

Subsidiary Legislation made under s.75.

**PROCUREMENT (ELECTRONIC INVOICING)
REGULATIONS 2018**

(LN.2018/290)

Commencement **20.12.2018**

ARRANGEMENT OF REGULATIONS.

Regulation

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In exercise of the powers conferred upon him by section 75 of the Public Finance (Control and Audit) Act 1977 and section 23(g)(i) of the Interpretation and General Clauses Act, and of all other enabling powers, and for the purposes of transposing into the law of Gibraltar Directive 2014/55/EU of the European Parliament and of the Council of the 16th April 2014, on electronic invoicing in public procurement, the Minister on behalf of the Government has made the following Regulations.

Title and commencement

1. These Regulations may be cited as the Procurement (Electronic Invoicing) Regulations 2018 and come into operation on the day of publication.

Interpretation

2. In these Regulations, unless the context otherwise requires:-

“contracting authority” has the same meaning as in the Procurement (Defence and Security Public Contracts) Regulations 2012, the Procurement (Concession Contracts) Regulations 2016, the Procurement (Utilities Contracts) Regulations 2016 and the Procurement (Public Sector Contracts) Regulations 2016;

“contractor” means a person who offers on the market work or works and:-

- (a) who sought, who seeks, or who would have wished, to be the person to whom a works contract is awarded; and
- (b) who is a national of a Member State and is established in Gibraltar or in a Member State;

“core elements of an electronic invoice” means the set of essential information components set out in regulation 4 which an electronic invoice must contain in order to enable cross border interoperability, including the necessary information to ensure legal compliance;

“Economic operator” has the same meaning as in the Procurement (Defence and Security Public Contracts) Regulations 2012, the Procurement (Concession Contracts) Regulations 2016, the Procurement (Utilities Contracts) Regulations 2016 and the Procurement (Public Sector Contracts) Regulations 2016;

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“electronic invoice” means an invoice that has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing;

“European standard” means a standard adopted by a European standardisation organisation and made available to the general public;

“services provider” means a person who offers on the market services and:-

- (a) who sought, who seeks, or who would have wished, to be the person to whom a services contract is awarded; and
- (b) who is a national of a Member State and established in Gibraltar or in a Member State;

“supplier” means a person who offers on the market goods for purchase or hire and:-

- (a) who sought, who seeks, or who would have wished, to be the person to whom a supply contract is awarded; and
- (b) who is a national of a Member State and established in Gibraltar or in a Member State;

“syntax” means the machine readable language or dialect used to represent the data elements contained in an electronic invoice and which comply with the European Standard on electronic invoicing;

“the Procurement Regulations” means all the following regulations collectively:-

- the Procurement (Defence and Security Public Contracts) Regulations 2012.
- the Procurement (Public Sector Contracts) Regulations 2016.
- the Procurement (Concession Contracts) Regulations 2016.
- the Procurement (Utilities Contracts) Regulations 2016.

Scope of regulation

3.(1) These Regulations shall apply to electronic invoices issued by an Economic Operator as a result of the performance of any contract for goods,

works or services awarded under or pursuant to the provisions of any one or more of the Procurement Regulations.

(2) These Regulations shall not apply to electronic invoices issued as a result of the performance of contracts falling under the provisions of the Procurement (Defence and Security Public Contracts) Regulations 2012 where the procurement and performance of the contract are declared to be secret or must be accompanied by special security measures and it has been determined that the essential interests concerned cannot be guaranteed by less intrusive measures.

Core elements of an electronic invoice

4. For the purposes of this Regulation and subject to the provisions of Regulation 5(2) an electronic invoice shall have the following minimum core elements:-

1. process and invoice identifiers;
2. the invoice period;
3. the Economic Operator's information;
4. the contracting authority or buyer's information;
5. payee information;
6. the Economic Operator's tax representative information;
7. contract references;
8. delivery details;
9. payment instructions;
10. allowance or charge information;
11. invoice line item information;
12. invoice totals;
13. if applicable, VAT breakdown.

Receipt and processing of electronic invoices

5.(1) A contracting authority must have the necessary protocols, procedures, equipment, tools and devices to securely receive and process any electronic invoice submitted by an Economic Operator in performance of any contract for goods, works or services awarded under or pursuant to the Procurement Regulations.

(2) The electronic invoice submitted by the Economic Operator must:-

- (a) comply with the requirements of the European Standard on Semantic Data Model of the Core Elements of an Electronic Invoice and must in any event meet the minimum requirements of Regulation 4; and

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- (b) use a syntax which is on the list published in the Official Journal of the European Union and complies with the European Standard referred to in Regulation 5(2)(a).

Data protection

6.(1) Subject to sub-regulation (2) nothing in these Regulations shall permit the processing of personal data in contravention of the provisions of the Data Protection Act 2004.

(2) Where personal data is transmitted or received in an electronic invoice the person transmitting, or as the case may be, receiving that invoice is responsible for observance of all applicable laws, and in particular must not use the invoice other than for the purposes for which it was intended or for purposes compatible with that intention.