

SUBSIDIARY LEGISLATION 363.03**LOCAL COUNCILS (TENDERING) REGULATIONS**

26th November, 1993

*LEGAL NOTICE 157 of 1993, as amended by Legal Notice 457 of 2004.***PART I****General Provisions**

1. The title of these regulations is the Local Councils (Tendering) Regulations. Citation.

2. In these regulations, unless the context otherwise requires -

"Act" means the Local Councils Act;

"appellant" means a bidder who has lodged an appeal against a Council's decision;

"bid bond" means the tender guarantee which a tenderer will be required to submit in favour of the Council in accordance with the tendering procedures;

"bidder" means, that person who has submitted a tender to the Council in accordance with these regulations;

"contractor" means the person or persons whose tender has been accepted by the Tender Committee;

"Executive Secretary" shall have the same meaning as is assigned to it in the Act;

"publication" means the affixing of the Council's decision on the Council's notice-board;

"Tender Committee" means the Council itself, or, if a committee is appointed to process, evaluate and adjudicate a tender in accordance with article 40(2) of the Act, such appointed committee;

"tender sum" means the total sum tendered by a contractor for any contract of works, services, materials or supplies;

"tendering procedures" means the Local Councils tendering procedures issued by the Minister to be followed by Councils in the execution of their duties and responsibilities under the Act and in accordance with these regulations.

PART II**Tendering**

3. (1) Prior to a public call for tenders for works, services, materials or supplies, the Secretary shall ensure that:

- (a) the proposed works, services, materials or supplies form part of the Council's business plan and are in accordance with the terms of such business plan as stipulated in article 59 of the Act;

Interpretation.
Amended by:
L.N. 457 of 2004.
Cap. 363.

Authorisation of
expenditure by
tender.
Amended by:
L.N. 457 of 2004.

- (b) the proposed expenditure is provided for and is in accordance with the Council's approved estimates of income and expenditure, and complies with articles 56 and 61 of the Act;
- (c) there are adequate funds available to meet the proposed or expected expenditure;
- (d) the Council has authorised the expenditure;
- (e) prepare an estimate of the contract value, which estimate shall be approved by the Council.
- S.L.363.01 (2) Unless otherwise provided for in the Act or the Local Councils (Financial) Regulations, a call for tenders shall be issued when the Council requires works, services, materials or supplies in connection with the execution of its functions.
- Expenditure limit requiring a call for tenders.
S.L.363.01 4. A call for tenders shall be required if the proposed or expected expenditure exceeds the limits defined in regulation 24 or falls under the provisions of regulation 43, of the Local Councils (Financial) Regulations.
- Tender procedures. 5. Every call for tenders shall follow the tendering procedures.
- Tenderers may be required to provide a bid bond. 6. The Council may require that every tenderer provides a bid bond, to be submitted with the tender offer.

PART III

Award of tenders

- Opening of tenders. 7. The Secretary together with two Councillors appointed by Council shall open in public the tenders submitted following a call for tenders issued in accordance with article 40 of the Act and make out a schedule of all tenders received.
- Examination and adjudication of tenders. 8. The Tender Committee shall examine and adjudicate all tenders submitted in accordance with article 40 of the Act.
- Award of tender.
Amended by:
L.N. 457 of 2004. 9. (1) The Tender Committee shall decide on the award of tender, and the Secretary shall publish the Committee's decision according to article 40(2)(c) of the Act.
- (2) The Executive Secretary shall, within three working days from the decision by the Council, publish the decision stating also the reasons in accordance with article 40(2)(c) of the Act..

PART IV

Appeals

- Board to hear appeals from decisions made by Local Councils.
Added by:
L.N. 457 of 2004. 10. (1) The Minister shall appoint a Board to hear and decide on appeals from decisions taken by any Local Council in respect of any call for tenders issued by such Local Council. The names of all Board members and also their substitutes shall be published in any two local newspapers.
- (2) The Board shall have the powers to hear and decide on appeals submitted by aggrieved bidders against a decision by such Council in respect of tenders with a contract value estimated to cost between two thousand and one liri (Lm 2001) and five thousand liri

(Lm 5000) and in all cases where, instead of an established contract value, there shall be established or tendered rates:

Provided that notwithstanding these provisions, in cases where the Council fails to establish the estimated contract value, the appeal shall be decided in accordance with the least offer tendered.

(3) The Board shall be composed of a Chairman and two other members appointed after consultations with the Executive of the Local Councils Association.

(4) The Chairman and members of the Board shall serve on an honorary basis for a period of one year and may be reappointed every year for a period not exceeding three consecutive years.

(5) The Minister shall also appoint substitutes for the Chairman and the Board members to serve in cases where either the Chairman or any member of the Board abstains or is prevented from acting. In that case the same conditions as those applicable to the Chairman or members of the Board shall apply.

(6) Any matter related to the reason for abstentions or prevention shall be decided by the Chairman.

(7) It shall be the duty of every Board member to disclose any interest he may have in any appeal brought before the Board, and the Chairman shall appoint his substitute. In cases where the interest disclosed is that of the Chairman, the substitute Chairman shall assume the chairmanship of the Board.

(8) The Board shall have a Registrar, and such function shall be assumed by the Executive Secretary of the Local Councils Association or his substitute as approved by the Board members.

(9) The Board shall convene at the administrative offices of the Local Councils Association or at a place approved by the President of the Local Councils Association.

(10) The Minister may at any time dissolve the Board of Appeals or remove any member of the Board or any substitute when he so deems necessary.

11. (1) Upon the receipt of a notice of appeal, the Board Registrar shall immediately inform the Chairman to summon the Board as early as possible and in no case any later than five working days from the date when the notice of appeal is received.

Summoning of the Board by the Registrar.
Added by:
L.N. 457 of 2004.

(2) Upon notification of the date and time to the Board members, the Board Registrar shall send to all parties all the details regarding the objections to be heard.

(3) The Board Registrar shall also notify all interested parties, of the place, date and time of the hearing. The Board shall have the right to summon any other persons as it may deem necessary for the fair hearing of the case.

(4) The appeal shall be deemed to be withdrawn if a bidder fails to appear as notified without a just cause.

(5) The Board's decision shall be final and binding on all parts.

Aggrieved bidder may appeal.
Added by:
L.N. 457 of 2004.

12. Every bidder who feels aggrieved by any decision of the Council regarding tenders may, within ten working days from the date of the decision of the Council, present an appeal together with a deposit of fifty liri to the Secretary of that Council. The full deposit shall be refunded by the Council to the appellant bidder if that appeal is decided in favour of the appellant.

Council to transmit copy of appeal, half deposit to Board Registrar.
Added by:
L.N. 457 of 2004.

13. (1) The Council shall immediately send a copy of the appeal, together with one-half of the amount deposited, to the Board Registrar, and such amount shall not in any case be refunded to the Council whatever the decision of the Appeals Board may be.

(2) The Board Registrar shall keep separate accounts to register the income and outcome related to the functioning of the Appeals Board.

Decision of the Board.
Added by:
L.N. 457 of 2004.

14. (1) At the end of the appeal the decision of the Board shall be notified to the Council and to the appellant immediately. The Council shall on receipt of the decision publish the decision.

(2) All orders issued by the Board shall be signed by the Chairman and certified by the Board Registrar.

Documents to be kept by Association.
Added by:
L.N. 457 of 2004.

15. All documents shall be kept at the administrative office of the Local Councils Association under the custody of the Board Registrar.

Issuing of notice of acceptance.
Added by:
L.N. 457 of 2004.

16. Within three working days from the notification of the appeals decision by the Board, the Executive Secretary of the Local Council shall issue the notice of acceptance in accordance with the decision of the said Board.

Where contract value exceeds Lm5000.
Added by:
L.N. 457 of 2004.
 S.L. 174.04

17. In all cases where the contract value exceeds five thousand liri, the procedure for an appeal shall be in accordance with the procedure of the Public Contracts Regulation.

Applicability of *ad hoc* procedures.
Added by:
L.N. 457 of 2004.

18. The procedures established by the Contracts Committee appointed by the Minister responsible for finance shall, unless otherwise provided by these regulations or other regulations in respect of tenders issued by Local Councils, apply *mutatis mutandis*.

PART V

Contracts

Contractors required to furnish guarantees, etc.
Amended by:
L.N. 457 of 2004.

19. Within seven days from the letter of acceptance, or within such longer period as the Tender Committee may in exceptional circumstances decide, the contractor shall provide the bonds, guarantees or insurances required under the tendering procedures.

Signing of contract agreement.
Amended by:
L.N. 457 of 2004.

20. A contract agreement shall then be signed between the Council and the contractor.