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Directorate Procurement Policy and Quality Assurance

Procurement Policy Note #27

Title: Obligations of the Energy Efficiency Directive on Procurement of Products, Services and Buildings

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1. Purpose

Article 6 of Directive 2012/27/EU of 25 October 2012 on Energy Efficiencyⁱ obliges Member States to ‘ensure that central governments only purchase products, services and buildings with high energy-efficiency performance’. Regulation 6(1) of the Energy Efficiency Regulations S.L. 623.07 continues to specify that purchase of high-energy efficiency products, services and buildings is applicable ‘insofar as this is consistent with cost-effectiveness, economical feasibility, wider sustainability, technical suitability, as well as sufficient competition, as referred to in the Third Schedule’.

The purpose of this Procurement Policy Note is to guide Contracting Authorities and other concerned parties to adhere to the Energy Efficiency obligations emanating from Article 6 of Directive 2012/27/EU and its corresponding transposition in S.L. 623.07, in the relevant Procurement Procedures.

2. Organisational Scope

This is a Government-wide policy. It shall apply to all Contracting Authorities falling under Schedules 1, 2 and 3 of the Public Procurement Regulations S.L. 601.03 (with the exception of Local Councils), as well as Contracting Entitiesⁱⁱ pursuing activities in line with the Public Procurement of Utilities S.L. 601.05ⁱⁱⁱ

Other public bodies, including Local Councils with due regard for their respective competences and administrative set-up, are encouraged to adopt the same Energy-Efficiency Policy when procuring products, services and buildings, thus, providing long-term energy savings.

3. Definitions

Energy – All forms of energy products, combustible fuels, heat, renewable energy, electricity, or any other form of energy, as defined in Article 2(d) of Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics.

Energy Efficiency – A ratio between an output of performance, service, goods or energy, and an input of energy.

Government – The Government of Malta and includes all administrative departments of Government whose competence extends over the whole territory of Malta, but shall not include local councils.

4. Policy Content and Guidelines

Contracting Authorities shall procure products, services or buildings with high energy-efficiency performance in accordance with the following parameters. Additional information may be viewed from Annex III of Directive 2012/27/EU.^{iv}

In so far as products^v covered by the Green Public Procurement (GPP) procedures are concerned, the GPP guidelines are to be adhered to.

(a) Products covered by the Energy Labelling Regulations

Only those products covered by the Energy Labelling Regulations^{vi}, which have the highest energy efficiency class may be purchased (refer to **Appendix I**).

(b) Products covered by the benchmarks set under the Ecodesign Directive

For products not covered by (a) above and covered by the Ecodesign Directive^{vii}, only products that comply with the relevant energy efficiency benchmarks for that product set out in implementing measures may be purchased (refer to **Appendix II**).

(c) Office Equipment

Only products that meet the latest Energy Star^{viii} standards for energy performance may be purchased.

(d) Tyres

Only tyres that have the highest fuel efficiency class, as defined by Regulation (EU) 2020/740^{ix} may be purchased (unless the purchase of tyres with the highest wet grip or external rolling noise class is justified in the interests of public safety or health).

(e) Services

In a Service Contract, any new products purchased by the Service Provider partially or wholly for the purpose of providing the services requested as per contract requirements, shall comply with the Energy-Efficiency parameters set out in points (a) to (d) above.

(f) *Buildings*

In general, when purchasing buildings or making new rental agreements for buildings, the chosen building/s shall comply with the Minimum Energy Performance requirements as established in S.L. 623.01 titled ‘Energy Performance of Buildings Regulations’^x. Accordingly, the buildings that are to be constructed, purchased or leased out shall conform with the provisions of Legal Notice 47 of 2018 (Original LN), as amended by Legal Notice 134 of 2020 and Legal Notice 409 of 2021 as well as any other subsequent Amendment LNs.

4.1 Procurement of Supplies: Energy Efficiency Requirements

Contracting Authorities are obliged to adhere to the standards of the Energy-Efficiency parameters as set out in points (a) to (d) above. Furthermore, they shall ensure that when procuring supplies/equipment listed in Appendix I (which also includes Office Equipment and Tyres), and Appendix II, the Technical Specifications shall detail the relevant Energy Efficiency Class or the Ecodesign Benchmark for that product, which shall be deemed as the minimum acceptable benchmark. In addition, the Technical Specifications shall also include the proper Energy Labelling and Ecodesign requirements, where applicable.

The above is only mandatory and applicable wherein the aggregate Estimated Procurement Value of one or more products listed in Appendix I and Appendix II, is equal to or greater than the EU Threshold of the relevant Procurement Regulations.

In such circumstances, Contracting Authorities shall procure the most Energy-Efficient Product where the Procurement of Supplies is consistent and compliant with the five (5) criteria hereunder. Contracting Authorities should take note that only products that are compliant with the Ecodesign requirements are allowed on the EU market. In the eventuality that Contracting Authorities do not select the most Energy Efficiency Class from the corresponding Energy Labelling Regulations, such a decision shall be substantiated through a valid justification. The acceptable justifications for procuring the less energy efficient option are detailed next to each of the following criteria:

- Cost Effectiveness – Cheaper Maintenance and Energy Cost over the Product’s Lifetime
- Economic Feasibility – Upfront Price and Running Costs are Viable and Feasible
- Wider Sustainability – Reduced Environmental Impact
- Technical Suitability – Better Technical Suitability
- Sufficient Competition – Wider Market

Appendix V and the EU Commission Guidance Note 3^{xi} provide further guidance on the aforementioned conditionalities.

Energy Efficiency Statistical Information: The Energy Efficiency requirements in respect to the Procurement of Supplies has been deployed on Government’s e-Procurement Platform (better known as the Electronic Public Procurement System – ePPS). Thus, further to the above, at Publication Stage, Contracting Authorities shall include all the necessary information in relation

to the Energy Efficiency benchmark of the Procurement of Supplies being undertaken, as depicted in **Appendix III**.

Procurement of a Product Package: Contracting Authorities may purchase a product package covered as a whole by a delegated act adopted under either Directive 2010/30/EU^{xii} or Regulation (EU) 2017/1369^{xiii} as applicable. In such instances, procurers shall require that the aggregate overall energy efficiency of product packages (i.e. a package of more than one energy-labelled product) for a particular Procurement Call takes priority over the efficiency of individual Energy Labelled Products within that package, as long as the product package complies with the criterion of belonging to the highest energy efficiency class.

4.2 Procurement of Services: Energy Efficiency Requirements

In Line with article 7.3 of General Conditions for Service Contracts, *‘the Contractor shall ensure that, when procuring items which are intended to be used in the execution of this contract he must procure items which adhere with the standards established under the following Legislations: Energy Labelling (Implementing Measures) Regulations, S.L. 427.96, Framework for the Setting of EcoDesign requirements for Energy related products Regulations, S.L.427.64 and the Energy Efficiency Regulations S.L. 623.07 (Original LN 66 of 2021 and any subsequent Amendment LNs) specifically The Third Schedule which details the Implementation of Article 6(1) in relation to purchasing Products, Services and Buildings by Contracting Authorities.*

Contracting Authorities are reminded that they shall procure services, insofar as the products for such services are consistent with a number of conditionalities, namely, Cost-Effectiveness, Economical Feasibility, Wider Sustainability, Technical Suitability and sufficient Competition. **Appendix V** provides further guidance on the said conditionalities.

Procuring the most energy-efficient product/s in line with the above regulations is only mandatory and applicable as long as the Estimated Procurement Value of the Service is equal to or greater than the EU Threshold of the relevant Procurement Regulations.

To this effect, through the Eligibility Section of the Tender Response Format, Contracting Authorities shall request that the bidders commit themselves to abide with the requirements of point (e) of the Third Schedule of the Energy Efficiency S.L. 623.07 (Original LN 66 of 2021 and any subsequent Amendment LNs). Thus, in a Service Contract, new products purchased by the Contractor, partially or wholly for the purpose of providing the service in question, shall comply with the requirements referred to in paragraphs (a) to (d) of the same schedule of these regulations, thus, ascertaining that the products procured are of the highest efficiency benchmark.

The bidders shall also declare that in the eventuality that they are awarded a contract, following its signature, if and when requested, the bidders shall provide evidence in respect to meeting the requirements stipulated regarding Energy Efficiency. As a minimum, the Successful Bidder shall commit to provide a detailed List of Products as proof that the products purchased are in line with the requirements stipulated in this Procurement Policy Note. Additional proof may include Samples, Descriptions, Photographs and/or Certificate.

Further to the above, during the Implementation Stage, Contracting Authorities shall ascertain that the Successful Bidder/Contractor submits the required evidence. In this respect, Contracting Authorities shall report any returns detailing the implementation of this requirement in terms of **Appendix IV** of this Procurement Policy Note. Annually, the said report shall be submitted to the Minister responsible for Energy and Water Management by email on energyefficiency@gov.mt.

4.3 Procurement of Buildings

Contracting Authorities shall procure buildings with high energy-efficiency performance insofar as it is consistent with a number of conditionalities, namely, Cost-Effectiveness, Economical Feasibility, Wider Sustainability, Technical Suitability and sufficient Competition. **Appendix V** provides further guidance on the said conditionalities.

In general, when purchasing buildings or making new rental agreements for buildings, the chosen building/s shall comply with the Minimum Energy Performance requirements as established in S.L. 623.01. During the execution of the lease, the lessor shall ensure that the building abides by the said Regulations. In addition, buildings shall conform to local building regulations and standards as well as any other applicable laws and regulations.

New buildings are subject to building regulations as described by Regulation 5 of the S.L. 623.01 entitled 'Energy Performance of Buildings Regulations' (EBPR). These requirements are embodied in the S.L. 623.04 entitled 'Conservation of Fuel, Energy and Natural Resources (Minimum Requirements on the Energy Performance of Buildings) Regulations'.

5. Effective

Immediate

6. Applicability

- i. Service and Supply Procurement Calls published departmentally or through the Department of Contracts (including the Operations and Sectoral Procurement Directorates), wherein the Estimated Procurement Value is equal to or greater than the EU Threshold of the relevant Procurement Regulations.

Supply Procurement Calls: Procuring the most energy-efficient product/s is only mandatory when the aggregate Estimated Procurement Value of one or more products, listed in Appendix I (which also includes Office Equipment and Tyres) and Appendix II, is equal to or greater than the EU Threshold of the relevant Procurement Regulations.

Service Procurement Calls: Procuring the most energy-efficient product/s for the purpose of providing a Service Contract is only mandatory when the Estimated Procurement Value of the Service is equal to or greater than the EU Threshold of the relevant Procurement Regulations.

- ii. With regard to the Purchase or Rental Agreement in relation to buildings, Energy Efficiency requirements shall be in line with the Third Schedule of S.L. 623.07 (Original LN 66 of 2021 and any subsequent Amendment LNs).

- iii. The obligations of this Procurement Policy Note shall apply to the contracts of the Armed Forces only to the extent that its application does not cause any conflict with the nature and primary aim of the activities of the Armed Forces. The obligation shall not apply to contracts for the supply of military equipment as defined by Directive 2009/81/EC (Coordination of Procedures for the Award of certain Works Contracts, Supply Contracts and Service Contracts by Contracting Authorities or Entities in the fields of Defence and Security).

7. Legislative Compliance

Energy Labelling (Implementing Measures) Regulations, S.L. 427.96.

Framework for the setting of Ecodesign requirements for Energy related products Regulations, S.L.427.64.

Energy Efficiency Regulations S.L. 623.07 (Original LN 66 of 2021 and any subsequent Amendment LNs specifically The Third Schedule which details the Implementation of Article 6(1) in relation to purchasing Products, Services and Buildings by Contracting Authorities).

8. References

Nil

9. Appendices

- Appendix I – List of Products covered by the Energy Labelling Regulations
- Appendix II – List of Products covered by the Ecodesign Directive
- Appendix III – Energy Efficiency Module on ePPS
- Appendix IV – Reporting of the Third Schedule of the Energy Efficiency Regulations Template
- Appendix V – Brief Guide on the Conditionalities vis-a-vis Energy Efficiency

10. Other related policy notes published

Nil

ⁱ The Energy Efficiency Directive was transposed into National Law through Legal Notice 66 of 2021 (as amended by LN 409 of 2021) – Energy Efficiency Regulations S.L. 623.07

ⁱⁱ Contracting entities are entities which in line with S.L.601.05: (a) are contracting authorities or public undertakings and which pursue one of the activities referred to in regulations 8 to 14; (b) when they are not contracting authorities or public undertakings, have as one of their activities any of the activities referred to in regulations 7 to 13, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority. Regulations 7 to 14 relate to various activities as follows: Reg 7 – Gas and Heat. Reg 8 – Electricity. Reg 9 – Water. Reg 10 – Transport Services. Reg 11 – Ports and Airports. Reg 12 – Postal Services. Reg 13 – Extraction of Oil and Gas Exploration or Extraction of Coal or other Solid Fuels. Reg 14 – Tenders Comprising Products Originating in Third Countries.

ⁱⁱⁱ Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulation: S.L. 601.05

^{iv} Directive 2012/27/EU: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02012L0027-20200101&from=EN>

^v GPP: http://environment.gov.mt/en/decc/Documents/environment/gpp/Office_It_Equipment_V1.1.pdf

^{vi} Transposed by a Legal Notice, into the Energy Labelling (Implementing Measures) Regulations, S.L. 427.96

^{vii} Transposed by a Legal Notice, into the Framework for the Setting of Ecodesign requirements for Energy-Related Products Regulations, S.L.427.64

^{viii} Energy Star: <http://www.eu-energystar.org/products.htm>

^{ix} Regulation (EU) 2020/740: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R0740&qid=1636371845155>

^x S.L. 623.01 / L.N. 47 of 2018 : <https://legislation.mt/eli/sl/623.1/eng>

^{xi} GN on Directive 2012/27/EU: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013SC0446&from=EN>

^{xii} Directive 2010/30/EU: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32010L0030>

^{xiii} Regulation (EU) 2017/1369: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1369&qid=1636372131595>