

SUBSIDIARY LEGISLATION 174.04**PUBLIC CONTRACTS REGULATIONS**

1st January, 2004*

*LEGAL NOTICE 299 of 2003, as amended by Legal Notices 377 and 473 of 2004.***ARRANGEMENT OF REGULATIONS**

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*In force with regard to all matters specified in these Regulations other than those falling under regulation 18(2) of the Public Service (Procurement) Regulations.

PART I

General Provisions

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

Interpretation. **2.** For the purposes of these regulations, unless the context otherwise requires -

"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:

Provided that for the purposes of Part VII -

- (a) an "affiliated undertaking" means any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the seventh Council Directive 83/349/EEC of 13 June 1983, based on Article 54(3)(g) of the EEC Treaty on consolidated accounts or, in the case of entities not subject to that Directive, any undertaking over which the contracting entity may exercise, directly or indirectly, a dominant influence, or which may exercise a dominant influence over the contracting entity or which, in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it;
- (b) a "relevant affiliated undertaking" is one which has as one of its activities the provision of services and which provides those services principally to one or more of its affiliated undertakings: without prejudice to the determination of whether services are principally provided to affiliated undertakings in other cases, in the case of an undertaking which has been in existence for thirty-six months or more, it shall be taken to be so if, for the preceeding thirty-six months, 80% or more of the average turnover of -
 - (i) the undertaking, or
 - (ii) it and of any affiliated undertaking

in respect of the provision of services of the type or similar to those to be provided under the contract within Member States was derived from the provision of those services to affiliated undertakings.

"Appeals Board" means the Board defined in regulation 30;

"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 a EU notice;

"candidate" means any natural or legal person, including a public body, who seeks an invitation to participate in a restricted or negotiated procedure, a public works concession, a design contest or a qualification system;

"the Commission" means the Commission of the European Union;

"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.

"contracting entity" means a contracting authority, public undertaking or other person referred to in regulation 73(1) and 73(2);

"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 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;

"EU notice" means a notice to be published in the Official Journal of the European Union as well as in the Gazette;

"framework agreement" means an agreement between one of the contracting authorities and one or more tenderers, 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 8.

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

"Minister" means the Minister responsible for Finance;

"negotiated procedures" means those procedures whereby contracting authorities consult tenderers of their choice and negotiate the terms of a contract with one or more of them;

"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 undertaking may submit a tender;

"periodic indicative notice" means the EU prior information notice referred to in regulation 44;

"public contract" means any contract concluded in writing for pecuniary interest being a public services contract, public supply contract, public works contract or public utilities contract, 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 solely of the right to exploit the provision of the service to the public or in this right together with payment;

"public services contract" means a contract concluded in writing for pecuniary interest between a service provider and a contracting authority to the exclusion of -

- (a) public supply contracts;
- (b) public utilities contracts;
- (c) public works contracts;
- (d) contracts for the acquisition or rental, by whatever financial means, of land, existing buildings, or other immovable property or concerning rights thereon. For the avoidance of doubt and for the purposes of the regulations, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental in whatever form, of the property

herein referred to, shall also be deemed a public services contract;

- (e) contracts for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time;
- (f) contracts for voice telephony, telex, radiotelephony, paging and satellite services;
- (g) contracts for arbitration and conciliation services;
- (h) contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services;
- (i) employment contracts;
- (j) 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;
- (k) public service concession contracts;

"public supply contract" means a contract concluded in writing for pecuniary interest involving the purchase, lease, rental or hire purchase, with or without option to buy, of products between a supplier and a contracting authority. The delivery of such products may in addition include sitting and installation operations;

"public telecommunication services" and "public telecommunication networks" referred to in Part VII shall be construed and interpreted by reference to the relevant provisions of the Telecommunications (Regulation) Act, including but not limited to the meaning assigned therein to the terms "commercial activities connected with telecommunications", "electro-magnetic system", "public telecommunications system", "public telecommunications service", "telecommunications" and "telephony";

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"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 utilities contract" means a contract awarded in terms of Part VII or excluded from these regulations by virtue of regulation 76;

"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 contract for pecuniary interest in writing between a contractor and a contracting authority, 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 7, or a work as defined in this regulation, or the execution 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 whereby only those candidates invited by the contracting authorities may submit tenders;

"Special Contracts Committee" means the committee defined in regulation 9;

"technical specifications" has the meaning assigned to it pursuant to regulation 42;

"tenderer" means any legal or natural person, including a public body, who submits a tender under an open procedure or who in a restricted or negotiated procedure, the procedure for the award of a public works concession or a design contest and submits a tender, offer or design as appropriate;

"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 11;

"undertaking" means a supplier, contractor or service-provider who offers products, works or services and who is resident in a Member State or a relevant state;

"work" means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic and technical function;

"working days" means working days in Malta.

Scope.

3. (1) These regulations shall provide for the regulation of public contracts awarded by contracting authorities listed in Schedule 1 and categorised in Schedule 2 and Schedule 3.

(2) The Minister may by regulations amend Schedule 1 to ensure that all contracting authorities in Malta are listed therein.

(3) The Minister shall have the power to amend Schedules 2 and 3 as he may deem necessary from time to time.

(4) The Minister shall have the power to amend Schedule 11 as he may deem necessary from time to time.

4. (1) Contracting authorities shall ensure that there is no discrimination between undertakings, and that all undertakings are treated equally 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 provision of regulation 31(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 candidates and tenderers.

(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) Unless otherwise provided for in these regulations, 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 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;
- (d) 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;
- (e) to vet and approve (with or without modification) tender documents before the same are issued and published;
- (f) to ensure that these regulations are observed by all parties involved;
- (g) to establish and regulate the procedure to be followed during meetings of the 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;

- (h) 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 Lm 20,000 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;
- (i) to approve, where appropriate, as provided in Part VIII, variations which affect the original values of contracts by more than 5 *per centum*;
- (j) to approve extensions in the duration of contracts awarded by him if he considers that circumstances so warrant in the public interest;
- (k) 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;
- (l) to institute and to defend any judicial or arbitral proceedings that may be necessary in relation to any contract awarded by him;
- (m)
 - (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;

- (n) to make regulations to award tenders in the name and on behalf of the Government of Malta in relation to contracting authorities listed in Schedule: 2

Provided that, the authorities listed in Schedule 2 shall -

- (i) draw up the tender documents;
- (ii) effect payment of the awarded tender; and
- (iii) shall monitor the implementation of the tender.

6. (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 public contract in relation to all public contracts whatever their value. Such remedies shall be provided by the Director of Contracts or by any other official within the Department of Contracts duly authorised by the Director.

Remedies -
Competence of the
Department of
Contracts.

(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 damage to the interests concerned, including measures to suspend or to ensure the suspension of the procedure for the 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:

Provided further that in relation to contracting authorities who have their public procurement regulated under Part VII may order that a sum, by way of penalty, be paid pursuant to this subregulation, which sum shall be set at a level high enough to dissuade the contracting entity from committing or persisting in an infringement;

- (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 any person having or having had an interest in obtaining a particular public contract 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 person having or

having had an interest in obtaining a particular public contract obtains the new tender document free of charge.

(3) The decisions of the Director in terms of subregulation (2) shall be rendered in writing in the Gazette and shall indicate the reasons upon which such decision was taken.

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(4) Any interested person who feels aggrieved by a decision taken by the Director of Contracts in terms of this regulation 6 may, on a point of law, appeal to the Court of Appeal (Inferior Jurisdiction) as constituted in accordance with article 41(6) of the Code of Organization and Civil Procedure by means of an application filed in the registry of that court within thirty working days from the date on which that decision has been made public.

Discretion to refer.
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7. (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;

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(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.

(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.

General Contracts
Committee.

8. (1) There shall be 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.

(2) 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.

(3) 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 Contracts Committee.

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

9. (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.

Special Contracts
Committee.

(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 8 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.

10. (1) The meetings of the 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.

Contracts
Committee.

(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 as per regulation 29) 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.	<p>11. 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.</p>
Requirement of approval before issue and publication of tender.	<p>12. 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 14(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.</p>
Annual report.	<p>13. (1) The Director of Contracts shall, by not later than six months after the end of each Malta Government financial year, make and transmit to the Minister a report dealing generally with the performance of the General Contracts Committee, the Special Contracts Committee and the public contracts Appeals 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 General Contracts Committee and the public contracts Appeals Board as the case may be.</p> <p>(2) The Minister shall lay a copy of every such Annual report on the table of the House of Representatives at the earliest opportunity.</p>
Applicability.	<p>14. Without prejudice to the applicability of the other provisions of these regulations, public contracts -</p> <ul style="list-style-type: none">(a) the estimated value of which does not exceed Lm 20,000, shall be subject to Part II;(b) the estimated value of which exceeds Lm 20,000 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 A, VI B, VI C and VII as may be applicable. <p>In calculating the estimated values of public contracts the contracting authority shall use the provisions laid down in regulation 15.</p>
Rules for calculating applicable estimated value.	<p>15. (1) In calculating the estimated value, the contracting authority shall consider the estimated value of remuneration due to the successful tenderer.</p> <p>(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.</p> <p>(3) Contracting authorities shall not adopt any mechanism, the purpose of which is to circumvent the application, in part or in whole, of these regulations.</p>

(4) When the content of a tender is subdivided into several 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 thus the applicability of these regulations:

Provided that in the case of a public services or a works contract, contracting authorities may depart from the principles laid down in this subregulation in respect of any lot which has an estimated value, net of VAT, of less than the threshold stated in Schedule 9 and provided that the total value of such lots does not exceed 20 percent of the total value of all the lots.

(5) (a) 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:

(i) 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;

(ii) or 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.

(b) If a proposed procurement of supplies or services of the same type may lead to contracts being awarded at the same time in separate parts, the estimated value of the total sum of these parts must be taken as the basis for the calculation of the estimated value.

(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 instalment multiplied by forty-eight.

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

(a) in the case of fixed term 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) Where a proposed procurement provides for option clauses, the basis for calculating the estimated value of the public contract shall be the highest permitted total including use of the option clauses.

(9) For the purposes of calculating the estimated value of a contract for financial services, the following amounts shall be taken into account:

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

(10) 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.

(11) 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 sitting and installation operations.

(12) The basis of calculating the value of a framework agreement shall be the estimated maximum value of all the contracts envisaged for the period in question.

Non-applicability.

16. (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 for the joint 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 secret or the execution of which must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force from time to time in Malta or when the protection of Malta's security so requires;
- (d) undertakings in a Member State or a third country in pursuance of an international agreement relating to the stationing of troops.

(2) 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 Lm 20,000

17. Where the estimated value of a public contract does not exceed Lm 20,000 only the relevant provisions of Part I and the whole of Part II shall apply. Applicability.

18. All public contracts, the estimated value of which does not exceed Lm 20,000, 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.

19. (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: Procurement procedures for contracting authorities.

- (a) where the estimated value does not exceed Lm 1,000, 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 Lm 1,000 but does not exceed Lm 2,500, 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 Lm 10,000;
- (d) where the estimated value exceeds Lm 2,500 but not Lm 20,000, the equipment, stores, works or services may be procured after a departmental call for tenders. The tenders 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 25 shall apply for the adjudication of the tenders submitted:

Provided that the Minister may by regulations

allow limits higher than Lm 20,000 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 centum*. 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 subregulation (1)(d) direct contracts valued in excess of Lm 2,500 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 in a legal notice.

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

Right of recourse.
Amended by:
L.N. 377 of 2004.

20. (1) Where the estimated value of the public contract exceeds Lm 5,000 but not Lm 20,000 and is issued by a Local Council or by an authority listed in Schedule 2, any interested undertaking shall have a right to make a complaint to the General Contracts Committee in accordance with the procedure laid down in these regulations.

(2) 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.

(3) Any interested undertaking who may be aggrieved by the award shall, within three working days from the publication of the notice, file a letter of objection, together with a deposit of Lm 100, with the contracting authority, clearly setting forth any reason for his complaint. 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. The

contracting authority shall be precluded from concluding the contract during the period allowed for the submission of appeals. The award process shall be completely suspended if an appeal is eventually submitted.

(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 Director of Contracts.

(5) The Director of Contracts shall refer the case to the General Contracts Committee which shall examine the matter in a fair and equitable manner and determine the complaint by upholding or rejecting it. The written decision of the General Contracts Committee shall be affixed on the notice board of the contracting authority and copies thereof shall be forwarded to all the parties involved.

(6) In its deliberation the Committee shall have the authority to obtain in any manner it deems appropriate, any other information not already provided by the contracting authority. The General Contracts Committee's decision shall be final and binding on the contracting authority and the interested undertaking who shall not be afforded any further recourse.

(7) 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.

(8) The Minister shall have the authority to order by legal notice, 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 Lm 20,000 but does not exceed the thresholds

21. In addition to this Part, Parts I and IV also apply to public contracts where the estimated value exceeds Lm20,000 but does not exceed the thresholds.

Applicability.
Amended by:
L.N. 377 of 2004.

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.

22. All public contracts, the estimated value of which exceeds Lm 20,000 but does not exceed the thresholds, shall be subject to the regulatory and other functions of the Department and Director of Contracts:

Regulation.

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;

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 including but not limited to the right of appeal.

PART IV

Rules common to public contracts whose value exceeds Lm 20,000

Applicability.

23. This Part shall apply to all public contracts whose value is in excess of Lm 20,000.

Award procedures.

24. (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.

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

(3) 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 of Contracts shall be required.

(4) In all cases in which the authorities listed in Schedule 3 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.

(5) 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 45, select the candidates whom they will invite to submit a tender or to negotiate.

Award criteria.

25. (1) 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.

(2) Where the award is made to the most economically advantageous offer, various criteria relating to 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.

(3) 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 EU contract notice, list, where possible in descending order of importance, all the criteria it intends to apply in the determination of the award.

26. (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, but it shall request tenderers to submit in writing, details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received.

Special considerations relating to rules governing award criteria.

(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, or, to the originality of the tenderer's proposal.

(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) Unless such specifications are justified by the subject of the contract, it shall not be lawful to introduce into tender specifications clauses which mention goods of a specific make or source or of a particular purpose and which therefore favour or eliminate certain potential tenderers. In particular the introduction of trade marks, patents, types or of a specific origin or production shall be prohibited. However, if such indication is accompanied by the words "or equivalent" it shall be authorized in cases where the contracting authorities are unable to give a description of the subject of the contract using specifications which are sufficiently precise and fully intelligible to all parties concerned.

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

- (a) that each tender contains all the information necessary for its evaluation;
- (b) that the confidentiality of tenders is maintained pending their evaluation;
- (c) that, 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) that tenders are opened after the time limit for their submission has expired.

27. 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 such indication shall be without prejudice to the tenderer's liability.

Sub-contracting.

28. (1) Tenders may be submitted by groups of tenderers. These groups shall not be required to assume a specific legal form in order to submit the tender. The selected group may be required to do so when it has been awarded the contract, to the extent that this

Joint and group tendering.

change is necessary for the satisfactory performance of the contract.

(2) Legal persons may be required to indicate in the tender or in a request for participation, in the case of design contests, the names and relevant professional qualifications of the individuals responsible for the performance of the service.

Separate packages.

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

Appeals Board.

30. (1) There shall be established a public contracts Appeals Board to be known as the Appeals Board which shall be regulated in terms of Part XIV.

(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 those authorities listed in Schedule 1 and whose value exceeds Lm 20,000, in accordance with the procedures laid down in Parts XII and XIII.

(3) Every contracting authority listed in Schedule 1 shall indicate in its tender documents that the award of the contract is subject to the appeals 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.

Statistical and other reports.

31. (1) Contracting authorities listed in Schedule 3 shall, by not later than April of each year, send to the Director a report in relation to each public contract awarded by it during the previous calendar year. This report shall include:

- (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, 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.

32. (1) Undertakings 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 undertakings 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 undertakings established in the Member State holding the official list.

(5) When undertakings from other Member States are being registered in an 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

33. 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 54, 55, 61, 62, 67 and 68, the negotiated procedure: Applicability.

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.

34. (1) Where the contracting authorities award a contract by restricted procedure, they may prescribe the range within which the number of tenderers which they intend to invite will fall. In this case the range shall be indicated in the EU contract notice. The range shall be determined in the light of the nature of the tender. The range must number at least five and may be up to twenty. In any event, the number of candidates invited to tender shall be sufficient to ensure genuine competition. Number of tenderers.

(2) Where the contracting authorities award a contract by negotiated procedure with a call for competition the number of candidates admitted to negotiate may not be less than three provided that there is a sufficient number of suitable candidates.

35. (1) Contracting authorities may award a public contract by negotiated procedure, with prior publication of a EU contract notice in the cases mentioned in regulations 54, 61 and 67 of these regulations. Negotiated procedures.

(2) Contracting authorities may award a public contract by negotiated procedure, without prior publication of a EU contract notice in the cases mentioned in regulations 55, 62, 68 and 83.

(3) The authorities listed in Schedule 2 shall require the consent of the Director of Contracts 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 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.

Time limits for receipt of tenders in open procedures.

36. (1) Where a public contract is to be awarded by open procedures, the contracting authority shall fix the time limit for the receipt of tenders at not less than fifty-two days from the date of dispatch of the EU contract notice.

(2) The time limit for the receipt of tenders laid down in subregulation (1) may be reduced to thirty-six days where the contracting authority has published the EU prior information notice, drafted in accordance with the model in Schedule 10 and incorporating as much of the information required for a EU contract notice as was available at that time and provided that the EU prior information notice was dispatched to the Office for Official Publications not less than fifty-two days and not more than one year before dispatch of the EU contract notice.

(3) The contract documents and supporting documentation, if any, must be sent to the tenderers by the contracting authority or competent department within six days from the date of receipt of their application to tender:

Provided that tenderers agree to make good the costs of such dispatch:

Provided further that where tenderers have a presence in Malta all documents shall, at the option of each tenderer, either be collected by the tenderers from the place indicated in the EU contract notice or shall be dispatched to them provided that the tenderers agree to make good the costs of such dispatch.

(4) Additional information relating to the contract documents must be sent to the tenderers by the contracting authority not later than six days before the final date fixed for receipt of tenders.

(5) Where the contract documents, supporting documentation or additional information are too voluminous to be sent within the time limits laid down in subregulations (3) and (4), or where tenders can only be made after a site visit, or following an onsite inspection of the documents, the time limits laid down in subregulations (1) and (2) shall be extended by such time as may be considered appropriate by the Director of Contracts or the contracting authority administering the call for tenders.

37. (1) Where a public contract is to be awarded by restricted procedures or negotiated procedures with a call for competition, the contracting authority shall fix the time limit for the receipt of requests to participate in the tender at not less than thirty-seven days from the date of dispatch of the EU contract notice to this effect.

Time limits for receipt of applications to participate in tenders in restricted and negotiated procedures.

(2) In the restricted procedure the contracting authority shall following a selection process, simultaneously and in writing, invite the selected tenderers to submit their tenders.

(3) The invitation to tender shall be sent to the selected tenderers accompanied by the contract documents and supporting documents. It shall include at least the following information:

- (a) where appropriate, the address of the service from which the contract documents and supporting documents can be requested and the final date for making such a request;
- (b) the amount and terms of any sum due in respect of such documents;
- (c) the final date for receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;
- (d) reference to the EU contract notice published;
- (e) indication of any documents to be scheduled which supplement the information referred to in regulations 46 and 47;
- (f) the criteria for the award of the contract, if these are not given in the EU contract notice;
- (g) any other special condition for participation in the contract.

(4) Where a public contract is to be awarded by restricted procedures, the contracting authority shall fix the time limit for the receipt of tenders at not less than forty days from the date of dispatch of the written invitation.

(5) The time limit for the receipt of tenders laid down in subregulation (4) may be reduced to twenty-six days where the contracting authorities have drafted and published the EU prior information notice, in accordance with the model found in Schedule 10 incorporating as much of the information required for a EU contract notice as was available at that time and provided that the EU prior information notice was dispatched to the Office for Official Publications not less than fifty-two days and not more than one year before dispatch of the EU contract notice.

(6) Requests to participate in procedures for the award of contracts may be made by letter, electronic mail, telegram, telex or fax.

(7) Where a request to participate is made by electronic mail, telegram, telex or fax it must additionally be confirmed by letter, dispatched before the end of the period laid down in subregulation (1).

(8) Insofar as it has been requested in good time, additional information relating to the contract documents must be sent to the tenderers by the contracting authorities, not later than six days before the final date fixed for receipt of tenders.

(9) Where the contract documents, supporting documentation or additional information are too voluminous to be sent within the time limits laid down in subregulations (4) and (5), or where tenders can only be made after a site visit, or following an onsite inspection of the documents, the time limits laid down in subregulations (4) and (5) shall be extended by such time as may be deemed appropriate:

Provided that tenderers agree to make good the costs of such dispatch:

Provided further that where tenderers have a presence in Malta all documents shall, at the option of each tenderer, either be collected by the tenderers from the place indicated in the EU contract notice or shall be dispatched to them provided that the tenderers agree to make good the costs of such dispatch.

Time limits in cases of urgency.

38. (1) Where the time limits laid down in regulation 37 are rendered impractical due to urgency, the contracting authority is permitted to apply the following time limits:

- (a) a time limit for receipt of requests to participate which shall be not less than fifteen days from the date of dispatch of the EU contract notice;
- (b) a time limit for the receipt of tenders which shall be not less than ten days from the date of the invitation to tender.

(2) Insofar as it has been requested in good time, additional information relating to the contract documents must be sent to the tenderers by the contracting authorities, not later than four days before the final date fixed for receipt of tenders.

(3) Requests for participation in contracts and invitations to tender must be made by the most rapid means of communication possible. Where a request to participate is made by telegram, fax or electronic mail, it must be additionally confirmed by letter, dispatched before the end of the period laid down in subregulation (1).

Time limit for a public works concession contract.

39. Where a contracting authority intends to award a public works concession contract, the contracting authority shall fix the time limit for the receipt of applications for the concession at not less than fifty-two days from the date of dispatch of the EU works concession notice.

Application of Council Regulation 1182/71.

40. 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.

Information.

41. (1) The contracting authority shall promptly inform candidates and tenderers of its decisions on the award of contracts and shall do so in writing if requested.

(2) Where a contracting authority decides either to abandon or recommence an award procedure in respect of which a EU contract notice has been published, or for which there has been an invitation to tender, it shall without delay inform the Director and the Office for Official Publications of the European Communities as well as any undertaking who submitted an offer or who applied to be included amongst the persons to be selected to tender for or to negotiate the contract, of the reasons for its decision.

(3) The contracting authority shall, within fifteen days of the date on which the request is received, inform any eliminated candidate or tenderer of the reasons for rejection of its application or tender and any tenderer who has submitted a compliant tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer. A contracting authority may decide to withhold certain information on the contract award, referred to in the preceding subregulation, 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 particular undertakings, public or private, or might prejudice fair competition between undertakings.

(4) For each contract awarded, the contracting authority shall draw up a written report which shall include at least the following:

- (a) the name and address of the contracting authority, the subject and value of the contract;
- (b) the names of the tenderers admitted to participate or tender and the reasons for their selection;
- (c) the names of the candidates or tenderers rejected from participating or tendering and the reasons for their rejection;
- (d) the name of the successful tenderer and the reasons for his tender having been selected and, if known, any share of the contract the successful tenderer may intend to subcontract to a third party;
- (e) if the contracting authority has used negotiated procedures, the circumstances which justify the use of these procedures.

(5) The provisions of regulation 31 shall apply *mutatis mutandis* to this Part.

42. (1) Contracting authorities may lay down technical specifications for public contracts provided that these shall be included in the contract documents.

Technical specifications.

(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 defined by the contracting authorities by reference to the Malta Standards Authority Act.

Cap. 419.

(3) A contracting authority may depart from subregulation (2) if:

- (a) the European specifications do not include any provision for establishing conformity, or, if technical

means do not exist for establishing satisfactorily the conformity of a product to the European specifications; or

- (b) use of the European specifications would oblige the contracting authority to acquire products or materials incompatible with equipment already in use or would entail disproportionate costs or disproportionate technical difficulties, but only as part of a clearly defined and recorded strategy with a view to change-over, within a given period, to European specifications; or
- (c) the project concerned is of a genuinely innovative nature for which use of existing European specifications would not be appropriate.

(4) Contracting authorities invoking subregulation (3) shall record, wherever possible, the reasons for doing so in the EU contract notice published in the Official Journal of the European Union or in the contract documents and in all cases shall record these reasons in their internal documentation and shall supply such information on request to Member States and to the Commission.

(5) In the absence of European specifications, the technical specifications shall be defined:

- (a) by reference to the national technical specifications in Malta recognized as requirements listed in the Community directives on technical harmonization, in accordance with the procedures laid down in those directives, and in particular in accordance with the procedures laid down in Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products;
- (b) by reference to national technical specifications in Malta relating to design and method of calculation and execution of works and use of materials;
- (c) by reference to other documents in the following order of preference:
 - (i) Malta standards implementing international standards;
 - (ii) other national standards and national technical approvals of Malta;
 - (iii) any other standard.

(6) Unless such specifications are justified by the subject 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 and which therefore favour or eliminate certain undertakings. In particular, the indication of trade marks, patents, types, or of a specific origin or production shall be prohibited. However, if such indication is accompanied by the words "or equivalent", it shall be authorized in cases where the

Contracting Authorities are unable to give a description of the subject of the contract using specifications which are sufficiently precise and intelligible to all parties concerned.

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

- (a) "technical specifications": 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 technical prescriptions shall include levels of quality, performance, safety or dimensions, including the requirements applicable to the material, the product or to the supply as regards quality assurance, terminology, symbols, testing and test methods, packaging, marking or labelling. They shall also include rules relating to design and costing, the test, inspection and acceptances 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;
- (b) "standard": a technical specification approved by a recognized standardizing body for repeated and continuous application, compliance with which is in principle not compulsory;
- (c) "European standard": a standard approved by the European Committee for Standardization (CEN) or by the European Committee for Electrotechnical Standardization (Cenelec) as "European standards (EN)" or "Harmonization documents (HD)" according to the common rules of these organizations;
- (d) "European technical approval": a favourable technical assessment of the fitness for use of a product, 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. The European agreement shall be issued by an approval body designated for this purpose by the Member State;
- (e) "common technical specification": 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;
- (f) "essential requirements": requirements regarding safety, health and certain other aspects in the general

interest, that the construction works must meet;

- (g) "European specifications": Malta standards implementing European standards, European technical approvals or common technical specifications.

Variants.

43. (1) Where the criterion for the award of the contract is that of the most economically advantageous tender, contracting authorities may take account of variants which are submitted by a tenderer and meet the minimum specifications required by the contracting authorities.

(2) The contracting authorities shall state in the contract documents the minimum specifications to be respected by the variants and any specific requirements for their presentation. They shall indicate in the tender EU contract notice if variants are not permitted.

(3) Contracting authorities may not reject the submission of a variant on the sole grounds that it has been drawn up with technical specifications defined by reference to national standards transposing European standards, to European technical approvals or to common technical specifications referred to in regulation 42, or by reference to national technical specifications referred to in regulation 42.

EU notices.

44. (1) Contracting authorities shall make known, as soon as possible, after the beginning of their budgetary year, by means of a EU prior information notice, the total procurement which they envisage awarding during the following twelve months where the total estimated value of each type of products, or category of services or public works contract is equal to or above the threshold value indicated in Schedule 9:

Provided that in the case of public works contracts the essential characteristics of the works contracts shall also be given.

(2) Where a contracting authority intends to award a public contract by open, restricted or by negotiated procedure with a call for competition such authority shall make known its intention by means of a EU contract notice.

(3) Where a contracting authority intends to carry out a design contest, such authority shall make known its intention by means of a EU design contest notice.

(4) Where a contracting authority intends to award a public works concession, such authority shall make known its intention by means of a EU works concession notice.

(5) Where a contracting authority has awarded a public contract, a public works concession or has held a design contest, such contracting authority shall make the result known by means of a EU award notice:

Provided that in the case of public contracts for services listed in Schedule 8B, the EU award notice shall also indicate whether the contracting authority agrees on its publication.

Certain information relating to the award of the contract

may not be published 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 particular enterprises, public or private, or fair competition between undertakings.

(6) For the purposes of this Part the EU notices shall be drawn up substantially in accordance with the models set out in Schedule 10 and shall specify the information requested in those models.

(7) The EU notices referred to in subregulation (5) shall be sent at the latest forty-eight days after the award of the contract in question.

(8) The contracting authorities shall send the EU notices as rapidly as possible and by the most appropriate channels to the Office for Official Publications of the European Communities.

(9) In the case of the accelerated procedure referred to in regulation 38, the EU contract notice shall be sent by telex, telegram or telefax.

(10) The EU notices referred to in subregulations (1) and (3) shall be published in full in the Official Journal of the European Union and in the TED data bank in the official languages of the Communities, the text in the original language alone being authentic.

(11) The Office for Official Publications of the European Communities shall publish the EU notices not later than twelve days after their dispatch. In the case of the accelerated procedure referred to in regulation 38, this period shall be reduced to five days.

(12) Notices shall not be published in the Gazette or in the press of Malta before the date of dispatch of the EU notices to the Office for Official Publications of the European Communities. They shall state the date of dispatch of the EU notice and shall not contain information other than that to be published in the Official Journal of the European Union.

(13) The contracting authorities must be able to supply proof of the date of dispatch.

(14) The length of the EU notice shall not be greater than one page of the Journal, or approximately six hundred and fifty words.

(15) Contracting authorities may arrange for the publication in the Official Journal of the European Union of EU notices announcing public contracts which are not subject to the publication requirement laid down in this regulation.

45. (1) Any candidate or tenderer may be excluded from participating in a public contract if the candidate or tenderer:

Qualitative
selection criteria.

- (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*;
- (d) has been declared guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- (e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of Malta or the country in which he is resident;
- (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 resident;
- (g) is guilty of serious misrepresentation in supplying the information required under these regulations.

(2) Where the contracting authority requires proof from the candidate or tenderer that none of the cases quoted in subregulation (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.

(3) Where the certification referred to in subregulation (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 judicial authority, a notary public or 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.

Evidence of financial and economic standing.

46. (1) The contracting authority may require evidence of candidates' or tenderers' financial and economic standing. This may be furnished inter alia, by one or more of the following:

- (a) appropriate statements from bankers;
- (b) presentation of the undertaking's balance-sheets or extracts therefrom, where publication of the balance sheets is required under company law in the country in which the undertaking is resident;
- (c) a statement of the undertaking's turnover and its turnover in respect of the products, works or services to which the contract relates for the three previous financial years.

(2) A contracting authority shall specify in the EU notice or in the invitation to tender, which references mentioned in subregulation (1) have been chosen as well as any others it deems fit.

(3) 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.

47. (1) The ability of candidates and tenderers to perform services may be evaluated in particular with regard to their skills, efficiency, experience and reliability. Evidence of technical capacity.

(2) Where the contracting authority requires evidence of the candidates' or tenderers' technical capacity this may, as a general rule, be furnished by one or more of the following means according to the nature, quantity and purpose of the products, works or services to be supplied:

- (a) the candidate's or tenderer's educational and professional qualifications and, or those of the candidate's or tenderer's managerial staff and, in particular, those of the person or persons responsible for providing the products, works or services;
- (b) a list of the principal products, works or services provided in the past three years, with the sums, dates and recipients, public or private, of the products, works or services provided:

Provided that -

- (i) where the above are provided to contracting authorities, the evidence of the items in paragraph (b) are to be in the form of certificates issued or countersigned by the competent authority,
- (ii) where the above are provided to private purchasers, the delivery is to be certified by the purchaser or, failing this, simply declared by the candidate or tenderer to have been effected;
- (c) an indication of the technicians or technical bodies involved, whether or not belonging directly to the candidate or tenderer, especially those responsible for quality control;
- (d) a statement of the candidate's or tenderer's average annual manpower and the number of managerial staff for the last three years;
- (e) a statement of the tool, plant or technical equipment available to the candidate or tenderer for carrying out the services;
- (f) a description of the candidate's or tenderer's measures for ensuring quality;
- (g) where the products, works or services to be provided are complex or are required for a special purpose, an inspection on the technical capacities, study and research facilities and quality control measures of the candidate or tenderer, may be carried out by the

contracting authority, or if so authorised, by a competent official body of the State in which the candidate or tenderer has its principal place of business, management or control;

- (h) an indication of the proportion of the public contract which the candidate or tenderer may intend to sub-contract;
- (i) samples, description and, or photographs of the products to be supplied, the authenticity of which must be certified if the contracting authority so requests;
- (j) certificates drawn up by official quality control institutes or agencies of recognized competence attesting conformity to certain specifications or standards of products clearly identified by references to specifications or standards.

(3) In so far as candidates for a public contract or tenderers 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 concerned, the contracting authority may require them to prove that they hold such authorization or membership.

(4) Any candidate or tenderer 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 subregulation (9).

(5) The contracting authority shall specify, in the EU notice or in the invitation to tender, which references it wishes to receive.

(6) The extent of the information referred to in regulation 46 and in subregulations (1), (2) and (3) of this regulation must be confined to the subject matter of the public contract.

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

(8) 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.

(9) 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.

Supplemental
information.

48. Contracting authorities may invite the candidates or tenderers to supplement or clarify the certificates and documents submitted in terms of regulations 46 and 47.

Report to
Commission.

49. (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.

- (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 product or service, and the nationality of the tenderer to whom the contract has been awarded and, in the case of negotiated procedures, subdivided in accordance with regulations 55, 62, 68 and 83 the number and value of contracts awarded to each Member State and to non-Member State countries.

PART VI

Types of Contract

Section A

Public services contracts

50. (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 B, VI C and VII which shall not apply thereto. Scope.

(2) This Part shall also apply to public service contracts, the estimated value of which is equal to or exceeds the threshold value, issued in connection with a subsidised public works contract in terms of regulation 65(2), by an authority not being a contracting authority, where fifty percent or more of the value of the public service contract is subsidised directly by a contracting authority.

(3) This Part shall also apply to public contracts intended to cover both works listed in Schedule 7 and services listed in Schedules 8A and 8B, if the value of the services in question exceeds that of the works covered by the contract.

(4) This Part shall also apply to public service contracts awarded by contracting authorities in the field of defence, except for contracts to which the provisions of Article 296 of the EC Treaty apply.

51. (1) These regulations shall not apply to public service contracts awarded to a contracting authority on the basis of an exclusive right it enjoys pursuant to a law, regulation or administrative provision compatible with the EC Treaty. Application.

(2) Where contracting authorities require the production of certificates drawn up by independent bodies for attesting conformity of the service with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant

EN 29 000 European Standards series certified by bodies conforming to the EN 45 000 European Standards series. They shall recognize equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from service providers who have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

Two-tier application.

52. (1) Where a public service contract is to be awarded in respect of a service classified under Schedule 8A, 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 42 in awarding a public service contract in respect of a service classified under Schedule 8B of these regulations. It shall dispatch a 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 8A and services classified under Schedule 8B it shall be classified as being for services classified under Schedule 8A if the estimated value of the services classified under Schedule 8A exceeds the estimated value of the services classified under Schedule 8B.

Design contests.

53. (1) This regulation shall apply to design contests organized as part of a procedure leading to the award of a service contract whose estimated value is not less than Lm 100,000 or such other threshold stated pursuant to regulation 11.

(2) This regulation shall apply to all design contests where the total amount of contest prizes and payments to participants is not less than the threshold stated pursuant to regulation 11.

(3) The rules for the organisation of a design contest shall be in conformity with the requirements of this regulation and shall be communicated to those interested in participating in the contest.

(4) The admission of participants to design contests shall not be limited on the grounds that they would have been required to be either natural or legal persons.

(5) Where design contests are restricted to a limited number of participants, the contracting authority shall lay down clear and non-discriminatory selection criteria. In any event, the number of participants shall be sufficient to ensure genuine competition.

(6) An adjudicating panel to determine the design contest shall be appointed by the contracting authority or the Director of Contracts, as the case may be, and it shall be composed exclusively of at least three natural persons who are independent of the participants in the contest. Where a particular professional qualification is required from participants in a contest, at least a third of its members must have the same qualification or its equivalent.

- (7) (a) Projects submitted to the adjudication panel shall be anonymous.
- (b) The adjudicating panel shall be autonomous in its decisions and opinions which shall be taken solely on the grounds of the criteria set out pursuant to regulation 53.
- (c) The decisions and opinions shall be reasoned and rendered in writing.
- (8) Three members of the panel shall constitute a quorum but decisions shall be taken on a majority basis.

54. Pursuant to regulation 35(1), a contracting authority may award public service contracts by negotiated procedure, with prior publication of a EU contract notice:

With prior publication of a EU contract notice.

- (a) in the event of tenders in response to an open or restricted procedure which are irregular or unacceptable for reasons which are consistent with these regulations, insofar as the original terms of the contract are not substantially altered. In such cases a contracting authority may refrain from publishing a EU contract notice where it includes in the negotiated procedure all the tenderers who satisfy the criteria of regulations 42 and 45 to 48 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 8A, 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.

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

Without prior publication of a contract EU notice.

- (a) in the absence of tenders or appropriate tenders in response to an open or restricted procedure provided that the original terms of the contract are not substantially altered and 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 service provider;
- (c) where the contract concerned is awarded subsequent to a design contest and must be awarded to one or more successful tenderers 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 36 to 38 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 service provider carrying out such service:
 - (i) when such additional services cannot be technically or economically separated from the main contract without great 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 percent 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 tenderer to which the same contracting authority awarded an earlier contract, provided that such services conform to a basic project for which a contract was originally awarded in accordance with the procedures referred to in regulations 36 and 38;

Provided that where a contracting authority intends to award a series of tenders for the same project, EU notice must initially be given that the negotiate procedure might be adopted, and the total estimated cost of subsequent services shall be taken into consideration by the contracting authority when they apply the provisions of regulation 15. This procedure may be applied solely during the three years following the conclusion of the original contract.

Information.

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

(2) A contracting authority which supplies the information referred to in subregulation (1) shall request the tenderers to indicate that they have taken account, when drawing up their tender, the obligations relating to employment protection provisions and the working conditions which are in force in the place where the work or the service is to be carried out or performed. This shall be without prejudice to the application of regulation 26.

57. Contracting authorities which have admitted variants pursuant to regulation 43 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.

Rejection of variants.

58. 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.

Entitlement to carry out a service activity.

59. For the purposes of the award of public contracts by contracting authorities, contracting authorities shall apply conditions as favourable as those which they grant to third countries in implementation of the Agreement on government procurement, concluded in the framework of the Uruguay Round multilateral negotiations, hereinafter referred to as "the Agreement".

Third countries.

Section B

Public supply contracts

60. (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 A, VI C and VII which shall not apply thereto.

Scope.

(2) When a contracting authority within the meaning of regulation 2 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 also apply to public supply contracts awarded by contracting authorities in the field of defence, except for contracts to which the provisions of Article 296 of the EC Treaty, apply.

(4) 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.

61. A contracting authority may award public supply contracts, by negotiated procedure with prior publication of a EU contract notice, in the event of tenders in response to an open or restricted procedure which are irregular or unacceptable for reasons which are consistent with these regulations and in so far as the original

With prior publication of a EU contract notice.

terms of the contract are not substantially altered. The contracting authority shall in these cases publish a EU contract notice, unless they include in such negotiated procedures all the undertakings satisfying the criteria of regulations 42 and 45 to 48 which, during the prior open or restricted procedure, have submitted tenders in accordance with the formal requirements of the tendering procedure.

Without prior publication of a EU contract notice.

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

- (a) in the event that no tenders or appropriate tenders are received in response to an open or restricted procedure insofar as the original terms of the contract are not substantially altered and that a report is communicated to the Commission at its request;
- (b) when the products involved are manufactured only for the purpose of research, experiment, study or development but not for the purposes of establishing commercial viability or for the recovery of research and development costs;
- (c) when, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the products supplied may be manufactured or delivered only by a particular supplier;
- (d) in so far as is strictly necessary when the time-limits for open, restricted or negotiated procedures referred to in regulations 36 to 38 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 where 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, as a general rule, not exceed three years.

Rejection of variants.

63. Contracting authorities which have admitted variants pursuant to regulation 43 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.

64. For the purposes of the award of public contracts by the contracting authorities referred to in Schedule 1, the Department of Contracts shall ensure that contracting authorities shall apply in their relations conditions as favourable as those which they grant to third countries in implementation of the WTO Agreement, in

particular those in regulations V and VI of that Agreement, on the restricted procedure, information and review.

Section C

Public works contracts

65. (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 A, VI B and VII which shall not apply thereto. Scope.

(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, but where fifty percent or more of the value of the public works contract is subsidised by a contracting authority.

66. (1) Where a contracting authority concludes a public works concession, the rules as described in regulation 44(4) to (8) and in regulation 39 shall apply to that contract when its value is not less than the estimated threshold: Public works concession.

Provided that in works contracts awarded by a works concessionaire other than a contracting authority, the time limit for the receipt of requests to participate, fixed by the concessionaire, shall be not less than fifty-two days from the date of dispatch of the EU notice.

(2) The contracting authority may:

- (a) either require the concessionaire to award contracts representing a minimum of thirty percent of the total value of the work for which the public works concession contract is to be awarded to third parties, and at the same time permitting tenderers the option to increase this percentage. The minimum percentage shall be specified in the public works concession contract;
- (b) or request the tenderers for public works concession contracts to specify in their tenders the percentage, if any, of the total value of the work that they intend to assign to third parties.

(3) When the concessionaire is itself a contracting authority it shall comply with the provisions of these regulations in the case of works to be carried out by third parties.

(4) A concessionaire other than a contracting authority shall apply the EU notice rules listed in regulation 44(4), (6) to (8) and in regulation 39, in respect of its works contracts with a value equal to or in excess of the threshold. An EU notice is not, however, required where public works contracts meet the circumstances referred to in regulation 68. Undertakings that have formed a group

in order to obtain the public works concession contract, or affiliated undertakings, shall not be regarded as third parties. A comprehensive list of these undertakings shall be enclosed with the application for the public works concession. This list shall be brought up to date following any subsequent changes in the relationship between the undertakings.

With prior
publication.

67. A contracting authority may award its public works contracts by negotiated procedure, with prior publication of a EU contract notice:

- (a) in the event of tenders in response to an open or restricted procedure which are irregular or unacceptable for reasons consistent with these regulations, in so far as the original terms of the contract are not substantially altered. In such cases a contracting authority may refrain from publishing a EU contract notice where it includes in the negotiated procedure all the tenderers who satisfy the criteria of regulations 42 and 45 to 48 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.

Without prior
publication.

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

- (a) in the event that no tenders or appropriate tenders are received in response to an open or restricted procedure in so far as the original 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 only be carried out by a particular contractor;
- (c) when the time-limits for open, restricted or negotiated procedures referred to in regulations 36 to 38 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 contract first concluded 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 contractor carrying out such work:

- (i) when such works cannot be technically or economically separated from the main contract without great inconvenience to the contracting authority, or
- (ii) when such works, although separable from the execution of the original contract, are strictly necessary to its completion:

Provided that the aggregate amount of contracts awarded for additional works may not exceed fifty percent of the amount of the main contract;

- (e) for new works consisting in the repetition of similar works entrusted to the tenderer to which the same contracting authority awarded an earlier contract, provided that such works conform to a basic project for which a contract was originally awarded in accordance with the procedures referred to in regulations 36 and 37:

Provided that where a contracting authority intends to award a series of contracts for the same project, EU notice must initially be given that the negotiated procedure might be adopted, and the total estimated cost of subsequent works shall be taken into consideration by the contracting authority when they apply the provisions of regulation 15. This procedure may be applied solely during the three years following the conclusion of the original contract.

69. In the case of contracts relating to the design and construction of a public 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 authority, 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, a contracting authority 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.

Further, a contracting authority shall, in accordance with regulations 42 and 45 to 48, set out in such a EU contract notice the personal, technical and financial conditions to be fulfilled by tenderers.

Where such procedure is adopted, a contracting authority shall apply the common EU notice rules relating to restricted procedures and to the criteria for qualitative selection as provided in regulations 37, 42 and 45 to 48.

Information. **70.** (1) The contracting authority may state in the contract documents, or be obliged by the Director of Contracts to do so, the authority or authorities from which a tenderer may obtain the appropriate information on the obligations relating to the employment protection provisions and the working conditions which are in force in Malta, or the region or locality in which the services are to be performed and which shall be applicable to the performance of the contract.

(2) A contracting authority which supplies the information referred to in subregulation (1) shall request the tenderers 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 work or the service is to be carried out or performed. This shall be without prejudice to the application of regulation 26 concerning abnormally low tenders.

Third countries. **71.** For the purposes of the award of public contracts by contracting authorities, the Department of Contracts shall ensure that contracting authorities shall apply in their relations conditions as favourable as those which they grant to third countries in implementation of the Agreement on government procurement, concluded in the framework of the Uruguay Round multilateral negotiations, hereinafter referred to as "the Agreement". Member States shall to this end consult each other within the Advisory Committee for public contracts on the measures to be taken pursuant to the Agreement.

PART VII

Public utilities contracts

Scope. **72.** Where the estimated value of a public utilities contract is equal to or exceeds the threshold value, the contract shall be awarded in terms of these regulations, save for Parts II, III, IV, VI A, VI B, VI C, regulations 35 to 42 of Part V which shall not apply thereto. For this purpose, any reference to a contracting authority or Authorities in the applicable regulations of this regulation shall be construed as a reference to a contracting entity or entities:

Provided that the value of supplies or services which are not necessary for the execution of a particular works contract may not be added to that of the works contract with the result of avoiding application of this regulation to the procurement of those supplies or services.

Applicability. **73.** (1) This Part applies exclusively to contracting authorities and public undertakings which exercise one, or a combination of, the activities referred to in regulation 75.

(2) This Part shall also apply to entities which although not contracting authorities and public undertakings, exercise one, or a combination of, the activities referred to in regulation 75 and operate on the basis of special or exclusive rights granted by a competent governmental body or authority.

(3) An entity other than a contracting authority or public undertaking shall be considered to enjoy special or exclusive rights in particular where:

- (a) for the purpose of constructing the networks or the facilities referred to in regulation 75, it may take advantage of a procedure for the expropriation or use of property or may place network equipment on, under or over public property;
- (b) in the case of regulation 75(1)(a), the entity which supplies with drinking water, electricity, gas or heat, a network which itself is operated by an entity enjoying special or exclusive rights granted by a competent governmental body or authority.

(4) For the purposes of this Part "special or exclusive rights" shall mean rights deriving from authorisations granted by a competent governmental body or authority, by law, regulation or administrative action, having as a result the reservation for one or more entities the exploitation of an activity defined in regulation 75.

74. (1) The Minister may provide that exploitation of geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels shall not be considered to be an activity defined in regulation 73(3)(b) and that entities shall not be considered as operating under special or exclusive rights within the meaning of regulation 73(3)(b) by virtue of carrying on one or more of these activities, provided that all the following conditions are satisfied with respect to the relevant national provisions concerning such activities:

Exempted activities.

- (a) at the time when authorization to exploit such a geographical area is requested, other entities shall be free to seek authorization for that purpose under the same conditions as the contracting entities;
- (b) the technical and financial capacity of entities to engage in particular activities shall be established prior to any evaluation of the merits of competing applications for authorization;
- (c) authorization to engage in those activities shall be granted on the basis of objective criteria concerning the way in which it is intended to carry out exploitation or extraction, which shall be established and published prior to the requests and applied in a non-discriminatory manner;
- (d) all conditions and requirements concerning the carrying out or termination of the activity, including provisions on operating obligations, royalties, and participation in the capital or revenue of the entities, shall be established and made available prior to the requests for authorization being made and then applied in a non-discriminatory manner; every change concerning these conditions and requirements shall be applied to all the entities concerned, or else

amendments must be made in a non-discriminatory manner; however, operating obligations need not be established until immediately before the authorization is granted; and

- (e) entities shall not be required by any law, regulation, administrative requirement, agreement or understanding to provide information on their intended or actual sources of procurement, except at the request of national authorities with a view to the objectives mentioned in Article 30 of the EC Treaty.

(2) In the application of subregulation (1) it shall be ensured, through the conditions of the authorization or other appropriate measures, that any contracting entity:

- (a) observes the principles of non-discrimination and competitive procurement in respect of the award of supplies, works and service contracts, in particular as regards the information which the contracting entity makes available to undertakings concerning its procurement intentions;
- (b) communicates to the Commission and the Department of Contracts, under conditions to be defined by the Commission information relating to the award of contracts.

(3) As regards individual concessions or authorizations granted before the date of the coming into force of this regulation, subregulation (1)(a), (b) and (c) shall not apply, provided that at that date other entities are free to seek authorization for the exploitation of geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels, on a non-discriminatory basis and in the light of objective criteria. Subregulation (1)(d) shall not apply as regards conditions or requirements established, applied or amended before the date referred to above.

(4) The Commission shall be informed by the Department of Contracts in the event that subregulation (1) is sought to be applied. In so doing, it shall inform the Commission of any law, regulation or administrative provision, agreement or understanding relating to compliance with the conditions referred to in subregulations (1) and (2). The Commission shall take a decision and shall publish its decision, giving its reasons, in the Official Journal of the European Union.

Activities.

75. (1) This Part shall apply to an entity which exercises one of, or a combination of, the following activities:

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of:
 - (i) drinking water; or
 - (ii) electricity; or
 - (iii) gas or heat; or

- (iv) the supply of drinking water, electricity, gas or heat to such networks; or
- (b) the exploitation of a geographical area for the purpose of:
 - (i) exploring for or extracting oil, gas, coal or other solid fuels, or
 - (ii) the provision of airport, maritime or inland port or other terminal facilities to carriers by air, sea or inland waterway; or
- (c) the operation of networks providing a service to the public in the field of transport by land;

For the purposes of this paragraph a transport services network exists where the service is provided under conditions laid down by a competent governmental body or authority, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service;

- (d) the provision or operation of public telecommunications networks or the provision of one or more public telecommunications services.

(2) The provision of bus transport services to the public shall not be considered to be an activity for the purposes of this regulation where the same services are provided by other entities either in general or in a particular geographical area, under the same condition as those of the contracting entity.

(3) The supply of drinking water, electricity, gas or heat to networks which provide a service to the public by a contracting entity shall be considered as a relevant activity where:

- (a) in the case of drinking water or electricity:
 - (i) the production of drinking water or electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than that referred to in subregulation (1), and
 - (ii) when the supply to the public network depends only on the entity's own consumption and has not exceeded thirty percent of the entity's total production of drinking water or energy, having regard to the average for the preceding three years, including the current year;
- (b) in the case of gas or heat:
 - (i) the production of gas or heat by the entity concerned is the unavoidable consequence of carrying on an activity other than that referred to in subregulation (1); and
 - (ii) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 per cent of the entity's turnover having regard to the average

for the preceding three years, including the current year.

Non-applicability.

- 76.** (1) This Part shall not apply to:
- (a) public contracts which contracting entities listed in Schedule 4 award for the purchase of water;
 - (b) public contracts which contracting entities listed in Schedules 5 and 6 award for the supply of energy or of fuels for the production of energy;
 - (c) public contracts or design contests which the contracting entities award or organise for purposes other than the pursuit of their activities as described in regulation 75(1);
 - (d) public contracts awarded for purposes of resale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of the contracts, and other entities are free to sell or hire it under the same conditions as the contracting entity: provided that the contracting entities shall notify the Commission at its request of any activities they regard as excluded under this subregulation;
 - (e) public contracts, which a contracting entity exercising activities described in regulation 75(1)(d) award, for purchases intended exclusively to enable them to provide one or more telecommunications services where other entities are free to offer the same services in the same geographical area and under substantially the same conditions; provided that the contracting entities shall notify the Commission at its request of any activities they regard as excluded under this subregulation;
 - (f) public service contracts, which a contracting entity awards to an affiliated undertaking;
 - (g) public service contracts, which are awarded by a joint venture formed by a number of contracting entities for the purpose of carrying out a relevant activity within the meaning of regulation 75, to one of the contracting entities or to an affiliated undertaking: provided that at least 80% of the average turnover of that undertaking with respect to services arising within the Community for the preceding three years derives from the provision of such services to undertakings with which it is affiliated.

(2) Where more than one undertaking affiliated with the contracting entity provides the same service or similar services, the total turnover deriving from the provision of services by those undertakings shall be taken into account.

Framework agreements.

- 77.** (1) A contracting entity may regard a framework agreement as a public contract.

(2) Awards of contracts issued under a framework agreement may be made pursuant to regulation 84.

(3) A contracting entity may not use framework agreements in order to hinder, limit or distort competition.

78. Public contracts which have as their object services listed in Schedules 8A and 8B shall be awarded in accordance with the provisions of regulation 52.

Two-tier application.

79. (1) This Part shall not apply to contracts or design contests which the contracting entities award or organize for the pursuit of their activities as described in regulation 75 in a non-Member State country, in conditions not involving the physical use of a network or geographical area within the Community:

Contracts or design contests.

Provided that the contracting entities shall notify the Commission at its request of any activities they regard as excluded under this subregulation.

(2) This Part shall apply to contracts or design contests awarded or organised by the entities which exercise an activity referred to in regulation 75(1)(a)(i) and which:

(a) are connected with hydraulic engineering projects, irrigation or land drainage, provided that the volume of water intended for the supply of drinking water represents more than 20 per cent of the total volume of water made available by these projects or irrigation or drainage installations, or

(b) are connected with the disposal or treatment of sewage.

(3) In the award of design contests under this Part, regulation 53 shall apply *mutatis mutandis*.

80. (1) Contracting entities shall include the technical specifications in the general documents or the contract documents relating to each contract.

Technical specifications.

(2) The technical specifications shall be defined by reference to European specifications, as defined in regulation 42, where these exist.

(3) In the absence of European specifications, the technical specifications should as far as possible be defined by reference to other standards having currency within the Community.

(4) Contracting entities shall define such further requirements as are necessary to complete European specifications or other standards. In so doing, they shall prefer specifications which indicate performance requirements rather than design or description characteristics, unless the contracting entity has objective reasons for considering that such specifications are inadequate for the purposes of the contract.

(5) Technical specifications which mention goods of a specific make or source or of a particular process, and which have the effect of favouring or eliminating certain undertakings, shall not be used unless such specifications are indispensable for the subject of the

contract. In particular, the indication of trade marks, patents, types, of specific origin or production shall be prohibited; however, such an indication accompanied by the words "or equivalent" shall be authorized where the subject of the contract cannot otherwise be described by specifications which are sufficiently precise and fully intelligible to all concerned.

(6) Contracting entities may derogate from subregulation (2) if:

- (a) it is technically impossible to establish satisfactorily that a product conforms to the European specifications;
- (b) the application of subregulation (2) would prejudice the application of Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment, or of Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications;
- (c) in the context of adapting existing practice to take account of European specifications, use of those specifications would oblige the contracting entity to acquire supplies incompatible with equipment already in use or would entail disproportionate cost or disproportionate technical difficulty. Contracting entities which have recourse to this derogation shall do so only as part of clearly-defined and recorded strategy with a view to a changeover to European specifications;
- (d) the relevant European specification is inappropriate for the particular application or does not take account of technical developments which have come about since its adoption. Contracting entities which have recourse to this derogation shall inform the appropriate standardizing organization, or any other body empowered to review the European specification, of the reasons why they consider the European specification to be inappropriate and shall request its revision;
- (e) the project is of a genuinely innovative nature for which use of European specifications would not be appropriate.

(7) EU notices published pursuant to regulation 82(1)(a) or regulation 82(2)(a) shall indicate any recourse to the derogations referred to in subregulation (6).

(8) This regulation shall be without prejudice to compulsory technical rules in Malta in so far as these are compatible with Community Law.

Availability of technical specifications.

81. (1) Contracting entities shall make available on request to suppliers, contractors or service providers interested in obtaining a contract the technical specifications regularly referred to in their supply, works or service contracts or the technical specifications

which they intend to apply to contracts covered by EU prior information notices within the meaning of regulation 44.

(2) Where such technical specifications are based on documents available to interested suppliers, contractors or service providers, a reference to those documents shall be sufficient.

82. (1) In the case of supplies, works or service contracts, the call for competition may be made: Call for competition.

- (a) by means of a EU contract notice drawn up in accordance with Schedule 10 "Utilities"; or
- (b) by means of a EU periodic indicative notice drawn up in accordance with Schedule 10 "Utilities", provided the periodic indicative notice, issued in terms of regulation 82A, was published not more than twelve months prior to dispatch of the invitation to confirm interest in accordance with subregulation (2)(c); or
- (c) by means of a EU notice on the existence of a qualification system drawn up in accordance with Schedule 10 "Utilities".

(2) When a call for competition is made by means of a periodic indicative EU notice:

- (a) the EU notice must refer specifically to the supplies, works or services which will be the subject of the contract to be awarded;
- (b) the EU notice must indicate that the contract will be awarded by restricted or negotiated procedure without further publication of a EU notice of a call for competition and invite interested undertakings to express their interest in writing;
- (c) contracting entities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations, provided the deadline of requests to participate shall in general be at least five weeks from the date of dispatch of the invitation and shall in any case not be less than twenty-two days from that date and not less than fifteen days if the invitation is sent by telex, facsimile or electronic means.

(3) When a call for competition is made by means of a EU notice on the existence of a qualification system, tenderers in a restricted procedure or participants in a negotiated procedure with a call for competition shall be selected from the qualified candidates in accordance with such a system.

(4) In the case of design contests, the call for competition shall be made by means of a EU notice drawn up in accordance with Schedule 10 "Utilities".

(5) The EU notices referred to in this regulation shall be dispatched to the Official Journal of the European Union.

(6) Regulation 44(1), 44(2), 44(3), and 44(10) to 44(15) shall not apply hereto.

Prior indicative notice.

82A. (1) Contracting entities shall make known, at least once a year, by means of a periodic indicative notice:

- (a) in the case of supply contracts, the total of the contracts for each product area of which the estimated value, is equal to or greater than EURO 750,000, and which they intend to award over the following twelve months;
- (b) in the case of works contracts, the essential characteristics of the works contracts which the contracting entities intend to award and which fall within the preview of Schedule 9, regulation 4(a)(ii), 4(b)(iii) and 4(c)(ii);
- (c) in the case of service contracts, the estimated total value of the service contracts in each of the categories of services listed in Schedule 8 A which they intend to award over the following twelve months, where such estimated total value is equal to or greater than EURO 750,000.

(2) The notice shall be drawn up in accordance with Schedule 10 and published in the Official Journal of the European Communities and the Gazette.

Procedure.

83. Contracting entities shall award their contracts under this Part through either open, restricted or negotiated procedure with a call for competition provided a call for competition has been made by means of an EU notice.

Without prior call for competition.

84. Contracting entities may use the negotiated procedure without prior call for competition in the following cases:

- (a) in the absence of the receipt of tenders or of compliant tenders in response to a procedure with a prior call for competition, provided that the original contract conditions have not been substantially changed;
- (b) when the products involved are manufactured only for the purpose of research, experiment, study or development but not for the purposes of establishing commercial viability or for the recovery of research and development costs and in so far as the award of such contract does not prejudice the competitive award of subsequent contracts which have in particular these purposes;
- (c) when, for technical or artistic reasons or for reasons connected with protection of exclusive rights, the contract may be executed only by a particular supplier, contractor or service provider;
- (d) insofar as is strictly necessary, when the time-limits for open, restricted or negotiated procedures referred to in regulations 36 to 38 cannot be respected for reasons of urgency occasioned by unforeseeable

events. The circumstances invoked to justify urgency must not be attributable to the contracting entity;

- (e) in the case of supply contracts for 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 entity to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
- (f) for additional works or services not included in the project initially awarded or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the execution of the contract, on condition that the award is made to the contractor or service provider executing the original contract:
 - (i) when such additional works or services cannot be technically or economically separated from the main contract without great inconvenience to the contracting entity;
 - (ii) or when such additional works or services, although separable from the execution of the original contract, are strictly necessary to its completion;
- (g) for new works consisting in the repetition of similar works entrusted to the tenderer to which the same contracting entity awarded an earlier contract, provided that such works conform to a basic project for which a contract was originally awarded in accordance with the procedures referred to in regulation 83:

Provided that where a contracting entity intends to award a series of contracts for the same project, EU notice must initially be given that the negotiated procedure might be adopted, and the total estimated cost of subsequent works shall be taken into consideration by the contracting entity when they apply the provisions of regulation 15. This procedure may be applied solely during the three years following the conclusion of the original contract;

- (h) for supplies quoted and purchased on a commodity market;
- (i) for contracts to be awarded on the basis of a framework agreement, provided that the conditions referred to in regulation 77 are fulfilled;
- (j) for bargain purchases, where it is possible to procure supplies taking advantage of a particularly advantageous opportunity available for a very short space of time at a price considerably lower than

normal market prices;

- (k) for purchases of goods under particularly advantageous conditions from either a supplier definitively winding up his business activities or liquidator of a bankruptcy, an arrangement with creditors or a similar procedure;
- (l) where the contract concerned is awarded subsequent to a design contest and must be awarded to one or more successful tenderers, in which case they shall be invited to participate in the negotiations.

Call for competition.

84A. (1) In open procedures the time limit for the receipt of tenders shall be fixed by contracting entities at not less than fifty-two days from the date of dispatch of the notice. This time limit may be shortened to thirty-six days where contracting entities have published a periodic indicative notice.

(2) In restricted procedures and in negotiated procedures with a prior call for competition, the following arrangements shall apply:

- (a) the time limit for receipt of requests to participate, in response to an EU notice or in response to a Notice on the Existence of a Qualification System from a contracting entity, shall, as a general rule, be at least five weeks from the date of dispatch of the notice or invitation and shall in any case not be less than not later than twenty-two days after their dispatch or within fifteen days in response to a request by the contracting entity and provided that the notice has been sent to the office by electronic mail, telex or telefax;
- (b) the time limit for receipt of tenders may be fixed by mutual agreement between the contracting entity and the selected candidates, provided that all tenderers are given equal time to prepare and submit tenders;
- (c) where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall, as a general rule, be at least three weeks and shall in any case not be less than ten days from the date of the invitation to tender; the time allowed shall be sufficiently long to take account in particular of the factors mentioned in regulation 84B(3).

Supply of documents.

84B. (1) Provided that they have been requested in good time, the contract documents and supporting documents must be sent to the suppliers, contractors or service providers by the contracting entities as a general rule within six days of receipt of the application.

(2) Provided that it has been requested in good time, additional information relating to the contract documents shall be supplied by the contracting entities not later than six days before the final date fixed for receipt of tenders.

(3) Where tenders require the examination of voluminous

documentation such as lengthy technical specifications, a visit to the site or an on-the-spot inspection of the documents supporting the contract documents, this shall be taken into account when the appropriate time limits are fixed.

(4) Contracting entities shall invite the selected candidates simultaneously and in writing. The letter of invitation shall be accompanied by the contract documents and supporting documents. It shall include at least the following information:

- (a) the address from which any additional documents can be requested, the final date for such requests and the amount and methods of payment of any sum to be paid for such documents;
- (b) the final date for receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;
- (c) a reference to any tender notice published;
- (d) an indication of any document to be annexed;
- (e) the criteria for the award of the contract if these are not given in the notice;
- (f) any other special condition for participation in the contract.

(5) Requests for participation in contracts and invitations to tender must be made by the most rapid means of communication possible. When requests to participate are made by telegram, telex, telephone or any electronic means, they must be confirmed by letter dispatched before the expiry of the time limit referred to in regulation 84A(1) or of the time limit set by contracting entities pursuant to regulation 84A(2).

85. (1) The contracting entity may state in the contract documents, or be obliged by the Director of Contracts to do so, the authority or authorities from which a tenderer may obtain the appropriate information on the obligations relating to the employment protection provisions and the working conditions which are in force in Malta, or the region or locality in which the services are to be performed and which shall be applicable to the performance of the contract. Information.

(2) A contracting entity which supplies the information referred to in subregulation (1) shall request the tenderers 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 work or the service is to be carried out or performed. This shall be without prejudice to the application of regulation 89(5) and (6) concerning the examination of abnormally low tenders.

86. (1) In the determination of an award, a contracting entity may establish and operate a system of objective qualification of candidates together with the criteria laid down in regulation 45 to 48. Qualification criteria.

(2) The criteria and rules for qualification shall be made available on request to interested candidates. The updating of these criteria and rules shall be communicated to the interested candidates. Where a contracting entity considers that the qualification system of certain third entities or bodies meets its requirements, it shall communicate to interested candidates the names of such third entities or bodies.

(3) A contracting entity shall inform candidates of their decision as to qualification within a reasonable period. If the decision will take longer than six months from the presentation of an application, the contracting entity shall inform the candidate, within two months of the application, of the reasons justifying a longer period and of the date by which its application will be accepted or refused.

(4) In reaching their decision as to qualification or when the criteria and rules are being updated, a contracting entity may not:

- (a) impose conditions of an administrative, technical or financial nature on some suppliers, contractors or service providers which are not imposed on others,
- (b) require tests or proof which duplicate objective evidence already available.

(5) Candidates whose qualification is refused shall be informed of this decision together with the reasons for refusal within fifteen days from the date of the decision. The reasons, where applicable according to this regulation, must be based on the criteria for qualification referred to in subregulation (1).

(6) A written record of qualified candidates shall be kept and it may be divided into categories, according to the type of contract for which the qualification is valid.

(7) A contracting entity may remove the qualification of a candidate, only for reasons based on the criteria referred to in subregulation (2). The intention to bring qualification to an end must be notified in writing to the candidate beforehand, together with the reason or reasons justifying the proposed action.

(8) The qualification system shall be the subject of an EU notice. Where the system is of a duration greater than three years, the EU notice shall be published annually.

Certificates.

87. (1) Should contracting entities require the production of certificates drawn up by independent bodies for attesting conformity of the service provider to certain quality assurance standards, they shall refer to quality assurance systems based on the relevant EN 29 000 European standards series certified by bodies conforming to the EN 45000 European standards series.

(2) Contracting entities shall recognize equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from service providers who have no access to such certificates or no possibility of obtaining them within the relevant time limits.

88. (1) Groupings of suppliers, contractors or service providers shall be permitted to tender or negotiate. Groupings of tenderers.

(2) The conversion of such groupings into a specific legal form shall not be required in order to submit a tender or to negotiate, but the grouping selected may be required so to convert itself once it has been awarded the contract where such conversion is necessary for the proper performance of the contract.

(3) 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 on the sole ground that under the law of the Member State in which the contract is awarded they would have been required to be either a natural or a legal person.

(4) However, legal persons may be required to indicate, in the tender or the request for participation, the names and relevant professional qualifications of the staff to be responsible for the performance of the service.

89. (1) Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the criteria on which the contracting entities shall base the award of contracts shall be: Award criteria.

(a) the most economically advantageous tender, involving various criteria depending on the contract in question, such as delivery or completion date, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, technical merit, after-sales service and technical assistance, commitments with regard to spare parts, security of supplies and price; or

(b) the lowest price only.

(2) In the case referred to in subregulation (1)(a), contracting entities shall state in the contract documents or in the EU contract notice all the criteria which they intend to apply to the award, where possible in descending order of importance.

(3) Where the criterion for the award of the contract is that of the most economically advantageous tender, contracting entities may take account of variants which are submitted by a tenderer and meet the minimum specifications required by the contracting entities. Contracting entities shall state in the contract documents the minimum specifications to be respected by the variants and specific requirements for their presentation. Where variants are not permitted, they shall so indicate in the contract documents.

(4) Contracting entities may not reject the presentation of a variant on the sole ground that it was drawn up on the basis of technical specifications defined with reference to European specifications or to national technical specifications recognized as complying with the essential requirements within the meaning of Directive 89/106/EEC.

(5) If, for a given contract, tenders appear abnormally low in relation to the provision of services, the contracting entity 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 taking account of the explanations received. It may set a reasonable period within which to reply. The contracting entity may take into consideration explanations which are justified on objective grounds relating to the economy of the construction or production method, or the technical solutions chosen, or the exceptionally favourable conditions available to the tenderer for the execution of the contract, or the originality of the product or the work proposed by the tenderer.

(6) Contracting entities may reject tenders which are abnormally low owing to the receipt of State aid only if they have consulted the tenderer and if the tenderer has been unable to show that the aid in question has been notified to the Commission pursuant to Article 88(3) of the EEC Treaty or has received the Commission's approval. Contracting entities which reject a tender under these circumstances shall inform the Commission thereof.

Third countries.

90. (1) This regulation shall apply to tenders comprising products originating in third countries with which the Community has not concluded, multilaterally or bilaterally, an agreement ensuring comparable and effective access for community undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Community or its Member States in respect of third countries.

(2) Any tender made for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Council regulation (EEC) No 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods, exceeds 50% of the total value of the products constituting the tender.

For the purposes of this regulation, software used in telecommunications network equipment shall be considered as products.

(3) Subject to subregulation (4), where two or more tenders are equivalent in the light of the award criteria defined in regulation 89, preference shall be given to the tenders which may not be rejected pursuant to subregulation (2). The prices of these tenders shall be considered equivalent for the purposes of this regulation, if the price difference does not exceed three per cent.

(4) However, a tender shall not be preferred to another pursuant to subregulation (3) where its acceptance would oblige the contracting entity to acquire material having technical characteristics different from those of existing material, resulting in incompatibility or technical difficulties in operation and maintenance or disproportionate costs.

(5) For the purpose of this regulation, those third countries to which the benefit of the provisions of this regulation has been extended by a Council Decision in accordance with subregulation (1) shall not be taken into account for determining the proportion referred to in subregulation (2) of products originating in third

countries.

(6) The Commission shall submit an annual report to the Council on progress made in multilateral or bilateral negotiations regarding access for community undertakings to the markets of third countries in the fields covered by this Part, on any result which such negotiations may have achieved and on the implementation in practice of all the agreements which have been concluded.

91. The Department of Contracts shall inform the Commission of any general difficulties encountered, in law or in fact, by Malta undertakings in securing the award of service contracts in third countries.

Information to Commission.

92. (1) Contracting entities shall keep appropriate information on each contract which shall be sufficient to permit them at a later date to justify decisions taken in connection with:

Information to be kept.

- (a) the qualification and selection of contractors, suppliers or service providers and award of contracts;
- (b) recourse to derogations from the use of European specifications in accordance with regulation 80;
- (c) use of procedures without prior call for competition in accordance with regulation 84;
- (d) the non-application of the relevant provisions of this regulation in accordance with regulation 74, 76 and 79.

(2) The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission if the latter so requests.

93. The Director of Contracts, after collecting all the necessary information from the entities concerned, shall ensure, that the Commission receives each year a statistical report concerning the total value of the contracts awarded below the thresholds which would, if they were not below those thresholds, be covered by this regulation, broken down by Member State and each of the following categories:

Statistical report.

- (a) production, transport or distribution of drinking water;
- (b) production, transport or distribution of electricity;
- (c) transport or distribution of gas or heat;
- (d) exploration for and extraction of oil or gas;
- (e) exploration for and extraction of coal or other solid fuels;
- (f) railway services;
- (g) urban railway, tramway, trolleybus or bus services;
- (h) airport facilities;
- (i) maritime or inland port or other terminal facilities;
- (j) operation of telecommunications networks or

provision of telecommunications services.

Attestation system.

94. (1) Contracting entities may have recourse to the attestation system hereunder.

(2) Contracting entities may have their contract award procedures and practices which fall within the scope of this Part examined periodically with a view to obtaining an attestation that, at that time, those procedures and practices are in conformity with Community law concerning the award of contracts and the national rules implementing the law.

(3) Attestors shall report to the contracting entity, in writing, on the results of their examination. They shall satisfy themselves, before delivering to the contracting entity the attestation that any irregularities identified in the contracting entity's award procedures and practices have been corrected and measures have been taken to ensure that those irregularities are not repeated.

(4) Contracting entities having obtained that attestation may include the following statement in the EU notice published in the Official Journal of the European Union:

"The Contracting Entity has obtained an attestation in accordance with Council Directive 92/13/EEC that, on (date), its contract award procedures and practices were in conformity with Community law and the national rules implementing that law."

(5) Attestors shall be independent of the contracting entities and must be completely objective in carrying out their duties. They shall offer appropriate guarantees of relevant professional qualifications and experience.

(6) The Department of Contracts shall identify any persons, professions or institutions whose staff, called upon to act as attestors, they regard as fulfilling the requirements of subregulation (5). For these purposes, the Department of Contracts may require professional qualifications, at least at the level of a higher education diploma within the meaning of Directive 89/48/EEC(8), which they regard as relevant, or provide that particular examinations of professional competence organized or recognized by the State offer such guarantees.

Conciliation.

95. (1) Any person having or having had an interest in obtaining a particular contract falling within the scope of this Part and who, in relation to the procedure for the award of that contract, considers that he has been or risks being harmed by an alleged infringement of Community law in the field of procurement or national rules implementing that law may request the application of the conciliation procedure provided for in regulations 96 and 97.

(2) The request referred to in subregulation (1) shall be addressed in writing to the Commission.

Application of
Community Law.

96. (1) Where the Commission considers, on the basis of the request referred to in regulation 95, that the dispute concerns the correct application of Community law, it shall ask the contracting

entity to state whether it is willing to take part in the conciliation procedure applying subregulations (2) to (7). If the contracting entity declines to take part, the Commission shall inform the person who made the request that the procedure cannot be initiated.

(2) The Commission shall propose, as quickly as possible, a conciliator drawn from a list of independent persons accredited for this purpose. This list shall be drawn up by the Commission, following consultation of the Advisory Committee for public contracts or, in the case of contracting entities the activities of which are defined in regulation 75(1)(d), following consultation of the Advisory Committee on Telecommunications Procurement.

Each party to the conciliation procedure shall declare whether it accepts the conciliator, and shall designate an additional conciliator. The conciliators may invite not more than two other persons as experts to advise them in their work. The parties to the conciliation procedure and the Commission may reject any expert invited by the conciliators.

(3) The conciliators shall give the person requesting the application of the conciliation procedure, the contracting entity and any other candidate or tenderer and any person having or having had an interest in obtaining the particular public contract participating in the relevant contract award procedure the opportunity to make representations on the matter either orally or in writing.

(4) The conciliators shall endeavour as quickly as possible to reach an agreement between the parties which is in accordance with Community Law.

(5) The conciliators shall report to the Commission on their findings and on any result achieved.

(6) The person requesting the application of the conciliation procedure and the contracting entity shall have the right to terminate the procedure at any time.

(7) Unless the parties decide otherwise, the person requesting the application of the conciliation procedure and the contracting entity shall be responsible for their own costs. In addition, they shall each bear half of the costs of the procedure, excluding the costs of intervening parties.

97. (1) Where, in relation to a particular contract award procedure, an interested person within the meaning of regulation 95, other than the person requesting the conciliation procedure, is pursuing judicial review proceedings or other proceedings for review within the meaning of this regulation, the contracting entity shall inform the conciliators. The conciliators shall inform that person that a request has been made to apply the conciliation procedure and shall invite that person to indicate within a given time limit whether he agrees to participate in that procedure. If that person refuses to participate, the conciliators may decide, acting if necessary by a majority, to terminate the conciliation procedure if they consider that the participation of this person is necessary to resolve the dispute. They shall notify their decision to the

Judicial review.

Commission and give the reasons for it.

(2) Action taken pursuant to this regulation and regulation 93 shall be without prejudice to:

- (a) any action that the Commission or any Member State might take pursuant to Articles 226 or 227 of the Treaty or pursuant to any other remedy provided under this regulation;
- (b) the rights of the persons requesting the conciliation procedure, of the contracting entity or of any other person.

PART VIII

Variation Orders

Contracts awarded by authorities listed in Schedule 2.

- 98.** (1) (a) Without prejudice to the provisions of Parts IV, V, VI A, VI B and VI C, in all cases where variation orders individually or in their totality exceed by more than five per centum 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.
- (b) 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.
- (c) When granting or refusing such a request for variation, the Director shall specify his view as to whether such a variation could have been avoided and the procedure to be followed in future by the contracting authority to avoid a recurrence.
- (d) 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 paragraphs (b) and (c).

Contracts awarded by authorities listed in Schedule 3.

(2) Approval for variations, having a financial effect as indicated in subregulation (1)(a) 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:

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

Contracts Committees.

99. (1) The Contracts Committees, referred to in regulations 8 and 9, 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.

(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 thereat.

(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 104(9) shall apply *mutatis mutandis* to the Contract Committees.

PART X

Functions of the Contracts Committees

100. 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

Functions of the
Contracts
Committees.

- (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 Appeals Board.

PART XI

Procurement Committees

Procurement
Committees.

101. (1) The Minister may authorise the setting up of committees, to be known as Procurement Committees, in respect of tenders whose estimated value exceeds Lm 20,000.

(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 8, 10(2), 10(3), 10(4), 13, 95 and 96 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

Separate packages
in tender offer.
Amended by:
L.N. 377 of 2004.

102. (1) Contracting authorities listed in Schedule 1 shall ensure that for all tenders with an estimated value of over Lm250,000 or, at the discretion of the Director of Contracts, on tenders of a lower estimated value, the tender conditions stipulate that tenders shall only qualify for consideration if they are submitted in separate packages as follows:

- (a) Package One: 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;

- (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 immediately preceding sub-regulation. 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 Department of Contracts or the contracting authority involved, as the case may be, within four working days from the date of notification of the decision and such complaint shall be accompanied by a deposit of 0.5% of the estimated tender value, which deposit shall only be refundable if the Appeals 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 Lm250 or more than Lm 25,000.

(5) The review is to be effected by the public contracts Appeals 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 Appeals 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 Appeals 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 not have the right to have recourse to the procedure for appeals as provided for in Part XIII:

Provided that the right of appeal under Part XIII shall be available to those tenderers whose offer reaches the final stage of the award procedure, that is, the opening and the publication of the financial proposals:

Provided further that any rights granted to tenderers by virtue of regulation 104(19) shall also apply to appeals decided by the Appeals Board under this Part.

PART XIII

Procedure for the submission of appeals

Procedure for the submission of appeals.
Amended by:
L.N. 377 of 2004.

103. (1) Any tenderer who feels aggrieved by a proposed award of a contract and 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 may, within fourteen working days of the publication of the decision, file a notice of objection at the Department of Contracts or the contracting authority involved as the case may be. Such a notice of objection shall only be valid if accompanied by a deposit equivalent to one per centum of the estimated tender value, provided that in no case shall the deposit be less than Lm 200 or more than Lm 25,000. The Head of a contracting authority 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 fourteen working 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 subregulation (1) shall be made public by not later than the next working day following its filing.

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- (c) Within three working days of the expiry of the fourteen-day period allowed for the filing of a notice of objection, any other tenderer and any person having or having had an interest involved in the call for tenders may register an interest in the proceedings. The registration of interest shall only be valid if accompanied by a deposit amounting to the deposit paid under subregulation (1). The tenderer who had been indicated in the adjudication decision of the Director or the contracting authority as the one to whom the contract was to be awarded, shall be deemed to have registered an interest but does not need to pay a deposit.
- (d) The names of the tenderers or other person having or having had an interest in obtaining a particular public contract who register an interest shall be made public on the first working day after the lapse of the time limit specified in paragraph (c).
- (e) (i) Within three working days after the publication of the list of persons who register an interest, the tenderer filing the notice of objection shall send a reasoned letter of objection explaining the objection.
- (ii) The letter of objection and any accompanying documentation shall be submitted in a number of copies that equals the number of tenderers with a registered interest, plus three.
- (iii) The letter of objection shall be made public and shall be circulated to all persons with a registered interest.
- (f) (i) Within five working days from the publication of the letter of objection, any tenderer who had registered an interest may send a reasoned reply to the letter of objection.
- (ii) The reply and any accompanying documentation shall be submitted in a number of copies that equals the number of tenderers with a registered interest, plus three.
- (iii) The reply shall be made public and shall be circulated to all tenderers with a registered interest and to all tenderers who have filed an objection.
- (g) Within ten working days of the publication of the replies the Director or the Head of the contracting authority shall prepare a report (the Analysis Report) analysing the letter of objection and the replies thereto. This report shall be circulated to the persons who file an objection and who have a registered interest. After the preparatory process is duly completed, the Head of the contracting authority shall forward to the Director of Contracts all documentation pertaining to the call for tenders in question including

files, tenders submitted, copies of deposit receipts, any motivated letter, analysis report, etc.

- (h) The Director shall forward all the documentation related to any appeal case to the Chairman of the Appeals Board who shall then proceed as stipulated in Part XIV.
- (i) The Director or the Head of the contracting authority shall publish a copy of the decision of the Appeals 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 to the complaining tenderer, any persons who had registered or had an implied interest and, by the Director only, to the contracting authority concerned when this is one listed in Schedule 2.

(3) Complaints in terms of this Part may only be submitted in respect of public contracts awarded by Authorities listed in Schedule 1 whose value exceeds Lm 20,000.

PART XIV

Public Contracts Appeals Board

Appeals Board.

104. (1) The Public Contracts Appeals 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.

(2) The Prime Minister may appoint a substitute as Chairman and substitute members of the Appeals Board, in which case the members shall serve in accordance with such distribution of duties, including provisions for inability of members to serve and other circumstances, as the Prime Minister may establish.

(3) A member of the Appeals Board may not be removed during the period covered by his appointment except for proved misbehaviour or proved inability to perform his function.

Cap. 12.

(4) The provisions of articles 733 to 739 of the Code of Organization and Civil Procedure shall apply to the Chairman and to the other members of the Appeals Board with respect to complaints before it in the same manner as they apply to judges with respect to a case brought before a court.

(5) A person shall be disqualified from being appointed or continuing to be a member of the Appeals 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 Appeals Board.

(6) The members of the Appeals Board shall receive such remuneration as the Prime Minister may determine.

(7) The members of the Appeals 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.

(8) The Appeals Board shall be provided by the Director of Contracts with administrative and secretarial services.

(9) The Appeals 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.

(10) The sessions of the Appeals 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.

(11) (a) The Chairman shall have the power to determine the procedure for the hearing of all complaints lodged with the Appeals Board and shall ensure that during the public hearing all interested parties are given the opportunity to make their case.

(b) The Appeals Board shall have the power to take such interim measures as it shall deem fit.

(12) Any member of the Appeals Board who may have a direct or indirect interest in any contract which becomes the subject of a complaint in terms of regulation 77 shall inform the Director of Contracts in writing of such interest in which case the member shall be precluded from further participation in the hearing of the complaint.

(13) The Chairman shall appoint the public hearing at the earliest possible date after the referral to him of the Analysis Report and the relative documentation by the Director of Contracts as stipulated in regulation 103(2)(h).

(14) The decision of the Appeals Board shall be final insofar as the award of the contract involved is concerned 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.

(15) Decisions of the Appeals 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.

(16) Decisions of the Appeals Board shall be submitted by the Chairman to the Director of Contracts in writing within ten working days after the holding of the public session. Should the Appeals Board be unable, for valid reasons, to meet this time-limit, the Director of Contracts shall extend the period in question if such extension is considered warranted by the circumstances of the case.

(17) All decisions taken by the Appeals Board shall be rendered in writing. It shall contain all the facts and reasons on which the Appeals 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.

(18) The Appeals Board shall recommend on whether any deposit submitted by a tenderer in terms of regulation 103 should be refunded, in whole or in part, or not, giving written reasons for such a recommendation. The Board's recommendation shall be final and binding.

(19) Any bidder submitting a complaint and who shall not be satisfied with the final decision taken by the Appeals Board shall refer the matter to the First Hall of the Civil Court. Such recourse shall not however delay the Director of Contracts or the Head of a contracting authority from implementing the Appeals Board's final decision.

SCHEDULE 1

*Substituted by:
L.N. 377 of 2004.
Amended by:
L.N. 473 of 2004.*

Complete List of Contracting Authorities

OFFICE OF THE PRIME MINISTER	Permanent Secretary's Office / Department of Corporate Services
	Internal Audit and Investigations Directorate
	Planning and Priorities Co-ordination Directorate
	Armed Forces of Malta
	Information
	Government Printing Press
	Electoral Office
	Public Service Commission
	MALTA COUNCIL FOR ECONOMIC AND SOCIAL DEVELOPMENT
	BROADCASTING AUTHORITY
MINISTRY OF FINANCE	Permanent Secretary's Office / Department of Corporate Services
	Treasury Department
	Inland Revenue Department
	Capital Transfer Duty
	Customs Department
	VAT Division
	Lotteries Department
	Contracts Department
	Economic Policy Division
	MALTA FINANCIAL SERVICES AUTHORITY
	MALTA STOCK EXCHANGE
	LOTTERIES AND GAMING AUTHORITY
	MALTA STATISTICS AUTHORITY
TAX COMPLIANCE UNIT	
MINISTRY FOR JUSTICE AND HOME AFFAIRS	Permanent Secretary's Office / Director Corporate Services
	Citizen and Expatriate Affairs
	Notary to Government
	Police Department
	Civil Protection
	Correctional Services
	Government Property Division
	Joint Office
	Land registry
	Public Registry
Civil Registration	

	Attorney General
	Judicial
	Local Councils Department
	MALTA ARBITRATION CENTRE
	LOCAL COUNCILS
MINISTRY OF EDUCATION, YOUTH AND EMPLOYMENT	Permanent Secretary's Office / Department of Corporate Services
	Education Division / Department of Finance and Administration
	Libraries and Archives
	Examinations
	Industrial and Employment Relations
	JUNIOR COLLEGE
	MALTA COLLEGE OF ARTS, SCIENCE AND TECHNOLOGY
	UNIVERSITY OF MALTA
	FOUNDATION FOR INTERNATIONAL STUDIES
	FOUNDATION FOR TOMORROW'S SCHOOLS
	FOUNDATION FOR EDUCATIONAL SERVICES
	MALTA COUNCIL FOR SCIENCE & TECHNOLOGY
	EMPLOYMENT AND TRAINING CORPORATION
	OCCUPATIONAL HEALTH AND SAFETY
	INSTITUTE FOR TOURISM STUDIES
	KUNSILL MALTI GHALL-ISPORTS
	COOPERATIVES BOARD
	NATIONAL POOL TAL-QROQQ
MINISTRY FOR TOURISM AND CULTURE	Permanent Secretary / Department of Corporate Services
	MALTA TOURISM AUTHORITY
	HERITAGE MALTA
	NATIONAL COUNCIL FOR CULTURE AND THE ARTS
	ST JAMES CAVALIER CREATIVITY CENTRE
	NATIONAL ORCHESTRA
	MANOEL THEATRE
	MEDITERRANEAN CONFERENCE CENTRE
	MALTA CENTRE FOR RESTORATION
	SUPERINTENDENCE OF CULTURAL HERITAGE
	FONDAZZJONI PATRIMONJU MALTI
MINISTRY FOR COMPETITIVENESS AND COMMUNICATIONS	Permanent Secretary's Office / Department of Corporate Services
	Civil Aviation
	Commerce Division
	Consumer and Competitive Division
	MALTA COMMUNICATIONS AUTHORITY
	MALTA MARITIME AUTHORITY

	MALTA STANDARDS AUTHORITY	
MINISTRY FOR RESOURCES AND INFRASTRUCTURE	Permanent Secretary's Office / Department of Corporate Services	
	Works Division / Finance and Administration	
	Operating Units	
	Construction and Maintenance	
	Manufacturing and Services	
	Building and Engineering	
	Building Construction Industry Department	
	Cleaning Department	
	Oil Exploration	
	MALTA RESOURCES AUTHORITY	
	BUILDING INDUSTRY CONSULTATIVE COUNCIL	
	MINISTRY FOR GOZO	Permanent Secretary's Office / Department of Corporate Services
Customer Services		
Projects and Development		
MINISTRY OF HEALTH, THE ELDERLY AND COMMUNITY CARE	Permanent Secretary's Office / Department of Corporate Services	
	Health Division / Finance and Administration	
	Elderly and Community Care	
	FOUNDATION FOR MEDICAL SERVICES	
	ZAMMIT CLAPP HOSPITAL	
	MATER DEI HOSPITAL	
	MOUNT CARMEL HOSPITAL	
	MEDICAL PRODUCTS REGULATORY AUTHORITY	
	WELFARE COMMITTEE	
MINISTRY FOR INFORMATION TECHNOLOGY AND INVESTMENTS PROMOTION	Permanent Secretary's Office / Department of Corporate Services	
	WATER SERVICES CORPORATION	
	ENEMALTA CORPORATION	
	MALTA NATIONAL LABORATORY	
	MGI/MIMCOL	
	MALTAPOST PLC	
	GOZO CHANNEL CO LTD	
	DATA PROTECTION COMMISSION	
	MITTS	
	INDUSTRIAL PROJECTS AND SERVICES LTD	
	PRIVATISATION UNIT	
	COLLECTIVE BARGAINING UNIT	
	MALTA ENTERPRISE	
	MALTA INDUSTRIAL PARKS	

MINISTRY FOR RURAL AFFAIRS AND THE ENVIRONMENT	Permanent Secretary's Office / Department of Corporate Services
	Agriculture Services and Rural Development
	Food and Veterinary Services
	Fisheries and Conservation Control
	MALTA ENVIRONMENT AND PLANNING AUTHORITY
	WASTE SERVICES LTD.
MINISTRY FOR URBAN DEVELOPMENT AND ROADS	Permanent Secretary Office / Department of Corporate Services
	MALTA TRANSPORT AUTHORITY
MINISTRY FOR THE FAMILY AND SOCIAL SOLIDARITY	Permanent Secretary's Office / Department of Corporate Services
	Social Security
	Family Welfare
	Social Housing
	HOUSING AUTHORITY
	FOUNDATION FOR SOCIAL WELFARE SERVICES
	SEDQA
	APPOĠĠ
	NATIONAL COMMISSION FOR DISABLED PERSONS
SAPPORT	
MINISTRY OF FOREIGN AFFAIRS	Permanent Secretary's Office / Department of Corporate Services
	INTERNATIONAL INSTITUTE ON AGEING

SCHEDULE 2

*Substituted by:
L.N. 377 of 2004.*

Contracting Authorities falling within the competence of
the Department of Contracts

OFFICE OF THE PRIME MINISTER	Permanent Secretary's Office / Department of Corporate Services
	Internal Audit and Investigations Directorate
	Planning and Priorities Co-ordination Directorate
	Armed Forces of Malta
	Information
	Government Printing Press
	Electoral Office
	Public Service Commission
	MALTA COUNCIL FOR ECONOMIC AND SOCIAL DEVELOPMENT
	BROADCASTING AUTHORITY
MINISTRY OF FINANCE	Permanent Secretary's Office / Department of Corporate Services
	Treasury Department
	Inland Revenue Department
	Capital Transfer Duty
	Customs Department
	VAT Division
	Lotteries Department
	Contracts Department
	Economic Policy Division
	LOTTERIES AND GAMING AUTHORITY
	MALTA STATISTICS AUTHORITY
	TAX COMPLIANCE UNIT
	FINANCIAL INTELLIGENCE ANALYSIS UNIT
	COLLECTIVE BARGAINING UNIT
MINISTRY FOR JUSTICE AND HOME AFFAIRS	Permanent Secretary's Office / Director Corporate Services
	Citizen and Expatriate Affairs
	Notary to Government
	Police Department
	Civil Protection
	Correctional Services
	Government Property Division
	Joint Office
	Land registry
	Public Registry
	Civil Registration
	Attorney General

	Judicial
	Local Councils Department
	MALTA ARBITRATION CENTRE
MINISTRY OF EDUCATION, YOUTH AND EMPLOYMENT	Permanent Secretary's Office / Department of Corporate Services
	Education Division / Department of Finance and Administration
	Libraries and Archives
	Examinations
	Industrial and Employment Relations
	JUNIOR COLLEGE
	MALTA COLLEGE OF ARTS, SCIENCE AND TECHNOLOGY
	UNIVERSITY OF MALTA
	FOUNDATION FOR INTERNATIONAL STUDIES
	FOUNDATION FOR TOMORROW'S SCHOOLS
	FOUNDATION FOR EDUCATIONAL SERVICES
	MALTA COUNCIL FOR SCIENCE & TECHNOLOGY
	EMPLOYMENT AND TRAINING CORPORATION
	OCCUPATIONAL HEALTH AND SAFETY
	INSTITUTE FOR TOURISM STUDIES
	KUNSILL MALTI GHALL-ISPORTS
	COOPERATIVES BOARD
	NATIONAL POOL TAL-QROQQ
MINISTRY FOR TOURISM AND CULTURE	Permanent Secretary / Department of Corporate Services
	HERITAGE MALTA
	MALTA COUNCIL FOR CULTURE AND THE ARTS
	ST JAMES CAVALIER CREATIVITY CENTRE
	NATIONAL ORCHESTRA
	MALTA CENTRE FOR RESTORATION
	SUPERINTENDENCE OF CULTURAL HERITAGE
	FONDAZZJONI PATRIMONJU MALTI
	MEDITERRANEAN CONFERENCE CENTRE
	MANOEL THEATRE
MINISTRY FOR COMPETITIVENESS AND COMMUNICATIONS	Permanent Secretary's Office / Department of Corporate Services
	Civil Aviation
	Commerce Division
	Consumer and Competitive Division
	MALTA COMMUNICATIONS AUTHORITY
	MALTA MARITIME AUTHORITY
	MALTA STANDARDS AUTHORITY

MINISTRY FOR RESOURCES AND INFRASTRUCTURE	Permanent Secretary's Office / Department of Corporate Services
	Works Division / Finance and Administration
	Operating Units
	Construction and Maintenance
	Manufacturing and Services
	Building and Engineering
	Building Construction Industry Department
	Cleaning Department
	Oil Exploration
	MALTA RESOURCES AUTHORITY
BUILDING INDUSTRY CONSULTATIVE COUNCIL	
MINISTRY FOR GOZO	Permanent Secretary's Office / Department of Corporate Services
	Customer Services
	Projects and Development
MINISTRY OF HEALTH, THE ELDERLY AND COMMUNITY CARE	Permanent Secretary's Office / Department of Corporate Services
	Health Division / Finance and Administration
	Elderly and Community Care
	FOUNDATION FOR MEDICAL SERVICES
	ZAMMIT CLAPP HOSPITAL
	MATER DEI HOSPITAL
	MOUNT CARMEL HOSPITAL
	MEDICAL PRODUCTS REGULATORY AUTHORITY
	WELFARE COMMITTEE
MINISTRY FOR INFORMATION TECHNOLOGY AND INVESTMENTS PROMOTION	Permanent Secretary's Office / Department of Corporate Services
	WATER SERVICES CORPORATION
	ENEMALTA CORPORATION
	MALTA NATIONAL LABORATORY
	DATA PROTECTION COMMISSION
	MITTS
	INDUSTRIAL PROJECTS AND SERVICES LTD
	PRIVATISATION UNIT
	COLLECTIVE BARGAINING UNIT
	MALTA ENTERPRISE
	MALTA INDUSTRIAL PARKS
MINISTRY FOR RURAL AFFAIRS AND THE ENVIRONMENT	Permanent Secretary's Office / Department of Corporate Services
	Agriculture Services and Rural Development
	Food and Veterinary Services
	Fisheries and Conservation Control

	MALTA ENVIRONMENT AND PLANNING AUTHORITY
	WASTE SERVICES LTD.
MINISTRY FOR URBAN DEVELOPMENT AND ROADS	Permanent Secretary Office / Department of Corporate Services
	MALTA TRANSPORT AUTHORITY
MINISTRY FOR THE FAMILY AND SOCIAL SOLIDARITY	Permanent Secretary's Office / Department of Corporate Services
	Social Security
	Family Welfare
	Social Housing
	HOUSING AUTHORITY
	FOUNDATION FOR SOCIAL WELFARE SERVICES
	SEDQA
	APPOĠĠ
	NATIONAL COMMISSION FOR DISABLED PERSONS
	SAPPORT
	COMMISSION FOR THE PROMOTION OF EQUALITY FOR MEN & WOMEN
MINISTRY OF FOREIGN AFFAIRS	Permanent Secretary's Office / Department of Corporate Services
	INTERNATIONAL INSTITUTE ON AGEING

SCHEDULE 3

*Substituted by:
L.N. 377 of 2004.
Amended by:
L.N. 473 of 2004.*

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

MINISTRY OF FINANCE	MALTA FINANCIAL SERVICES AUTHORITY
	MALTA STOCK EXCHANGE
MINISTRY OF JUSTICE AND HOME AFFAIRS	LOCAL COUNCILS
MINISTRY FOR TOURISM AND CULTURE	FONDAZZJONI PATRIMONJU MALTI
MINISTRY FOR INFORMATION TECHNOLOGY AND INVESTMENTS	MGI / MIMCOL
	MALTAPOST PLC
	GOZO CHANNEL CO LTD

SCHEDULE 4

List of Contracting Authorities for the Supply of Water

1. Water Services Corporation
 2. Water Desalination Services
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SCHEDULE 5

List of Contracting Authorities for the Supply of Energy

1. Enemalta Corporation
-

SCHEDULE 6

List of Contracting Authorities for the Supply of Fuels for the Production of Energy

1. Oil Exploration Division Office of the Prime Minister
-

SCHEDULE 7

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 (navyving)

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 8A

Services within the meaning of regulation 52(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

CPA Reference No	Subject	CPC Reference No
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
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

CPA Reference No	Subject	CPC Reference No
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
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

CPA Reference No	Subject	CPC Reference No
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
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

CPA Reference No	Subject	CPC Reference No
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
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. R&D services⁽⁴⁾	

CPA Reference No	Subject	CPC Reference No
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
	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

CPA Reference No	Subject	CPC Reference No
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 8B

Services within the meaning of regulation 52(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
	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

CPA Reference No	Subject	CPC Reference No
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	

SCHEDULE 9

Values of thresholds pursuant to regulation 11

1. The values of the thresholds applicable to Public Supplies contracts are as follows:

Euro 200 000: threshold above which public supply contracts are subject to Part VI B without prejudice to the application of the threshold set out for supply contracts subject to the WTO Agreement (recital 10, Dir 93/36/EEC).

Euro 750 000: threshold above which the contracting authorities shall make known, by means of an indicative notice to be published as soon as possible after the beginning of the budgetary year, the total procurement by product area which they envisage awarding during the subsequent twelve months as stipulated in regulation 44.

SDR 130 000: applicable to contracts awarded by contracting authorities, including contracts awarded by contracting authorities in the field of defence in so far as the products included in Schedule 11 are concerned so long as such contracting authorities are dealing with products covered by Schedule 11.

SDR 200 000: applicable to contracts awarded by contracting authorities including contracts awarded by contracting authorities in the field of defence in so far as the products not included in Schedule 11 are concerned. But does not apply in so far as central government authorities are concerned.

2. The values of the thresholds applicable for Public Works contracts are as follows:

Euro 1 000 000: This threshold is applicable to works lots in terms of regulation 15(4).

Euro 5 000 000: Threshold pursuant to regulation 65(2). This provision concerns only those contracts covered by Class 50, Group 502, of the general industrial classification of economic activities within the European Communities (NACE) nomenclature and contracts relating to the building works for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes:

- threshold above which a notice is required when contracting authorities intend to conclude a public works concession contract in terms of regulation 66(1);
- threshold above which a notice is required when a concessionaire other than a contracting authority intends to award a contract to a third party pursuant to regulation 66(4);
- threshold above which the contracting authorities shall make known, by means of an indicative notice to be published as soon as possible after the beginning of the budgetary year, the essential characteristics of the works contracts which they intend to award.

SDR 5 000 000: threshold applicable to Part VI C.

3. The values of the thresholds applicable for Public Service contracts are as follows:

Euro 80 000: threshold applicable in terms of the proviso to regulation 15(4) to Lots provisions.

Euro 750 000: threshold above which contracting authorities shall make known, by means of an indicative notice to be published as soon as possible after the beginning of their budgetary year, the intended total procurement in each of the service categories listed in Schedule 8 A and in respect of which they envisage awarding contracts during the subsequent twelve months.

Euro 200 000: Threshold above which a contracting authority subsidises directly by more than 50% a service contract awarded by an entity other than itself in connection with a works contract. Regulation 50(2) refers.

In relation to public service contracts concerning the services referred to in Schedule 8 A (with the exception of the services in category 8 and the telecommunications services in category 5 under CPC references 7524, 7525 and 7526):

- (i) awarded by the Central Government authorities where the estimated value net of VAT is not less than the equivalent of 130 000 SDR;
- (ii) awarded by the contracting authorities other than those referred to in

sub-paragraph (i) where the estimated value net of VAT is not less than the equivalent in 200 000 SDRs.

Euro 200 000: In relation to public service contracts concerning the services referred to in Schedule 8 B, the services in category 8 in Schedule 8 A and the telecommunications services in category 5 of Schedule 8 A under CPC references 7524, 7525 and 7526, awarded by the contracting authorities.

Threshold for design contest fulfilling conditions of regulation 53 shall be:

- (a) in relation to public service contracts concerning the services referred to in Schedule 8 A with the exception of the services in category 8 and the telecommunications services in category 5 under CPC references 7524, 7525 and 7526:
 - (i) awarded by Central Government Authorities where the estimated value net of VAT is not less than the equivalent of 130 000 SDR;
 - (ii) awarded by the contracting authorities other than those referred to in sub-paragraph (i) where the estimated value net of VAT is not less than the equivalent in 200 000 SDRs.
- (b) Euro 200 000: In relation to public service contracts concerning the services referred to in Schedule 8 B, the services in category 8 in Schedule 8 A and the telecommunications services in category 8 of Annex I A under CPC references 7524, 7525 and 7526, awarded by the contracting authorities.

4. The values of the thresholds applicable for supplies, service and for works contracts by entities in the Utilities sector are as follows:

- (a)
 - (i) ECU 600 000 in the case of supply and service contracts awarded by contracting entities carrying out activities in the telecommunications sector provided that the estimated value, net of value added tax (VAT), .
 - (ii) ECU 5 000 000 in the case of works contracts awarded by contracting entities carrying out activities in the telecommunications sector, provided that the estimated value, net of value added tax (VAT), .
- (b)
 - (i) ECU of 400 000 special drawing rights (SDR) for supply contracts and for the service contracts listed in Schedule 8A, except for the R&D services mentioned in Category 8 and Category 5 telecommunications services, the CPC reference numbers of which are 7524, 7525 and 7526 for contracts awarded by contracting entities carrying out activities in the sectors covering the production, transport or distribution of drinkingwater; in the sectors covering the production, transport or distribution of electricity; in the field of urban railway, tramway, trolleybus or bus services; in the field of airport facilities; in the field of maritime or inland port or other terminal facilities;
 - (ii) ECU 400 000 in the case of service contracts other than those mentioned in (i) awarded by contracting entities carrying out activities in the sectors covering the production, transport or distribution of drinkingwater; in the sectors covering the production, transport or distribution of electricity; in the field of urban railway, tramway, trolleybus or bus services; in the field of airport facilities; in the field of maritime or inland port or other terminal facilities;

- (iii) the equivalent in ECU of 5 000 000 SDR for works contracts awarded by contracting entities carrying out activities in the sectors covering the production, transport or distribution of drinking water; in the sectors covering the production, transport or distribution of electricity; in the field of urban railway, tramway, trolleybus or bus services; in the field of airport facilities; in the field of maritime or inland port or other terminal facilities.
- (c) (i) ECU 400 000 in the case of supply and service contracts for contracts awarded by contracting entities carrying out activities in the sectors covering the transport or distribution of gas or heat; in the sectors covering the exploration for and extraction of oil or gas; in the sectors covering the exploration for and extraction of coal or other solid fuels; and in the field of railway services;
- (ii) ECU 5 000 000 in the case of works contracts for contracts awarded by contracting entities carrying out activities in the sectors covering the transport or distribution of gas or heat; in the sectors covering the exploration for and extraction of oil or gas; in the sectors covering the exploration for and extraction of coal or other solid fuels; and in the field of railway services.
- (d) Euro 1 000 000: threshold under which contracting entities, in the case of works contracts, are allowed to derogate from regulation 15(4) paragraph 1 provided that the total value of such lots does not exceed 20% of the total value of all the lots.

Design Contests: The thresholds relating to design contests in the utilities sector are as defined in Article 23 of Directive 93/38/EEC as follows:

1. This Article shall apply to design contests organized as part of a procedure leading to the award of a service contract the estimated value net of VAT for which is not less than the value referred to in Article 14(1).
2. This Article shall apply to all design contests where the total amount of contest prizes and payments to participants is not less than Euro 400 000 for design contests organized by entities exercising an activity referred to in Article 2(2)(a), (b) and (c) and Euro 600 000 for design contests organized by entities exercising an activity referred to in Article 2(2)(d).
3. The rules for the organization of a design contest shall be in conformity with the requirements of this Article and shall be communicated to those interested in participating in the contest.
4. The admission of participants to design contests shall not be limited:
 - by reference to the territory or part of the territory of a Member State;
 - on the grounds that, under the law of the Member State in which the contest is organized, they would have been required to be either natural or legal persons.
5. 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.
6. The jury 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 its members

must have the same qualification or its equivalent.

The jury shall be autonomous in its decision or opinions. These shall be reached on the basis of projects submitted anonymously and solely on the grounds of the criteria indicated in the notice provided for in Annex XVII.

SCHEDULE 10

Model Contract Notices

Full adoption of Directive 2001/78/EC of 13th September 2001

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.
