewals, if any.

Nomenclature reference number(s),

- in the case of regular or renewable contracts during the course of a given period, indicate also, if known, the timetable for subsequent contracts for purchase of intended supplies,
- in the event of a framework agreement, indication also of the planned duration of the framework agreement, the estimated total value of the supplies for the entire duration of the framework agreement and, as far as possible, the value and the frequency of the contracts to be awarded.

(c) Public service contracts:

- category and description of service. Nomenclature reference number(s).

Quantity of services to be provided. Indicate in particular options concerning supplementary purchases and, if known, the provisional timetable for recourse to these options as well as the number of renewals, if any. In the case of renewable contracts over a given period, an estimate of the time frame, if known, for subsequent public contracts for purchase of intended services, in the event of a framework agreement, indication also of the planned duration of the framework agreement, the estimated total value of the services for the entire duration of the framework agreement and, as far as possible, the value and the frequency of the contracts to be awarded,

- indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.

Reference to the law, regulation or administrative provision.

- indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the

execution of the service.

7. If the contracts are subdivided into lots, indication of the possibility of tendering for one, for several or for all the lots.

8. Any time limit for completion of works/supplies/services or duration of the works/supply/services contract; where possible any time limit by which works will begin or any time limit by which delivery of supplies or services will begin.

9. Admission or prohibition of variants.

10. Where applicable particular conditions to which the performance of the contract is subject.

11. In the case of open procedures:

(a) name, address, telephone and telefax number and electronic address of the service from which contract documents and additional documents can be requested;

(b) where appropriate, time limit for submission of such requests;

(c) where appropriate, cost of and payment conditions for obtaining these documents.

12. (a) Time limit for receipt of tenders or indicative tenders where a dynamic purchasing system is being used (open procedures);

(b) time limit for receipt of request to participate (restricted and negotiated procedures);

(c) address where these have to be transmitted;

(d) the language or languages in which they must be drawn up.

13. In the case of open procedures:

(a) persons authorised to be present at the opening of tenders;

(b) date, time and place for such opening.

14. Where appropriate any deposit and guarantees required.

15. Main terms concerning financing and payment and, or references to the texts in which these are contained.

16. Where applicable, the legal form to be taken by the grouping of economic operators to whom the contract is to be awarded.

17. Selection criteria regarding the personal situation of economic operators that may lead to their exclusion, and required information proving that they do not fall within the cases justifying exclusion. Selection criteria and information concerning the economic operators' personal situation, information and any necessary formalities for assessment of the minimum economic and technical standards required of the economic operator. Minimum level(s) of standards possibly required.

18. Where there is a framework agreement: the number and, where appropriate, proposed maximum number of economic operators who will be members of it, the duration of the framework agreement provided for, stating, if appropriate, the reasons for any duration exceeding four years.

19. In the case of a competitive dialogue or a negotiated procedure with the publication of a contract notice, indicate, if appropriate, recourse to a staged procedure in order gradually to reduce the number of solutions to be discussed or tenders to be negotiated.

20. In the case of a restricted procedure, a competitive dialogue or a negotiated

procedure with the publication of a contract notice, when recourse is had to the option of reducing the number of candidates to be invited to submit tenders, to engage in dialogue or to negotiate: minimum and, if appropriate, proposed maximum number of candidates and objective criteria to be used to choose that number of candidates.

21. Time frame during which the tenderer must maintain its tender (open procedures).

22. Where appropriate, names and addresses of economic operators already selected by the contracting authority (negotiated procedures).

23. Criteria referred to in regulation 28(3), (4) and (5) to be used for award of the contract: "lowest price" or "most economically advantageous tender". Criteria representing the most economically advantageous tender as well as their weighting shall be mentioned where they do not appear in the specifications or, in the event of a competitive dialogue, in the descriptive document.

24. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

25. Date(s) of publication of the prior information notice in accordance with the technical specifications of publication indicated in Schedule 10 II or statement that no such publication was made.

26. Date of dispatch of the notice.

27. Indicate whether the contract is covered by the Agreement.

SIMPLIFIED CONTRACT NOTICE FOR USE IN A DYNAMIC PURCHASING SYSTEM

1. Country of contracting authority.

2. Name and e-mail address of contracting authority.

3. Publication reference of the contract notice for the dynamic purchasing system.

4. E-mail address at which the technical specification and additional documents relating to the dynamic purchasing system are available.

5. Subject of contract: description by reference number(s) of "CPV" nomenclature and quantity or extent of the contract to be awarded.

6. Time frame for submitting indicative tenders.

CONTRACT AWARD NOTICES

1. Name and address of the contracting authority.

2. Award procedures chosen. In the case of negotiated procedure without prior publication of a contract notice (regulation 25), justification.

3. Public works contracts: nature and extent of the contract, general characteristics of the work.

Public supply contracts: nature and quantity of products supplied, where appropriate, by the supplier; nomenclature reference number.

Public service contracts: category and description of the service; nomenclature reference number; quantity of services bought.

4. Date of contract award.

5. Contract award criteria.
6. Number of tenders received.
7. Name and address of the successful economic operators.
8. Price or range of prices (minimum/maximum) paid.
9. Value of the tender (tenders) retained or the highest tender and lowest tender taken into consideration for the contract award.
10. Where appropriate, value and proportion of contract likely to be subcontracted to third parties.
11. Date of publication of the tender notice in accordance with the technical specifications for publication in Schedule 10 II.
12. Date of dispatch of the notice.
13. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning the deadline for lodging appeals, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

ANNEX I B

INFORMATION WHICH MUST APPEAR
IN PUBLIC WORKS CONCESSION NOTICES

1. Name, address, fax number and email address of the contracting authority
2. (a) Place of execution
(b) Subject of the concession; nature and extent of the service
3. (a) Time limit for the submission of applications
(b) Address to which they must be sent
(c) Language(s) in which they must be written
4. Personal, technical and financial conditions to be met by the candidates
5. Criteria which will be applied in the award of the contract
6. If appropriate, the minimum proportion of the works which will be contracted out
7. Date of dispatch of the notice
8. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning the deadline for lodging appeals, or if need be the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

ANNEX I C

INFORMATION WHICH MUST APPEAR IN WORKS CONTRACT NOTICES OF
CONCESSIONNAIRES WHO ARE NOT CONTRACTING AUTHORITIES

1. (a) Place of execution
(b) Nature and extent of the services, general characteristics of the works
2. Any time limit for completion imposed
3. Name and address of the body from whom the specifications and the additional documents may be requested
4. (a) Time limit for the receipt of applications to participate and/or the receipt

of tenders

- (b) Address to which they must be sent
- (c) Language(s) in which they must be written
- 5. Any deposits or guarantees required
- 6. Economic and technical conditions to be met by the contractor
- 7. Criteria which will be applied in the award of the contract
- 8. Date of dispatch of the notice

ANNEX I D

INFORMATION WHICH MUST APPEAR IN DESIGN CONTEST NOTICES

- 1. Name, address, fax number and email address of the contracting authority and those of the service from which the additional documents may be obtained
- 2. Description of the project
- 3. Type of contest: open or restricted
- 4. In the event of an open contest: time limit for the submission of projects
- 5. In the event of a restricted 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
- 6. If appropriate, indicate that the participation is restricted to a specified profession
- 7. Criteria which will be applied in the evaluation of the projects
- 8. Names of any members of the jury who have already been selected
- 9. Indicate whether the jury's decision is binding on the contracting authority
- 10. Number and value of any prizes
- 11. Payments to be made to all participants, if any
- 12. Indicate whether any contracts following the contest will or will not be awarded to the winner or winners of the contest
- 13. Date of dispatch of the notice

NOTICE OF THE RESULTS OF A CONTEST

- 1. Name, address, fax number and email address of the contracting authority
- 2. Description of the project
- 3. Total number of participants
- 4. Number of foreign participants
- 5. Winner(s) of the contest
- 6. Any prizes
- 7. Reference of the contest notice
- 8. Date of dispatch of the notice

ANNEX II

FEATURES CONCERNING PUBLICATION

1. Publication of notices
 - (a) Notices referred to in regulations 49, 71(3) and (9) and 58(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. The prior information notices referred to in regulation 49(1), first sub-paragraph, published on a buyer profile as described in point 2(b), must also use that format, as must the notice of such publication.
 - (b) Notices referred to in regulations 49, 71(3) and (9) and 58(6) are published by the Office for Official Publications of the European Communities or by the contracting authorities in the event of a prior information notice published on a buyer profile in accordance with regulation 49(1), first sub-paragraph.

In addition, contracting authorities may publish this information on the Internet on a "buyer profile" as referred to in point 2(b).
 - (c) The Office for Official Publications of the European Communities will give the contracting authority the confirmation referred to in regulation 49(10).
2. Publication of complementary or additional information
 - (a) Contracting authorities are encouraged to publish the specifications and the additional documents in their entirety on the Internet.
 - (b) The buyer profile may include prior information notices as referred to in regulation 49(1)(a), 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.
3. Format and procedures for sending notices electronically. The format and procedure for sending notices electronically are accessible at the Internet address "<http://simap.eu.int>".

SCHEDULE 11

List of Products in the Field of Defence

This list of products in the Field of Defence shall be that list as established by the list covered in Annex II of EC Directive 93/36/EEC.

SCHEDULE 12

Requirements relating to Devices for the Electronic Receipt of Tenders, Requests for Participation and Plans and Projects in Contests

Devices for the electronic receipt of tenders, requests for participation and plans and projects in contests must at least guarantee, through technical means and appropriate procedures, that:

- (a) electronic signatures relating to tenders, requests to participate and the forwarding of plans and projects comply with national provisions adopted pursuant to Directive 1999/93/EC;
 - (b) the exact time and date of the receipt of tenders, requests to participate and the submission of plans and projects can be determined precisely;
 - (c) it may be reasonably ensured that, before the time limits said down, no-one can have access to data transmitted under these requirements;
 - (d) if that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;
 - (e) only authorized persons may set or change the dates for opening data received;
 - (f) during the different stages of the contract award procedure or of the contest access to all data submitted, or to part thereof, must be possible only through simultaneous action by authorized persons;
 - (g) simultaneous action by authorized persons must give access to data transmitted only after the prescribed date;
 - (h) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith.
-