

THE AWARD OF PUBLIC CONTRACTS (SUPPLY, WORKS AND SERVICES)
LAW OF 2003

Regulations by virtue of section 65

101(I) of 2003 The Council of Ministers, exercising its powers provided by section 65 of the Award of Public Contracts (Supply, Works and Services) Law of 2003 issues the following Regulations.

PART A – INTRODUCTORY PROVISIONS

Short Title 1. These Regulations are hereinafter referred to as the Award of Public Contracts (Supply, Works and Service) (General) Regulations of 2004.

Interpretation 2.-(1) In these Regulations, unless otherwise stated in the context-

“Interested Service”, in relation with the competition that leads to the award of contract, means the contracting authorities of the Government that carries out the competition either on their own interest or on behalf of an other governmental service.

“civil servant” means the person who holds a post in a governmental service.

101(I) of 2003 “Law” means the Award of Public Contracts (Supply, Works and Service) Law of 2003 and includes every law that amends or replaces it.

“Tender Boards” means the Boards established by virtue of Regulation 4.

2. Any other terms used in these Regulations without any further definition, will be interpreted by the meaning of the Law.

PART B – COMPOSITION AND OPERATION OF THE COMPETENT BODIES
FOR COMPETITION HANDLING

Competent bodies
in matter of
competitions
handling
for the award
of contracts 3.- (1) Subject to the provisions of the Law, the Tenders Boards and the Evaluation Committees are the bodies that, each one in the context of the powers provided to it by this Regulation, have the authority to broach and handle matters of the competition leading to the award of contracts.

(2) The Tenders Boards established by virtue of Regulation 4, have the power, each one, to decide in matter of competitions for the award of contracts of unlimited value .

(3) Except where applies the negotiated procedure, according to Regulation 21 (3), the Evaluation Committee, which are established according to Regulation 9(1), have the authority to decide in matter of competitions for the award of:

- (a) public supply contracts and public service contracts whose estimated value is up to the amount of CYP 90,000, excluding VAT.
- (b) public works contracts whose estimated value is up to the amount of CYP 500.000, net of VAT.

Provided, that in the case that it's ascertained that the competition for the award of contract, it's outside the jurisdiction of the Evaluation Committee, the tenders' file, together with each relevant document or collected element, is submitted by the head of the Interested Service, pursuant to the provisions of Regulation 9(1)(b), to the competent Tender Board for further instructions.

Establishment
of Tender
Boards

4.-(1) In each Ministry or Independent Office or Independent Service of the Republic Tender Boards are established, which have the power to decide about competitions that lead to the award of contracts, regarding the Ministry or Service or Department that belongs to this or the Independent Office or the Independent Service of the Republic.

(2) Competent for the appointment of the President and the members of each Tender Board is, according to circumstances, the Director General of the interested Ministry or the head of the interested Independent Office or of the interested Independent Service of the Republic.

Composition
of the
Tenders
Committees

5.-(1) Each Tender Board consists of one President and of other four members, as follows:

- (a) President is appointed, according to circumstances, the Director General of the Ministry or the head of the Independent Office or of the Independent Service of the Republic or their representative.
- (b) Members are appointed, according to circumstances, four officers of the Ministry and/or of the Services and/or of the Departments that belong to this or of the Independent Office or of the Independent Service of the Republic.

(2) Only a civil servant with salary scale A14 or higher, may be appointed as a President representative of the Tender Board, while members of the Tender Board are appointed only civil servants with salary scale A10 or higher. Both members' and President Representative's term of office is not permitted to exceed the five years and their reappointment is not permitted to take place before two years elapse from the termination of the their previous mandate.

(3) The termination or widowhood of the position of any member does not affect the validity of any act or work at the Tender Boards, provided that the members' number is not less than the required for the quorum of the members, as provided in Regulation 8.

Secretariat
and agenda

6.-(1) The Tender Boards, upon recommendation of its President, appoints two officers of the Ministry, of the Independent Office and of the Independent Service of the Republic, according to circumstances, to carry out the duties of the Secretary and the Deputy Secretary.

(2) The President prepares the agenda of each meeting of the Tender Board and takes care of its notification, at least the day before the meeting, to each member as well as to the observers. In state of emergency, the agenda may be notified just before the meeting.

Minutes
of the
meetings

7.-(1) During the meetings of the Tender Boards, minutes are kept by the Secretary or by the Deputy Secretary.

(2) The minutes are approved and signed by the President of the Tender Board the latest within 15 working days from the relevant meeting and then are notified to the members and to the observers of the Tender Board.

Quorum
And
Decision
Making
Of the
Tenders
Committees

8.-(1) For the purpose of the valid carrying out of the Tender Boards' meetings, the attendance of at least three members is required including that of the President.

(2) The decisions of the Tender Boards are taken by majority of attendants and, in case of parity (of votes), the President has a second winning vote.

Establishment
of
Evaluation
Committees

9.-(1) Except where Section 54(1)(a) of the Law applies, for each competition that leads to the award of contracts, the head of the Interested Service, sets up an Evaluation Committee of at least three-members, for the study of the submitted tenders, for the preparation of an evaluation report, as provided by the Regulation 25 and-

- (a) Award of contracts, the estimated value of which does not exceed the amounts stated in Regulation 3(3) or the amount of CYP 30.000, excluding VAT, where the negotiated procedure is applied according to Regulation 21, or
- (b) submission of recommendations to the competent Tender Board for contracts, the estimated value of which exceeds the amounts stated in Regulation 3(3) or the amount of CYP 30.000, excluding VAT, when the negotiated procedure is applied, according to Regulation 21.

(2) In cases in which the evaluation of tenders is entrusted to private consultants, the Evaluation Committee studies the evaluation report of the private consultants and proceeds into the actions referred to in paragraph (1)(a) or (b), according to circumstances.

Composition
of the
Evaluation
Committees

10. Every Evaluation Committee consists of an odd number of members, who have technical and/or professional education on the matter under examination, one of which executes duties of Coordinator for the purpose of keeping minutes and of preparing the evaluation report, as stated in Regulation 25:

Provided that, if deemed necessary, as members of the Evaluation Committee may be appointed civil servants who do not have a post in the Interested Service, provided that this arrangement is made upon agreement with the head of the service in which they have a post.

Quorum
and decision-
making
of the
Evaluation
Committees

11.-(1) For the purpose of the valid carrying out of the meetings of the Evaluation Committee, the attendance of all its members is required. In case of weakness or hindrance of any member to attend a meeting of the Committee, the head of the Interested Service appoints a substitute member.

(2) The decisions of the Evaluation Committees are taken by majority.

(3) The contract is awarded with the consent of the head of the Interested Service. In case of disagreement of the head of the Interested Service or in case that no decision is taken by the Evaluation Committee because of parity (of votes), the positions of the head are justified and the issue is forwarded to the competent Tender Board , for final decision.

Observers

12. The Attorney General of the Republic, the Auditor General of the Republic and the Accountant General of the Republic as the head of the Competent Authority or their representatives have the right to attend the meetings of the Tender Boards and of the Evaluation Committees as independent observers, to express their opinion and to ask for the recording of these, according to circumstances, in the by virtue of Regulations 7 or 10 kept minutes or in the evaluation report as provided in Regulation 25.

Constitution
of ad hoc
technical
committees
and
participation
of
experts
and other
specialists

13.-(1) The Tender Boards have the power to :

- (a) appoint ad hoc technical Committees of at least three members for studying evaluations, for carrying out specific surveys and submitting reports on specific technical matters, or/and
- (b) call any expert or other specialist to attend the meetings for providing advice or clarifications on matters of their specialisation, which are considered necessary for the purpose of correct decision-making.s

(2) The members of the ad hoc technical Committees are persons with technical knowledge, qualifications and experience in relation with the examined matter.

(3) The heads of the civil servants or of the employees of public law organisations, who are appointed as members of the ad hoc technical Committees take care for, so that the chosen members should be provided with every facility for the purpose of the successful fulfillment of their obligations arising from their participation in these committees.

Declaration
of
conscientious
and
impartial
executions
of
duties
and
revelation
of
eventual relationship

14.-(1) Before any meeting takes place, the President, his representative and the members of all Boards and Committees appointed on the basis of these Regulations, sign a declaration that they will execute their duties with conscientious and impartiality, without fear or favour, and of absolute confidentiality during the execution of their duties.

(2) In case that the President or his representative or any other member of any Board or Committee, set up on the basis of these Regulations, has any financial or any other interest, director indirect in relation with any competition that leads to the award of the contract or has any particular relation or any blood relationship or kinship up to the fourth degree with any person who has evident financial or any other interest into the procedure herein, is obliged to disclose this interest, relation or relationship to the competent Board or Committee and to withdraw from the relevant meeting.

Incompatible

15.-(1) The simultaneous participation of members of ad hoc technical committees, set up on the basis of Regulation 13(1)(a), to any other Committee or Board, set up on the basis of these Regulations, and that deals with same matter for which the relevant ad hoc technical committee has been appointed, is incompatible.

(2) The simultaneous participation of members of the Evaluation Committee, set up on the basis of Regulation 9(1), in a Tenders Board, that deals with the same matter for which the relevant Evaluation Committee has been appointed is incompatible.

Appointment
of
Special Committees
for fruit,

vegetable
and
perishables
Supply

16.-(1) The head of the Interested Service has the power to appoint a Special Purchases Committees of at least three members, for the supply of fruit, vegetables and perishables on the basis of the provisions of sections 54(1)(a) and (1)(b) of the Law.

(2) The Committees, set up on the basis of paragraph (1), call for written quotations, required by item into a sealed envelope, from a satisfactory, according to their opinion number of suppliers who are interested to submit a tender.

(3) The tenders are opened , recorded, evaluated and signed by the members of the Committee on a specific note of award, copy of which must accompany the payment voucher.

Power
to suspend
the
competitions

17.-(1) Regardless of whatsoever provisions in these Regulations, the Tender Boards have the power, for special and serious reasons that are justified in their relevant decision, to suspend temporarily any competition that leads to the award of contract that is pending before them and to forward the matter with a proposal of the competent Minister to the Council of Ministers for the undertaking of the final decision for suspension.

(2) In case that the Council of Ministers, to which the matter is forwarded, by virtue of paragraph (1), decides the continuation of the procedure, returns the matter to the Tender Board, together with any instructions, to complete the relevant procedure.

PART C – PROCEDURE FOR THE INVITATION TO TENDER

Requirements
Of the
Invitation
to tender

18. The invitation to tender for the award of the contract, is made by the Interested Service, since it has confirmed in advance that the necessary funds are available. In case of invitation to tender for which there are no available funds, the head of the Interested Service is personally responsible.

Provided that, in case that the necessary available funds receive relevant approval in a later stage, there must be a relevant reference in the mentioned tender documents.

Right of the
economic
operators
to
submit
Recommendations

19.-(1) Into the tender documents a condition shall be incorporated by which the economic operators who are interested to submit a tender, have the right to submit any suggestions, comments and observations in relation to the technical specifications and to the terms of the tender documents, at least 15 days before the submission date of tenders.

(2) In case where such suggestions, comments and observations are submitted, on the basis of the right provided into paragraph (1), the Interested Service informs through supplementary documents about its decisions, the economic operators who are interested to submit a tender, in respect of the time limits set in section 31(3) up to (5) of the Law. A copy of the supplementary documents is notified to the President of the competent Tender Board, in case that the final decision making falls within its competence, and to the Competent Authority and to the Auditor General of the Republic.

Notification
of the
tenders
documents

20.-(1) Copies of the notice together with the tender documents, accompanied by objective estimated costs, that shall be supported by analytical bill of quantities, if available, are notified, simultaneously together with the dispatch of the notice for publication, to the Competent Authority and to the Auditor General of the Republic.

(2) The tender documents shall be available with the notice, to be forwarded or sent to the economic operators who are interested to submit a tender, according to the relevant provisions of Law. For this purpose, a list of all the physical and legal persons to whom the tender documents have been forwarded or sent shall be kept.

(3) In case of competitions that lead to the award of contracts, the estimated value of which exceeds the amounts referred to in paragraph 3(3), the tender documents may be given to the economic operators interested to submit a tender upon payment of a reasonable fee.

Approval
of the
negotiated
procedure,
according
to article
22 and 23
of Law

21.-(1) In case that the Interested Service applies the negotiated procedure, according to section 22 and 23 of the Law, the following shall be secured:

- (a) for contracts, the estimated value of which is up to the amount of CYP 30.000, net of VAT, the in advance written approval of the head of the Interested Service or
- (b) for contracts whose estimated value is higher than the amount of CYP 30.000 but equal or less than the amount of CYP 100.000, net of VAT, the in advance written approval of the President of the Competent Tender Board or
- (c) for contracts the estimated value of which is higher than the amount of CYP 100.000, net of VAT, the in advance written approval of the competent Tender Board.

(2) In the cases referred to in paragraph (1)(b) and (c) the approval shall be given upon written request of the Interested Service in which the following will be specified:

- (a) the reasons for the recourse of the negotiated procedure
- (b) the terms of the negotiation
- (c) the names of the economic operators, who will be called to participate in the negotiated procedure.

(3) Where the negotiated procedure for the award of the contract applies, the estimated value of which exceeds the amount of CYP 30.000, net of VAT, the power of dealing belongs to the Tender Boards operating into the Ministries or into the Independent Offices or into the Independent Services of the Republic and the provisions of Regulations will be applied pro rata regarding contracts the estimated value of which exceeds the amounts set into Regulation 3(3).

PART D – SUBMISSION OF TENDERS

Time and
manner of
Submission
of tenders

22.-(1) The tenders are submitted before the date and time specified in the relevant notice for the submission of tenders.

- (a) In the tender box of the competent Tender Board, in case of contracts the estimated value of which exceeds the amounts set in Regulation 3(3).
- (b) In the box of the Interested Service, in case of contracts the estimated value of which does not exceed the amounts set in Regulation 3(3).

(2) The tender boxes are secured with two locks.

- (a) In case of tender boxes of the Tender Board, one key is kept by the Secretary of the Tender Board and the other one is kept by the official appointed by the Tender Board after recommendation of its President.
- (b) In case of tender boxes that are placed into various Departments or Services of the Ministries, the keys of these boxes are kept by the two officials appointed by the Interested Service.

(3) The tenders that come into the possession of the Tender Board or the Interested Service in whatever else legal manner, other than that referred to in paragraph (1), before the last date and time for the submission of tenders, are not opened, but after the recording of the date of receipt on their envelope and after being countersigned by the competent official, are placed sealed into the tender box in order to be opened with the rest of the tenders submitted under the above-mentioned procedure.

(4) The tenders that due to their size may not be placed into the tender box and the financial envelopes submitted under the two envelope system, are received by the officials who have the keys of the tenders boxes according to paragraph (2) and are placed in a special place, that is also secured with two locks, the keys of which are kept by the same officials, to be opened by the provided procedure.

Tenders with future submission date remain sealed in the tender box, until the specified submission date.

(5) The tenders received by the Tender Board or by the Interested Service in any way overdue, are not taken into consideration and the tenderer is also informed about the way of return of his tender.

(6) For the purpose of this Regulation, the term “key” includes also code numbers.

23.-(1) The opening procedure of tenders starts, where feasible, immediately after the expiration of the time limit for their submission. The tenders are opened, numbered, countersigned and registered into a special form, the format of which is contained into Annex.

(2)(a) The tender envelopes that on the basis of Regulation 22(1)(a) are placed in the tender boxes of the Tender Boards, are opened in the presence of the President or his representative and of the Secretary or of the Deputy Secretary of the Board, as well as of the representative of the Interested Service to whom are consigned the originals of the tenders for evaluation purpose. The copies of the tenders are kept under the responsibility of the President of the Tender Board.

(b) The tender envelopes that will be examined by the Evaluation Committee, according to the provisions of Regulation 9(1), and that on the basis of the Regulation 22(1)(b) are placed into the tender box of the Interested Service, are opened by the competent Evaluation Committee in the presence of the representative of the head of the Interested Service. The representative of the head of the Interested Service, will be one of the two officials who will keep the keys of the tender box and is responsible for the recording of the tenders in a special form, the format of which is contained into Annex, and is also responsible to keep a copy of the tenders.

(3) During the opening of the tenders, representatives of the Competent Authority and of the Auditor General of the Republic may be present. In case of contracts the estimated value of which exceeds the CYP 1.000.000 net of VAT, representatives of the economic operator may also be present.

(4) Without any prejudice to the provisions of paragraph (5), after the tenders have been opened, the President of the competent Tender Board or, in the case that the award of contract will be made by the Evaluation Committee, the head of the Interested Service, or their representatives, notifies, where it is feasible, the tenderers, by the way considered suitable by him, about the order of their classification in relation with the price level of the tenders.

(5) The control regarding the total compliance of the tenderers or of their tenders in relation to the conditions of the tender documents is carried out at the tender evaluation stage.

24. For every competition that leads to the award of contracts, the Interested Authority shall include into the tender documents a condition specifying the kind and amount of the participation guarantee that is necessary to accompany the submitted tenders:

Provided that, for competitions that lead to the award of contracts, the estimated value of which does not exceed the amount of CYP 30.000, net of VAT, the Interested Service has the discretion not to request the submission of the participation guarantee.

PART E – TENDERS EVALUATION

Evaluation
Tenders
Report

25.-(1) In observance of the provisions of Regulation 9, the tenders study and valuation by the Evaluation Committee, begins immediately after the opening of the tenders.

(2) In cases in which the estimated value of the contracts exceeds the amounts set up into Regulation 3(3), the evaluation report that is prepared by the Evaluation Committee is signed by all its members and it is submitted to the competent Tender Board in a satisfactory number of copies and in any case before the expiry of the validity of the tenders.

PART F – AWARD OF CONTRACTS, REJECTION OF TENDERS AND CANCELLATION OF COMPETITIONS.

Powers
of the
competent
organs

26.-(1) Where the power to award contracts rests with the Tender Board, it has the power, after the study of the evaluation report provided in Regulation 25 of the ad hoc technical committee report, where applied, and of any other element submitted to it, according to circumstances, to award the contract to a specific tender, to reject whatsoever tender or to cancel the procedure of competition.

(2) Where the Evaluation Committee has the power to award the contract, after the tender study and evaluation, according to circumstances, to award the contract to a specific tender, to reject whatsoever tender or to cancel the procedure of competition.

(3) Tenders that, in the opinion of the competent body present essential deviations from the terms and/or from the technical specifications of the tender documents, or any other essential obscurity arising from eventual corrections or otherwise, are rejected.

(4) Cancellation of competition may be decided due to one or more of the following reasons:

- (a) When no tender is submitted for the specific competition within the fixed time-limit.
- (b) When the terms of the tender documents contain technical specifications and it is ascertained that no tender can meet them or that these specifications lead exclusively to one specific economic operator.

- (c) When the prices of all tenders that meet the terms and the technical specifications of the tender documents are unrealistic or seem to be the result of previous agreement between the tenders, having as a result the violation of the principle of healthy competition.
- (d) When the circumstances under which the competition published has been changed in such a way that the object of the competition is not necessary any more.
- (e) When any other serious unpredictable reason occurs which the competent body, considers as justified.

Notification
of the
competition
results

27.-(1) (a) The competent body notifies its decisions in relation to the competition to the Interested Service, as soon as possible.

- (b) The Interested Service informs, in writing, all the economic operators who have participated in the competition in case of cancellation of competition, and in any other case the unsuccessful ones about the taken decision and its reasons.

(2) Subject to the provisions of section 56 of Law , the Interested Service -

- (a) Upon ascertaining that there is no intention for filing an application for review within a period of not less than 10 days but not more than 30 days from the date that the relevant decision of the competent body came to its knowledge according to paragraph (1), notifies in writing the successful economic operator in respect of the relevant decision and invites him within a fixed time limit that does not exceed the 30 days from the date the decision has been notified to him, to sign the contract, if it is so stated in the tender documents.
- (b) in case that there is an intention to file an application for review, notifies the successful economic operator about this fact, with specific reference to the hindrance to the signing of the contract and with parallel obligation of informing him in writing upon completion of the review procedure.

Provided that, in case that the Review Authority confirms the decision of the competent body, the successful economic operator will be called to sign the contract as provided in paragraph (a).

- (3) (a) The tenders are valid and bind the economic operators for the period fixed in the tenders documents which shall not exceed –
 - (i) the period of six months for normal contracts, or
 - (ii) the period of twelve months for complex contracts.

Except if, in exceptional cases, the Council of Ministers decides otherwise before the publication of the competition.

- (b) The validity of the tender may be extended with the same terms, provided that it is required prior to its expiration, upon approval:
 - (i) Provided that the total period of validity of the tender, including any extensions, does not exceed the periods fixed in paragraph a(i) and (ii) respectively.
 - A. of the President of the competent Tender Board for contracts the estimated value of which exceeds the amounts fixed in Regulation 3(3).
 - B. of the head of the Interested Service for contracts the estimated value of which does not exceed the amounts fixed in Regulation 3(3).
 - (ii) of the Council of Ministers for contracts whose tender validity was fixed by it by virtue of paragraph (a) and for contracts that fall into the provisions of paragraph (a)(i) and (ii) if the requested extension exceeds the periods fixed therein.
- (c) Tenders, that states a period of validity less than that provided in the tenders documents , is rejected as unacceptable.
- (d) Tender, the requested validity extension of which is not submitted in writing by the tenderer to the Interested Service within the time fixed by it, is rejected as unacceptable.
- (e) The provisions of these Regulations apply also by analogy to the guarantees that accompany the tenders, when this is required .

PART G – CONTRACT DRAWING UP

Signing
of contract

28.-(1) The economic operator to whom the contract has been awarded, if it is provided so in the tender documents, shall present himself, within a prescribed time from the date of notification to him of the decision, at the stated place for the signing of the relevant contract.

(2) Into the drawing up contract, all elements of the tender documents , the tender of the economic operator to whom the contract has been awarded, and any other relevant correspondence exchanged with the successful economic operator, are included and considered as part of the contract.

(3) If the economic operator, to whom the contract has been awarded and who received the notification of the award, does not present himself within the time fixed at the stated place for the signing of the contract, then he is declared forfeited and the deposited participation guarantee, as provided by Regulation 24, is seized .

Performance
Guarantee

29. Except where otherwise stated in the tender documents, the economic operator to whom the contract has been awarded, is obliged upon the signature of the contract to provide a performance guarantee, in the manner stated into the tender documents.

Contract
Performance

30. The contract is considered to has been fully performed, if and when all contractual obligations of all parts are fulfilled and when any deposited guarantees are released according to the contract provisions.

PART H – MISCELLANEOUS AND FINAL PROVISIONS

Additional
reasons of
exclusion

31. Further to the reasons of exclusion referred to in article 40 of the Law every economic operator may be excluded at any stage of the competition procedure, if the competent body ascertains that he:

- (a) Seeks or attempts either by himself or through mediation or with the help of any other person to influence in any way the judgment of any body or committee, or any member thereof, or of any civil officer or of any official during the execution or the exercise, of their duties and powers conferred under this Law or these Regulations.
- (b) obtains or possesses without any lawful authority and by his own initiative, confidential information or documents relating to the competition to which he participates.
- (c) Has violated or has not performed other contracts precisely which have been awarded to him in such a way that his performance guarantee has been seized
- (d) Has refused without any justification, after the contract has been awarded to him, to proceed with the signature of the awarded contract.

Transitional
provisions

32. Nothing in these Regulations shall affect the validity of anything validly done prior to the coming into force of these Regulations, any outstanding procedure or the award of a public contract which commenced but not concluded at the date of the coming into force of this Law, shall be concluded, so far as possible, subject to the provisions of these Regulations.

Provided that no economic operator shall be adversely prejudiced or deprived of any legal right which he had, in respect of any procedure still outstanding, prior to the coming into force of these Regulations.

Commencement 33. These Regulations shall come into force by a decision of the Council of Ministers to be published in the Official Gazette of the Republic.

Repeal 34. The Public Tender (General) Regulations of 1999 up to 2003 shall, upon the coming into force of these Regulations, be repealed.

Official Gazette,
Annex Third (I):
21.5.1999
12.4.2001
20.6.2003

ANNEX
(Regulation 23 (1) and (2) (b))

Contracting Authority:.....

Tender Number:.....

SUBJECT:.....

Date of Submission:.....

Serial Number	Name of Tenderer	Amount (if feasible)

Name and signature of the opening committee:

.....

.....

Name and signature of the tenders' receipt :.....