

# **OECD Public Governance Reviews**

# **Public Procurement in Malta**

**BUILDING CAPACITY AND MANAGING RISKS** 





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# **Foreword**

The sheer size of public procurement, representing approximately 12% of gross domestic product (GDP) in OECD countries, 14% in European Union economies and 6% in Malta, makes it an important economic activity and a crucial pillar of service delivery. In recent years, the resilience of public procurement systems has been tested by several shocks, including the COVID-19 pandemic. Prior to the pandemic, Malta was a fast-growing open economy of the European Union that achieved a robust economic prior to the pandemic. Yet, the Maltese economy registered a severe contraction during the pandemic due to its economic dependence on the tourism industry.

Used strategically, public procurement can contribute significantly to building a more resilient and sustainable economy and society. The COVID-19 pandemic helped reshaping the way governments invest public money, in terms of sustainability and long-term impact. Given the vulnerabilities revealed by the COVID-19 crisis, it is important that public procurement systems not return to "business as usual", but rather transition to a more resilient "new normal". This is particularly relevant since unforeseen external shocks, such as Russia's war of aggression against Ukraine, are increasingly affecting our globalised economies, and thus the provision of public services and the well-being of citizens.

Malta recognises that public procurement can support the government's broad strategic goals for economic growth and recovery. The Department of Contracts (DOC) within the Ministry of Finance and Employment has been strengthening the regulatory function of its public procurement system to make it more efficient and effective and achieve more value for money. After a first cooperation with the OECD in 2018 that aimed at rethinking and re-engineering DoC's public procurement processes, Malta requested additional support from the Organisation to enhance its procurement system in key areas including: i) the organisational structure of the public procurement system, ii) internal processes to carry out public procurement procedures, iii) the implementation of a risk based approach in procurement activities, iv) the strategic use of public procurement, v) the professionalisation of the procurement workforce, and vi) implementing key performance indicators and using a data-driven approach to assess the efficiency and effectiveness of the public procurement system.

This report is part of the project "Strengthening the public procurement system through advancing the professionalisation of the public procurement workforce and developing risk and performance measurement" conducted in Malta that was funded by the European Union via the Technical Support Instrument, and implemented by the OECD, in co-operation with the Directorate-General for Structural Reform Support of the European Commission.

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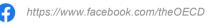
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# **Executive summary**

In Malta, public procurement accounted for approximately 6% of GDP in 2019 and it is recognised as a strategic instrument for achieving government policy goals, including recovery from the COVID-19 pandemic.

The Department of Contracts (DoC) within the Ministry of Finance and Employment is responsible for the administration of procurement procedures. In addition to procurement policymaking, the DoC carries out *ex ante* control by vetting tenders. In recent years, the DoC has reformed the public procurement system, but the system still faces significant challenges.

# Key findings and policy recommendations

# Improving the organisational structure of public procurement

Core and supplementary procurement functions are mostly addressed in Malta within the DoC. Some gaps have been identified in the advisory and operations support functions and the professionalisation function. In addition, DoC is responsible for vetting tender documents through two directorates who are performing similar tasks: the Operations Directorate (OD) and the Sectoral procurement Directorate (SPD). The responsibility of each Directorate depends on three parameters: i) the estimated value of the procurement, ii) the procurement procedure and iii) the schedule of the public procurement regulation under which the entity is listed. The SPD value for vetting is low (EUR 10,000), which creates an administrative burden for the SPD and contracting authorities (CAs). CAs were categorised into different schedules based on their capability without detailed criteria. Furthermore, there are no formal and regular exchanges with key public procurement stakeholders. Malta could benefit from:

- Further strengthening the professionalisation of public procurement functions
- Creating a helpdesk to provide support to the users of the public procurement system
- Rethinking the organisational structure of DoC, for instance by centralising the vetting process within one directorate
- Gradually increasing the SPD value for vetting to decrease the workload and progressively restructuring the SPD by purchasing categories
- Introducing clear criteria for CAs to be assigned to each schedule; and
- Establishing formal and regular exchanges with key stakeholders of the public procurement system

### Enhancing public procurement processes

Gaps have been identified in the planning of procurement activities and in the assessment of needs and market analysis. The vetting process faces several challenges, including conflict of opinions among different vetting officials and the lack of standardised procedures between SPD (3-layer vetting system) and OD (2-layer one). In addition, the use of best price-quality ratio (BPQR) criteria is also subject to prior

approval by DoC. All increase the length and burden of the vetting process. In addition, procurement processes are not fully digitised and efficiency tools are not widely used. Therefore, Malta could benefit from:

- Asking CAs to prepare procurement plans
- Streamlining the vetting processes by i) standardising and reducing the layers of the vetting process, ii) reinforcing vetting officials' capacity to ensure coherent feedback and, iii) setting minimum and maximum timelines for vetting processes
- Promoting the use of BPQR criteria in tenders for different procurement categories and gradually removing DoC's approval
- Further digitising all procurement processes by introducing, for instance, e-signature and making the use of ePPS mandatory for some procurement actions such as challenging procurement decisions
- Promoting the use of efficiency tools such as centralised procurement, framework agreements and dynamic purchasing systems

# Implementing a risk-based approach in public procurement

Risk management practices in public procurement are not deeply rooted in Malta. The country has not yet developed a dedicated strategy and tools in this area. Malta could benefit from:

- Developing a national public procurement risk management strategy covering all CAs
- Developing risk management tools to be used by CAs.

# Strengthening the strategic use of public procurement

Malta has taken steps to promote green public procurement (GPP) since 2011 through the development of GPP National Action Plans (NAP). In October 2021, Malta launched the 2<sup>nd</sup> NAP, which is more ambitious than the 1<sup>st</sup> NAP and could face implementation challenges. It is critical to support and monitor the 2<sup>nd</sup> NAP implementation. Public procurement for innovation (PPI) is still underused due to the lack of an enabling environment including institutional frameworks, strategies, and capability. Therefore, Malta could benefit from:

- Monitoring the implementation of the 2<sup>nd</sup> NAP to identify potential bottlenecks.
- Increasing the GPP capability through providing improved and updated guidelines and training that could gradually be made mandatory.
- Strengthening the enabling environment of PPI by i) assigning the leading role to one entity and
  ensuring co-ordination with other stakeholders, ii) developing a comprehensive strategy to promote
  PPI, and iii) reinforcing the capability-building system of PPI by developing a practical manual;
  establishing a competence centre for innovation procurement; and ensuring effective monitoring of
  PPI through ePPS.

# Reinforcing the capability of the public procurement workforce

Malta has been professionalising the public procurement workforce through various initiatives; including the classification of four job profiles for the public procurement career stream, a pilot programme on Recognition for Prior Learning, and the organisation of training. However, the capacity of the procurement workforce is still a challenge in Malta. The country could benefit from:

- Developing a public procurement professionalisation strategy
- Reinforcing the training system based on the ProcurComp<sup>EU</sup> self-assessment survey

- Offering training to procurement officials and to key stakeholders within CAs
- Developing a national certification framework aligned with the training system and the competency matrix to be developed by adapting ProcurComp<sup>EU</sup> matrix to the local context

# Developing a comprehensive measurement framework in Malta

There is no comprehensive public procurement measurement framework implemented by the DoC. Many CAs do not see the benefits of measuring the performance of public procurement. Malta could benefit from:

- Developing a comprehensive measurement framework for public procurement and raising awareness of its benefits
- Improving data availability and quality in ePPS.

# 1 Improving the organisational structure of public procurement

This chapter provides an overview of the institutional framework of the public procurement system in Malta. It assesses the existence of the core and supplementary functions of the public procurement system and provides an overview of the institutional changes within the Department of Contracts (DoC) and the roles of each Directorate within the DoC in particular for the administration of public procurement processes. The Chapter also discusses the three categories (Schedules) of contracting authorities defined by the Maltese procurement framework and how belonging to a category impact procurement processes. Lastly, the chapter examines the collaboration among key stakeholders of the public procurement system in Malta.

# 1.1. Strengthening key public procurement functions in Malta

International good practices promote the need for coherent and stable institutional, legal and regulatory frameworks regardless of the policy area. That is also the case for public procurement where efficient and functional systems benefit from this approach. The Recommendation of the OECD Council emphasizes that these frameworks should be as clear and simple as possible (OECD, 2015[1]).

The functions, structures, status within the government, and capacity of central public procurement bodies are key elements to consider for the well-functioning of a public procurement system. Indeed, key stakeholders in public procurement systems rely extensively on the capability of public procurement bodies to support the development of national procurement systems (OECD-SIGMA,  $2016_{[2]}$ ). To make the public procurement system work at all levels, a set of functions needs to be performed at the central level. It is possible to identify two sets of functions: core functions and supplementary ones. On the one hand, core functions usually comprise primary policy and legislative functions, secondary policy and regulatory functions, international coordination functions, and monitoring and compliance assessment functions. On the other hand, supplementary functions include the remaining functions such as advisory and operations support, publication and information, professionalisation and capacity strengthening (OECD-SIGMA,  $2016_{[2]}$ ).

# 1.1.1. Core functions: the need to strengthen the monitoring functions

Core functions should be covered at the central government level. In Malta, the primary procurement policy and legislative functions are covered by the Department of Contracts (DoC) within the Ministry of Finance and Employment, more particularly by the Directorate for Procurement Policy and Quality Assurance (DPPQA). This directorate is responsible for public procurement policy development and implementation and for ensuring compliance with legislative and administrative requirements. It is also responsible for the secondary policy and regulatory functions. The international coordination functions are covered by the DoC. Indeed, the DoC is the body representing Malta on public procurement matters in different international organisations and fora such as the working groups on Public Procurement organised by the European Commission and the Organisation for Co-operation and Development (OECD). However, as described in detail in Chapter 6, the monitoring of public procurement activities plays a key role in the wellfunctioning of the procurement system. It supports policy makers to assess the way in which the development and functioning of the system as well as the desired (targeted) state of play has been achieved (OECD-SIGMA, 2016[2]). Monitoring may include the preparation of an annual report to the government or the parliament on the functioning of the national public procurement system and the collection of statistical and other information on the performance and efficiency of the public procurement system. The monitoring function is partially covered by DoC. In fact, despite the current lack of a comprehensive set of available performance indicators on public procurement in Malta, the DPPQA through the Compliance and Monitoring Unit, prepares every three years a "Procurement Monitoring Report" to the European Commission. Additionally. This gap should be closed in the near future as the DoC is committed to developing performance indicators to measure the efficiency and effectiveness of the organisational structure and public procurement processes (see Chapter 2). The compliance assessment includes methods and proceedings that are applied in order to detect and remedy irregularities in public procurement. The compliance assessments are performed by different departments within the DoC (the Operations Directorate (OD), the DPPQA and the Sectoral Procurement Directorate (SPD). For instance, the OD and SPD are in charge of approving procurement processes and documents in specific cases (see section 1.2.2). Table 1.1. provides a summary of the mapping of core functions in Malta. In this context, Malta should continue its efforts to reinforce the monitoring function of the DoC.

Table 1.1. Mapping of core functions in Malta

| Central Public Procurement<br>Category and Function | Description   | Addressed in<br>Malta                  |
|---|---|--|
| Primary policy and legislative functions            | Establishing the overall legal framework for public procurement through drafting public procurement legislation   | Yes                                    |
| Secondary policy and regulatory functions           | Regulations formally adopted by government or provision of tools to support primary law implementation  | Yes                                    |
| International co-ordination functions               | Participation and contribution in international regulatory activities, EU advisory committees and working groups, and acting as a national point of reference on procurement procedures | Yes                                    |
| Monitoring and compliance assessment functions      | Monitoring and review of public procurement system and method in line with policy   | Partially (resolved in the near future |

Source: Based on information provided by DoC

# 1.1.2. Supplementary functions: Reinforcing the advisory, operations support and professionalisation functions

Supplementary functions cover all the other functions that are not included in the core functions. Nevertheless, their existence is no less key than the core functions for the well-functioning of the procurement system (OECD-SIGMA, 2016<sub>[21</sub>). The advisory and operations support functions are crucial to support both contracting authorities and economic operators in conducting public procurement processes in compliance with the regulatory framework (OCDE, 2019[31]). Advisory and operations support functions include the following: organisation of a help-desk function to provide legal and professional support to contracting authorities and economic operators on a daily basis; development of guidance systems and operational tools for managing all phases of the procurement process, e.g. methodologies for tender evaluation; and issuance of publications, commentaries and interpretative communications on various aspects of public procurement (OECD-SIGMA, 2016[2]). This function is partially addressed in Malta primarily in relation to IT support on the ePPS, and the provision of guidance notes by DoC. However, some gaps exist in relation to help-desk for legal and professional support. Based on discussions with selected contracting authorities, this gap results in individuals trying alternative means to contact DoC to seek assistance. In order to improve service and enhance knowledge sharing in a more structured way, Malta should consider implementing a help-desk to provide support to the users of the public procurement system.

As highlighted in the OECD Recommendation on public procurement, transparency is key for the well-functioning of the public procurement system, and it is also central to promoting good governance in the public sector. The recommendation also highlights the role of Information and communication technologies to ensure transparency and access to public tenders, increasing competition (OECD, 2015[1]). The implementation of transparency relies mainly on the publication and information functions which aim at publishing and disseminating public procurement information accessible to all. In Malta, these functions are covered by the DoC. Public procurement information is disseminated through the DoC website or the e-procurement platform ePPS (Department of Contracts, 2022[4]). Regarding the professionalization and capacity-building functions in procurement, the DoC and the People and Standards Division within the Office of the Prime Minister (OPM) are partially in charge of these functions. Within DoC, DPPQA is formally in charge of the coordination of training on the new Public Procurement Procedures for all ministries on a national level, in conjunction with Institute for Public Service (IPS). The OPM has worked in partnership with DoC towards the recognition for prior learning (RPL) of the public procurement function (see Chapter 6). However, the professionalisation function goes beyond training. It includes for instance, the regular organisation of conferences and seminars of an informative nature, the facilitation of

independent teaching and research in universities on public procurement. In addition, these functions should not be limited only to central government. Therefore, Malta should consider further strengthening the professionalisation and capacity building functions on public procurement. Table 1.2. provides a summary of the mapping of the main supplementary functions in Malta.

Table 1.2. Mapping of supplementary functions in Malta

| Central Public Procurement Category and Function | Description   | Addressed in DOC Structure |
|--|---|----------------------------|
| Advisory and operations support functions        | Measures to support contracting authorities and economic operators in their procurement operational tasks. This includes a help-desk for legal and professional support, and guidance systems   | Partially                  |
| Publication and information functions            | Publication and dissemination of public procurement related information. This includes contract notice issuance through the ePPS, the publication online of different documents, including circulars, procurement policy notes and guidance notes | Yes                        |
| Professionalisation and capacity strengthening   | Strengthening the capacity of employees in the public procurement system  | Partially                  |

Source: Based on information provided by DoC

# 1.2. Reinforcing the public procurement institutional framework in Malta

# 1.2.1. An evolving public procurement institutional framework in Malta

In Malta, the public procurement system has been strongly reformed in the past five years. The main reform started in 2016 with the transposition of the European Public Procurement Directives 2014/24, the Concession Contracts Directive 2014/23 and the Utilities Contracts Directive 2014/25 (OECD, 2019[5]).

In addition to the regulatory improvements to the public procurement system, the institutional framework in Malta has also been reformed and recently shifted from a decentralised approach through the Ministerial Procurement Units (MPUs) established in 2016 (OECD, 2019<sub>[5]</sub>) to a more centralised organisational structure when MPUs were moved in 2021 to the Sectoral Procurement Directorate (SPD) within the Department of Contracts (DOC) under the Ministry of Finance and Employment (Legal Notice 56/2021 of the 15<sup>th</sup> March 2021). With these changes, the DoC is currently comprised of four directorates: the SPD, the Directorate of Operations (OD), the Directorate Procurement Policy and Quality Assurance (DPPQA), and the Administration Directorate (AD). Both the SPD and the OD are in charge of administering public procurement processes (see Box 1.1).

# Box 1.1. The roles of OD and SPD when administrating public procurement processes

Both the Directorate of Operations (OD) and the SPD hold several key responsibilities related to the oversight of procurement processes of Contracting Authorities (CAs), including:

- vetting and approving procurement documents,
- publishing and managing the publication process
- coordinating evaluation reports
- · issuing letters to successful and unsuccessful bidders,
- coordinating signatures and contract dissemination (for OD) and,
- issuing Dynamic Purchasing Systems and Framework Agreements on behalf of CAs.

The SPD is in charge of administering procurement procedures published under open or restricted procedure of contracting authorities listed under Schedule 16 of the Public Procurement Regulations 2016 whose estimated value is between EUR 10 000 and EUR 750 000 excluding VAT, whilst the OD administers the rest of the open or restricted procurement with an estimated value exceeding EUR 750 000 excluding VAT. Additionally, the OD administers (i) all procurement for contracting authorities listed under Schedule 2 which equals or exceeds the estimated value of EUR 140 000, and (ii) any other procurement procedure which is not open or restricted and which estimated value is above EUR 140 000.

Source: Responses of the DoC to the OECD questionnaire

The Public Procurement Regulations (PPR) Subsidiary Legislation 601.03, in particular Legal Notice 56/2021 of the 15<sup>th</sup> March 2021 (Legizlazzjoni Malta, 2022<sub>[6]</sub>), foresees three categories of contracting authorities: Schedule 2, Schedule 3 and Schedule 16 (DoC Malta, 2016<sub>[7]</sub>). Depending on the respective Schedule, the procurement volume and the category of procurement procedures, are either administered by the contracting authorities, the SPD or the OD:

- Schedule 2 refers to contracting authorities falling within the competence of the OD for all
  procurement whose estimated value is equal to or exceeds EUR 140 000 excluding VAT.
  Procurement estimated beneath this threshold are administered by contracting authorities.
- Schedule 3 of the PPR provides a list of contracting authorities which shall administer their own public procurement procedures (without the involvement of the SPD or the OD).

Schedule 16 provides a list of contracting authorities involving the SPD for open and restricted tenders with an estimated value ranging between EUR 10 000 and EUR 750 000 excluding VAT. When the procurement estimated value does not exceed EUR 10 000 excluding VAT, contracting authorities administer their own procurement. In addition, open or restricted tenders above EUR 750 000 are administered by the OD. The OD also administers procurement procedures which are not open or restricted tenders and with an estimated value above EUR 140 000 (Design Contest, Innovation Partnership, Competitive Dialogue, Competitive Procedure with Negotiations and Negotiated Procedures). Table 1.3. provides a summary of the different categories for processing public tenders in Malta as of 2021.

Table 1.3. Categories for processing public tenders in Malta (as of March 2021)

| Schedule/ Entity responsible for managing the public tenders | Schedule 16                               | Schedule 2                  | Schedule 3 |  |
|--|---|-----------------------------|------------|--|
| Contracting authorities                                      | < EUR 10 000                              | < EUR 140 000 Any amount    |            |  |
| Contracting authorities                                      | < EUR 140 000*                            | CON 140 000                 | Any amount |  |
| SPD (DoC)  | <b>SPD (DoC)</b> EUR 10 000 – EUR 750 000 |                             | N/A        |  |
| Operations Directorate (DoC)                                 | > EUR 750 000**                           | 00** = or > EUR 140 000 N/A |            |  |
| Operations Directorate (DOC)                                 | = or > EUR 140 000***                     | - 01 > EUR 140 000          | IN/A       |  |

Note: \* which are not Open or Restricted Procedure (after prior approval of the Operations DOC), \*\* Open or Restricted Procedures, \*\*\* not Open or Restricted Procedure. All the thresholds mentioned in this table are excluding VAT.

The EUR 140 000 threshold in 2022 corresponds to EUR 139 000 in the previous years  $\,$ 

Source: the PPR

These schedules determine the scope of actions of the SPD, the OD, and the contracting authorities (CAs). There were two main changes that significantly influenced the capacity of the SPD. First, within the Subsidiary Legislation 601.03, there are currently 7 contracting authorities listed under Schedule 2, while 227 contracting authorities are listed under Schedule 16. Second, particularly through Legal Notice 56/2021, the regulatory changes increased the threshold for the SPD to administer tenders. While in the past the 7 MPUs) used to administer only open tenders with a procurement value ranging between EUR 10 000 to 250 000, the new thresholds for SPD to administer open and restricted tenders are ranging now from EUR 10 000 to 750 000. This results in both a higher number of CAs under the SPD scope of action and a higher number of procedures.

The establishment of the SPD (and integration of the former MPUs) with widened procurement thresholds has contributed to alleviate and lighten OD's processes. Figure 1.1 provides a description of procurement processes under the previous and actual system processes. Notwithstanding these changes, the number of staff within SPD did not change. Therefore, these changes increased the SPD's workload and raised many challenges in terms of capacity planning and human resources. In addition, the SPD faces many difficulties to recruit capable public procurement workforce, leading to many vacant positions within the directorate. This can affect the way SPD performs and conducts its activities and ultimately negatively impact the smooth and efficient running of the public procurement processes. Therefore, the government of Malta should consider reinforcing the capacity of the SPD to deliver its mandate. In addition, many stakeholders mentioned that the SPD threshold for administering public procurement processes is too low (EUR 10 000) and might impact significantly the administrative burden for both the SPD and contracting authorities falling under its remits. Therefore, Malta should consider increasing gradually the SPD threshold.

Categories for processing public Categories for processing public tenders until March 2021 tenders since March 2021 Schedule 2 Schedule 16 Schedule 3 Schedule 16 Schedule 2 Schedule 3 Operations Directorate EUR 750 000 Operations Directorate Operations Operations Operations Directorate Directorate Directorate EUR 250 000 SPD Contracting Contracting Open or r Authoritie MPU for decentralised **FUR 144 000** Ministries EUR 139 000 Non decentralised Contracting Ministries Authorities **EUR 10 000 EUR 10 000 Contracting Authorities Contracting Authorities** Non decentralized Operations Contracting SPD/MPUs ministries Directorate Authorities

Figure 1.1. Public procurement processes under the actual and the previous system

Source: Based on the PPR and (OECD, 2019[5])

Note: The EUR 140 000 threshold in 2022 corresponds to EUR 139 000 in the previous years

In addition, currently the SPD is comprised of 8 units mirroring the sectorial organisation of the former MPUs (see Table 1.4). According to DoC, each SPD unit has to administer tenders for a certain number of contracting authorities and the allocation of contracting authorities under each SPD unit was set taking into account the related workload. Data provided by the SPD shows that the number of contracting authorities ranged from 18 to 59 in 2021. The estimated number of procedure ranges between 66 and 271. Some contracting authorities launched more procedures for certain procurement categories. For instance, data provided by the SPD shows that the SPD units 1 and 4 are well experienced in public works. The SPD mentioned that in practice, the different units are supporting each other when they face a higher workload. Given the organisational changes implemented in the recent years and the shift from decentralised MPUs to one central directorate, the current sectoral structure of the SPD could evolve in the long run by considering organising progressively the SPD by purchasing categories. This will strengthen the effectiveness of SPD's organisational structure and improve overall coordination and alignment with DoC operations.

Table 1.4. Estimated data on SPD's 8 units in 2021

|       | SPD   |       |               |  |                                  |
|-------|---|-------|---------------|--|----------------------------------|
|       | Units   | Staff | Number of CAs | Number of<br>Procurement<br>procedures | Total Volume in million<br>(EUR) |
|       | Director's Office                               | 2     | N/A           | N/A                                    | N/A                              |
| SPD 1 | Education and<br>Employment                     | 7     | 26            | 271                                    | 108,9                            |
| SPD 2 | Home Affairs and Tourism                        | 6     | 34            | 66                                     | 22,9                             |
| SPD 3 | Gozo  | 3     | 18            | 132                                    | 33                               |
| SPD 4 | Inclusion, Equality and Social Welfare          | 4     | 27            | 121                                    | 26,2                             |
| SPD 5 | Justice, Culture<br>and Regional<br>Affairs     | 4     | 35            | 114                                    | 25,3                             |
| SPD 6 | Transport and Energy                            | 9     | 28            | 112                                    | 38,3                             |
| SPD 7 | Finance, Economy,<br>OPM and Foreign<br>Affairs | 5     | 59            | 76                                     | 6,7                              |
| SPD 8 | Environment,<br>Agriculture and<br>Fisheries    | 6     | 19            | 239                                    | 27,5                             |

Source: Data collection from SPD in 2021

In addition, as described in Box 1.1, the SPD and the OD are performing similar tasks when it comes to administering public procurement processes. The existence of these two directorates with similar tasks is related to historical reasons, as the SPD has replaced the former MPUs that were within the ministries and imported many of their features and functions. In this context, Malta could consider rethinking the organisational structure of the DoC in the long term and exploring the possibility to centralise the tasks related to administering public procurement processes within one directorate.

# 1.2.2. Different processes for entities belonging to different schedules

As described in section 1.2.1, contracting authorities are organised under different schedules. Discussions with the DoC highlighted that the categorisation of contracting authorities under these three schedules aims at reinforcing the capacity of some contracting authorities (in particular those under schedule 16 and 2) and at ensuring that procurement documentation is compliant with the regulatory framework. Indeed, the administration of procurement procedures by the SPD or the OD is considered as an ex-ante control measure but has clear implications for contracting authorities in terms of administrative burden.

As of 2021, entities are by default categorised under Schedule 16, rather than Schedule 2 of the PPR. In fact, the majority (227) of contracting authorities are listed under Schedule 16, when compared to 7 under schedule 2 and 8 contracting authorities under schedule 3 respectively. Figure 1.2. summarises the distribution of contracting authorities in Malta for each schedule category. Since the creation of SPD in March 2021, and until December 2021, OECD survey revealed that the value of procedures administered by OD are higher than the ones administered by SPD with procedures estimated to EUR 856 million for OD between March and December 2021 against EUR 92 million for SPD. This is mainly due to the high thresholds applicable for the tenders administered by the OD. Despite the procedures value difference,

SPD administers a volume of procedures two times higher than OD, with 71% of Schedule 16 contracting authorities' procedures administered by SPD and 29% under OD remit.

Schedule 3
3%

Schedule 16
94%

Figure 1.2. Share of contracting authorities under each schedule in Malta

Source: the PPR

The categorisation of the different contracting authorities under each Schedule is based on the procurement capacity of each individual contracting authority. However, no detailed criteria have been communicated. Some contracting authorities mentioned that this has led to a situation of confusion as they were administering their own procurement procedures in the past. With the new categorisation, they must follow new processes involving SPD and/ or OD without clearly understanding the criteria for being under Schedule 2 or 16. In this context, Malta could consider introducing criteria for each Schedule for transparency and fairness purposes amongst the different contracting authorities. A system should be implemented based on compliance with key organisational performance indicators and criteria in order to shift from one schedule to another (see Chapter 6).

### 1.2.3. Enhancing cooperation with other key public procurement actors

The OECD Recommendation of the Council on public procurement highlights the need to foster transparent and effective stakeholder participation (OECD, 2015<sub>[1]</sub>). The benefits of collaboration among the various stakeholders involved in public procurement are well recognised, in particular when reforming the public procurement system (OECD, 2019<sub>[8]</sub>). Indeed, it enables the identification of bottlenecks and areas to improve but also to strengthen trust in the system. Stakeholders of the public procurement system may include contracting authorities, business representatives, line ministries in charge of specific policies, review bodies, oversight bodies such as supreme audit institutions (SAIs) and the entities in charge of fighting corruption and enhancing competition, amongst others (OCDE, 2019<sub>[3]</sub>).

The DoC has regular exchanges with contracting authorities; however, discussions with contracting authorities highlighted that those exchanges do not follow a standard process and might take different forms with different degrees of formality (phone calls, emails, etc.). DoC should therefore consider organising regular discussions with contracting authorities using standard and better documented processes. For instance, since 2013, the Department for Public Procurement of the State in France (Direction des achats de l'Etat) created inter-ministerial teams for each purchasing category with

representatives from different ministries. This enables the Directorate for the procurement of the State to have regular discussions with contracting authorities on challenges and issues experienced in specific procurement categories (see Box 1.2) (Direction des Achats de l'État, n.d.[9]). Regarding the private sector, the DoC has regular exchanges with the Chamber of Commerce to understand the issues faced by economic operators in relation to public procurement in the country. For instance, discussions between the DoC, the Malta Chamber of Commerce and other stakeholders led to the development by the Chamber of a report on public procurement reform aiming at identifying core challenges faced by economic operators when dealing with public procurement in Malta and proposing relevant recommendations (The Malta Chamber, 2021[10]). According to the DoC, these recommendations were mostly addressed and implemented.

Oversight and control of the procurement cycle are essential in supporting accountability and promoting integrity in the public procurement process (OECD, 2019[8]). When auditing contracting authorities, SAIs assess different areas and processes including public procurement. Based on their findings, SAIs provide concrete recommendations to public entities. Therefore, SAIs have a wealth of information on incompliances, irregularities and areas to improve in the public procurement system. In Malta, the role and functions of the National Audit Office (NAO) are defined by Section 108 of the Constitution of Malta and the Auditor General and National Audit Office Act of 1997 (NAO, 2014[11]). The NAO performs both compliance and performance audits. NAO is responsible for monitoring the accounts and performance of all public authorities and private entities in which the government owns more than 51% of shares (OECD, 2019[5]). The NAO issues an Annual Report on Public Accounts providing many comments and recommendations regarding public procurement. In addition to the NAO, the Internal Audit and Investigation Division (IAID) is in charge of carrying out internal and financial investigations.

Discussions with contracting authorities highlighted that following an audit the NAO provides them with concrete findings and recommendations to improve their procurement practices. In addition, the yearly report of the NAO includes dedicated analysis of audited entities' compliance with the public procurement regulatory framework and various recommendations (NAO, 2020[12]). However, there are no regular discussions between the DoC, the NAO or the IAID on the public procurement system. However, the institutions collaborate on specific procurement audits and activities such as the activities of the National anti-fraud and corruption committee.

In addition to the NAO, there are no formal and regular exchanges on public procurement reforms between the DoC and other key stakeholders such as the public procurement review body – the Public Contracts Review Board (PCRB), the Permanent Commission against Corruption, and Malta Competition and Consumer Affairs Authority. Exchanges with PCRB are key as the entity helps guarantee effective enforcement of public procurement rules under the EU Remedies Directives (European Commission, 2019<sub>[13]</sub>). As developed in Chapter 3, public procurement is a high-risk area, which includes integrity and collusion risks. Discussions with entities in charge of corruption and competition issues could help further understand the extent of the issues in the country and findings ways of working together on the development of mitigation measures.

Moreover, as highlighted in Chapter 4, public procurement can be used as a strategic tool to advance the implementation of various policy objectives. This requires effective communication and collaboration between the public procurement body and the line ministries, entities and agencies in charge of specific policies like the protection of the environment, gender equality, innovation or the development of small and medium sized enterprises. In Malta, the Ministry for the Energy, Environment and Enterprise (MEEE) and the DoC have been collaborating on a regular basis. However, this is not the case for other ministries and agencies like the Ministry of Economy and Industry, Malta Council for Science and Technology, Ministry for Energy, Enterprise and Sustainable Development. The limited cooperation could explain the low uptake of these policies in the public procurement field. In this context, DoC could benefit from having formal and regular exchanges with key stakeholders of the public procurement system.

# Box 1.2. Standardised processes between the French Department for Public Procurement and contracting authorities

In 2013 and 2014, the French Department for Public Procurement implemented specific teams made up of representatives mandated by each ministry and led by a lead buyer, at both the national and regional level. Their main activities are:

- i. Monitoring
- ii. Report the needs, issues, and expectations of the different ministries
- iii. Suggest inter-ministerial purchasing strategies
- iv. Identify, set up and monitor purchasing projects
- v. Facilitate public procurement processes and their execution

The special teams cover many key purchasing categories, including postage and transport, intellectual services, IT infrastructure, telecommunications, printing solutions etc.

Source: (Direction des Achats de l'État, n.d.<sub>[9]</sub>)

# References

| Department of Contracts (2022), <i>Department of Contracts website</i> , <a href="https://contracts.gov.mt/en/Pages/Home-DepartmentOfContracts.aspx">https://contracts.gov.mt/en/Pages/Home-DepartmentOfContracts.aspx</a> (accessed on 4 February 2022).   | [4]  |
|---|------|
| Direction des Achats de l'État (n.d.), <i>Stratégie achat</i> , <a href="https://www.economie.gouv.fr/dae/strategie-achat-0">https://www.economie.gouv.fr/dae/strategie-achat-0</a> .   | [9]  |
| DoC Malta (2016), Manual of Procedures: Public Procurement Regulations, 2016.   | [7]  |
| European Commission (2019), <i>EU network of review bodies helps guarantee effective enforcement of public procurement rules</i> , <a href="https://ec.europa.eu/growth/news/eu-network-review-bodies-helps-guarantee-effective-enforcement-public-procurement-rules-2019-04-25_en">https://ec.europa.eu/growth/news/eu-network-review-bodies-helps-guarantee-effective-enforcement-public-procurement-rules-2019-04-25_en</a> (accessed on 4 February 2022). | [13] |
| Legizlazzjoni Malta (2022), Subsidiary Legislation 601.03Public Procurement Regulations, <a href="https://legislation.mt/eli/sl/601.3/eng/pdf">https://legislation.mt/eli/sl/601.3/eng/pdf</a> .  | [6]  |
| NAO (2020), Annual Audit Report by the Auditor General Public Accounts, <a href="https://nao.gov.mt/en/recent-publications">https://nao.gov.mt/en/recent-publications</a> .   | [12] |
| NAO (2014), <i>The National Audit Office webpage</i> , <a href="https://nao.gov.mt/">https://nao.gov.mt/</a> (accessed on 4 February 2022).   | [11] |

| OCDE (2019), Revue du système de passation des marchés publics en Algérie: Vers un système efficient, ouvert et inclusif, Examens de l'OCDE sur la gouvernance publique, Éditions OCDE, Paris, <a href="https://doi.org/10.1787/49802cd0-fr">https://doi.org/10.1787/49802cd0-fr</a> .                       | [3]  |
|--|------|
| OECD (2019), <i>Public procurement in Malta Re-engineering the Department of contracts</i> , <a href="https://www.oecd.org/governance/public-procurement/publications/public-procurement-in-malta.pdf">https://www.oecd.org/governance/public-procurement/publications/public-procurement-in-malta.pdf</a> . | [5]  |
| OECD (2019), Reforming Public Procurement: Progress in Implementing the 2015 OECD Recommendation, OECD Public Governance Reviews, OECD Publishing, Paris, <a href="https://doi.org/10.1787/1de41738-en">https://doi.org/10.1787/1de41738-en</a> .  | [8]  |
| OECD (2015), <i>OECD Recommendation of the Council on Public Procurement</i> , <a href="https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0411">https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0411</a> .   | [1]  |
| OECD-SIGMA (2016), <i>Breif 26- Organising Central Public Procurement Functions</i> , <a href="http://www.sigmaweb.org">http://www.sigmaweb.org</a> (accessed on 24 January 2019).   | [2]  |
| The Malta Chamber (2021), Report on Public Procurement Reform, https://www.maltachamber.org.mt/loadfile/c51f072e-897a-485f-9a7f-0248fbb887d5   | [10] |

# 2 Enhancing public procurement processes

This chapter discusses public procurement processes in Malta throughout the procurement cycle. It highlights the need to strengthen procurement planning with a focus on procurement plans, and needs and market analysis. It also reviews procurement processes for open tender and highlights the need to simplify the vetting process, to further use multiple award criteria, and to improve processes for the tendering and contract management phase with a focus on the digitalisation of processes. Lastly, the chapter discusses the use of efficiency tools in Malta, with a focus on framework agreements, dynamic purchasing systems and centralisation schemes.

# 2.1. Strengthening public procurement planning

# 2.1.1. Preparing and publishing procurement plans

Public entities have different mandates contributing to provide public services to citizens and businesses. To deliver on their mandate, those entities require the adequate human capital and the procurement of goods, services and public works. Therefore, the strategic planning of each entity is closely linked with procurement planning (OECD, 2021[1]). Procurement planning has two key benefits: i) ensuring a better management of time and resources for all stakeholders including the procurement departments within contracting authorities and the DoC (for entities under schedule 2 and 16) and ii) improving market engagement by providing economic operators with enhanced visibility on upcoming procurement opportunities (when the procurement plans are published), therefore increasing access to public tenders and ultimately promoting more competition. Discussions with contracting authorities in Malta highlighted the lack of strategic planning at the entity level and the lack of alignment and coordination with procurement planning, when available.

Procurement planning is formalised using procurement plans which usually include key information such as the procurement category, the estimated value, the procurement procedure, the estimated launch timeline, etc. (see Box 2.1). In some countries, such as Croatia and Latvia (European Commission, n.d.[2]), the preparation and publication of procurement plans is mentioned in the regulatory framework or in procurement guidelines, which is not the case of Malta and other European Union countries. Making better use of procurement planning was already mentioned as key area of improvement in the previous OECD assessment (OECD, 2019[3]). In Malta, discussions with stakeholders highlighted that the preparation of procurement plans is not a widespread practice. Only a few contracting authorities interviewed mentioned the preparation of an annual procurement plan that was requested by the SPD unit in charge of administering their tenders. The main benefit of such practice was to provide a better visibility for both the contracting authority and the SPD unit on the workload throughout the year. However, requesting procurement plans is not a homogeneous practice across the SPD units and DoC. Interviewed procurement officials recognise the benefits of such practice but mentioned challenges to collect data and information from the technical departments. Aware of those benefits, the DoC is working on regulatory changes to request procurement plans from contracting authorities.

In addition to the gaps related to the preparation of procurement plans, issues also exist regarding the publication of procurement plans which significantly decreases the benefits of such practice: on the one hand contracting authorities are not providing visibility to the market on upcoming procurement opportunities, and on the other hand it impacts the quality of procurement plans as well the accountability of contracting authorities. The need to publish procurement plans was confirmed by the 2021 report of the Malta Chamber of Commerce that reveals that 89% surveyed economic operators consider that contracting authorities should disclose their procurement plan in advance<sup>1</sup> (The Malta Chamber, 2021<sub>[4]</sub>). This report also highlights that Malta Information Technology Agency – MITA is the only organisation that publishes on its website key information for the market. Therefore, in addition to reinforcing the strategic planning at the entity level, Malta should continue its efforts in order to integrate in the regulatory framework provisions related to the development and publication of procurement plans. These procurement plans could be published in the e-procurement system ePPS and in the entities' websites. To streamline the process, the DoC should consider developing a procurement plan template to be used by all contracting authorities (Schedule 2, 3 and 16).

# Box 2.1. Key information included in procurement plans

Procurement planning is defined as a process carried out by contracting authorities to plan purchasing requirements for a defined period. Procurement plans usually include:

- Details on the stakeholders involved in the preparation of the plan, in terms of roles, department/s and any necessary sign-offs, including any other stakeholders consulted during the process
- Description of procurement requirements divided by the respective category; supplies, services, works.
- Respective section/department requiring the procured goods (if relevant) and any areas affected by the procurement needs
- Estimated budget and project implementation deadlines
- Strategy including established timelines for expected award, delivery or implementation
- Action Plan delineating key tasks to be completed by each identified stakeholder, with timeframes for completion. This may also incorporate the approach the project team will adopt to select the product/s or service together with the procurement type/procedure and any respective selection criteria

Source: (SIGMA, 2015[5])

To further engage the market, it could be beneficial to engage and inform the private stakeholders in advance. This is particularly relevant for complex and/or strategic procurement operations. In line with the European procurement directives and international good practices, the PPR provides the possibility to publish prior information notice (PIN). A PIN can be published up to 12 months ahead of the estimated publication of the tender and includes at least basic information regarding the goods or services to be purchased (EU Parliament and Council, 2014[6]). In Malta, the use of PINs is not a widespread practice. Between January 2020 and March 2022, only 8 PINs have been published (European Commission, 2022[7]). The DoC should consider raising the awareness of contracting authorities to the existence of such practice and its benefits. It could also promote using the PIN in selected tenders as pilots in order to demonstrate the value in its use.

# 2.1.2. Reinforcing needs and market analyses in contracting authorities

The information reflected in procurement plans relies on a sound needs analysis and market analysis. Indeed, those analyses reflect the first steps of the public procurement process. Their impact goes beyond the sound preparation of procurement plans, as it impacts the overall efficiency and success of public procurement operations (OECD, 2021[1]).

A needs analysis refers to the identification of end-users needs. It is recommended to follow a functional and performance-based approach meaning identifying the performance, functionalities, quality and quantity of the solution required. It should not be oriented towards products, services and brands available in the market. In Malta, based on discussions with contracting authorities, needs analysis are not conducted systematically. When conducted, they are mainly performed by the technical departments within contracting authorities (79% of surveyed contracting authorities).

To understand the extent to which the market can meet the identified needs, the needs analysis process should go hand in hand with a sound market analysis (OECD, 2021[1]). A sound market analysis is key to understand the characteristics, capacity and capability of the supply market and their capacity to respond to priorities and policy objectives of the procuring entity. In Malta, similarly to needs analysis, market analysis is mainly performed by technical departments within contracting authorities (71% of surveyed

contracting authorities). Answers to the OECD survey and discussions with contracting authorities highlighted that in practice conducting market analysis is limited and concerns mainly new services, works, and supplies. The weaknesses regarding market analysis have also been identified by economic operators. A survey launched by the Malta Chamber of Commerce highlighted that 61% of respondents consider the level of market research and studies made by contracting authorities prior to the issue of tenders is "inadequate" (The Malta Chamber, 2021[4]).

In addition, different tools and methods can be used to engage and collect information from the market, including the publications of procurement plans, meetings with key suppliers and preliminary market consultations (see Box 2.2). The use of these methods depends on different elements such as the complexity of the procurement and the estimated value of the contract. In Malta, DoC provides a preliminary market consultation template that includes relevant questions to consider to assess the market. However, further guidance could support entities in choosing the appropriate method. For instance, Ireland developed a specific guidance on supply market analysis (NPPPU, n.d.[8]) (Office of Government Procurement, 2020[9]).

In Malta, the gaps to the needs and market analyses are often linked to the lack of capacity of the technical departments within contracting authorities in charge of performing these tasks. In this context, the DoC should consider providing further guidance and capacity building activities to contracting authorities on these tasks.

# Box 2.2. How to engage the market and collect information on the market?

Different methodologies can be used to engage the market.

### Direct engagement mechanisms:

- Publish procurement plan.
- Organise public events to meet with suppliers.
- Meet with key suppliers (taking into account integrity risks).
- Request for quotation (RfQ)/questionnaires.
- Publish Prior Information Notices (PINs).

# Getting information from third parties

- Commission a consultant (public and transparent selection).
- Use market analysis or sector study reports published by specialised companies or trade unions.
- Consult other contracting authorities with experience in similar procurement.

Source: (OECD, 2020[10])

# 2.2. Enhancing the use of the open tender procedure

The public procurement regulatory framework should provide an appropriate range of procurement methods comprising competitive and less competitive procedures, when appropriate (MAPS initiative, 2018<sub>[11]</sub>). Competitive procedures should be the standard method for conducting procurement as a means of driving efficiencies, fighting corruption, obtaining fair and reasonable value for money and ensuring competitive outcomes (OECD, 2015<sub>[12]</sub>). Indeed, they can bring many benefits to contracting authorities and to the economy in general (OCDE, 2019<sub>[13]</sub>). The main procedure within competitive tendering is the open tender procedure which has become the default approach when procuring goods and services and

public works (OECD, 2019<sub>[14]</sub>). In Malta, different procedures are used: open procedure, open accelerated procedure, restricted procedure, competitive procedure with negotiation, negotiation procedure, etc. As described in Figure 2.1., the most common used public procurement procedures are the open procedures. Open procedures represent 97% of all contracts in 2018, 96% of all contracts in 2019, and 94% of all contracts in 2020. The second most used procurement procedure in 2018 and 2019 is the open accelerated procedure (representing 3% of all contracts in 2018 and 2019). Negotiated procedures, restricted procedures and other procedures such as simplified procedures represent a very small share of Malta's total public procurement procedures. Innovation partnership and design contest procurement were not used between 2018 and 2020.

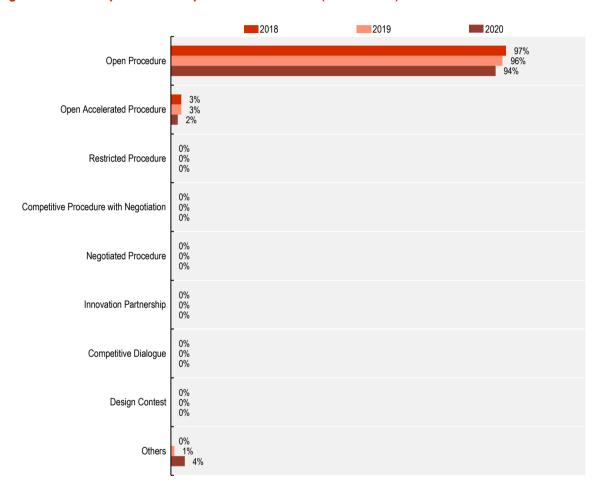


Figure 2.1. Public procurement procedures in Malta (2018 - 2020)

Note: Data is provided through ePPS. For the negotiated procedures, the data is not accurate as this procedure was only published in ePPS since 2020.

Source: Based on data provided by the DoC

In Malta, the open tender procedure entails a specific process that includes six main stages from tender preparation to the contract management and the conclusion of the contract (see Figure 2.2.). During the tender preparation, usually contracting authorities' respective technical department develop the technical specifications and the procurement section gathers all information required to compile the tender documentation. In some contracting authorities, officials are in charge of vetting draft tender documents to improve their quality. However, this practice is not adopted across all contracting authorities. Schedule 2 and 16 entities, submit draft tender documents to OD and SPD generic email respectively (according to

the estimated value threshold) for vetting. Schedule 3 entities review their own documents without the involvement of DoC. With reference to tenders including the Best Price-Quality Ratio (BPQR) award criterion, the contracting authorities are to seek approval of the criteria from DoC DPPQA prior to vetting of the rest of the tender documents. Upon BPQR approval, the vetting process is assigned to a vetting officer within the OD or SPD or for Schedule 16 and 2 entities, according to the threshold and case. For the SPD documents are uploaded on Microsoft Teams and vetting officers review all tender documentation. The exchange of documents between the DoC and the CA can be iterated (depending on the quality of documents) until the final documents are approved by DOC.

The publication and clarification stage entails the publishing of the finalised tender documents on ePPS which is accessible by all interested economic operators. This is performed by DoC on behalf of Schedule 2 and 16 entities, and by contracting authorities themselves in the case of Schedule 3 entities. Economic operators may request clarifications through ePPS. In the case of Schedule 3 entities, contracting authorities access the ePPS and reply directly to interested bidders. In the case of Schedule 2 and 16 contracting authorities, SPD or OD (depending on the threshold) access the ePPS and relay the clarification requests to the contracting authorities via email. After, a review by the respective contracting authorities, responses are then sent via email to DoC (SPD or OD), who upload and publish replies on ePPS.

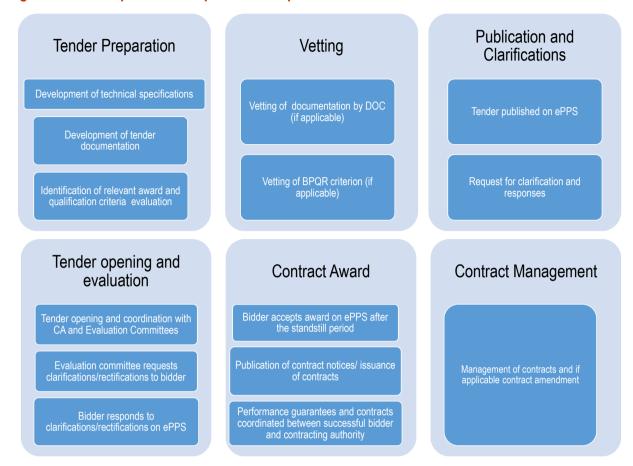
Tender opening and evaluation require coordination with contracting authorities and evaluation committees, coordinated through DoC for Schedule 2 and 16, and directly by Schedule 3 contracting authorities. Evaluation committees may request clarifications and/or rectifications to bidders, who respond accordingly through ePPS. Once the tender evaluation committee evaluates the administrative, technical, and financial components of the tender, a tender evaluation report is developed and reviewed by the SPD or OD and then submitted for approval to the Departmental Contracts Committee (DCC) for tenders within the SPD threshold, i.e. EUR 10 000 – 750 000 or General Contracts Committee (GCC) for tenders above EUR 750 000 and/or within the OD threshold. GCC is the permanent committee established within the DoC, while DCC is set up at each ministry.

Contract awards are then issued whereby bidders accept award through the ePPS following the standstill period. This is followed by the publication of contract notices and subsequent issuance of contracts. In doing so, performance guarantees, any relevant forms required and contracts are coordinated between the successful bidder and the contracting authority. Whilst this is coordinated themselves by Schedule 3 entities, the contract is prepared by DoC in the case of Schedule 2 and 16 entities.

Following the award of the contract, contract management is managed by the respective contracting authority. In the case of Schedule 2 and 16 contracting authorities, modifications of contracts are approved either by the respective head of contracting authority (in the case of tenders administered by SPD) or by the General Contracts Committee (in the case of tenders administered by the OD and therefore contracts signed by the Director General of DoC), depending on the threshold. Contract management and amendments are approved by the respective head of contracting authority in the case of Schedule 3 entities. For all schedules, the respective Permanent Secretary has either to approve or endorse the modification requests.

The process for the restricted procedure is similar, with an added step for Schedule 2 and 16 entities, whereby the contracting authority is to provide a justification to be approved by SPD or OD Director depending on the situation.

Figure 2.2. Public procurement process for open tender in Malta



Source: Based on data provided by DoC and selected contracting authorities in 2021

# 2.2.1. Simplifying the vetting process of procurement operations at the pre-tendering phase

Several entities involved in vetting procurement processes

The procurement process at the pre-tendering phase involves several entities, for vetting and approval of tender documents. In the case of approvals, different stakeholders are involved, depending on i) the estimated value of the procurement, ii) the procurement procedure and iii) the schedule of the entity (2, 3 or 16).

Open tender procedures for Schedule 16 entities might involve several vetting processes. While some vetting processes are specific to each entity such as internal vetting, vetting from a Ministry (for some entities under the supervision of a ministry); other vetting processes are common to all Schedule 16 entities. Indeed, as open and restricted tenders between EUR 10 000 and 750 000 are administered by the SPD, those tenders are also vetted by different SPD officials such as the SPD vetting official, the SPD assistant director and/ or the SPD director. Some contracting authorities allocate resources to vet the tender documents prior to submission to DoC, with the aim of increasing quality of tender documents.

In addition, open and restricted tenders above EUR 750 000 are administered and vetted by the OD of the DoC (OD vetting assistant and OD director). Last but not least, the use of BPQR is vetted by the DPPQA of the DoC for all schedules.

In addition to internal vetting processes, open tenders issued by Schedule 2 entities, are subject to the vetting of the OD when their value is above EUR 140 000 (OD vetting assistant and OD director). Table 2.1 summarises the different actors involved in internal and external vetting processes.

Table 2.1. The vetting process for open tender procedures

|          | Schedule 16   | Schedule 2                             | Schedule 3                             |
|----------|---|--|--|
| Internal | Specific to each contracting authority                  | Specific to each contracting authority | Specific to each contracting authority |
| External | SPD (for tenders between EUR 10 000 – EUR 750 000 )     | OD<br>(for tenders = or > EUR 140 000) | No vetting                             |
|          | OD (for tenders > EUR 750 000)  DPPQA for BPQR criteria |  |  |

Source: the PPR

Streamlining the vetting process in place for the pre-tendering phase

For schedule 2 and 16 entities, the vetting process starts when the SPD or the OD receive all procurement documents and relevant supporting information, including necessary approvals and the nomination of the Evaluation Committee and Contract Manager. As described in the previous section several stakeholders are involved in the vetting process of open tenders.

Indeed, when the vetting is performed by the DoC, a vetting officer from one of the SPD departments or OD department is in charge of the procedure. The officer registers and assigns a reference number to the procurement documents, which are usually then uploaded on Microsoft Teams (for SPD) for vetting purposes. SPD Vetting Officer vets submitted documents and provides feedback via tracked changes on Teams to the contracting authority. Once the first vetting is concluded, in the case of the SPD, the officer informs the contracting authority via email that the vetted documents can be accessed via Microsoft Teams and a meeting is set between both parties to clarify issues. In the case of OD, officers send the documents with track changes via emails. Following this, there are additional layers of vetting depending on the DoC directorates involved. In the case of SPD, documents (without track changes) are then sent to SPD Assistant Director for review, comments and approval. This cycle is repeated until procurement documents are finalised for publication. Before publication, procurement documents are referred to contracting authorities via email for final approval by Vetting Officer. Once approval is received from contracting authorities, the Assistant Director emails SPD/DoC Operations Director for final approval to publish. Lastly, Director SPD/OD addresses any issues with the contracting authority and the tender is published on the ePPS by SPD/OD on behalf of the contracting authority.

The analysis of the process and discussions with contracting authorities highlighted different issues: first, the need to streamline the vetting process as it is lengthy and administratively burdensome, second the need to harmonise the process between the SPD and the OD and lastly the necessity to improve communication tools used between DoC and contracting authorities.

Regarding the need to streamline the vetting process, DoC requires sending around 11 documents including the list of evaluation committee members that needs to be signed by the head of each contracting authority and the respective permanent secretary (for entities under SPD remits), to start the vetting process (see Box 2.3). Some contracting authorities mentioned that given the length of the process, the evaluation committee members are likely to change and the internal processes to approve new committee members is burdensome. Therefore, internal processes to get the approval from the head of the contracting authority and the respective permanent secretary (when applicable) should be streamlined to enhance the efficiency of the process.

# Box 2.3. List of documents required for the vetting process

- 1. Signed Procurement Originators Form (POF)
- 2. Signed Commitment of Funds (when relevant)
- 3. Budget Office and/or any other Ministry for Finance and Employment approval/s (when relevant)
- 4. Budget estimate breakdown
- 5. Evaluation committee's nominees (including respective CVs)
- 6. Contracts Manager nominee
- 7. Green Public Procurement (GPP) approval
- 8. Permanent Secretary approval covering: publication, evaluation committee, contracts manager
- 9. Planning Authority (PA) permits (in the case of Works tender), including drawing/s and drawings schedule as applicable
- 10. Tender document including:
  - o technical specifications and terms of reference
  - technical offer form including questionnaire
  - literature list (in line with technical offer)
  - o sample list (in line with technical offer)
  - o financial bid form and/or bill of quantities
  - key experts form including statement of exclusivity and self-declaration form (as required)
- 11. BPQR approval if applicable.

Source: Responses of the DoC to the OECD questionnaire

In addition, the lack of standardisation in procedures between SPD and OD in relation to vetting was noted for Schedule 16 entities. Indeed, the SPD has a 3-layer vetting system (Vetting Officer, Assistant Director and Director), whilst OD has mainly a 2-layer vetting process (Vetting Officer, Director). On the one hand, discussions with DoC indicated that repeated vetting cycles are required due to the differing levels of quality of tender documents received by the different directorates of DoC. On the other hand, discussions with contracting authorities highlighted the approval layers in the current vetting system could represent in some cases a source of inefficiency which could lead to significant delays in the vetting process, generally taking 2 to 3 months for finalisation, and even longer periods for tenders integrating the BPQR evaluation method. In addition, the last round of vetting does not involve the same level of detailed feedback whether it is a procedure under the OD or SPD remits.

Furthermore, differences or conflict in opinions between the first and other officials in charge of vetting was noted amongst some contracting authorities, in particular for the SPD. Discussions with contracting authorities indicated issues relating to capacity of some SPD vetting officials. In addition, tracked changes or comments made by one vetting officer and addressed by the contracting authority in the procurement documents, cannot be seen by the other vetting officials. This lack of tracking and visibility regarding the changes made to the procurement documents might lead to conflicts of opinions between the different vetting officers. Such inconsistencies between vetting officials further increase the length and the burden of the process. As a result of delays experienced across the process, some contracting authorities mentioned that they tend to use direct orders, particularly when funding deadlines are concerned.

To address delays and inefficiencies in the process, DoC should consider implementing several actions, as follows:

- i. strengthening public procurement officials' capacity in contracting authorities in order to enhance the quality of tender documents received;
- ii. encouraging contracting authorities to validate their own tender documents prior to submission to DoC in order to facilitate the vetting process;
- iii. standardising and reducing the layers of the vetting process in order to limit delays and;
- iv. reinforcing vetting officials' capacity to ensure coherent feedback throughout the process
- v. promoting communications and modifications savings (through track changes or other relevant digital tools) between officials in charge of vetting and contracting authorities in order to keep track of previous modifications

Reinforcing the capacity of DoC officials could be done through training sessions and other internal workshops to communicate issues and share best practices in order to further standardise the type of feedback provided (see Chapter 5). Once vetting officers are sufficiently trained to the expected level, the number of vetting officials may be further reduced by empowering only one (1) official (rather than 2 or 3 individuals) to vet a tender document. In addition, streamlining the vetting process may also be achieved by rethinking the organisational structure of the DoC in the long term through a more centralised structure that would unify and facilitate the vetting process (see section 1.1.1).

While contracting authorities mentioned potential delays resulting from DoC processes, both the SPD and the OD also mentioned the lack of responsiveness of some contracting authorities to validate comments and finalise the vetting process. In this regard, SPD and OD are now setting deadlines to cancel procedures when no feedback is received from the contracting authorities. However, SPD and OD should also consider setting minimum and maximum timelines for each process under their responsibility and communicating them to contracting authorities to manage expectations accordingly. This will enable DoC to better monitor the timing of their internal processes and to further assess the potential sources of delays. Visibility on vetting timelines will also help contracting authorities for planning (see section 2.1) and monitoring their own internal processes (see Chapter 6).

Moreover, discussions with contracting authorities indicated that vetting of tenders utilising the BPQR evaluation method further prolongs the vetting process. This is due to the additional heavy scrutiny of scoring criteria by the DPPQA of the DoC. In efforts to increase efficiency, DoC should consider removing this additional layer of vetting to the use of the BPQR method. In tandem, the capacity of officials in establishing adequate BPQR criteria should be reinforced.

Lastly, based on discussions with selected contracting authorities, of multiple communication tools are used in the vetting process between DoC and contracting authorities. The vetting process is not taking place via ePPS or any specific dedicated platform. During this stage, multiple communication channels and systems are used by the different participants in the process. Documents are received from contracting authorities via generic email, registered, and then the vetting process occurs via shared documents in Teams and online meetings. For re-engineering public procurement processes in Malta, the previous OECD report highlighted the need to review the process and to track tender status (OECD, 2019<sub>[3]</sub>). According to discussions with DoC, the shift from email to Teams was as a result of process reengineering efforts to increase efficiency at DoC. However, the use of Teams and emails for vetting purposes might lead to several issues related to safety, efficiency, workflows, and traceability. Indeed, for instance, some contracting authorities highlighted the absence of formal acknowledgment of receipt after sending the required documents at the start of the process. DoC directorates are still tracking tender progress through an excel file which does not enable to send alerts or notifications. Additionally, the shifting of documents between channels each time is inefficient as it disrupts the workflow on each occasion. It may also result in traceability issues, whereby the latest version of documents may not be reflected in the workflow. In addition, despite the numerous functionalities offered by collaborative tools such as Teams (shared documents, co-editing etc.), they are linked to non-national clouds under different regulations and are therefore subject to many data safety risks. Public procurement data could include sensitive information

related to government priorities and strategies. In this regard, France for example only authorises the use of national or European clouds in public administrations and has therefore prohibited the use of Teams (linked to a cloud outside the EU) (Acteurs publics, 2021[15]).

In order to enhance the vetting process, communication means with contracting authorities should be digitalised, centralised and secure. The choice of the ePPS or a specific platform should be based on a cost-benefit analysis. The system should enable to notify contracting authorities of i) the receipt of documents ii), the start of the process and, iii) the stage of the process. The system could also send to both contracting authorities and DoC directorates alerts when approaching key milestones and deadlines.

# 2.2.2. Improving procurement processes for the tendering and contract management phase

In Malta, in line with international good practices, the process for tendering and clarifications is predominantly digitalised. However, similarly to the vetting process, multiple communication channels and systems are used by multiple stakeholders for tenders administered by SDP and OD: ePPS, emails, etc. Discussions with stakeholders highlighted that the use of multiple communication channels and systems by multiple stakeholders and the "intermediary role" of SPD or OD could create inefficiencies in this process.

Indeed, once clarifications are raised from bidders through the ePPS, these are then relayed by DoC (in the case of Schedule 2 and 16 entities) to the respective contracting authority via email. The contracting authority then replies to clarifications and provides any minutes to clarification meetings/site visits via email to SPD / OD. The SPD/OD then upload the contracting authority's response after reviewing it, and publish it on ePPS. DoC also sends the evaluation committee a deadline to conclude the evaluation process (four weeks). DoC may consider providing contracting authorities with access to the ePPS for the clarification stage (at the publication stage).

During the course of evaluation, the evaluation committee may request any clarification or rectification from the economic operators through DoC. Such clarification or rectification requests are subject to vetting and approval by DoC prior to publishing on ePPS. Tender evaluation committees evaluate the offers and submit the final evaluation report with annexes via email to DoC. The evaluation report, which incorporates the evaluation committee's recommendations for award, is forwarded to the DCC or GCC (depending on the previously mentioned thresholds), who approves recommendations for award via email since the Covid 19 pandemic. In its previous report, the OECD already recommended to fully integrate the evaluation report within ePPS to simplify the process (OECD, 2019[3]). Furthermore, it was noted that whilst the SPD is composed of eight units representing different contracting authorities, DCCs exist within each ministry, whereby currently Malta has a total of 18 ministries. For a more structured process, consideration should be given to aligning the number of DCCs with those of the SPD. In doing so, the number of members within the DCCs should be strengthened in order to; (i) have the necessary capacity to shoulder the responsibility of various ministries, and (ii) enhance efficiency due to potential delays in approving evaluation reports for each tender. Similarly, any future structural changes to the DOC should also be reflected in the roles and remits of the DCC or GCC.

Moreover, DOC should reconsider their role in the line of communication between the economic operator and contracting authority. Indeed, DoC could allow contracting authorities to be at the frontline of the communication with economic operators at the clarification and evaluation stages. Moreover, and similarly to the vetting stage, the use of multiple communication channels in tender evaluation stage should also be addressed by having one centralised digital channel across the various stakeholders. DoC should also reconsider the need to review and approve each clarification or rectification request put forward by the evaluation committee. In doing so, evaluation committees' capacity should be reinforced.

Furthermore, in the request for clarification stage, Schedule 2 and 16 contracting authorities experience lack of flexibility in the number of times that clarifications or rectifications may be issued. Indeed clarifications may be issued only once according to the DoC policy, irrespective of the topic or nature of the tender. After the clarification stage, contracting authorities should therefore carefully examine tender documents and ensure that the potential changes are clear and might not lead to additional clarification needs from potential bidders (EU Parliament and Council, 2014<sub>[6]</sub>) (Clarkslegal, 2017<sub>[16]</sub>).

Additionally, online evaluation on ePPS carried out by the contracting authorities' evaluation committee does not allow for a detailed description of the process (due to lack of characters) on the system. Whilst the restriction of characters facilitates more clear and concise explanations, it may give rise to potential misunderstandings by the SPD or OD, which may in turn lead to the incorrect issuance of award letters by DoC through the ePPS. In such occurrences, the DoC may consider improving or enabling enhancements to the ePPS. In addition, DoC should reconsider its intermediary role, and empower contracting authorities to issue letters of award through the ePPS.

Regarding the award of the contract, upon elapse of the standstill period prior to contract award notice, in line with international good practices, it is necessary to check whether objections are filed before the relevant bodies. In Malta objections are filed before the Public Contracts Review Board (PCRB). While ePPS includes a functionality to file challenges directly online, this functionality is not yet made mandatory. Therefore, the SPD, the OD and schedule 3 contracting authorities check with the PCRB whether objections were filed for each tender via email, which may be administratively taxing. It is therefore recommended that the use of the ePPS is made mandatory for challenging decisions. This would not only reduce the use of multiple systems, but also render all information relating to each tender in one location, facilitating better information management, data collection and reporting thereafter.

If no appeals are lodged, the Contract Award Notice is published once the Contractor accepts the award on ePPS. For Schedule 2 and 16 contracting authorities, the contract is prepared by DoC and sent to contracting authorities or the DoC Director General for signatures. In the case of Schedule 3, contracts are prepared and coordinated by the respective contracting authority.

Schedule 2 and 16 contracting authorities mentioned a lack of standardisation in i) contract signing and ii) contract modification by the different Directorates within DoC (SPD and OD). In fact, in tenders administered by SPD, the SPD issues contracts, and signatures are sought from both the Head of the contracting authority (Permanent Secretary) and the successful bidder. However, when the OD is in charge of the process, the OD issue contracts, which are signed by the DG Contracts (on behalf of the contracting authority) and the successful bidder. Once contracts are signed, the contracting authority provides electronic copies of the performance quarantee and the signed contract agreement to the Contractor, and retains the original copies. Similarly, with reference to contract modifications and amendments for tenders administered by the SPD, approval is provided by the respective Head of the contracting authority and permanent secretary. However, for tenders administered by the OD, the approval of modifications is provided by the General Contracts Committee (GCC). At times, such practices result in delays experienced by various contracting authorities, particularly with contracts issued by the OD. In the short term, when OD is involved, deadlines for contract modification approval by the GCC should be established, to increase efficiencies and reduce delays. In the medium term, it is necessary to standardise contract signing towards signing by the respective contracting authority. This would serve to eliminate inconsistencies between the directorates within DOC and increase the accountability of contracting authorities.

In addition, whilst it is acknowledged that procedures are primarily digital through the use of the ePPS, as noted from contracting authorities' feedback, remaining items to be integrated and/or used in digital format include; incorporating e-signatures, the use of the ePPS module to challenge public procurement decisions, the use of the contract management module, and the provision of digital guarantees. For instance, forms such as the tender originator forms and the contracts following the award are signed manually and then saved in electronic format. In addition, all required external approvals, particularly in

the contract management stage, with the SPD or the DoC are obtained through email. In order to enhance efficiency and reduce the administrative burden, Malta should consider further digitising all processes throughout the procurement cycle. This includes integrating additional features such as the e-signature (eliminating hard copies of procurement documents) and using ePPs or other relevant platforms for exchanges between DoC and contracting authorities. It will also ensure that all information relating to public procurement procedures is available and accessible online, in one centralised location (see 6.4) on the availability of relevant data to assess the efficiency and quality of procurement processes).

# 2.2.3. Promoting the use of multiple award criteria

Award criteria are used to evaluate bidders' offers and to award the contract to the offer that provides the best value for money (OECD, 2021[17]). The European directives offers three options to assess bids: i) the best price-quality ratio (BPQR); ii) life cycle costing (LCC); and iii) the lowest price. The use of BPQR criteria enables contracting authorities to assess bids not only based on the price criterion but also on other aspects such as quality, technical merit, social and environmental characteristics, qualification and experience of supplier staff, after-sales service and technical assistance and delivery conditions. Furthermore, using the BPQR criteria along with the LCC method can also support innovation outcomes and enhance competition (OECD, 2019[18]). In addition, the use of BPQR can serve as a strategic lever to stimulate innovation and competition. Indeed, with minimum technical specifications, and using the lowest price criteria, bidders might not be encouraged to go beyond the minimum requirements and innovate (OECD, 2019[18]).

In Malta, in line with the European directives, the public procurement regulatory framework enables the use of BPQR. Despite the encouraging fact that both contracting authorities and economic operators seem to be aware of the benefits of BPQR (The Malta Chamber, 2021<sub>[4]</sub>) the use of this evaluation method is limited in practice. At the European level, for above threshold procedures, Malta is among the countries that are using the lowest price criteria the most (European Commission, 2020<sub>[19]</sub>)) (see Figure 2.3). To use BPQR method in their tenders, contracting authorities have to seek DPPQA approval for the use of the BPQR criterion method.

In addition, DoC have developed procurement policy notes to guide contracting authorities opting to use BPQR (Government of Malta, 2016<sub>[20]</sub>). However, feedback from contracting authorities highlighted the need to provide further guidance with concreate examples to operationalise the use of this evaluation method. The European Commission provides such guidance for practitioners, which include examples of award criteria of the BPQR approach as well as practical tips and delineation of good and bad practices when defining such award criteria (European Commission, 2018<sub>[21]</sub>).

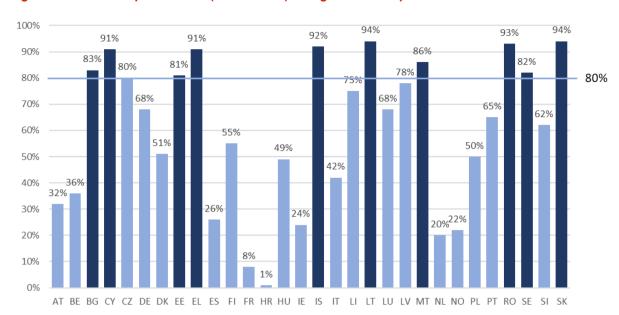


Figure 2.3. Share of procedures (in numbers) using the lowest price criteria in EU countries in 2020

Source (European Commission, 2020[19])

Furthermore, data provided by DoC shows that in the last 3 years, on average, only 3.2% of Call for Tenders (CfTs) used BPQR (see Table 2.2). The poor and decreasing uptake of BPQR in Malta is due to several reasons including the administrative burden associated with the use of this method which may deter contracting authorities from utilising this method, and the lack of practical guidance on how to use it. Indeed, discussions with contracting authorities highlighted that the use of BPQR can be cumbersome as it is subject to hefty review and approval of DPPQA. DoC explains this control by the need to ensure that the criteria used by contracting authorities are not subjective and will not lead to increased likelihood of challenges of procurement decisions.

Table 2.2. Share of Call for tenders in volume using BPQR in 2018-2020

| Year | Number of CfTs | Number of BPQR CfTs | Percentage |
|------|----------------|---------------------|------------|
| 2018 | 5 882          | 198                 | 3.37%      |
| 2019 | 5 858          | 186                 | 3.18%      |
| 2020 | 6 165          | 188                 | 3.05%      |

Note: CfTs= Call for tenders

Source: Data provided by DoC in 2022

In addition, while the use of BPQR is authorised and has a positive impact for all procurement categories (see Box 2.4), in Malta, contracting authorities are mainly encouraged to use it for the procurement of services. Furthermore, discussions with stakeholders revealed issues relating to the evaluation of tenders using BPQR criteria. Evaluators are encouraged to allocate different scores from each other to avoid being accused of manipulating results. To enhance the uptake of BPQR, Malta should consider gradually removing the approval of the use of this evaluation method by the DoC for schedule 16 and 2. This will also reinforce the accountability of contracting authorities. In addition to promoting the use of BPQR for different procurement categories, Malta should consider developing the existing guidelines on the use of BPQR with detailed breakdown of criteria and concrete examples from different procurement categories. This will enable to enhance the capacity of contracting authorities in using the appropriate award criteria

and to reduce the subjectivity in using those criteria. It will also ensure the transparency and fairness of scores provided by evaluators at the evaluation stage.

# Box 2.4. Using BPQR criteria in public procurement tenders

Using BPQR, as opposed to the lowest price criterion, presents a series of advantages. It allows contracting authorities to take into account qualitative considerations. The BPQR criteria are typically used when quality is important for the contracting authority. Some cases where it may be considered appropriate to use BPQR are as follows.

- The procurement of supplies: For public supply contracts that involve significant and specialised product installation and/or maintenance and/or user training activities, the contract award is usually made on the basis of BPQR criteria. For this type of contract, in fact, quality is generally particularly important.
- The procurement of works: For the procurement of works that involve a lengthy and/or complex project management process, quality of materials used and works delivered are key elements that can be reflected in the award criteria.
- The procurement of services: For the procurement of consultancy services and more generally intellectual services, quality is normally very important. Experience has shown that when procuring this type of service, the best results in terms of the best value for money are achieved when BPQR criteria are used.

Source: (OECD, 2021[1])

# 2.3. Towards the strategic use of public procurement efficiency tools

The OECD Recommendation calls adherents to develop and use tools to improve procurement procedures, reduce duplication and achieve greater value for money, including framework agreements and dynamic purchasing systems (OECD, 2015<sub>[12]</sub>). A framework agreement means an agreement between a fixed number of one or more contracting authorities and one or more economic operators, with the purpose of establishing the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. Unlike the Dynamic purchasing system (DPS), no additional economic operators can join throughout the duration of a classical framework agreement. It is to be noted that in 2019, 97% of OECD countries responding to a survey have implemented framework agreements as a means of increasing efficiency and realising savings (OECD, 2019<sub>[14]</sub>).

A DPS is somehow a framework agreement to which potential suppliers can join any time during its period of validity, thus enabling further competition over time. The DPS can streamline procurement for both suppliers and authorities (LPP NHS, n.d.<sub>[22]</sub>). The contract award process can also be conducted more rapidly than under other procedures. A DPS offers flexibility in fast-paced, constantly changing markets. The use of needs aggregation coupled with those collaborative instruments enables to achieve further efficiency gains. (OECD, 2021<sub>[1]</sub>)

## 2.3.1. Further promoting the use of DPS and framework agreements

In Malta, in line with the European directives, the Public Procurement Regulation provides the possibility to implement framework agreements (FAs) and DPSs. The Public Procurement Regulation 108 of S.L. 601.03 state that DPS may be set up for procurement estimated above the threshold of EUR 140 000

excluding VAT as it entails using a restricted procedure. In other countries, there are no thresholds to use DPS and framework agreements, such as Ireland and Lithuania (The Parliament of the Republic of Lithuania, 2022<sub>[23]</sub>). To enhance the uptake of DPS, Malta should consider removing thresholds to use DPS.

Data provided by the DoC shows that the uptake of framework agreements and DPS is relatively low. A total of 106 FAs were published between 2018 and 2020. The Ministry for Transport Infrastructure and Capital Projects published the greatest number (37) of FAs between 2018 – 2020, representing 34.9% of the total number of FAs in the country, followed by DoC (28.3% of the total number of FAs) that is mainly publishing FAs on behalf of contracting authorities, and the Ministry for Justice, Culture and Local Government (12.3% of the total number of FAs). Similarly, the share of contracts awarded through framework agreement against the total procurement volume was 0.72% in 2018, 2.28% in 2019 and 0.61% in 2020. Consultations with DoC indicated that in 2019, policy shifted to increase framework agreement uptake, hence such figures reflect the increased establishment of framework agreements in 2019 that were still in place, in 2020.

The share of contracts awarded through DPS was 0.03% in 2020. Data covering 2018 – 2020 in Malta identifies that a total of 11 DPSs were published, with DPSs administered by DoC on behalf of contracting authorities representing the majority (58.3%) of shares against all contracting authorities, followed by MITA (25%) and Infrastructure Malta (16.7%), the latter two being Schedule 3 entities. With reference to SPD, a total of 17 DPSs were administered by SPD on behalf of contracting authorities in 2021, with a total volume of EUR 674 thousand. Whilst none related to works, 52.9% related to supplies and 47.1% related to services. The majority of the volume (59.7%) related to services. Additionally, in 2022, there are five (5) operational DPSs issued by DoC on behalf of contracting authorities, relating to procurement of: examination gloves, travel agents, professional engineering services, professional architect services, and supply of books. In addition, seven (7) operational DPSs were issued by three (3) Schedule 3 entities in the technology, construction and infrastructure industries.

Some contracting authorities mentioned that they are not using DPSs or framework agreements because i) it is not adapted to their procurement categories, ii) they do not see the added value and iii) the process is burdensome. Regarding the administrative burden, for schedule 2 and 16 entities, when the procedure is administrated by the OD or the SPD, documents need to be resubmitted to these directorates for each mini-competition. Therefore, the administrative burden strongly limits the benefits of using these tools. In this regard, it is necessary to rethink the process for competitions derived from signed framework agreements and DPSs to enhance the efficiency of the process, by reducing or eliminating the involvement of DoC directorates at the mini competition stage.

On the other hand, a number of contracting authorities are seeking to increasingly make use of efficient procurement tools. Malta exhibits high potential towards the use of public procurement efficiency tools, particularly in collaborating with other contracting authorities for increased centralisation. In addition to the IT field, contracting authorities as well as the DoC mentioned the high potential of some procurement categories to implement framework agreements and dynamic purchasing systems, which include: Cleaning services, Security services, Travel agencies, Communication and Vehicles. At the European Union level, office supplies and IT equipment are the top categories for DPS, followed by education and training services (see Table 2.3). In this context, the DoC should raise awareness on the benefits of such tools and the most adequate procurement categories to use them.

Table 2.3. The Top CPV codes when using DPS in the European Union

| Main division   | Occurrences |
|---|-------------|
| Office and computing machinery, equipment and supplies except furniture and software packages               | 338         |
| T services: consulting, software development, Internet and support  | 211         |
| Education and training services   | 184         |
| Transport equipment and auxiliary products to transportation  | 162         |
| Construction work   | 137         |
| Business services: law, marketing, consulting, recruitment, printing and security                           | 126         |
| Furniture (incl. office furniture), furnishings, domestic appliances (excl. lighting) and cleaning products | 125         |
| Architectural, construction, engineering and inspection services  | 125         |
| Medical equipment, pharmaceuticals and personal care products   | 98          |
| Radio, television, communication, telecommunication and related equipment                                   | 71          |

Source: TED data (all contract notices from the two Directives up until April 2020)

In Malta, some guidance has been developed on the use of efficiency tools such as FAs and DPS. The Procurement Policy and Quality Assurance Directorate (DPPQA) within DoC developed a manual of procedures delineating the framework agreement and DPS procedures (DOC, 2016<sub>[24]</sub>), and guidance notes on DPS are made accessible to contracting authorities through the ePPS. Moreover, the DoC has also published a document on rules governing DPS (DoC, 2018<sub>[25]</sub>). Whilst this document is i) accessible online and ii) provides a detailed description of the various aspects of the procedure, it lacks the necessary visual guidance and concrete examples needed for effective uptake of the procedure. In fact, a number of contracting authorities mentioned the need to improve the guidance as it was not always operational. DoC should increase the uptake and effective adoption of the procedure. For instance, the Scottish Government published detailed guidance on the use of DPS, including on i) points to consider before using a DPS, ii) how to create a DPS, iii) awarding contracts under a DPS, iv) implementation of a DPS (see Box 2.5). The Scottish Government, n.d.<sub>[26]</sub>).

# Box 2.5. Example of the Scottish Government guidelines on using DPS

# **Definition of a Dynamic Purchasing System**

The Scottish Government guidance starts with a definition of DPS.

# Points to consider

The Scottish Government guidelines list key characteristics of what to consider when setting up a DPS. This includes for example :

- i. Large volume or suppliers
- ii. Large volume of transactions
- iii. Total anticipated spend

A decision making checklist is also provided with many suggestions, including:

- i. Speak to others who have set up or operate a DPS
- ii. Engage with key stakeholders
- iii. Don't underestimate the potential challenge around cultural change
- Build a robust business case

#### Creation of a DPS

The guidance provides key information and useful links on the procedure to use (Restricted procedure), suppliers, period of validity, communication issues, regulations concerning potential changes, selection criteria and other best practices related to DPS creation.

# Validity of the DPS

The guidance highlights key elements related to the validity of the DPS including the applicable timescale to evaluate requests for participation in a DPS and the available extensions for evaluation.

### Awarding contracts under a DPS

The guidance provides information about key requirements regarding the award criteria, the "standstill" period, and the publication of the contract award notices.

## Implementation suggestions

The guidance provides key steps for DPS implementation including:

- i. Piloting undertaking a trial run prior to implementation of a DPS incorporating various categories
- ii. Ensure sufficient resources establishing a DPS requires resources particularly at initial stages, if it involves higher numbers of suppliers. It also involves administrative efforts throughout the duration of the DPS.
- iii. Involve suppliers DPS success factors requires available suppliers to actually be interested to bid. Ways to support suppliers include communication of eligible factors apriori, demonstrating the way the DPS works, and eliciting feedback at various stages of the cycle.

Source: (Scottish Government, n.d.[26])

# 2.3.2. Considering the centralisation of procurement for further efficiency gains

Aggregating needs is a key lever to enhance the efficiency of public procurement systems. This holds particularly true in times of fiscal austerity when all levels of governments are focusing efforts on rationalising public spending (OECD, 2019[18]). It has several benefits including the achievement of economies of scale and administrative savings by reducing duplications and the faster uptake of the use of public procurement to achieve policy objectives. The use of needs aggregation coupled with framework agreements or DPSs enables to achieve further efficiency gains (OECD, 2021[1]).

There are different ways of aggregating needs: through centralisation of procurements from different contracting authorities usually with the lead of a single contracting authority or by doing joint procurements between two or more contracting authorities (OECD, 2021[1]). In Malta, both options exist but at a limited scale.

Indeed, regarding centralisation, the DoC is leading two DPSs on supply of Winter and Summer uniforms respectively, through which all contracting authorities may procure. The larger initiative related to the aggregation of needs is the one of the Malta Information Technology Agency (MITA) who is leading several

DPSs in the Information Technology (IT) field, which include the provision of temporary IT resources, the procurement of printers, scanners and related supplies or services, the procurement of software development services, workstations for the government of Malta, and the procurement of software development services for modernisation initiatives.

In this context, a number of documents and templates are readily available and accessible through the Agency's website for the DPS procurement of printers, scanners and related supplies/services, as well as procurement of software development services (MITA, 2022[27]). Specifically, the following documents were available online for some DPSs: i) Guidance note for contracting authorities on the use of the DPS, ii) DPS Overview, iii) Specific contract template, iv) Baseline hardware specifications, v) Mandatory general requirements, and vi) Purchase order template (MITA, 2022[27]). Contracting authorities interviewed provided a positive feedback on DPSs managed by MITA as it decreases their administrative burden and does not reduce competition for a certain period of time. However, DoC has not promoted or raised awareness on the benefits of centralisation schemes. Given the benefits of needs aggregation, DoC should consider raising awareness on the advantages of using such centralised procurement schemes, with tangible examples. It should also consider promoting MITA's contracts and exploring the possibility of centralising some relevant procurement categories gradually, considering its limited capacity, in terms of human resources. This should be done following a methodological approach including the assessment of most frequent purchases, and the assessment of purchases where contracting authorities may face some difficulties or may require some support. Finally, relevant stakeholders could be engaged in this process. For instance, in Ireland, the Office of Government Procurement (OGP) supported since 2014 the education sector during a budget restriction period by centralising some specific procurement categories. The benefits of such centralisation could not be achieved without the involvement of relevant actors from the education sector. In this context, a Schools Procurement Unit (comprising of four individuals) was established between the OGP and its clients, emphasising the advantages of centralised procurement and the benefits of cost savings (Irish Management Institute, 2017<sub>[28]</sub>).

### References

| Acteurs publics (2021), L'État freine le "tout-Microsoft" dans ses administrations, <a href="https://acteurspublics.fr/articles/letat-freine-le-tout-microsoft-dans-ses-administrations">https://acteurspublics.fr/articles/letat-freine-le-tout-microsoft-dans-ses-administrations</a> .  | [15] |
|--|------|
| Clarkslegal (2017), Perfecting Imperfect Bids Part 1 - When is a clarification not a clarification?, <a href="https://www.clarkslegal.com/Blog/Post/Perfecting_Imperfect_Bids_Part_1_When_is_a_clarification">https://www.clarkslegal.com/Blog/Post/Perfecting_Imperfect_Bids_Part_1_When_is_a_clarification</a> a clarification.                                    | [16] |
| DOC (2016), Manual of Procedures Public Procurement Regulations (SL 174.04), <a href="https://contracts.gov.mt/en/Resources/Documents/Manual%20of%20Procedures%20-%20PPRs%202016%20-%20v1%201.pdf">https://contracts.gov.mt/en/Resources/Documents/Manual%20of%20Procedures%20-%20PPRs%202016%20-%20v1%201.pdf</a> .   | [24] |
| DoC (2018), General Rules Governing Dynamic Purchasing Systems, <a href="https://procurement.mita.gov.mt/media/110254/general-rules-governing-dynamic-purchasing-system-v10.pdf">https://procurement.mita.gov.mt/media/110254/general-rules-governing-dynamic-purchasing-system-v10.pdf</a> .  | [25] |
| EU Parliament and Council (2014), "Directive 2014/24/EU of the European Parliament and of the Council", Official Journal of the European Union, <a href="http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024&amp;from=EN">http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024&amp;from=EN</a> (accessed on 31 January 2018). | [6]  |
| European Commission (2022), Search result - TED Tenders Electronic Daily, <a href="https://ted.europa.eu/TED/search/searchResult.do">https://ted.europa.eu/TED/search/searchResult.do</a> (accessed on 9 March 2022).  | [7]  |

| European Commission (2020), <i>Single market scoreboard</i> , <a href="https://single-market-scoreboard.ec.europa.eu/policy_areas/public-procurement_en">https://single-market-scoreboard.ec.europa.eu/policy_areas/public-procurement_en</a> .  | [19] |
|--|------|
| European Commission (2018), Public Procurement Guidance for Practitioners on avoidinng the most common erros in projects funded by the European Structural and Investment Funds, <a href="https://ec.europa.eu/regional_policy/sources/docgener/guides/public_procurement/2018/guidance_public_procurement_2018_en.pdf">https://ec.europa.eu/regional_policy/sources/docgener/guides/public_procurement/2018/guidance_public_procurement_2018_en.pdf</a> . | [21] |
| European Commission (n.d.), <i>Publish annual procurement plans</i> , <a href="https://razvoj.gov.hr/">https://razvoj.gov.hr/</a> (accessed on 9 March 2022).  | [2]  |
| Government of Malta (2016), <i>Procurement Policy Notes</i> , <a href="https://contracts.gov.mt/en/ProcurementPolicyNotes/Pages/ProcurementPolicyNotes.aspx">https://contracts.gov.mt/en/ProcurementPolicyNotes/Pages/ProcurementPolicyNotes.aspx</a> .  | [20] |
| Irish Management Institute (2017), Case Study on the Office of Government Procurement (OGP), <a href="https://www.reformplan.per.gov.ie/2014/downloads/files/Case%20Study%20OGP%20FINAL%2004.07.17.pdf">https://www.reformplan.per.gov.ie/2014/downloads/files/Case%20Study%20OGP%20FINAL%2004.07.17.pdf</a> .   | [28] |
| LPP NHS (n.d.), <i>Dynamic Purchasing Systems - all you need to know</i> , <a href="https://www.lpp.nhs.uk/for-suppliers/dynamic-purchasing-systems-all-you-need-to-know/">https://www.lpp.nhs.uk/for-suppliers/dynamic-purchasing-systems-all-you-need-to-know/</a> .   | [22] |
| MAPS initiative (2018), <i>MAPS Methodology</i> , <a href="https://www.mapsinitiative.org/methodology/MAPS-">https://www.mapsinitiative.org/methodology/MAPS-</a><br><a href="mailto:Methodology-ENG.pdf">Methodology-ENG.pdf</a> (accessed on 21 September 2021).   | [11] |
| MITA (2022), <i>Procurement of Printers, Scanners and related Supplies/Services - DPS 020/20</i> , <a href="https://procurement.mita.gov.mt/resources/dps/dpsprinters-scanners/">https://procurement.mita.gov.mt/resources/dps/dpsprinters-scanners/</a> .   | [27] |
| NPPPU (n.d.), Supply Market Analysis Guidance Note General 2, <a href="http://etenders.gov.ie/Media/Default/SiteContent/LegislationGuides/23.%20Supply%20Market%20Analysis.pdf">http://etenders.gov.ie/Media/Default/SiteContent/LegislationGuides/23.%20Supply%20Market%20Analysis.pdf</a> .  | [8]  |
| OCDE (2019), Revue du système de passation des marchés publics en Algérie: Vers un système efficient, ouvert et inclusif, Examens de l'OCDE sur la gouvernance publique, Éditions OCDE, Paris, <a href="https://doi.org/10.1787/49802cd0-fr">https://doi.org/10.1787/49802cd0-fr</a> .   | [13] |
| OECD (2021), Public Procurement in the State of Mexico: Enhancing Efficiency and Competition, OECD Public Governance Reviews, OECD Publishing, Paris, <a href="https://doi.org/10.1787/cc1da607-en">https://doi.org/10.1787/cc1da607-en</a> .  | [17] |
| OECD (2021), <i>Unlocking the Strategic Use of Public Procurement in Bratislava, Slovak Republic</i> , OECD Publishing, Paris, <a href="https://doi.org/10.1787/d616e4d9-en">https://doi.org/10.1787/d616e4d9-en</a> .   | [1]  |
| OECD (2020), Training on Market analysis.  | [10] |
| OECD (2019), Enhancing the Use of Competitive Tendering in Costa Rica's Public Procurement System, <a href="https://www.oecd.org/costarica/costa-rica-public-procurement-system.pdf">https://www.oecd.org/costarica/costa-rica-public-procurement-system.pdf</a> .   | [14] |
| OECD (2019), <i>Public procurement in Malta Re-engineering the Department of contracts</i> , <a href="https://www.oecd.org/governance/public-procurement/publications/public-procurement-in-malta.pdf">https://www.oecd.org/governance/public-procurement/publications/public-procurement-in-malta.pdf</a> .   | [3]  |

## Note

<sup>&</sup>lt;sup>1</sup> Based on the 100 responses received in a survey conducted by The Chamber of Malta.

# Implementing a risk-based approach in public procurement

This chapter discusses the development of a risk management approach in public procurement in Malta. It recalls that public procurement is a high-risk area and that risks affecting public procurement processes are multiple and can have concrete consequences on the quality and quantity of services provided by governments. Given that Malta has not yet developed a national risk management strategy in public procurement, the chapter provides key steps for the country to develop such strategy. The chapter also highlights the practices at the contracting authorities' level and the different procurement risks identified throughout the procurement cycle.

# 3.1. Towards the development of a risk management approach in public procurement in Malta

# 3.1.1. Public Procurement: a high-risk area

The sheer size of public procurement, representing approximately 12% of gross domestic product (GDP) in OECD countries, 14% in European Union economies and 6% in Malta (Government of Malta, 2021[1]), makes it a key economic activity and a crucial pillar of service delivery. Due to the volume of purchases, the complexity of the processes and the number of stakeholders involved, public procurement is a very high-risk area. Therefore, risks related to public procurement, regardless of their nature and origin, need to be identified and managed to minimise losses to the government and citizens (OECD-HAICOP, 2019[2]) (OECD, 2022[3]). In this context, risk management approaches refer to the identification and the systematic and positive assessment of threats and opportunities for the best use of resources. In addition, the COVID-19 pandemic highlighted the necessity to improve the identification and management of existing risks in public procurement systems and processes (OECD, 2021[4]). More countries have therefore been forced to rethink their procurement risk management strategies and put emergency measures in place (OECD, 2021[4]).

Risks affecting public procurement processes are multiple and can have concrete consequences on the quality and quantity of services provided by governments (OECD, 2022<sub>[3]</sub>). Public procurement is a cross sectoral and multi-disciplinary area, therefore subject to distinct categories of risks that are highlighted in the literature and exemplified in the MAPS methodology. Beyond risks of fraud and corruption, various dimensions of risks should be considered such as fiduciary, development and reputational risks (MAPS initiative, 2018<sub>[5]</sub>), a non-exhaustive list is provided in Figure 3.1. For standardisation purposes, these risks can be bundled into four categories:

- i. Financial (budget availability, respect of the budget)
- ii. Conformity, operational, technological (regulatory compliance, capacity, organisational aspects, public procurement process, use of e-procurement tools)
- iii. Economic, political, social/environmental (geopolitical environment, market trends, positions of market players, respect and protection of the environment and social conditions)
- iv. Integrity (reputation, corruption, conflict of interest)

Figure 3.1. Examples of risks categories impacting the public procurement system and activities

#### Economic and Regulatory/Compliance Sustainability risks Operational contextual · Environmental risks · Digital risks · Budgetary risks Compliance with public procurement Socials risks · Capacity risks · Market risks regulatory framework · Compliance with relevant Regulatory frameworks · Integrity risks ( corruption, collusion, faud, etc.)

Source: (OECD, 2022[3])

As in any other open economy, these risks can also impact the public procurement system and activities in Malta. As public procurement is a key economic activity, some of these risks have been identified as the most problematic factors for doing business in Malta such as government bureaucracy, inadequate supply of infrastructure, access to financing, lack of capacity, poor work ethics and corruption, etc. (see Figure 3.2)

Inefficient government bureaucracy 14.6 Insufficient capacity to innovate 12.4 Inadequate supply of infrastructure 11.7 Access to financing 11.7 11.2 Inadequately educated workforce Poor work ethic in national labor force 98 Corruption 7.9 Restrictive labor regulations 5.0 4.0 Tax rates 3.7 Tax regulations Policy instability 3.0 Government instability/coups 2.3 Foreign currency regulations 2.0 Inflation 0.7 Poor public health 0.1 Crime and theft 0.0

Figure 3.2. Most problematic factors for doing business in Malta

Note: From the list of factors, respondents to the World Economic Forum's Executive Opinion Survey were asked to select the five most problematic factors for doing business in their country and to rank them between 1 (most problematic) and 5. The score corresponds to the responses weighted according to their rankings.

Source: (World Economic Forum, 2017-2018[6])

Regarding the lack of capacity, in the recent years, Malta faced many challenges such as labour shortages in the private sector (Malta Employers' Association, 2021<sub>[7]</sub>), but also in the public sector, regarding the public procurement field. Aware of this risk, the government launched several reforms in the public procurement area to address capability gaps in the public procurement workforce in Malta including initiatives on professionalisation, role clarity, training courses on the public procurement regulation, on the electronic procurement system, and on Green Public Procurement (OECD, 2019<sub>[8]</sub>).

Malta is also facing high risks of systemic corruption, including in the public procurement field. The country however developed regulations and policies to enhance accountability and transparency over the years and recently introduced a National Anti-Fraud and Corruption Strategy (Office of the Prime Minister Malta, 2021[9]). The National Audit Office has also become increasingly proactive. A number of high-level officials have been prosecuted for corruption offences, showing a willingness by the state to bring to account corrupt actors (Gehrke, 2020[10]). Nevertheless, challenges remain as Malta is ranked 52/180 in the corruption perception Index in 2020 (Transparency International, 2020[11]) with 28% of people who think corruption increased in the previous 12 months (Transparency International, 2021[12]). Among the business community, corruption is identified as the 7<sup>th</sup> most problematic factors for doing business in Malta (see Figure 3.2.). With the large volumes at stake and the interaction between the private and public sector, public procurement is likely to be particularly at risk in Malta.

The growing awareness on environmental issues and economic wellbeing have increased the popular environment health concerns in Malta, including regarding ambient air quality, water quality, and sanitation (Ministry for the Environment, Climate Change and Planning, 2020<sub>[13]</sub>). The country has the second-worst air pollution in Europe and construction of building work is the leading contributor for poor air quality in the country (EARTH5R, 2020<sub>[14]</sub>) (European Environment Agency, 2015<sub>[15]</sub>). The environmental risks are likely

to impact the way public procurement is conducted. In response to environmental risks, many initiatives have been developed such as the National Air Pollution Control Programme.

# 3.1.2. Developing a risk management strategy at the national level

For a long time, the OECD recognises adequate risk management as a relevant feature of a well-functioning public procurement system and encourages countries to integrate risk management strategies into them (OECD, 2015[16]) (see Box 3.1).

# Box 3.1. Principle "Risk Management" of the OECD Recommendation on public procurement

The Council recommends that Adherents integrate risk management strategies for mapping, detection and mitigation throughout the public procurement cycle.

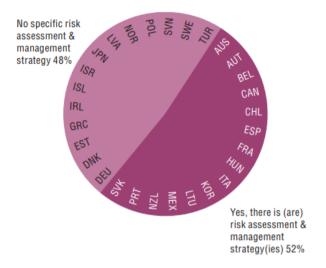
To this end, Adherents should

- i. Develop risk assessment tools to identify and address threats to the proper function of the public procurement system. Where possible, tools should be developed to identify risks of all sorts – including potential mistakes in the performance of administrative tasks and deliberate transgressions – and bring them to the attention of relevant personnel, providing an intervention point where prevention or mitigation is possible.
- ii. **Publicise risk management strategies**, for instance, systems of red flags or whistle-blower programmes, and raise awareness and knowledge of the procurement workforce and other stakeholders about the risk management strategies, their implementation plans and measures set up to deal with the identified risks.

Source: (OECD, 2015[16])

Given the relevance of risk management in public procurement, some countries have developed a dedicated strategy for assessing, preventing and mitigating public procurement risks, although the uptake is still below expectations. In 2018, only 52% of OECD countries, developed a strategy for assessment prevention and mitigation of public procurement risks (see Figure 3.3.).

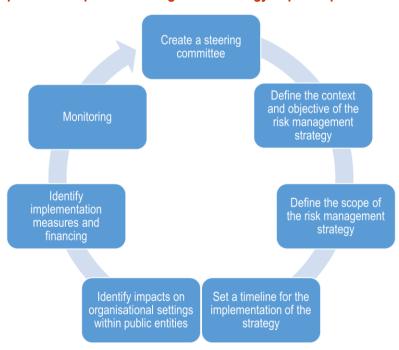
Figure 3.3. Existence of a strategy for assessment, prevention and mitigation of public procurement risks, 2018



Source: (OECD, 2019[17])

Malta has not yet developed a risk management strategy in public procurement, neither at a national scale nor through a sectoral approach. However, the DoC is highly committed to advancing the development of a risk management approach and strategy in public procurement. To this purpose, Malta should adopt a more comprehensive approach towards risk by developing a national public procurement risk management strategy covering all public entities. The development of such strategy requires taking into account the different parameters described in Figure 3.4.

Figure 3.4. Key steps to develop a risk management strategy in public procurement



Source: (OECD, 2022[3])

# 3.1.3. Initiatives to promote risk management at the national level

In Malta, very limited initiatives have been taken to promote risk management in public procurement. Effective risk management frameworks and activities are nonetheless a crucial part of the response against the numerous risks threatening the well-functioning of public procurement processes.

The need for an efficient control system to embed a risk management approach in public procurement

The good management of public procurement risks needs to be grounded into a sound institutional framework with strong control mechanisms. Furthermore, appropriate external oversight and control mechanisms, opportunities for challenges and complaints from citizens and businesses can also help gaining and maintaining public trust in institutions and ensuring a good management of public funds (OECD, 2019<sub>[18]</sub>). Controls are usually either internal or external and can support risk identification and the implementation of mitigation measures (OCDE, 2019<sub>[19]</sub>).

An internal control system refers to the policies and processes that enable an organisation to identify and adequately respond to internal or external risks and ensure an efficient and proper use of public resources (OECD, 2019<sub>[20]</sub>). Internal control measures ensure the efficient fulfilment of a public procurement cycle while safeguarding integrity (OECD, 2016<sub>[21]</sub>). In Malta, depending on the categories of public entities (Schedule 2, 3 and 16), several entities or bodies are part of the internal control measures system and contribute to identify and mitigate public procurement risks. Among them: the three DoC directorates (Procurement Policy and Quality Assurance Directorate - PPQAD, Operations Directorate - OD, and the Sectoral Procurement Directorate - SPD), and different committees, namely the Tender Evaluation Committee (TEC), the Departmental Contracts Committee (DCC), the General Contracts Committee (GCC), and the green public procurement – GPP focal points (see Table 3.1.). In addition, some specific measures have been implemented namely to reduce risks related to the capabilities of the procurement workforce such as developing standard templates and promoting dedicated capacity building activities (see Chapter 5). As mentioned in section 2.2, some control measures such as the vetting of procurement document and BPQR are considered cumbersome by the interviewed contracting authorities. Malta should evaluate the efficiency of the different control measures in place and provide additional measures when necessary based on the identification of risks impacting the public procurement system.

Table 3.1. Example of entities/ bodies involved in the internal control system of public entities in Malta

|  | Example of measures  | Scope   |
|--|--|---|
| SPD (DoC)  | <ul> <li>Vetting procurement documents,</li> <li>Publishing and managing the publication process,</li> <li>Coordinating evaluation reports for recommendations to the DCC</li> </ul>           | Schedule 16 entities                                    |
| OD (DoC) - Evaluation and<br>Contracts Agreement Unit: | <ul> <li>Vetting procurement documents,</li> <li>Publishing and managing the publication process,</li> <li>Coordinating evaluation reports for recommendations to the DCC</li> <li></li> </ul> | Schedule 2 and 16 entities (depending on the threshold) |
| OD (DoC)- Special Projects Unit:                       | - Vetting tenders which vary from the default procedures such as Concessions, Design Contests, Competitive Dialogues and Innovation Partnership  | Schedule 2 and 16 entities                              |
| DPPQA (DoC)- Quality<br>Assurance Unit                 | - BPQR approval  | Schedule 2, 3 and 16 entities                           |
| Tender Evaluation<br>Committee (TEC)                   | - Evaluation of tenders  | All CAs ( for each tender)                              |
| Departmental Contracts<br>Committee (DCC)              | - Approval of tender award   | Tenders administered by SPD                             |

| General Contracts<br>Committee (GCC)                                  | - Approval of tender award - Approval of Negotiated procedure or direct orders above EUR 139,000         | Tenders administered by OD  |  |
|---|--|---|--|
| Direct Order's Office within the Ministry for Finance and Employment. | - Approval of the Negotiated procedure or direct orders above EUR 10,000 and below EUR 140 000 excluding | All CAs   |  |
| GPP focal point   | - GPP clearance  | All CAs (Calls for Tenders above EUR 10 000 / Calls for Quotations above 5 000) |  |

Source: Based on information provided by DoC and (OECD, 2019[8]).

In addition to internal control, external controls are essential to ensure an efficient and effective management of public resources. In Malta, different bodies oversee external audit such as the National Audit Office (NAO) and the Internal Audit and Investigation Division (IAID) and can play a key role in risk identification. For instance, in its 2020 report, the NAO identifies several public procurement risks including those related to the lack of planning, non-compliance with the PPR, excessive use of direct orders, lack of market research, procurements carried out without approval from the DoC (NAO, 2020[22]). In addition, for the use of European funds, other stakeholders are performing control on public finance management and public procurement activities: the Planning and Priorities Coordination Division (PPCD) and the Funds and Programme Division (FPD) (Government of Malta, n.d.[23]) (Government of Malta, n.d.[24]). In addition, the Compliance & Monitoring Unit (DoC) investigated alleged irregularities in public procurement procedures and collects information, analyses findings and disseminates submitted feedback.

As described in section 1.1.3, the coordination between the DoC and other key stakeholders in public procurement is relatively limited which can hamper the efficiency of the control system and does not favour the development of a risk management framework. All stakeholders involved in the control and oversight of public procurement activities should contribute to the development of a risk management framework and tools, and to the development of adequate mitigation measures.

The need to develop specific tools to implement a risk management approach

While the development of risk strategies could foresee the development of risk management tools, it is possible to develop risk management tools independently from a related strategy. Although most OECD countries adopted a risk management strategy in public procurement, only a few have developed tools to assess public procurement risks. As illustrated in Figure 3.5., out of 29 countries surveyed in 2018, only 9 had developed risk databases, 7 had a risk assessment methodology, 5 had a risk register and 4 had risk assessment results (OECD, 2021[4]).

No. 29 25 20 22 24 15 10 5 n Databases Risk assessment Risk register Risk assessment methodology results

Figure 3.5. Number of countries with tools in place to assess public procurement risks, 2018

Source: (OECD, 2021[4])

While a formal risk management strategy has not been developed yet in Malta, a few tools have been developed by different entities to reduce public procurement risks. For instance, the SPD provided a checklist for contracting authorities to be used before submitting a procurement procedure for vetting as a mitigation measure for internal and external checks. One of the SPD units (former MPU) developed a risk register covering the whole public procurement cycle which is considered as a good practice. For each public procurement stage, the register highlights the risks likely to occur, the potential consequences and the mitigation actions to implement. Table 3.2 provides an example of procurement risks at the needs identification and planning phase. Many risks identified in this register are consistent with the risks encountered by the majority of surveyed contracting authorities (see section 3.2.2). However, according to the OECD survey, this good practice has not been replicated in other SPD units, in other directorates in DoC or in other contracting authorities. Despite the limited number of initiatives related to risk management in public procurement in Malta, the willingness of DoC to embark on a risk-based approach and the few existing tools tackling risks (such as the risk management register) are very promising and encouraging signals for the elaboration of a formal risk management strategy and tools. In this context, the DoC should lead the development of risk management tools to be used by all public entities. When contracting authorities use risk management tools developed by DoC and report their results (risk identification, risk registers etc.), it will enable the DoC to centralise the information on potential risks and lead to an update of a general risk register to be spread and used across all contracting authorities. In addition, to formalising a risk management approach, it will contribute to reinforce the capacity of contracting authorities on risk management which should result in better management of public funds.

Table 3.2. Procurement risks identified by one SPD unit

| Risk                            | Likely consequences   | Action  |
|---------------------------------|---|---|
| Understatement of the need      | Purchase of unsuitable product or service Funds underutilised [or wasted] Need partially or not satisfied                           | Analyse need accurately and ask for the ultimate scope, aims and goals of the Contracting Authority.      |
| Overstatement of the need       | Greater expense leading to unnecessary procured works, services or supplies     Limited competition due to overtechnical requisites | Analyse need accurately, seeking the realistic functional and performance requirements                    |
| Misinterpretation of user needs | Totally unacceptable purchase or not most suitable product or service     Time lost     Increased costs     Possible downtime       | Improve consultation and discussions with users     Obtain clear statement of work and definition of need |

| Insufficient funding  | Delay in making the purchase     Additional costs for re-tender  | Obtain appropriate approvals before undertaking process such as but not limited to Commitment Forms [MFIN templates]     Improve planning especially for long term contracts   |
|-----------------------|--|--|
| Impractical timeframe | Inadequate responses from tenderers     Reduced competition     Delivery schedule not met                        | <ul> <li>Improve forecasting, planning and consultation with users</li> <li>Improve communication with potential tenderers</li> <li>Submission of annual plans vis-à-vis procurement necessities by the Contracting Authority</li> </ul>   |
| Integrity issues      | Increased procurement costs     Misuse of resources     Most suitable product not obtained     Unethical conduct | <ul> <li>Implement best practice policies, guidelines and practices, especially in line to the general rules governing tendering and procurement policies issued by the Central Contracting Authority [Department of Contracts]</li> <li>Maintain ethical environment</li> <li>Improve training of personnel</li> <li>Put suitable controls and reviews in place – with increased segregation of duties</li> <li>Using legal advisors</li> <li>Improve communication with potential tenderers whilst promoting equal, clear and transparent procurement procedures.</li> </ul> |

Source: Data provided by the Ministry of Gozo

# 3.2. Risk management practices at the contracting authorities' level

# 3.2.1. Initiatives to promote risk management at the contracting authorities' level

At a contracting authority level, and as described in Figure 3.6, risk management in public procurement activities has not been deeply rooted yet in Malta. Most surveyed contracting authorities (57%) do not undertake any risk management activities. Some contracting authorities are familiar with risk management in other areas than public procurement (e.g. IT system, fire engineering, financial services). Among all surveyed contracting authorities, only 7% undertake risk management activities in their public procurement processes. For instance, the Ministry of Gozo- MGOZ is using the risk register developed by the former SPU unit (MPU of MGOZ). The Malta Information Technology Agency (MITA), which is the central purchasing body of Malta for procurement related to Information and Communications Technology (ICT), is also maintaining a risk register. This tool is key for MITA as the agency that not only manages its own procurements and the related risks, but also centralises other contracting authorities' procurements needs in the ICT field. In practice, the scarcity of risk management activities and tools supports the need for DoC to develop risk management tools.

In addition, in some cases (21%), risk management actions in public procurement are set up by contracting authorities without being formalised, communicated or documented, which hampers informed and adequate decision-making. Formalisation of risk management activities is essential to anchor the practice of risk management in contracting authorities' culture. The tools that will be developed by the DoC could support these entities in formalising the risk management approach to enhance the management of public funds.

Undertaking limited risk management activities in public procurement (without being formalised)

Undertaking risk management activities in other areas than public procurement

Undertaking risk management activities in public procurement

Figure 3.6. Risk management activities at the contracting authority's level

Note: Based on a survey carried out between November and December 2021 with a representative sample of 14 contracting authorities in Malta. Source: OECD survey

0%

10%

20%

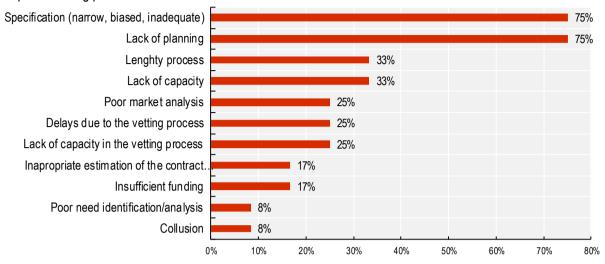
60%

# 3.2.2. Various procurement risks identified throughout the procurement cycle

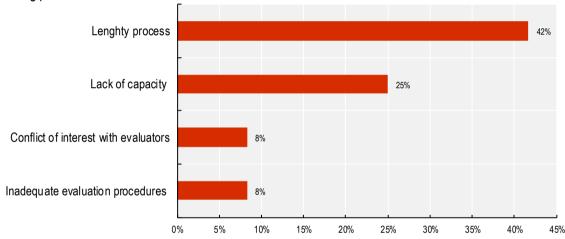
An efficient risk management framework in public procurement relies on a thorough risk identification and involves various relevant stakeholders including the public procurement authority, contracting authorities, oversight bodies (see section 3.1.3), and the private sector. The risks that could affect the proper functioning of the public procurement system are present throughout the procurement cycle. Responses collected from a sample of contracting authorities in Malta provided some useful insights on the main risks impacting different procurement stages (see Figure 3.7.). For instance, the main risks affecting the public procurement processes in the pre-tendering phase are related to inadequate specifications and lack of planning. At the tendering phase, respondents highlighted the length of processes as the main risk. The contract management stage is strongly exposed to the workforce lack of capacity (according to 58% of respondents). The DoC could strongly benefit form involving contracting authorities in risk identification when developing risk management tools.

Figure 3.7. Main risks affecting the public procurement processes through the procurement cycle

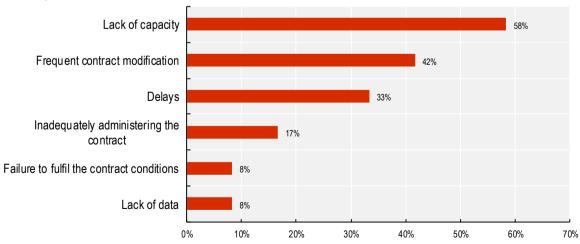
At the pre-tendering phase



# At the tendering phase



# Contract management phase



Source: Based on a survey carried out between November and December 2021 with a representative sample of 14 contracting authorities in Malta.

Many risks identified by contracting authorities in the OECD survey are consistent with challenges and risks faced and highlighted by the private sector in Malta. For instance, the development of narrow, biased, or inadequate tender specifications has been identified as the main risk threatening public procurement processes by 75% of responding contracting authorities. This result is consistent with the Malta Chamber of Commerce report and survey on challenges faced by economic operators in public procurement. Indeed, 55% of economic operators surveyed by the Malta Chamber of Commerce responded that tender specifications were drafted in such a way that competition was artificially narrowed (The Malta Chamber, 2021<sub>[25]</sub>). Risks related to the development of specifications may have different causes including the poor needs and market analysis (see section 2.1.2). Other risks, associated with distinct stages of the procurement cycle, such as the inappropriate estimation of the contract value or the length of the evaluation process, have also been identified by the Malta Chamber of Commerce (The Malta Chamber, 2021<sub>[25]</sub>). Given their experience in i) responding to public procurement opportunities initiated by contracting authorities and ii) performing public contracts, Malta should therefore consider involving suppliers and business associations in the discussion, exchange and sharing of experiences related to establishing and improving the management of public procurement risks in the country.

# References

| EARTH5R (2020), "Malta Sustainability Problems and Circular Economy Solutions", <a href="https://earth5r.org/malta-circular-economy/">https://earth5r.org/malta-circular-economy/</a> .  | [14] |
|--|------|
| European Environment Agency (2015), "Main themes and sectors addressed in the national State of Environment report", <a href="https://www.eea.europa.eu/soer/2015/countries/malta">https://www.eea.europa.eu/soer/2015/countries/malta</a> .   | [15] |
| Government of Malta (2021), Second Green Public Procurement Action Plan 2022-2027, <a href="https://environment.gov.mt/en/decc/Pages/environment/gpp/secondNap.aspx">https://environment.gov.mt/en/decc/Pages/environment/gpp/secondNap.aspx</a> .   | [1]  |
| Government of Malta (n.d.), Funds and Programmes Division, <a href="https://eufunds.gov.mt/en/EU%20Funds%20Programmes/Funds%20and%20Programmes%20Division/Pages/Funds-and-Programme-Division.aspx">https://eufunds.gov.mt/en/EU%20Funds%20Programmes/Funds%20and%20Programmes%20Division/Pages/Funds-and-Programme-Division.aspx</a> . | [24] |
| Government of Malta (n.d.), <i>Managing Authority The Planning and Priorities Co-ordination Division</i> , <a href="https://eufunds.gov.mt/en/Operational%20Programmes/Managing%20Authority/Pages/Managing-Authority.aspx">https://eufunds.gov.mt/en/Operational%20Programmes/Managing%20Authority/Pages/Managing-Authority.aspx</a> . | [23] |
| Malta Employers' Association (2021), <i>Addressing a Chronic Shortage of Employees</i> , <a href="https://www.maltaemployers.com/wp-content/uploads/Position-Paper-Shortage-of-employees-Aug-2021.pdf">https://www.maltaemployers.com/wp-content/uploads/Position-Paper-Shortage-of-employees-Aug-2021.pdf</a> .                       | [7]  |
| MAPS initiative (2018), <i>MAPS Methodology</i> , <a href="https://www.mapsinitiative.org/methodology/MAPS-Methodology-ENG.pdf">https://www.mapsinitiative.org/methodology/MAPS-Methodology-ENG.pdf</a> (accessed on 21 September 2021).   | [5]  |
| Ministry for the Environment, Climate Change and Planning (2020), <i>Recognizing Malta's Environmental Challenges</i> , <a href="https://era.org.mt/wp-content/uploads/2020/07/Recognising-Maltas-Env-Challenges.pdf">https://era.org.mt/wp-content/uploads/2020/07/Recognising-Maltas-Env-Challenges.pdf</a> .                        | [13] |
| NAO (2020), Annual Audit Report by the Auditor General Public Accounts, <a href="https://nao.gov.mt/en/recent-publications">https://nao.gov.mt/en/recent-publications</a> .  | [22] |
| OCDE (2019), Revue du système de passation des marchés publics en Algérie: Vers un système efficient, ouvert et inclusif, Examens de l'OCDE sur la gouvernance publique, Éditions OCDE, Paris, <a href="https://doi.org/10.1787/49802cd0-fr">https://doi.org/10.1787/49802cd0-fr</a> .   | [19] |
| OECD (2022), "Public procurement in Lebanon: Towards a risk management approach", <i>OECD Public Governance Policy Papers</i> , No. 16, OECD Publishing, Paris, <a href="https://doi.org/10.1787/b4285df1-en">https://doi.org/10.1787/b4285df1-en</a> .  | [3]  |
| OECD (2021), Government at a Glance 2021, OECD Publishing, Paris, <a href="https://doi.org/10.1787/1c258f55-en">https://doi.org/10.1787/1c258f55-en</a> .  | [4]  |
| OECD (2019), Enhancing the Use of Competitive Tendering in Costa Rica's Public Procurement System, <a href="https://www.oecd.org/costarica/costa-rica-public-procurement-system.pdf">https://www.oecd.org/costarica/costa-rica-public-procurement-system.pdf</a> .   | [18] |
| OECD (2019), Government at a Glance 2019, OECD Publishing, Paris, <a href="https://doi.org/10.1787/8ccf5c38-en">https://doi.org/10.1787/8ccf5c38-en</a> .  | [17] |

| OECD (2019), <i>Public procurement in Malta Re-engineering the Department of contracts</i> , <a href="https://www.oecd.org/governance/public-procurement/publications/public-procurement-in-malta.pdf">https://www.oecd.org/governance/public-procurement/publications/public-procurement-in-malta.pdf</a> .   | [8]  |
|--|------|
| OECD (2019), <i>Reforming ISSSTESON's Public Procurement for Sustainability</i> , OECD Public Governance Reviews, OECD Publishing, Paris, <a href="https://doi.org/10.1787/a6ee30a8-en">https://doi.org/10.1787/a6ee30a8-en</a> .  | [20] |
| OECD (2016), <i>Preventing Corruption in Public Procurement</i> , <a href="https://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf">https://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf</a> .  | [21] |
| OECD (2015), OECD Recommendation of the Council on Public Procurement,<br>https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0411.  | [16] |
| OECD-HAICOP (2019), Stratégie de Management des Risques dans les Marchés Publics en Tunisie, <a href="https://www.oecd.org/gov/public-procurement/publications/strat%C3%A9gie-management-des-risques-march%C3%A9s-publics-tunisie.pdf">https://www.oecd.org/gov/public-procurement/publications/strat%C3%A9gie-management-des-risques-march%C3%A9s-publics-tunisie.pdf</a> (accessed on 11 June 2019). | [2]  |
| Office of the Prime Minister Malta (2021), <i>National Anti-Fraud and Corruption Strategy</i> , <a href="https://parlament.mt/media/112436/national-anti-fraud-and-corruption-strategy">https://parlament.mt/media/112436/national-anti-fraud-and-corruption-strategy</a> en.pdf.  | [9]  |
| Politico (ed.) (2020), Ex-chief of staff to former Maltese PM arrested in corruption probe, <a href="https://www.politico.eu/article/malta-keith-schembri-arrested-panama-papers-scandal-daphne-caruana-galizia-murder/">https://www.politico.eu/article/malta-keith-schembri-arrested-panama-papers-scandal-daphne-caruana-galizia-murder/</a> .  | [10] |
| The Malta Chamber (2021), Report on Public Procurement Reform, <a href="https://www.maltachamber.org.mt/loadfile/c51f072e-897a-485f-9a7f-0248fbb887d5">https://www.maltachamber.org.mt/loadfile/c51f072e-897a-485f-9a7f-0248fbb887d5</a> .   | [25] |
| Transparency International (2021), <i>Global Corruption Barometer citizens' views and experiences of corruption</i> , <a href="https://images.transparencycdn.org/images/TI_GCB_EU_2021_web_2021-06-14-151758.pdf">https://images.transparencycdn.org/images/TI_GCB_EU_2021_web_2021-06-14-151758.pdf</a> .  | [12] |
| Transparency International (2020), <i>Corruption Perceptions Index</i> , <a href="https://www.transparency.org/en/cpi/2020/index/mlt">https://www.transparency.org/en/cpi/2020/index/mlt</a> .   | [11] |
| World Economic Forum (2017-2018), <i>Global Competitiveness Index 2017-2018</i> , <a href="http://reports.weforum.org/global-competitiveness-index-2017-2018/countryeconomy-profiles/#economy=MLT">http://reports.weforum.org/global-competitiveness-index-2017-2018/countryeconomy-profiles/#economy=MLT</a> .  | [6]  |

# 4 Strengthening the strategic use of public procurement

This chapter discusses the strategic use of public procurement in Malta with a focus on environmental aspects, innovation and small and medium size enterprises (SMEs) development. On green public procurement, this chapter analyses four key enablers: institutional framework, regulatory frameworks and strategies, supporting tools, and monitoring system. Given the low uptake of innovative procurement, this chapter assesses the need for a leading entity on public procurement for innovation, the development of a dedicated strategy, and capability building. Furthermore, this chapter highlights the benefits of supporting SMEs to promote green public procurement and innovation. The chapter also emphasises the relevance of promoting the use of Best Price-Quality Ratio (BPQR) criteria and market analysis as a driver to support the implementation of strategic procurement.

As mentioned, public procurement by the central government in Malta accounted for approximately 6% of GDP in 2019 (Government of Malta, 2021<sub>[1]</sub>), Until recently, in most OECD countries, the economic and fiscal arguments have been at the forefront of government considerations and policy design, given constant budget pressures and citizens' demands for accountability vis-à-vis public spending. Increasingly over in the past decade, however, recognising the role public procurement can play in achieving broader outcomes, the concept of value in public spending has been evolving to encompass a wider range of considerations known as "complementary policy objectives" (OECD, 2022[2]). These objectives include supporting a more resource-efficient economy, stimulating innovation, supporting small and medium-sized enterprises (SMEs) and promoting social values. (OECD, 2021[3]) The strategic use of public procurement has been long highlighted by the OECD, namely through the 2015 "OECD Recommendation of the Council on Public Procurement" (hereinafter referred to as the "OECD Recommendation") that calls upon countries to use public procurement to pursue complementary policy objectives while balancing them against the primary objectives. This could be done by i) evaluating the use of public procurement as one method of pursuing complementary policy objectives in accordance with clear national priorities (ii) developing an appropriate strategy for integrating these policy objectives in public procurement systems, and (iii) employing appropriate impact assessment methodology to measure the effectiveness of public procurement in achieving these objectives. (OECD, 2015[4])

In fact, countries are progressively using public procurement as a strategic lever to enhance the uptake of different policy objectives. For instance, Figure 4.1. shows that all OECD countries have developed green public procurement policies at least at some level of the public sector. The majority of the OECD countries has policies to support SMEs' access to public procurement. However, policies related to stimulating innovation, responsible business conduct and social policies are lagging behind.

A strategy/policy has been developed at central level Only some procuring entities have developed an internal strategy/policy 100% 90 % 90% 83% 83% 80% 69% 70% 60% 52% 50% 40% 30% 24% 24% 10% 2018 2018 2018 2018 2018 Green public procurement Innovative goods & services Support to SMEs Responsible business Women-owned businesses conduct

Figure 4.1. Development of public procurement strategies/policies to support complementary policy objectives across OECD countries, 2016 and 2018

Source: (OECD, 2019[5])

Ensuring an enabling environment is pivotal to the effective integration of complementary policy objectives through public procurement. Enabling environment consists of having appropriate regulatory and

institutional frameworks, developing policies and strategies, providing support tools, and establishing a monitoring mechanism. (See Figure 4.2.)

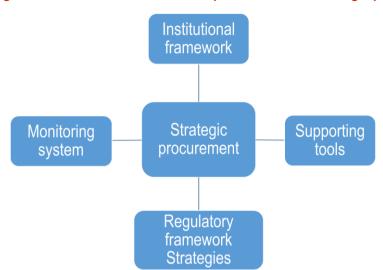


Figure 4.2. Enabling environment for the effective implementation of strategic procurement

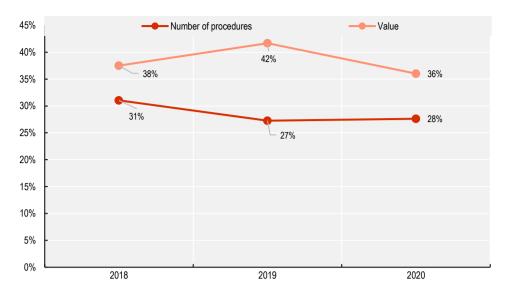
In line with the European directives and policies, Malta is committed to advancing the strategic use of public procurement. This chapter will focus on the strategic use of public procurement to advance the environmental agenda, to spur innovation and to enhance SMEs development. It aims at assessing the current state of play and elements related to the enabling environment and providing the country with concrete recommendations to support the implementation of this agenda.

# 4.1. Further strengthening the implementation of green public procurement in Malta

Green Public Procurement (GPP) is an important tool to achieve environmental and sustainable policy goals relating to climate change, resource use and sustainable consumption and production. GPP refers to "purchasing of products and services which are less environmentally damaging when taking into account their whole life cycle" (OECD, 2015<sub>[6]</sub>). GPP is aligned with achieving international initiatives such as a European Green Deal and Sustainable Development Goals (SDGs) and plays a key role in achieving these goals. In Malta, GPP is defined as "the process where public authorities attempt to solicit services, goods and works that have a diminished environmental impact throughout their life cycle, in comparison to services, goods and works that have the same primary function". (Ministry for the Environment, Climate Change and Planning, 2021<sub>[7]</sub>).

Malta has been taking strong initiatives to promote GPP since 2011, through implementing GPP institutional reforms and GPP National Action Plans (NAP). Indeed, the country adopted the first NAP (2012-2014) in 2011 and the second NAP (2022-2027) in 2021. Data provided by the Ministry for the Energy, Environment and Enterprise (MEEE) shows that in 2020 GPP accounted for 28% of the total number of tenders published. This corresponds to 36% of the total procurement value and 1.17% of GDP in 2020. (See Figure 4.3. ) However, the share of GPP decreased in 2020 compared with 2018 and 2019 in terms of the value. According to the MEEE, this decrease can be explained by the fact that many tenders, in particular large volume procurement with GPP criteria, were issued prior to 2020.

Figure 4.3. Share of GPP in Malta, 2018-2020



Source: Data provided by the MEEE

This section analyses an enabling environment of GPP in Malta.

# 4.1.1. Introducing clear institutional settings to advance Green Public Procurement

Having in place a clear and coherent institutional framework with regards to GPP is key to advancing its implementation, irrespective of the entity leading the GPP agenda. While in some countries the GPP agenda is led by the entity in charge of public procurement (e.g. Public procurement office, Ministry of Finance, etc), in other countries, it is the Ministry in charge of the environment policy that undertakes this role. In Malta, the GPP initiative is led by the Green Public Procurement (GPP) Office within the Directorate for the Environment and Climate Change which is located within the MEEE, in cooperation with the Department of Contracts (DoC).

The institutional settings to implement GPP were established. These include GPP Focal Point, which is the key driving force to advance GPP implementation, the National GPP task Force, a GPP Helpdesk (to be discussed in the section 4.1.3), and GPP officer function.

DoC **MECP** Each **GPP** Office Ministry SPD/OD **GPP** Focal **GPP GPP** Vetting process (after **Point** helpdesk Coordinator GPP clearance) for Schedule 2 and 16 **GPP** Feedbacks on GPP clearance policy and Q&A implementation National GPP Task Contracting authority Force (Inter-ministerial task force (IMTF)

Figure 4.4. GPP governance framework in Malta

Source: Prepared by the author based on (Ministry for the Environment, Climate Change and Planning, 2021[8])

GPP Focal Point has been placed within the MECP since 2011 and is responsible for the coordination of stakeholder consultations, the representation of Malta at the GPP Advisory Group Meetings of the European Union, the delivery of training and information sessions to public entities and the monitoring and contribution to reports related to GPP.

The National GPP Task Force was established in 2011 as an inter-ministerial task force (IMTF) to oversee the roll out of GPP, promote the collaboration among key stakeholders of GPP in Malta and support the development and implementation of the 1<sup>st</sup> NAP. The IMTF was chaired by the MECP, and its members consisted of governmental institutions: DoC, Ministry for Resources and Rural Affairs (MRRA), Malta Environment and Planning Authority (MEPA), Malta Council for Science and Technology (MCST), Malta Enterprise (ME), National Statistics Office (NSO), Malta Competition and Consumer Affairs Authority (MCCAA) and the Department for Local Government (DLG). This task force was re-established in 2015 and is also active currently to provide the GPP Focal Point with feedbacks on GPP policy and implementation. This IMTF contributed to setting the basis upon which the second GPP NAP 2022-2027 (to be discussed in the next section 4.1.2) was built.

Similarly to GPP Focal Point, GPP officer is placed within each Ministry. The role of the GPP officer was to carry out GPP clearance procedures until 2015. GPP clearance system was established as a quality control mechanism to ensure that GPP is used by contracting authorities in procurement procedures in line with the policies in place. Therefore, the GPP officer acted as a gatekeeper for ensuring compliance with GPP criteria, by assessing whether each tender falls within the scope of GPP and, if so, whether the correct GPP criteria were adequately included. Since 2015, the responsibility for implementing GPP clearance corresponds to the GPP Coordinator based at and employed by each Ministry.

GPP clearance is required for all contracting authorities in Malta (Schedule 2, 3, and 16) before publishing procurement procedures whose estimated amount is above EUR 10 000 excluding VAT for Calls for Tenders and above EUR 5 000 excluding VAT for Calls for Quotations. (Department of Contracts, 2022[9]) Contracting authorities shall send a GPP clearance request to a GPP coordinator. The request should be

submitted together with the procurement documents. Clarification is requested by a GPP coordinator when a non-compliance is identified. Failure to amend such requirements may lead to cancellation of the tender.

The GPP coordinator ensures GPP adherence and enhances GPP compliance. However, Figure 4.5. shows that the GPP compliance rate, which represent the procedures compliant with GPP criteria under the scope of GPP, is not close to 100%. In 2020, the GPP compliance rate was at 56% in terms of number of procedures and 45% in terms of financial value, and it has been decreasing since 2018. According to the 2020 GPP Monitoring Report, the non-compliance arises not only from mistakes but also from the intentional behaviour from contracting authorities to avoid using non-mandatory GPP criteria. Contracting authorities may opt to request for a less demanding product without GPP criteria in order to avoid the risk of low competition or receiving no bids that result in cancellation of tender.". (Ministry for the Environment, Climate Change and Planning, 2021<sub>[7]</sub>)

Furthermore, communication and approval process related to GPP clearance were carried out via e-mail between the GPP coordinator and the person in charge of the procurement procedure at the contracting authorities. Carrying out GPP clearance procedures through ePPS could enhance the efficiency of the process. Indeed, this could provide a real-time traceability of the clearance status, security of information, and direct access to the data by the DoC during the vetting process. It will also enable both DoC and the MECP to monitor GPP implementation (See section 6.4.1). Therefore, Malta could consider assessing the possibility to use ePPS for GPP clearance.

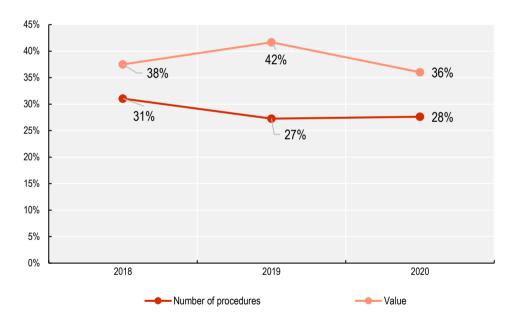


Figure 4.5. GPP compliance, 2018-2020

Note: GPP compliance is calculated by the formula: tenders compliant with GPP divided by tenders under the scope of GPP Source: Data provided by MECP

# 4.1.2. Strengthening the GPP implementation through the ambitious 2<sup>nd</sup> GPP National Action Plan

Enhancing and ensuring GPP uptake needs to be grounded in the regulatory and/or strategic public procurement frameworks. These frameworks should include several mechanisms to consider environmental criteria at different phases of the public procurement cycle. (See Figure 4.6.)

Contract performance clauses

GPP mechanism

Life cycle costing

Labels

Labels

Figure 4.6. Mechanisms to embed environmental aspects in procurement activities

Source: Adapted from (OECD, 2021[10])

During the pre-tendering phase, considering environmental aspects in market analysis can enable contracting authorities to use the appropriate mechanisms (European Commission, 2016[11]). During the tendering phase, some concrete actions can include using selection criteria, which will allow bidders to comply with specific environmental requirements to participate in the tender process. Using award criteria encourages bidders to propose higher levels of environmental performance than the minimum requirement specified in the technical specifications. Using environmental labels allows contracting authorities to identify sustainable products or services and/or to use them as means of proof of compliance with the technical specifications. Labels can be used as criteria and technical specifications. Additionally, life cycle costing approaches (LCC) can complement this by evaluating the financial proposals while considering the total costs over the life cycle of a product, service or works including (i) purchase price and all associated costs (delivery, installation, insurance, etc.); (ii) operating costs, including energy, fuel and water use, spares, and maintenance (iii) end-of-life costs, such as decommissioning or disposal; and (iv) costs imputed to environmental externalities. Finally, contract performance clauses can also require the use of environmentally friendly materials and a monitoring system. (European Commission, 2016[11])

In Malta, the public procurement regulatory framework provides the possibility to use all these mechanisms. For instance, the Public Procurement Regulations (PPR) foresee provisions related to the use of labels (Article 54), life-cycle costing (Article 239 & 240), and environmental management standards (Article 234). Environmental criteria can be integrated into the technical specifications (Article 2), award criteria (Article 239) or contract performance (Article 245). Article 16 requires contracting authorities to take appropriate measures to ensure that during the execution of a contract, economic operators comply with the applicable obligations in the fields of environmental law established by European Union law, national law, collective agreements or by the international environmental provisions listed in Schedule 13 (List of International Social and Environmental Conventions). Article 199 refers to blacklisting an economic operator from participating in a procurement procedure in case of the violation of the laws/provisions specified in Article 16. (Government of Malta, 2016<sub>[12]</sub>)

GPP National Action Plan (NAP) is the most relevant GPP strategic framework in Malta, providing also GPP guidelines. The 1st NAP (2012 -2014) was approved in November 2011 and came into force in

January 2012. It defines GPP targets for 18 product and service groups for which common GPP criteria have been set at the European level. It has a combination of mandatory and non-mandatory GPP criteria. Mandatory criteria were set for 5 procurement categories: i) Copying and Graphic Paper, ii) Office IT Equipment, iii) Textiles, iv) Gardening Products and Services, and v) Cleaning Products and Services.

In June 2014, a Cabinet made the decision to enshrine GPP as a cornerstone of the Government's green agenda, and set the target of 75% to progressively increase the share of GPP, as laid down in the Greening Economy Action Plan: Greening our Economy – Achieving a Sustainable Future.

In line with international good practices, the MECP carried out public consultation for the development of the 2nd NAP in 2019; all stakeholders, including contracting authorities, the private sector, civil society organisations were given the opportunity to provide their feedbacks. The 2<sup>nd</sup> NAP, launched in October 2021, is more ambitious than the 1<sup>st</sup> NAP and the Greening Economy Action Plan. It intends to cover a wider range of environmental objectives: (i) waste prevention and reduction, (ii) water availability, (iii) climate change, and (iv) energy efficiency. It sets the GPP uptake target to be met by 2027 at 90% through progressively increasing the share of GPP. It defines the target for 17 product and service groups. They included 6 new product and service groups: i) Electrical and electronic equipment used in health care, ii) Vending machines and hospitality catering, iii) Sanitary tapware, iv) Toilets and urinals, v) Road design, construction and maintenance and, vi) Office building design, construction and management. 14 of these 17 product and service groups are classified as mandatory. Only three product groups will retain their non-mandatory status: furniture, vending machines and electric & electronic equipment used in health care.

Table 4.1. Targets for the second NAP for mandatory and non-mandatory categories

|   | National Ta | rgets |      |      |      |      |
|---|-------------|-------|------|------|------|------|
| Mandatory Product Groups                            | 2022        | 2023  | 2024 | 2025 | 2026 | 2027 |
| Copying and graphic paper                           | 100%        | 100%  | 100% | 100% | 100% | 100% |
| Gardening products and services                     | 100%        | 100%  | 100% | 100% | 100% | 100% |
| Computers and Monitors                              | 100%        | 100%  | 100% | 100% | 100% | 100% |
| Imaging equipment                                   | 100%        | 100%  | 100% | 100% | 100% | 100% |
| Textiles  | 100%        | 100%  | 100% | 100% | 100% | 100% |
| Cleaning products and services                      | 100%        | 100%  | 100% | 100% | 100% | 100% |
| Road lighting and traffic signals                   | 100%        | 100%  | 100% | 100% | 100% | 100% |
| Transport   | 100%        | 100%  | 100% | 100% | 100% | 100% |
| Office building design, construction and management | 80%         | 100%  | 100% | 100% | 100% | 100% |
| Road design, construction and maintenance           | 80%         | 100%  | 100% | 100% | 100% | 100% |
| Paints, varnishes and road markings                 | 80%         | 100%  | 100% | 100% | 100% | 100% |
| Sanitary tapware                                    | 30%         | 50%   | 60%  | 80%  | 100% | 100% |
| Toilets and urinals                                 | 30%         | 50%   | 60%  | 80%  | 100% | 100% |
| Hospitality and Catering Services                   | 30%         | 50%   | 60%  | 80%  | 100% | 100% |
| Non-Mandatory Product Groups                        |             |       |      |      |      |      |
| Furniture   | 40%         | 50%   | 60%  | 70%  | 80%  | 90%  |
| Vending Machines                                    | 40%         | 50%   | 60%  | 70%  | 80%  | 90%  |
| Electric & electronic equipment                     | 30%         | 40%   | 50%  | 60%  | 70%  | 70%  |

Source: (Ministry for the Environment, Climate Change and Planning, 2021<sub>[8]</sub>)

The ambition of the 2<sup>nd</sup> NAP goes beyond simply setting higher targets for the forthcoming years and giving mandatory status to additional product and service groups as well as introducing new GPP criteria for additional sectors. The 2<sup>nd</sup> NAP defines the following objectives to be accomplished by 2027 in order to achieve the vision for GPP and enhance the uptake and inclusion of GPP criteria within tendering processes:

- To continuously engage economic operators, contracting authorities and other relevant stakeholders by providing necessary training through information sessions, workshops and established communication channels.
- To facilitate GPP implementation by managing the GPP Helpdesk Facility and an interactive National GPP web-responsive application; www.gpp.gov.mt (conveniently accessible on mobile phones) enabling users to attain further knowledge on specific queries.
- To increase awareness amongst economic operators and contracting authorities on the benefits of GPP which extend beyond the provision of services and products and instils an environmental conscience amongst the business community.

These objectives will be measured by the following key performance indicators every six-monthly basis:

- Percentage of public tenders expressed in number of tenders and values in each product/service group
- Number of training and information sessions held, number of participants attended, and a survey rating the training given
- Frequency of meetings held with CAs, stakeholders and economic operators.
- Number of requests received on the GPP generic email or through other channels and answered.

In addition to the NAP, other environmental policies aim at enhancing the uptake of GPP. For instance, the Waste Management Plan 2014-2020 had identified GPP as an instrument for creating resources from waste, a concept that is carried forward into the Long-term Waste Management Plan (2021 to 2030). (Ministry for the Environment, Climate Change and Planning, 2021<sub>[13]</sub>) This holistic approach to waste management demonstrates the relevance of GPP as mechanism for tackling environmental challenges. This approach reinforces the policy coherence with the 2<sup>nd</sup> NAP. Construction and Demolition Waste Strategy for Malta 2021-2030: Managing Construction & Demolition Resources, published in 2021, which sets re-use & recycling targets on excavated materials and construction materials for the construction of high-density residential developments. (Environment and Resources Authority, 2021<sub>[14]</sub>) Public service strategy, launched in November 2021, includes initiative No. 37 on Green Public Procurement Plans. It recognises that GPP plays a key role in promoting more environmentally friendly choices given the volume of public spending. (Office of the Prime Minister, 2021<sub>[15]</sub>)

As already discussed, the 2<sup>nd</sup> NAP is more ambitious than the 1<sup>st</sup> NAP in terms of targets (90% for the share of GPP). In 2016, the MECP launched a survey to contracting authorities and economic operators in order to assess the effectiveness of the 1<sup>st</sup> NAP and their view of GPP. The result shows that the majority of participants (75%) indicated no significant difficulties in their experience with respect to the conditions imposed by the established GPP criteria. However, discussions with some interviewed contracting authorities highlighted that some targets of the 2<sup>nd</sup> NAP are quite ambitious and are perceived as difficult to be achieved. For instance, the target could be easily achieved for the transport category with the procurement of electric cars. However, for some specific products under the transport category such as specialised engines, this target could be difficult to reach. In addition, some contracting authorities mentioned that the market will have difficulties in adapting to the increased GPP requirements of the 2nd NAP. However, most Maltese enterprises are not manufactures but act as wholesalers. Thus, they could easily adapt to increased requirements through international manufacturers. To ensure the feasibility of all targets of the 2<sup>nd</sup> NAP, the MEEE should monitor the implementation of the 2<sup>nd</sup> NAP to identify eventual bottlenecks and challenges related to achieving its higher goals.

Regarding the GPP criteria, MEEE identified as challenges the fact that some EU GPP criteria are very technical and difficult to be understood by procurement officials at contracting authorities. Sometimes, the criteria can be understood only by officials with an engineering or technical backgrounds. However, in that case, the use of adequate labels could have the potential to alleviate this technical challenge. Article 54 of PPR allows contracting authorities to use eco labels for the environmental purpose. (Government of Malta,

2016<sub>[12]</sub>) Malta could consider the possibility of promoting the use of specific eco labels, when relevant, in each GPP criteria through the capability-building activities.

# 4.1.3. Developing further supporting tools to enhance the GPP uptake

Different measures can reinforce the capability of procurement officials in using GPP criteria, including the provision of training, manuals and guidelines, help desks and standardised templates. (See Figure 4.7.). Standardised templates are ready-to-use forms that contracting authorities can use to facilitate their work. The help desk is a contact point centre to assist contracting authorities and/or economic operators in clarifying their inquiries related to their daily tasks of public procurement. It represents an efficient tool to provide quick and tailor-made information. Developing a methodological assistance contributes to supporting procurement officials and economic operators to undertake the processes related to public procurement effectively, and it complements what is learnt through training courses. (OECD, Fothcoming[16])

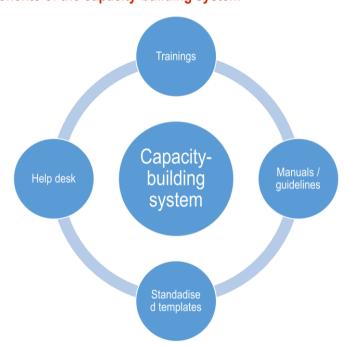


Figure 4.7. Key components of the capacity-building system

In 2022, DoC issued the Contracts Circular No. 6 2022, Green Public Procurement: implications of the Second National Action Plan, in order to provide contracting authorities with the guidance on GPP (Department of Contracts, 2022[9]). The 2nd NAP can be considered as a comprehensive guideline of GPP. It provides the detailed GPP criteria for each product group. The 2nd NAP also includes the standardised template for contracting authorities to request for the GPP clearance procedure. However, discussions with contracting authorities highlighted that the 2<sup>nd</sup> NAP provides only general requirements and criteria for each product category which makes it difficult to apply for specific products. Currently, the MEEE has the plan to publish more detailed guidelines in respect to GPP specifications, verification documents, sample certification and other similar supplementary documentation. (Department of Contracts, 2022[9]) In this context, Malta could benefit from complementing the existing guidelines on GPP by adding concrete case studies and examples.

In terms of trainings, MEEE also provides a 5-hour GPP training through the IPS. This training course covers various GPP elements with practical case studies and a test:

- What is GPP evolution of GPP in Malta
- The 2<sup>nd</sup> National Action Plan
- Understanding the GPP criteria
- GPP in Practise

This GPP training was provided to 250 public procurement officials in 2021 (188 in 2018, 190 in 2019, and 60 in 2020 due to the Covid-19 pandemic). However, this GPP course is mandatory only to the GPP officers and one member of the Tender Evaluation Committee, and optional to procurement officials at contracting authorities. For reference, 61% of the ProcurComp<sup>EU</sup> survey participants carried out for this project have completed this course. Malta could consider the possibility of making the GPP training mandatory, and update the course module as the guidelines and manuals are revised with concrete case studies and examples.

Recognising the need to provide timely support and advice to contracting authority and economic operators, MEEE also operates the GPP Helpdesk since 2011. The GPP Helpdesk provides support via telephone, email, and the organisation of meetings. The helpdesk is committed to respond to questions or request within a period of 48-72 hours. Malta could consider the possibility of preparing responses to the frequently asked questions to publish them online as well as to update the manuals and the training module.

According to the 2020 GPP Monitoring Report, the MECP also launched GPP Mobile Application in 2021 which consist of a one-stop-shop for all GPP-related information such as: lists of GPP certified products, GPP publications, current GPP technical specifications, or for booking GPP training sessions, etc. Users are also able to communicate directly with the GPP office through the built-in chat function found in the app. It is expected to contribute to further increasing GPP compliance.

# 4.1.4. Strengthening an effective monitoring system through ePPS

The OECD Recommendation calls upon adherent countries to employ appropriate impact assessment methodologies to measure its effectiveness (OECD, 2015<sub>[4]</sub>). Malta has a solid monitoring system of GPP implementation. Indeed, the role of the MEEE shifted from a purely vetting and screening role to one that is more focused on monitoring and training ( (Ministry for the Environment, Climate Change and Planning, 2021<sub>[8]</sub>). Contracting authorities were required to submit the weekly report to the GPP office through their GPP coordinator, in accordance with the template that includes the following information:

- The date of tender publication
- The details of the ministry and/or contracting authority publishing the tender
- Indication of whether the tender falls under the scope of the GPP criteria
- Indication of whether the tender is compliant or not (if all the applicable GPP criteria have been inserted the CA)
- Indication of whether the tender can be classified as variant (this would be the case if the tender contains some GPP criteria but not all the applicable ones).
- The tender or quotation title
- The estimated budget of the tender or quotation
- Indication of which GPP criteria are included in the tender

With the introduction of the GPP module on ePPS, a quarterly report is sent to the GPP office. This Office then assures the quality of the information reported in the quarterly report by verifying it with the actual call for tender actually published in the government gazette. Therefore, the GPP Office could identify tenders that were not reported in the quarterly report in a correct manner, and can request the GPP coordinator to follow up with the contracting authority. GPP coordinators at each ministry also submit a quality assurance

report to the MECP on a quarter basis. This quarterly report shall include all GPP related information and data, including but are not limited to, vetted calls for quotations and calls for tenders, GPP clearances, GPP-related clarifications and / or rectifications.

DoC developed a GPP module on ePPS in collaboration with the MEEE in order to set up a real-time, comprehensive, and digitalised monitoring system through ePPS. This module that went live when the 2<sup>nd</sup> NAP became applicable aims at facilitating the GPP data collection from all contracting authorities which are obliged to answer to a set of questions in ePPS prior to publishing a tender document. These questions include the application of the scope of the GPP, information on the GPP criteria, and justifications in case of not including GPP criteria. Failure to do so would prohibit them from publishing tender, since the correspondent fields in ePPS are set as mandatory. (See Figure 4.8)

Figure 4.8. Image of GPP module on ePPS



Source: (Department of Contracts, 2022[9])

GPP module on ePPS is expected to increase the compliance of GPP criteria as well as facilitating the data collection on the implementation of GPP. Malta could benefit from communicating on the compliance of GPP criteria on a regular basis.

# 4.2. Using public procurement to stimulate innovation and the national economy

Public procurement can provide an enormous potential market for innovative products and services. Used strategically, public procurement can help governments boost innovation at both the national and local levels. Strategic use of public procurement for innovation (PPI) is defined as "any kind of public procurement practice (pre-commercial or commercial) that is intended to stimulate innovation through research and development and the market uptake of innovative products and services." (OECD, 2017[17]). In other words, it refers to any procurement that has (i) buying the process of innovation – research and development services – with (partial) outcomes, and/or (ii) buying the outcomes of innovation. It brings various benefits including (i) boosting the post COVID-19 economic recovery, the green and digital transition and improving resilience, (ii) delivering higher quality public service on an optimal budget, (iii) addressing an arising need, (iv) modernising public services, (v) helping start-ups and innovative SMEs launch and grow, and (vi) moving markets towards innovation (European Commission, 2021[18])

In Malta, public procurement is still under-used as a strategic tool to stimulate innovation. As of the end of 2021, only two PPI procedures have been implemented by the Special Projects Unit within the Operations Directorate of the DoC on behalf of contracting authorities. (See Box 4.1)

#### Box 4.1. Innovation partnerships carried out in Malta

Special Projects Unit within the Operations Directorate of the DoC provides contracting authorities with advice, guidance and assistance on complex procurement procedures such as concessions, design contests, competitive dialogues and innovation partnerships. This unit carried out two innovation partnership procedures on behalf of contracting authorities:

- Innovation Partnership for the Design, Development, Testing, Commissioning, Delivery, Operation and Maintenance of a Remote Patient Monitoring Service and a Call Centre Service for Preventive Care for the Central Procurement & Supplies Unit (CPSU), Ministry for Health, (estimated value: EUR 5 million)
- Innovation Partnership for Luqa Dump landfill mining from separation treatment and preparation
  of C&D material for re-utilisation including ground clean-up and digging to cleaning of
  contaminated rock and Service provision of Packing, Transportation, Export to third countries
  and Final Deposit of Waste including Contaminated Waste, RDF and Hazardous Waste /
  Residues, (estimated value: EUR 37 million)

Source: Information provided by the Department of Contracts

PPI is under-used in Malta due to the absence of various elements that support a proper Procurement for Innovation strategy such as having a leading entity, an approved strategy, raising awareness, and the right capabilities accompanied by supporting tools. According to the EC study on the innovation procurement policy frameworks, Malta ranked 18<sup>th</sup> out of the 30 countries analysed (EU 27 Member States, UK, Norway and Switzerland) with the overall score of 20.4% in 2018, which is below the European average of 26.6%. (See Figure 4.9.) The EC study pointed out the lack of many elements such as a national competence centre, action plan, spending target, monitoring system and systematic capacity building. (European Commission, 2021[19])

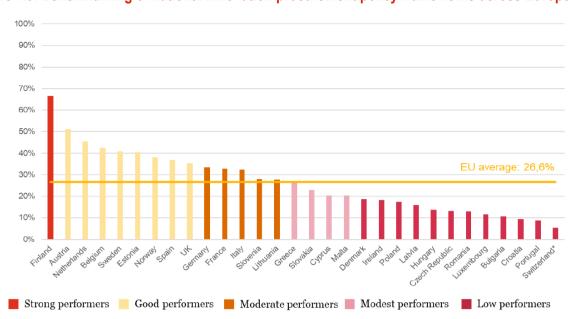


Figure 4.9. Benchmarking of national innovation procurement policy frameworks across Europe

Note: European average refer to the average of the 30 countries considered (EU 27 Members States, Norway, Switzerland and the UK) Note by the Republic of Türkiye

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye shall preserve its position concerning the "Cyprus issue". Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Source: (European Commission, 2021[19])

Discussions with contracting authorities in Malta highlighted that they are not familiar with the concept of procurement schemes to stimulate innovation such as innovation partnerships, and even not aware of its benefits. These findings are also supported by the result of the OECD survey to contracting authorities. (Figure 4.10). This section discusses these enabling factors to promote the use of PPI in Malta.

0% 10% 20% 30% 40% 50% 60% 70% 80%

Lack of training 73%

Lack of adequate capacity 69%

Lack of guidelines 66%

Lack of market readiness 66%

Risk aversion 59%

Administrative burden 45%

Procedure not adapted to the needs 39%

Duration of the procedure 34%

Figure 4.10. Challenges of contracting authorities in using public procurement to stimulate innovation

Note: 8 contracting authorities provided a valid answer. Each contracting authority was requested to rate each of challenges in terms of challenges. Then, the result was summed up after the conversion in accordance with the following scoring rule: 1st challenge (greatest challenge) = 8 points, 2nd challenge = 7 points, 3rd challenge = 6 points, 4th challenge = 5 points, 5th challenge = 4 points, 6th challenge = 3 points, 7th challenge = 2 points, 8th challenge = 1 points. Finally, the weighted share (%) in the figure was calculated through dividing the total points of each challenge by the possible maximum point (in this case, 64 points: 8 points x 8 contracting authorities)

Source: Prepared in accordance with the responses to the questionnaires of the OECD survey to contracting authorities

# 4.2.1. The need for a leading entity on public procurement for innovation

As mentioned in section 4.1.1, in order to advance the strategic use of any policy objectives, it is key to have in place a clear and coherent institutional framework to advance its implementation, irrespective of the entity leading the agenda. In Malta, no entity is leading the public procurement for innovation agenda. The mapping of stakeholders identified several relevant entities that could work together to advance the innovation agenda: Malta Council for Science and Technology (MCST), Malta Enterprise (ME) and the DoC. MCST was established with the specific scope of advising the government on science and technology policy. MCST is responsible for promoting the Research and Innovation (R&I) aspects in the local market, and champions R&I engagement across public, academic and private sectors. In addition, it also provides researchers, technologists and stakeholders with the necessary mentoring and support measures to translate innovative ideas into tangible products and/or services. R&I Programmes Unit of MCST manages national funds for R&I through the development and operation of R&I programmes. The ME is a national economic development agency. Its mandate is to attract new foreign direct investment and facilitate the growth of existing operations. It also provides incentives to assist Industrial Research and Experimental Development activities required by the industry with the scope of acquiring knowledge and skills in relation to innovation. This will in turn lead to the development of innovative products and solutions especially in sectors such as ICT, healthcare, aviation, maritime and manufacturing. In addition, the Special Projects Unit within the DoC provides contracting authorities with technical advice, assistance and guidance related to the implementation of complex procurement schemes such as innovation partnerships.

The example of Austria provides insights on institutional framework of PPI. In 2011, the Austrian Ministry of Economy, Family and Youth (BMWFJ), currently the Ministry for Digital and Economic Affairs (BMDW), and the Ministry of Transport, Innovation and Technology (BMVIT) took the role as the leading agencies to promote PPI, and in 2011 prepared an Austrian Action Plan on Public Procurement Promoting Innovation through the engagement processes with stakeholders such as the Austrian Federal Procurement Agency (BBG) the Austrian Institute of Technology (AIT). This action plan included initiatives such as the

establishment of a competence centre in BBG as well as the implementation of pilot projects of precommercial procurement (PCP). The two Ministries are responsible for the political commitment, the strategic governance, and financing for the initiatives of the Action Plan. BBG serves as a competence centre and the AIT supports the other key actors providing scientific support. (The Ministry of Economy, Family and Youth (BMWFJ) and Ministry of Transport, Innovation and Technology (BMVIT), 2011[20])

The Maltese Government should assign the leading role on Procurement of Innovation to one entity and ensure coordination mechanisms with the other stakeholders

# 4.2.2. Towards the development of a strategy to advance public procurement for innovation to reap the benefits of the current regulatory framework

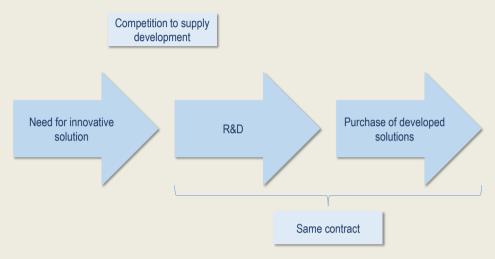
In 2018, about 70% of OECD countries had developed policies or strategies related to public procurement for innovation (OECD, 2019<sub>[5]</sub>). In Malta, no strategy with specific roadmaps to promote the implementation of PPI has been developed regardless of the availability of the regulatory frameworks of PPI, given the absence of a leading agency of PPI. This part overviews the regulatory frameworks and the strategy related to PPI in Malta.

Malta introduced the concept of PPI by transposing the EU Public Procurement Directives (Directive 2014/24/EU) into the Public Procurement Regulations (PPR). PPR foresees the procurement mechanism that can be used to stimulate innovations such as competitive procedure with negotiation (Articles 123-127), Innovation Partnership (Articles 128-139), competitive dialogue (Articles 140-149) and design contest (Articles 157-160). (See Box 4.2) Article 245 stipulates that contracting authorities may lay down conditions relating to the contract performance such as economic, innovation-related, environmental, social or employment-related considerations. (Government of Malta, 2016[12]) From the strategic viewpoint, PPI opens the door to higher quality and more efficient solutions that value environmental and social benefits, better cost-effectiveness; and new business opportunities for enterprises. (European Commission, 2021[18])

# Box 4.2. Mechanism of innovation partnership

Innovation partnership has been designed to drive innovation in cases where a contracting authority has a need for an innovative product, service or works that are not available on the market. Innovation partnership involves both R&D and purchase of the end-product under the same contract.

Figure 4.11. Mechanism and flow of innovation partnerships



Source: (Difi, 2017[21])

The Innovation partnership procedure follows three main steps:

- i. Selection phase: The competitive phase takes place at the very beginning of the procedure, when the most suitable partner(s) are selected on the basis of their skills, abilities and price;
- ii. R&D phase: The partner(s) develop the new solution, as required, in collaboration with the contracting authority. This research and development phase can be divided into several stages, during which the number of partners may be gradually reduced, depending on whether they meet certain predetermined criteria;
- iii. Commercial phase: the partner will then provide the final solution

Innovation partnership is to be distinguished from pre-commercial procurement that only covers the procurement of R&D services. Economic operators are often more reluctant to participate in pre-commercial procedures as they do not guarantee, at the end of the R&D phase, of being awarded the procurement contract for the developed solution.

Source: (European Commission, 2021[18])

From the technical viewpoint, innovative procurement schemes help contracting authorities in overcoming challenges that they face in drafting technical specifications when they intend to procure innovative goods and services. Indeed, technical specifications are identified as the most commonly used measures by contracting authorities (See Figure 4.12.). SPD also shared the same view that technical specifications are most often used by contracting authorities to procure innovative goods and services. However, the SPD considers that drafting technical specifications is the biggest weakness of contracting authorities when it comes to procuring innovative procurement.

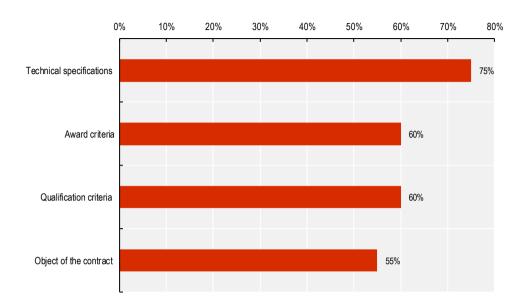


Figure 4.12. Measures often used by contracting authorities to implement PPI

Note: 10 contracting authorities provided a valid answer. Each contracting authority was requested to rate each of measures in terms of its frequency of use. Then, the result was summed up after the conversion in accordance with the following scoring rule: Most-often used measure = 4 points, 2<sup>nd</sup> measure = 3 points, 3<sup>rd</sup> measure = 2 points, 4<sup>th</sup> measure = 1 point. Finally, the weighted share (%) in the figure was calculated through dividing the total points of each often-used measure by the possible maximum point (in this case, 40 points: 4 points x 10 contracting authorities)

Source: Prepared in accordance with the responses to the questionnaires of the OECD survey to contracting authorities

The innovative procurement schemes such as pre-commercial procurement and innovation partnerships can contribute to solving this weakness. Article 130 of PPR stipulates that the contracting authority shall identify in the procurement documents the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market. In other words, the innovative procurement schemes such as innovation partnerships will allow contracting authorities to start their procedures by asking for innovative solutions for the problems they identify, without preparing detailed technical specifications, allowing the market to innovate.

In addition to these regulatory frameworks, some strategies related to innovation mentions the role of public procurement in stimulating innovation. National Research and Innovation Strategy 2020, published in June 2014, included the action line Embedding a culture for innovation, creativity, risk-taking and entrepreneurship in order to achieve a comprehensive R&I support ecosystem. (Malta Council for Science & Technology, 2014<sub>[22]</sub>) This action line recognised that public procurement plays a key role in generating increased demand for innovation. It also states that procurement for innovation generates considerable benefits in terms of leveraging private sector R&I and providing greener, innovative and potentially costeffective, public services, although it is often more complex and time-consuming. Malta's Smart Specialization Strategy (RIS3) 2021-2027, published in 2020, mentions the potential of public procurement for stimulating innovation in health sector, recognising that research and innovation in the health sector had to speedily rise to new challenges, realities and opportunities presented by the COVID-19 pandemic. (Malta Council for Science & Technology, 2020[23]) It also states that national funds can and should be tailored to provide support for public procurement of innovation. It recognises that there is very little use of PPI in practice regardless of the availability of this scheme and recommends that Malta should investigate the barriers preventing the public sector from utilising this method to incentivise innovation and promote its use, especially in the selected smart specialisation areas.

However, no more specific roadmaps are mentioned in these two strategies. For example, unlike the case of GPP specified in the 2nd NAP, no target is set on the uptake of PPI in terms of percentage of total public procurement (number of procedures and/or amounts), although ePPS provides the data on the procurement procedures related to PPI. Setting a target is a powerful way of expressing political mandate that can create strong institutional incentives for overcoming administrative inertia and risk aversion, as PPI requires a cultural shift not only among public buyers but also among the entire ecosystems such as economic operators, auditors, and academic sector (European Commission, 2021[18]). For example, the Finnish government set a target of PPI at 10 % of total procurement in order to increase competitiveness of the country. In order to achieve this target and further promote PPI, the Ministry of Economic Affairs and Employment of Finland published in 2020 the action plan for increasing the use of innovative public procurement, through a close stakeholder engagement process. (Ministry of Economic Affairs and Employment of Finland, 2020[24] In Lithuania, the National Progress Plan (2021-2030), published by the Government of Lithuania in 2020, set a target of PPI at 5% by 2025 and 20% by 2030 with concrete actions such as the establishment of a national Lithuanian Innovation procurement competence centre. The Ministry of Economy and Innovation of Lithuania leads this strategic plan to promote PPI in collaboration with the Public Procurement Office. (The Government of the Republic of Lithuania, 2020<sub>[25]</sub>)

In addition, there is no initiative led by the government to incentivise the use of PPI among contracting authorities such as the financial support and pilot initiatives. This leads to fewer incentives for contracting authorities to use PPI, in addition to the lack of supporting tools to be discussed in the next section. In Finland, contracting authority can apply for innovative public procurement funding provided through Business Finland in order to develop innovative solutions to reform services and operations. This funding can be used for a wide varieties of purposes: (i) planning and preparation (market mapping, definition of the procurement), (ii) tendering (e.g. a competitive negotiated procedure, innovation partnership), and (iii) co-development and piloting to develop an innovative solution with a chosen partner. (Business Finland, n.d.[26]) Poland has proven evidence as a catalyst and promoter of PPI through the implementation of pilot projects. National Centre for Research and Development (NCRD) of Poland, the agency in charge of ESIF R&I projects, initiated an e-Pioneer project financed under the ESIF Operational Programme "Digital Poland 2014-2020, under which the PCP scheme was used by beneficiaries to procure innovative solutions. This initiative contributed to encouraging a larger pool of interested contractors to participate in the ESIF R&I projects by using PCP. (See Box 4.3)

Malta could benefit from developing a comprehensive strategy / action plan to advance PPI such as defining the roles of key institutions and the incentive mechanisms (e.g. specific targets of the PPI uptake, financial support, and pilot initiatives).

# Box 4.3. Promotion of public procurement for innovation by National Centre for Research and Development of Poland

In Poland, the new Public Procurement Law (PPL) of 11 September 2019, which entered into force on 1 January 2021, further supports public procurement of innovation (PPI) by implementing new solutions in this area. PPA directly links the procurement of innovation with a broader perspective of national policy. State Purchasing Policy of Poland (2022-2025), which came into force on 3 January 2022, advises all Polish public buyers to allocate 3% of their budget to the procurement of R&D and 20% to public procurement of innovative solutions, which are aligned with the target recommended by the Scale-up Europe Manifesto (Manifesto for Change and Empowerment in the Digital Age), in addition to the environmental (30%) and social (20%) considerations.

National Centre for Research and Development (NCRD) have experiences in using the scheme of public procurement for innovation in ESIF-funded R&I projects. NCRD is in charge of carrying out tasks in the area of the scientific, technical and innovation policy including financing innovative solutions

through R&D programmes. NCRD decided to launch pilot research programmes based on both procurement models: pre-commercial procurement (PCP) and innovation partnership, both of which are adapted to procuring innovative solutions that cannot be specified at the beginning of the procedure, i.e. those that require research and development works.

The first experience of NCRD related to pre-commercial procurement dates back to 2013. It was further developed in 2016 owning to the implementation of the e-Pioneer project, which aims to support talented programmers in solving identified social or economic problems with communication technologies (ICT). This is a joint project of NCRD and the Accelerators selected by NCRD, which uses the PCP model. PCP is not used directly by NCRD, but serves as an obligatory project implementation tool for the Accelerators selected by NCRD. The e-Pioneer project is financed under the ESIF Operational Programme "Digital Poland 2014-2020."

For example, Akcelerator Accelpoint Sp. z o. o., one of the selected accelerators in the e-Pioneer project, developed a Cleanbox to fight against Covid-19 by using the PCP model. Cleanbox is an easy-to-use, modern device with antibacterial and antifungal properties, which eliminates 99.99% of microbes and bacteria, ensuring an additional antibacterial effect for up to 30 days. With its functionalities, the project helps to prevent common infections and answers the growing need for surface disinfection, contributing to the fight against the spread of coronavirus. The MVP (a Minimum Viable Product, or, to put it simply, a demo version of the target product) was created and tests were successfully carried out using the infrastructure of the public partner (Municipal Sport and Recreation Centre in Lublin).

NCRD promoted themselves as an agency which not only finances innovation but also carries out innovative activities itself. It presented new forms of research programme implementation to the market and the potential contractors to encourage a larger pool of interested contractors to participate in the ESIF R&I projects.

With the experience gained so far and the competences built within the organisation, NCRD has been working since 2020 to launch further initiatives based on pre-commercial procurement. By doing so, NCRD aims at ensuring that this instrument is permanently included in its portfolio of support instruments.

Source: (Public Procurement Office of Poland, 2020[27]) and (Ministry of Development and Technology of Poland, 2022[28])

#### 4.2.3. Developing a solid capability-building system related to PPI

Promoting the implementation of PPI shall be supported by the solid capability-building system. As already shown in Figure 4.10, both the OECD survey result to the selected contracting authorities and the perspective of the SPD identify the lack of trainings, the lack of capacity to implement this scheme, and the lack of guidelines as the three biggest barriers to the use of PPI by contracting authorities.

In Malta, several gaps have been identified in the capability-building system on this topic. First, no tailored guidelines and manuals are available for PPI. Currently, it is limited to the link of the DoC website to the Guidance on Innovation Procurement issued by the European Commission in 2018. Ideally, the guidelines and manuals could be developed by including, but are not limited to, the contents such as the regulatory framework of PPI, specific procedures, steps from the planning to the contract management, and actual case examples. For example, Malta could prepare the guidelines and manuals by adapting the manuals developed by the European Assistance For Innovation Procurement (EAFIP). (See Box 4.4) The Public Procurement Office of Poland published a manual for PPI called *Public Procurement of Innovation*. It describes the concept of public procurement for innovation, and demonstrates actual good practices from a wide range of contracting authorities in Poland including the central government administration, the local government entity, and the academic sector. (Public Procurement Office of Poland, 2020<sub>[27]</sub>)

# Box 4.4. EAFIP innovation procurement toolkits

The European Assistance For Innovation Procurement (EAFIP), an initiative financed by the EC, developed innovation procurement toolkit with the following 3 modules for policy makers, public procurers and legal staff on why and how to implement PCP and PPI.

- Module 1: A strategic module addressed to policy makers, providing economic and case evidence about the impacts and benefits of PCP and PPI, together with concrete guidance on how to embed PCP and PPI into innovation strategies;
- Module 2: An operational module addressed to public procurers aimed at clarifying the prerequisites and key steps to design and implement an innovation procurement process (PCP and PPI); and
- Module 3: A legal / operational module addressed to legal services aimed at clarifying legal issues and provide practical 'how-to' guidelines, supported by templates.

Source: (European Assistance for Innovation Procurement (eafip), n.d.[29])

DoC offers a specific session within the specialised training programme (a Follow-Up Booster) through the Institute for Public Service (IPS), which has a duration of 4 hours and is mostly dedicated to the procurement procedures related to innovation, such as competitive dialogue and the innovation partnership. The Special Projects Unit of the DoC provides technical advice, assistance and guidance. Furthermore, the DoC can connect a contracting authority to seek guidance with another one that have already conducted similar procurement procedures.

Currently, Malta does not have a competence centre on innovation procurement, while countries like Finland and Germany have already set it up. A competence centre on innovation procurement is defined as an organisation/organisational structure that has been assigned the task by its government and has a mandate according to national law to encourage wider use of pre-commercial procurement (PCP) and public procurement of innovation (PPI) that includes among others providing practical and/or financial assistance to public procurers in the preparation and/or implementation of PCP and PPI across all sectors of public interest. (Procure2Innovate, 2020[30]) A competence centre is expected to contribute to reinforcing the capability through a wide variety of mandates to promote PPI (See Box 4.5).

### Box 4.5. Mandates of a competence centre on innovation procurement

#### <Core services>

- Capacity building (procurement instruments, market knowledge, legal knowledge, financial knowledge)
- Helpdesk, permanent contact
- Support for the pre-procurement phase (needs assessment, market analysis, market sounding, market engagement)
- Provide a networking and exchange space for procurers (via events or online tools)
- Showcase good practice examples

#### <Advanced services>

• Strategic management support (development of innovation procurement action plans, development of technical knowledge in procurement department etc.)

- Guidance documents
- Strategic support for the positioning of the procurement department in the public authority
- Consultancy and in-house training
- Support in applying for European funds
- Coordinate with regional agents (motivated multiplayers from public authorities) to act as mediators between the regions and the national competence centre

Advanced services often become core services as the competence centre operate for years.

Source: (Procure2Innovate, 2020[30])

For example, the Finnish Competence Centre for Sustainable and Innovative Procurement (KEINO), which acts as a competence centre and professional network for sustainable and innovative procurement, offers specific capacity building measures to public procurement professionals in the area of innovative procurement, such as issuing guidelines, disseminating best practises and case studies, and providing templates and tools. (See Box 4.6)

Malta could benefit from reinforcing the capability-building system of PPI by developing a practical manual and establishing a competence centre for innovation procurement.

## Box 4.6. Community of practice on sustainable and innovative procurement in Finland

The Finnish government set a target of public procurement for innovation at 10 % of total procurement, in order to increase competitiveness of the country. In March 2018, the Finnish Competence Centre for Sustainable and Innovative Procurement (KEINO) was established as a joint initiative of eight founding members from both the public and private sector, including the Central Purchasing Bodies Hansel and Kuntahankinnat. Additional members of the consortium are Motiva Ltd, the Association of Finnish Local and Regional Authorities (FLRA), VTT Technical Research Centre of Finland Ltd, the Finnish Funding Agency for Innovation Business Finland and the Finnish Environment Institute SYKE. KEINO serves as a network-based competence centre to support innovation procurement in Finland.

KEINO's three main objectives are:

- Increasing the number of innovative public procurement procedures in Finland
- Promoting public procurement as a strategic tool to reach wider societal objectives
- Fostering the dissemination of information and peer learning across contracting authorities

In order to reach these goals, KEINO supports the development of procurement competence in Finland through advisory services, events and networking meetings. It promotes peer learning among procurement professionals and it fosters closer collaboration and international networks on sustainable and innovative procurement topics. In addition, KEINO offers specific capacity building measures to public procurement professionals in the area of innovative procurement, such as issuing guidelines, disseminating best practises and case studies, and providing templates and tools.

Source: (European Commission, 2020[31])

# 4.3. Further supporting SMEs to promote GPP and innovation procurement

Small and medium-sized enterprises (SMEs) play a vital role in the economy by representing large shares of employment and GDP. In 2021, SMEs accounted for 99.8% of the total enterprises in Malta, which is equal to the EU average (99.8%). They generated 71.9% of value added and 82.4% of employment, which exceeds the respective EU averages of 51.8% and 64.4%. (European Commission, 2022<sub>[32]</sub>) They play a critical role in the economy, in particular, in retaining and creating jobs in the post-COVID-19 era. Public procurement is a key area for SMEs development and performance, given the volume that it represents in the overall economy. (See Figure 4.13.).

Demand Conditions Institutional and Trade and Investment Access to regulatory markets framework Public Governance **SME** Performance Technology and Innovation Human capital and skills Entrepreneurial Access to Culture resources

Figure 4.13. Public procurement, a key policy area for SMEs development

Source: (OECD, 2017[33])

SMEs can be agents of innovation. (Aaron G. Grech, 2018<sub>[34]</sub>) They, in particular start-ups, are typically involved in R&D and innovative approaches, with a view to introduce new processes and products. They are also major contributors to achieving a sustainable recovery from the Covid-19 crisis and accelerating the twin green and digital transitions, while also creating new jobs. (European Commission, 2022<sub>[32]</sub>) Indeed, PPI can provide innovative SMEs with opportunities to meet the specific needs of the public sector to tackle these twin transitions (European Commission, 2015<sub>[35]</sub>).

According to the European Commission's 2019 Small Business Act (SBA) fact sheet based on the data from the TED (Tenders Electronic Daily) of the EU, the majority of public procurement suppliers are SMEs. Indeed, 97.2% of the total contract value was awarded to SMEs in 2017. (European Commission, 2019[36]) This data echoes the result of the OECD survey sent to 14 contracting authorities which shows that the majority of contracts were awarded to SMEs.

Therefore, SME's participation in public procurement is not identified as a big challenge by the government of Malta. However, promoting the strategic use of public procurement still requires the institutional framework as well as the provision of supporting tools for SMEs. This section discusses these enabling environments.

#### 4.3.1. Strengthening the institutional and monitoring frameworks

In Malta, the Ministry for the Economy, European Funds and Lands (MEFL) is responsible for promoting the development of SMEs. The MEIB Mission Statement states that the Ministry 'is committed in its legislative, administrative and coordinating role to further and uphold a forward-looking Maltese economy that ensures stability and growth'. Since SMEs and family businesses are the backbone of the Maltese economy, MEIB encourages 'growth and opportunities, catering for businesses at every stage of their lifecycle. In addition, the DoC is the entity in charge of the public procurement system (See section 1.1).

In line with the European public procurement directives, the Maltese procurement regulatory framework includes several provisions that enhance SMEs' access to public procurement, such as the division of contracts into lots (Article 33 and 34) and subcontracting (Article 60). (Government of Malta, 2016<sub>[12]</sub>). In addition, the DoC has taken various measures to promote the SMEs participation in public procurement throughout the past years. These measures aim at decreasing the administrative burden for SMEs and decreasing the costs of participating in public procurement opportunities (See Box 4.7). In particular, it is worth noting that the bid bond is not required anymore. On the other hand, the performance guarantee is required for contract of all the categories above EUR 10 000 which could represent an administrative and financial burden for SMEs. In the United Stated, for example, Part 28 of the Federal Acquisition Regulation requires the performance bond (above USD 150 000) or alternative protection mechanisms such as the certificate of deposit (above 35 000 but below 150 000) only for the contacts related to public works. Performance bonds for non-construction contracts are required, although requesting for them is not prohibited. (General Services Administration, 2022<sub>[37]</sub>) In this context Malta could consider the possibility of assessing the impact of performance bonds on SMEs participation and, if relevant, increasing the threshold for requesting such bonds.

## Box 4.7. Measures taken by DoC to facilitate SMEs participation in public procurement

- Requirement of the performance guarantee depends on the contract amount: the performance guarantee is not required in case the total contract value is less than EUR10 000 excluding VAT; 4% where it is between EUR 10 000 and EUR 500 000 excluding VAT; 10% where it is above EUR 500 000 excluding VAT; no performance guarantee is required.
- Acceptance of a single bond that covers the performance guarantees for all contracts between a Contractor and the same contracting authority
- Bid bond is no longer requested
- Self-declaration for exclusion criteria including blacklisting
- Economic & financial standing applicable only for call for tender whose estimated value equals or exceeds EUR 2 million excluding VAT.
- Experience as a selection or award criteria applicable only for call for tender whose estimated value equals or exceeds of EUR 500 000 excluding VAT.
- Selection criteria requirements (i.e. eligibility criteria, exclusion, ESPD) are rectifiable free of charge.

Source: (Department of Contracts, 2015[38]) and Information provided by DoC

According to the SPD, the division of contracts into lots is the most common measure used by contracting authorities to enhance SME access to public procurement opportunities. In addition, SPD also pays attention to the subcontracting conditions during the vetting process.

Regardless of these measures, there are no official documents related to SMEs development such as strategies that refer to the role of public procurement in promoting SMEs development. This is attributable to the fact that promoting SMEs participation in public procurement is not given priority at the MEFL or DoC, considering that most of the contracts are awarded to SMEs. However, an SME Strategy for a sustainable and digital Europe, published by the EC in 2020, clearly mentions the role of public procurement in supporting SME development as well as the role of SMEs in bringing innovative solutions to achieve EU's twin transitions to a sustainable and digital economy. (European Commission, 2020[39]) Therefore, Malta could benefit from an SME strategy that clearly mention not only the role of public procurement in promoting SMEs development but also the role that SMEs play in promoting innovative solutions through public procurement.

To enhance data monitoring on SMEs participation in public procurement, the DoC introduced in November 2020 an improvement in ePPS for companies to input their size. This will enable to gather comprehensive data on contracts awarded to SMEs and the participation of SMEs in public procurement opportunities which are key indicator to assess the performance of the procurement system.

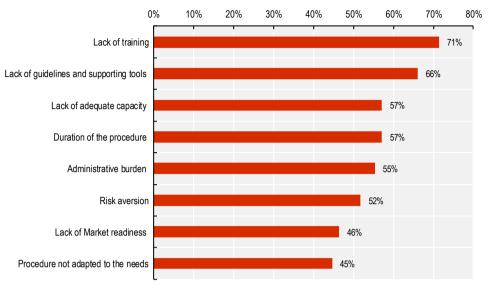
# 4.3.2. Developing further supporting tools to promote SMEs participation in public procurement

Useful supporting tools help SMEs to participate in public procurement opportunities. Despite the measures taken to facilitate SMEs participation in public procurement, no dedicated supporting tools have been developed on SMEs access to public procurement for both suppliers and contracting authorities.

While no specific supporting tools have been developed for SMEs, economic operators including SMEs have access to the general guidelines in the website of DoC. They are also eligible to IPS trainings provided by DoC's IT Unit, on ePPS. This training covers, among other things, the portal interface, searching for information, the use of the Tender Preparation Tool (TPT) and the uploading of the bid proposal.

From the contracting authorities' perspective, the OECD survey shows that all the top three challenges of contracting authorities in using public procurement to promote SMEs participation are related to the capability: lack of supporting tools (trainings and guidelines) and lack of adequate capacity to undertake this procedure. (See Figure 4.14) In addition, the EC will issue guidance and support to contracting authorities to enhance opportunities for SMEs, according to the SME Strategy for a sustainable and digital Europe. (European Commission, 2020[39]) Under this context, Malta could consider the possibility of developing supporting tools to promote SMEs participation in public procurement and their role in bringing innovative solutions through public procurement.





Note: 7 contracting authorities provided a valid answer. Each contracting authority was requested to rate each of challenges in terms of challenges. Then, the result was summed up after the conversion in accordance with the following scoring rule: 1st challenge (greatest challenge) = 8 points, 2nd challenge = 7 points, 3rd challenge = 6 points, 4th challenge = 5 points, 5th challenge = 4 points, 6th challenge = 3 points, 7th challenge = 2 points, 8th challenge = 1 points. Finally, the weighted share (%) in the figure was calculated through dividing the total points of each challenge by the possible maximum point (in this case, 56 points: 8 points x 7 contracting authorities)

Source: Prepared in accordance with the responses to the questionnaires of the OECD survey to contracting authorities

# 4.4. Promoting the use of Best Price-Quality Ratio (BPQR) criteria and market analysis in strategic procurement

This section briefly discusses the use of best price-quality ratio (BPQR) criteria and market analysis, which were already discussed in the Section 1.1.1 and 2.2.3, from the viewpoint of strategic procurement.

#### 4.4.1. Promoting the use of BPQR and LCC

Encouraging the use of BPQR can constitute key elements to promote strategic procurement schemes including GPP and PPI. As the Section 2.2.3 discussed, only 3.2% of call for tenders (CfTs) used BPQR criteria on average in the last 3 years (2018-2020). In addition, life-cycle costing was never used in the said last 3 years, regardless of the fact that ePPS provides the functionality of using LCC as award criteria.

GPP criteria of each product group, defined in the 2<sup>nd</sup> NAP, consists of (i) subject matter (suggestion on how to draft the tender title), (ii) technical specifications, and/or (iii) award criteria (BPQC, LCC). GPP criteria of the 2<sup>nd</sup> NAP provides some examples of specific BPQR criteria for each product group. However, it is considered as optional, considering from the description "Award criteria (to be considered when BPQR is utilised," (Ministry for the Environment, Climate Change and Planning, 2021<sub>[8]</sub>)

As Figure 4.15. demonstrates, the OECD survey shows that award criteria (BPQR / LCC) is the least used measure by contracting authorities when implementing GPP, while technical specifications are the most-often used one which might contribute to the use of the lowest-price criteria. SPD also shared the same view that contract award criteria (BPQR and LCC) are least often used by contracting authorities to implement GPP and at the same time the biggest weakness of contracting authorities. The same indicator

for PPI was 2<sup>nd</sup> in the OECD survey as shown in Figure 4.15., but there was almost no difference among 2<sup>nd</sup> (award criteria) and 4<sup>th</sup> (object of contract) compared with 1<sup>st</sup> main measure (technical specification). This implies that promoting the use of BPQR criteria will contribute to increasing the uptake of strategic procurement such as GPP and IPP.

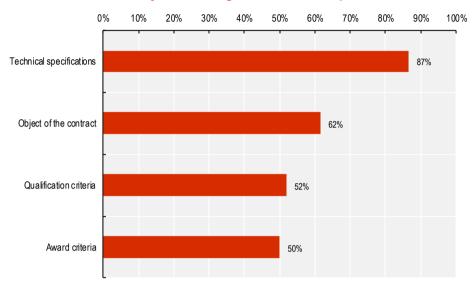


Figure 4.15. Measures often used by contracting authorities to implement GPP

Note: 13 contracting authorities provided a valid answer. Each contracting authority was requested to rate each measures in terms of its frequency of use. Then, the result was summed up after the conversion in accordance with the following scoring rule: Most-often used measure = 4 points, 2<sup>nd</sup> measure = 3 points, 3<sup>rd</sup> measure = 2 points, 4<sup>th</sup> measure = 1 point. Finally, the weighted share (%) in the figure was calculated through dividing the total points of each often-used measure by the possible maximum point (in this case, 52 points: 4 points x 13 contracting authorities)

Source: Prepared in accordance with the responses to the questionnaires of the OECD survey to contracting authorities

Austrian Federal Real Estate Agency demonstrates good practice in using BPQR criteria to carry out an innovation partnership to procure innovative solutions in the development of software of public building management. (See Box 4.8)

# Box 4.8. Use of BPQR criteria under the Innovation Partnership by the Austrian Federal Real Estate Agency (BIG)

Austrian Federal Real Estate Agency (BIG) is a central purchasing body for the Federal Government of Austria, and owns and manages more than 2 200 properties across Austria. In 2020, BIG won the award of "Outstanding Innovation Procurement in ICT" which is supported by the EU-funded Procure2Innovate Project, due to its innovative approach of using software for sustainable real estate management.

BIG wanted to optimise the use of public buildings throughout Austria to achieve two goals. The first was to make space available for new uses. Often, buildings are only utilised for a few hours a day, especially at schools. The second was to only heat or cool rooms when they are in use. These two goals aimed at making better use of space and energy.

BIG decided to use an innovation partnership because the required solution was not available on the market. Subject matter of the contract was the formation of an innovation partnership with several

companies for development, implementation and delivery of a software and app solution for an electronic administration tool in the area of property and facility management.

The procurement was conducted using a two-stage process between May 2019 and December 2019. Stage 1 was a prequalification stage. Stage 2 was held in the form of a negotiated procedure ending with a last and final offer.

The MEAT criteria was used with the weighting of 80% quality (of which 40% was awarded for the concept, and 40% for presentation), and 20% price. Bidders were asked to share technical details of the software, as well as a full business plan. The quality evaluation was conducted by evaluating the proposed solution according to "concept" quality sub-criteria: (i) project structure; (ii) project organisation; (iii) project leader and deputy project Leader; and (iv) distribution strategy. "Presentation" sub-criteria were assessed according to the (i) conclusive and comprehensible communication of the elaboration and results of the concept; (ii) conclusive and comprehensible answers to any additional questions about the concept; and (iii) communication skills, performance / personal and social skills.

The call for tender attracted a lot of interest, with over 90 companies that downloaded the call. 11 companies from three European countries submitted applications to the prequalification stage. Out of these 11 bidders, 6 fulfilled the innovation specifications. After the review of errors in the applications, four companies were invited to stage 2. Contracts were signed with two companies in February 2020.

Both contractors reported positive benefits from participating in an innovation partnership with BIG. The developed solution makes use of IoT devices which provide real time data on public buildings and simplifies targeted communication and information provision in real time via a central platform for all users. The advantages range from news, surveys, FAQs, calendar and booking functions, damage reports to canteens' menu plan.

Source: (ICLEI European Secretariat, 2021[40])

#### 4.4.2. Promoting market analysis

Carrying out market analysis prior to calls for tender contributes to enhancing the quality and reflecting the reality of the market. Almost all Maltese contracting authorities surveyed implement market analysis for every procurement procedure, while only a few do it on an occasional basis when necessary. Most of the contracting authorities associate the market analysis with its orthodox purposes such as obtaining the price quotation to estimate the value of procurement and/or drafting technical specifications which reflect what is available in the market. Only one contracting authority mentioned setting up the better price to quality ratio, and public market consultation for complex tender procedures. Market analysis will bring more added values when it is used for setting up better BPQR criteria rather than only obtaining the price quotations. Under the context of procurement procedures that seek innovative solutions, it is an essential process during the tender preparation to interact with potential economic operators in order to inform them of the needs of the public sector and hear initial feedbacks. It allows contracting authorities to find creative ideas from the market, define the conditions for solving the problem, create opportunities for market to work with the public sector, and measure its ability to take on the risk of innovation. (European Commission, 2021<sub>[18]</sub>) Thus, it will contribute to promoting the use of strategic procurement. For example, Austria developed the digital platform to facilitate the process of the market research and consultation by building a bridge between contracting authorities and potential suppliers. (See Box 4.9)

# Box 4.9. Digital innovation platform in Austria

A PPPI Service Centre (national competence centre for innovation procurement) established within the Austrian Federal Procurement Agency (BBG) launched a digital platform to build a bridge between contracting authorities and suppliers. In this platform, contracting authorities can publish their latest challenges for consulting the market on innovative solutions, and the market suppliers can submit their innovative solutions. Their solutions are evaluated by independent experts that can ask questions in the platform. Public procurers use this market place for market research purpose before starting the procurement procedure of PPI.

In 2018, more than 100 innovative solutions in various product categories such as IT, and mobility listed on the platform connected contracting authorities with the market. Since then, over a dozen contracting authorities have published the challenges they face in fields including automation, marketing & PR, sensor technology and facility management. They have received more than 230 different ideas from the market through the platform.

Source: (Federal Procurement Agency of Austria (BBG)., n.d.[41]) and (European Commission, 2021[18])

Therefore, Malta could consider the possibility of promoting the use of BPQR criteria and market analysis in order to increase the uptake of GPP and PPI.

#### References

| Aaron G. Grech (2018), SMEs' contribution to the Maltese economy and future prospects, Central Bank of Malta, <a href="https://ideas.repec.org/p/mlt/ppaper/0118.html">https://ideas.repec.org/p/mlt/ppaper/0118.html</a> .   | [34] |
|---|------|
| Business Finland (n.d.), Innovative public procurement funding, <a href="https://www.businessfinland.fi/en/for-finnish-customers/services/funding/research-and-development/innovative-public-procurement">https://www.businessfinland.fi/en/for-finnish-customers/services/funding/research-and-development/innovative-public-procurement</a> (accessed on 17 August 2022). | [26] |
| Department of Contracts (2022), Green Public Procurement - Implications of Second National Action Plan (Circulars 06 2022), <a href="https://contracts.gov.mt/en/Circulars/2022/Pages/Circulars2022.aspx">https://contracts.gov.mt/en/Circulars/2022/Pages/Circulars2022.aspx</a> (accessed on 12 August 2022).   | [9]  |
| Department of Contracts (2015), Procurement Policy Note #22 The Performance Guarantee and the Single Bond (Single Performance Guarantee).   | [38] |
| Difi (2017), Strategic use of public procurement.   | [21] |
| Environment and Resources Authority (2021), Construction and Demolition Waste Strategy for Malta 2021-2030: Managing Construction & Demolition Resources.   | [14] |
| European Assistance for Innovation Procurement (eafip) (n.d.), <i>Innovation procurement toolkit</i> , <a href="https://eafip.eu/toolkit/">https://eafip.eu/toolkit/</a> (accessed on 22 August 2022).  | [29] |
| European Commission (2022), SME Performance Review Annual Report 2021/2022, <a href="https://single-market-economy.ec.europa.eu/smes/sme-strategy/sme-performance-review_en#paragraph_887">https://single-market-economy.ec.europa.eu/smes/sme-strategy/sme-performance-review_en#paragraph_887</a> (accessed on 16 August 2022).   | [32] |

| European Commission (2021), <i>Guidance on Innovation Procurement</i> , <a href="https://ec.europa.eu/docsroom/documents/45975">https://ec.europa.eu/docsroom/documents/45975</a> (accessed on 17 June 2022).  | [18] |
|--|------|
| European Commission (2021), <i>The strategic use of public procurement for innovation in the digital economy</i> , <a href="https://op.europa.eu/en/publication-detail/-/publication/7f5a67ae-8b8e-11eb-b85c-01aa75ed71a1">https://op.europa.eu/en/publication-detail/-/publication/7f5a67ae-8b8e-11eb-b85c-01aa75ed71a1</a> (accessed on 17 June 2022).     | [19] |
| European Commission (2020), An SME Strategy for a sustainable and digital Europe.  | [39] |
| European Commission (2020), "Study on professionalisation of public procurement in the EU and selected third countries", <a href="https://op.europa.eu/fr/publication-detail/-/publication/400d4892-8542-11eb-af5d-01aa75ed71a1/language-en">https://op.europa.eu/fr/publication-detail/-/publication/400d4892-8542-11eb-af5d-01aa75ed71a1/language-en</a> . | [31] |
| European Commission (2019), 2019 SBA (Small Business Act) Fact Sheet Malta, <a href="https://ec.europa.eu/docsroom/documents/38662/attachments/20/translations/en/renditions/native">https://ec.europa.eu/docsroom/documents/38662/attachments/20/translations/en/renditions/native</a> (accessed on 15 February 2022).                                      | [36] |
| European Commission (2016), "Buying green! A handbook on green public procurement", <a href="https://doi.org/10.2779/246106">https://doi.org/10.2779/246106</a> .  | [11] |
| European Commission (2015), <i>Public procurement as a driver of innovation in SMEs and public services</i> , <a href="https://op.europa.eu/en/publication-detail/-/publication/f5fd4d90-a7ac-11e5-b528-01aa75ed71a1/">https://op.europa.eu/en/publication-detail/-/publication/f5fd4d90-a7ac-11e5-b528-01aa75ed71a1/</a> (accessed on 16 August 2022).      | [35] |
| Federal Procurement Agency of Austria (BBG). (n.d.), <i>IÖB Innovationsplattform</i> , <a href="https://www.ioeb-innovationsplattform.at/">https://www.ioeb-innovationsplattform.at/</a> (accessed on 19 August 2022).   | [41] |
| General Services Administration (2022), Federal Acquisition Regulation, <a href="https://www.acquisition.gov/far/part-28#FAR_28_102">https://www.acquisition.gov/far/part-28#FAR_28_102</a> (accessed on 16 August 2022).  | [37] |
| Government of Malta (2021), Second Green Public Procurement Action Plan 2022-2027, <a href="https://environment.gov.mt/en/decc/Pages/environment/gpp/secondNap.aspx">https://environment.gov.mt/en/decc/Pages/environment/gpp/secondNap.aspx</a> .   | [1]  |
| Government of Malta (2016), <i>Public Procurement Regulations</i> , <a href="https://legislation.mt/eli/sl/601.3/eng/pdf">https://legislation.mt/eli/sl/601.3/eng/pdf</a> (accessed on 15 February 2022).  | [12] |
| ICLEI European Secretariat (2021), Developing ICT solutions for smart and efficient building management: BIG, Winner of the 2020 Procura+ Outstanding Innovation Procurement in ICT award.   | [40] |
| Malta Council for Science & Technology (2020), <i>Malta's Smart Specialization Strategy (RIS3)</i> 2021-2027, <a href="https://mcst.gov.mt/wp-content/uploads/2022/01/RIS3-Strategy-2020-2027.pdf">https://mcst.gov.mt/wp-content/uploads/2022/01/RIS3-Strategy-2020-2027.pdf</a> (accessed on 15 February 2022).  | [23] |
| Malta Council for Science & Technology (2014), National Research and Innovation Strategy 2020.   | [22] |
| Ministry for the Environment, Climate Change and Planning (2021), <i>Green Public Procurement Annual Monitoring Report 2020.</i>   | [7]  |
| Ministry for the Environment, Climate Change and Planning (2021), Long-term Waste  Management Plan (2021 to 2030), <a href="https://environment.gov.mt/en/Documents/ministerialConsultations/longTermWasteManagem">https://environment.gov.mt/en/Documents/ministerialConsultations/longTermWasteManagem</a> entPlan.pdf (accessed on 15 February 2022).     | [13] |

| Ministry for the Environment, Climate Change and Planning (2021), Second Green Public Procurement National Action Plan 2022-2027,   | [8]  |
|---|------|
| https://environment.gov.mt/en/decc/Pages/environment/gpp/secondNap.aspx (accessed on 14 February 2022).   |      |
| Ministry of Development and Technology of Poland (2022), <i>State purchasing policy of Poland</i> (2022-2025), <a href="https://digital-strategy.ec.europa.eu/en/news/poland-sets-targets-procurement-rd-and-innovative-solutions">https://digital-strategy.ec.europa.eu/en/news/poland-sets-targets-procurement-rd-and-innovative-solutions</a> (accessed on 18 August 2022).  | [28] |
| Ministry of Economic Affairs and Employment of Finland (2020), <i>The public procurement as an instrument in implementing society's important development objectives -Action plan for increasing the use of innovative public procurement, developing services and promoting sustainable growth,</i> <a href="https://tem.fi/documents/1410877/36553790/MEE">https://tem.fi/documents/1410877/36553790/MEE</a> Action Plan.pdf/eea428b3-a5c6-2207-5775-f595f0d5a404/MEE Action Plan.pdf?t=1600240171125 (accessed on 17 August 2022). | [24] |
| OECD (2022), "Integrating responsible business conduct in public procurement supply chains: Economic benefits to governments", <i>OECD Public Governance Policy Papers</i> , No. 14, OECD Publishing, Paris, <a href="https://doi.org/10.1787/c5350587-en">https://doi.org/10.1787/c5350587-en</a> .  | [2]  |
| OECD (2021), Government at a Glance 2021, OECD Publishing, Paris, <a href="https://doi.org/10.1787/1c258f55-en">https://doi.org/10.1787/1c258f55-en</a> .   | [3]  |
| OECD (2021), <i>Unlocking the Strategic Use of Public Procurement in Bratislava, Slovak Republic</i> , OECD Publishing, Paris, <a href="https://doi.org/10.1787/d616e4d9-en">https://doi.org/10.1787/d616e4d9-en</a> .  | [10] |
| OECD (2019), Reforming Public Procurement: Progress in Implementing the 2015 OECD Recommendation, OECD Public Governance Reviews, OECD Publishing, Paris, <a href="https://doi.org/10.1787/1de41738-en">https://doi.org/10.1787/1de41738-en</a> .   | [5]  |
| OECD (2017), <i>Public Procurement for Innovation: Good Practices and Strategies</i> , OECD Public Governance Reviews, OECD Publishing, Paris, <a href="https://doi.org/10.1787/9789264265820-en">https://doi.org/10.1787/9789264265820-en</a> .  | [17] |
| OECD (2017), Small, Medium, Strong. Trends in SME Performance and Business Conditions, OECD Publishing, Paris, <a href="https://doi.org/10.1787/9789264275683-en">https://doi.org/10.1787/9789264275683-en</a> .  | [33] |
| OECD (2015), Going Green: Best Practices for Sustainable Procurement, <a href="http://www.oecd.org/gov/ethics/Going_Green_Best_Practices_for_Sustainable_Procurement.pdf">http://www.oecd.org/gov/ethics/Going_Green_Best_Practices_for_Sustainable_Procurement.pdf</a> .  pdf.   | [6]  |
| OECD (2015), OECD Recommendation of the Council on Public Procurement, <a href="https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0411">https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0411</a> .  | [4]  |
| OECD (Fothcoming), "Towards the development of a comprehensive public procurement measurement framework".   | [16] |
| Office of the Prime Minister (2021), Achieving a Service of Excellence: A 5-year Strategy for the Public Service.   | [15] |
| Procure2Innovate (2020), How to set up a competence centre for innovation procurement, <a href="https://procure2innovate.eu/fileadmin/user_upload/Documents/Procure2Innovate_Howtosetu_pacompetencecentreonInnovationProcurement.pdf">https://procure2innovate.eu/fileadmin/user_upload/Documents/Procure2Innovate_Howtosetu_pacompetencecentreonInnovationProcurement.pdf</a> (accessed on 18 August 2022).  | [30] |

| Public Procurement Office of Poland (2020), <i>Public Procurement of Innovation</i> , <a href="http://www.ccpg.com.pl">http://www.ccpg.com.pl</a> (accessed on 16 April 2021).   | [27] |
|--|------|
| The Government of the Republic of Lithuania (2020), National Progress Plan for 2021-2030, <a href="https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/c1259440f7dd11eab72ddb4a109da1b5?jfwid=-whxwii77y">https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/c1259440f7dd11eab72ddb4a109da1b5?jfwid=-whxwii77y</a> (accessed on 17 August 2022).  | [25] |
| The Ministry of Economy, Family and Youth (BMWFJ) and Ministry of Transport, Innovation and Technology (BMVIT) (2011), Austrian Action Plan Public Procurement Promoting Innovation, <a href="https://era.gv.at/policies/innovation-procurement/austrian-action-plan-public-procurement-promoting-innovation/">https://era.gv.at/policies/innovation-procurement/austrian-action-plan-public-procurement-promoting-innovation/</a> (accessed on 18 August 2022). | [20] |

# **5** Reinforcing the capability of the public procurement workforce

This chapter discusses the capacity of the public procurement workforce in Malta. It provides an overview of the recent efforts of the government of Malta in professionalising the public procurement workforce, including the recognition of public procurement as a professional task. The chapter also shows key results and takeaways from the ProcurComp<sup>EU</sup> survey which was carried out with fifteen entities to identify competences that require more capability-building initiatives. It identifies major challenges and provides recommendations on reinforcing the capability of the public procurement workforce in Malta, including through trainings, methodological assistance, and certification frameworks.

Given its high volumes of public spending and strategic relevance, public procurement is a key governmental activity that has significant impact on the country's economic and social development. In 2019, public procurement accounted for 12.6% of GDP and 29.6% of total government expenditures in OECD countries. (OECD, 2021[1]) Under the global pandemic crisis that arose from Covid-19 outbreak, public procurement was at the front runner to deliver essential public services (e.g. vaccines and personal protective equipment) and managing critical infrastructures. (OECD, 2020[2])

Public procurement has become a more complex function than ever, requiring public procurement officials to be equipped with higher-level capabilities to implement public procurement procedures. They are expected to have not only technical knowledge and skills such as knowing the regulatory framework and drafting tender documents but also soft skills such as project management, in order to fulfil their tasks. This requirement is further driven by the increasing global use of public procurement as a strategic tool to pursue broader policy objectives aligned with the 2030 Agenda for Sustainable Development (SDGs), as detailed in the previous chapter. The most common are recapped here: promoting circular and green economy, stimulating innovation, supporting small-and medium-sized enterprises' (SMEs), and promoting ethical behaviour and responsible business conduct.

Indeed, the adequate capacity of the public procurement workforce is a key element to ensure a sound procurement system in order to deliver efficiency and value for money in the use of public funds. The OECD Recommendation has one principle dedicated to the capacity of the public procurement workforce. It calls upon countries to develop a procurement workforce with the capacity to continually deliver value for money efficiently and effectively. (OECD, 2015<sub>[3]</sub>)

This chapter overviews the recent efforts of the government of Malta in advancing the professionalisation of the public procurement workforce such as the recognition of public procurement as a professional task and its capacity-building system. The chapter also shows key takeaways from the ProcurComp<sup>EU</sup> survey carried out to the 15 contracting authorities that are part of this project. It identifies major challenges and provides key recommendations on reinforcing the capability of the public procurement workforce in Malta.

#### 5.1. Recognition of the procurement function

Countries have been advancing on the agenda of professionalisation of the public procurement. As Figure 5.1. shows, in 2020, 38% of OECD countries recognised public procurement as a standalone profession, marking an increase from 32% of OECD countries in 2018. (OECD, 2021[1])

ESP TUR BEL FRA HUN SVN SVK ISR PRT KOR LVA MEX LTU NLD Yes JPN NZL 38% ITA NOR No IRL 62% POI GRC **SWF** DEU CHE FIN GBR AUS **EST** DNK AUT CZE CRI COL CHL

Figure 5.1. Public procurement recognised as a standalone profession in OECD countries (2020)

Note: Data for Canada, Iceland, Luxembourg, and the United States are not available. Source: (OECD, 2021<sub>[1]</sub>)

Public procurement is not recognised as a standalone profession in Malta, however a public procurement career path is recognised through job profiles. It follows the classification established by the People and Standards Division within the Office of the Prime Minister. This classification includes four job profiles for the public procurement career stream: (i) Assistant Manager (Procurement), (ii) Manager I (Procurement), (iii) Manager II (Procurement), and (iv) Senior Manager (Procurement). Indeed, each job profile has a description of specific tasks related to public procurement. (European Commission, 2020[4]) It should be noted, however, that the use of these job profiles is limited to the DoC and the public service (within Ministries). It is not adopted by entities that fall under the public sector.

In addition, the government of Malta, through the collaboration between the DoC and the Institute for the Public Services (IPS), launched a pilot programme on Recognition for Prior Learning (RPL) in procurement in July 2020. It is worth noting that RPL started from the procurement stream. RPL aims at identifying onthe-job skills and knowledge not currently addressed or supported by academic qualifications, providing recognition, and rewarding experience. (Office of the Prime Minister, 2021<sub>[5]</sub>)

RPL in the pilot of the procurement career stream intends to get rid of the bottleneck of career promotion. It offers the opportunity of on-the-job trainings to public servants working in public procurement who wish to promote their career in public procurement but do not possess the necessary qualifications to be eligible for promotion. The requirement of the academic backgrounds was considered as the key bottleneck to the promotion of public officers that have rich professional experiences in public procurement. For example, the promotion to Manager I requires a bachelor's degree in procurement, accounting, or finance or an equivalent professional qualification, while the promotion to Manager II calls for the master's degree in the same fields or an equivalent professional qualification. RPL intends to address this bottleneck.

This pilot project does not provide an accredited certificate. However, it takes into account the knowledge and skills gained through trainings, identifies any necessary competencies to reach the next career level, and provides the necessary training to fill in the identifies gaps. This pilot initiative supports public procurement officials to achieve career development and promotion to higher position.

RPL initiative is considered as an innovative solution to alleviate the key bottleneck in the career development in public procurement. It is worth mentioning that the RPL pilot was carried out built upon the competency matrix provided by European competency framework for public procurement professionals (ProcurComp<sup>EU</sup>). Thus, the RPL initiative has played key role in recognising the public procurement function as a major pillar in the career stream of the public sector in Malta.

Regardless of this strong initiative, however, Malta does not have a professionalisation strategy of public procurement, although the DoC embarked on developing it. (Department of Contracts, 2021<sub>[6]</sub>) Malta could benefit from elaborating a public procurement professionalisation strategy that describes the roadmaps and actions to promote the professionalisation of the public procurement workforce.

# 5.2. Key takeaways from ProcurComp<sup>EU</sup> survey

This section presents the key takeaways and results of the survey of the European competency framework for public procurement professionals (ProcurComp<sup>EU</sup>), which was carried out with 119 procurement officials of 15 contracting authorities including the SPD in 2022.

## 5.2.1. ProcurCompEU as a tool to assess the capability level

It is critical to identify and assess the gaps of capabilities and skills of the public procurement workforce to develop better professionalisation strategy and a solid capacity-building system. ProcurCompEU is a practical tool to facilitate these assessments. ProcurComp<sup>EU</sup> was launched by the European Commission in December 2020, in order to support the professionalisation of public procurement. ProcurCompEU provides practical tools to advance the professionalisation agenda such as the competency matrix including 30 key competencies for public buyers, self-assessment tool, and generic training curriculum. (See Box 5.1)

# Box 5.1. European competency framework for public procurement professionals (ProcurComp<sup>EU</sup>)

ProcurComp<sup>EU</sup> is a tool designed by the European Commission to support the professionalisation of public procurement. ProcurComp<sup>EU</sup> consists of three elements:

- Competency Matrix, which defines 30 procurement-related and soft competences along four proficiency levels;
- Self-Assessment Tool that allows users to set targets for the different competences and assess their proficiency levels against them and identify any gaps;
- Generic training curriculum which lists all learning outcomes that public procurement professionals should know and be able to demonstrate after having attended a training for a certain proficiency level.

The Competency Matrix describes 30 competencies (knowledge, skills and attitudes) that public procurement professionals should demonstrate in order to perform their job effectively and efficiently and carry out public procurement procedures that bring value for money. The competences are grouped in two main categories: procurement specific competences, and soft competences. The categories are then divided into six clusters, three per category:

- Procurement-specific competences (19 competences):
  - o Horizontal: 9 competences applicable to all stages of the public procurement lifecycle

- Pre-award: 6 competences required to perform all the tasks and activities taking place before the award of a public contract
- Post-award: 4 competences necessary for the contract management after the award of a public contract.
- Soft competences (11 competences):
  - Personal: 4 competences on behaviours, skills and attributes that public procurement professionals should possess, as well as the mind-set that they should display according to their job profile
  - People: 3 competences enabling public procurement professionals to interact and cooperate with other professionals, and to do so in the most professional manner
  - Performance: 4 competences public procurement professionals need to have in order to increase value for money in public procurement procedures

Each competence is described along four proficiency levels based on the breadth of knowledge and skills: Basic, Intermediate, Advanced, and Expert.

The ProcurComp<sup>EU</sup> Self-Assessment Tool is composed of several key elements:

- · A self-assessment questionnaire
- Templates for job profiles
- A calculation tool for computing individual and organisational assessment results.

The ProcurComp<sup>EU</sup> Reference Training Curriculum lists all learning outcomes that public procurement professionals should know and be able to demonstrate after having attended a training for a certain proficiency level.

ProcurComp<sup>EU</sup> is a quite flexible, voluntary and customisable tool. Getting value from ProcurComp<sup>EU</sup> does not require using each and every component of the framework, nor does it require the use of each and every competence defined in the ProcurComp<sup>EU</sup> Competency Matrix.

Source: (European Commission, 2020[7])

Before its official launch in December 2020, the DoC piloted the ProcurComp<sup>EU</sup> tool to a limited extent in Malta by assessing its own organisational maturity (European Commission, 2020<sub>[8]</sub>). In October 2021, DoC disseminated a Contracts Circular N° 17/2021 to contracting authorities on the 'ProcurComp<sup>EU</sup>: European Competency Framework for Public Procurement Professionals' in order to encourage contracting authorities to use ProcurComp<sup>EU</sup> and assess and identify competency gaps. (Department of Contracts, 2021<sub>[6]</sub>)?

#### 5.2.2. ProcurCompEU survey structure

The ProcurComp<sup>EU</sup> survey was prepared in the EC digital platform (EUSurvey) by adapting the standardised survey questionnaire of ProcurComp<sup>EU</sup> to the Maltese context. It was carried out to public procurement officials in 15 public entities (14 contracting authorities and the SPD) for the four classified job profiles of the public procurement career stream in civil service in the country: (i) Assistant Manager, (ii) Manager I, (iii) Manager II, and (iv) Senior Manager.

The survey aimed at measuring the organisational maturity of 15 participating public entities and identifying the competences that need more capacity building, by:

• Calculating the self-assessment results of each of four job profiles for 30 competences (23 competences for Assistant Manager)

- Comparing the self-assessment results (average points) with the set targets for each profile
- Collecting feedbacks on capacity-building needs

The survey consisted of the four sections:

- Section I General questions: Information on the respondent such as the current position and experiences on public procurement and completed training
- Section II Public procurement competences: self-assessment of the current level for the 19 procurement specific competences
- Section III Soft competences: Assessment of the current level for the 11 soft competences
- Section IV Feedback on capacity-building needs: Selection of top 5 competencies that need more capability-building activities in the opinion of the respondent

In the Section II and III, the participants were requested to self-assess their proficiency levels of knowledge and skills for 30 competences from the following levels that were converted to the points (0 to 4):

Less than basic: 0 point

Basic: 1 point

Intermediary: 2 pointsAdvanced: 3 pointsExpert: 4 points

A webinar to launch the survey was organised by the OECD and DoC on 16 February 2022, in order to explain the purpose and structure of the exercise to the participants. The survey was closed on 16 March 2022.

# 5.2.3. Profiles of participants of ProcurCompEU survey

This section shows the basic profiles of the 119 officials that participated in the ProcurComp<sup>EU</sup> survey from 15 public entities. (See Table 5.1.)

Table 5.1. Participants of the ProcurComp<sup>EU</sup> survey

| Name of entity                             | Participants |
|--|--------------|
| Armed Forces of Malta                      | 6            |
| Central Procurement Unit – MGOZ            | 13           |
| Foundation for Medical Services            | 6            |
| Heritage Malta                             | 8            |
| Housing Authority                          | 4            |
| Infrastructure Malta                       | 4            |
| Local Government Division (DLG)            | 2            |
| Malta Financial Services Authority         | 2            |
| Malta Information Technology Agency (MITA) | 8            |
| Malta Tourism Authority                    | 2            |
| Planning Authority                         | 2            |
| Transport Malta                            | 2            |
| University of Malta                        | 11           |
| Wasterserv                                 | 17           |
| Sectoral Procurement Directorate (SPD)     | 32           |
| TOTAL                                      | 119          |

Source: ProcurComp<sup>EU</sup> survey result for 15 public entities in Malta (May 2022)

The followings are the snapshots of the 119 participants:

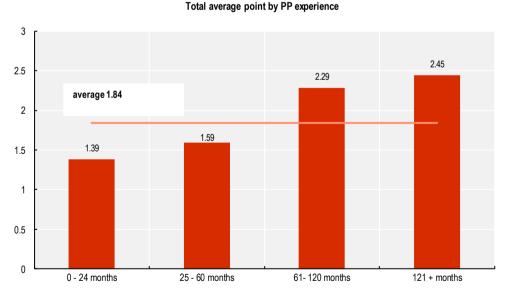
- 96.8% (114 out of 119 officials) work full-time for public procurement.
- Average experiences in the current position is 33 months
- Average experiences in public procurement is 68 months
- Breakdown by job profile under the classification used across the Public Service in Malta:
  - Assistant Manager: 36 participants (30.3%)
  - Manager I: 30 participants (25.2%)
  - Manager II: 35 participants (29.4%)
  - Senior Manager: 18 participants (15.1%)

# 5.2.4. ProcurCompEU survey result

A follow-up webinar was organised by the OECD and DoC on 24 May 2022 in order to share with the participants the key findings from the analysis of the aggregated self-assessment results of the 119 participants. The survey results for each of the 15 public entities was sent to each institution individually, to maintain the confidentiality of their individual results. Therefore, this section only shows the key findings of the aggregated result of the 119 participants, which are still useful to meet the objective of identifying the competences that need more capacity building on a country-wide level.

The total average point of the 30 competences of all the 119 participants was 1.84. The total average point of procurement specific competences (No. 1 - 19) amounted to 1.79, while the one for the soft competences (No. 20 - 30) was 1.92. Figure 5.2. shows that the capability level increases proportionally with more professional experiences in public procurement and with higher-ranked job profile.

Figure 5.2. Total average point by PP experience and by job profile



Source: ProcurComp<sup>EU</sup> survey result for 15 public entities in Malta (May 2022)

Figure 5.3. shows the average point of each competence (No.1 - 30) by all the 119 participants and by four job profile. This is coherent with the result for all the 30 competences that capability level increases

proportionally with higher-ranked job profile. For example, Senior Manager (the highest-ranked job profile) performed best in all the 30 competences. However, the exception was identified for the 13 competences between Assistant Manager and Manager I, in which Assistant Managers performed better than Manager I. Regardless of this exception, the aggregated result showed the overall conclusion that higher-ranked officials performed better.

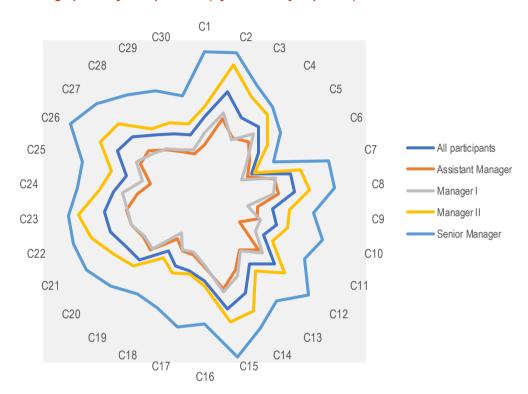


Figure 5.3. Average point by competence (by total and job profile)

Note: C1 Planning, C2 Lifecycle, C3 Legislation, C4 e-Procurement and other IT tools, C5 Sustainable procurement, C6 Innovation procurement, C7 Category specific, C8 Supplier management, C9 Negotiations, C10 Needs assessment, C11 Market analysis & engagement, C12 Procurement strategy, C13 Technical specifications, C14 Tender documentation, C15 Tender evaluation, C16 Contract management, C17 Certification and payment, C18 Reporting and evaluation, C19 Conflict resolution / mediation, C20 Adaptability and modernisation, C21 Analytical and critical thinking, C22 Communication, C23 Ethics and compliance, C24 Collaboration, C25 Stakeholder relationship management C26 Team management and leadership, C27 Organisational awareness, C28 Project management, C29 Performance orientation, C30 Risk management and internal control

Source: ProcurComp<sup>EU</sup> survey result for 15 public entities in Malta (May 2022)

Figure 5.4. shows the average points of all the 119 participants by competence in ascending order. The self-assessment result identified C6 (Innovation Procurement) as the weakest competence of the participants with the lowest average point of 1.18, followed by C19 (Conflict resolution / mediation), C30 (Risk management and internal control), C11 (Market analysis and engagement) and C9 (Negotiation). This result resonates well with the arguments and findings made in the previous chapters. For example, innovation procurement and risk management are not a common practice yet in Malta.

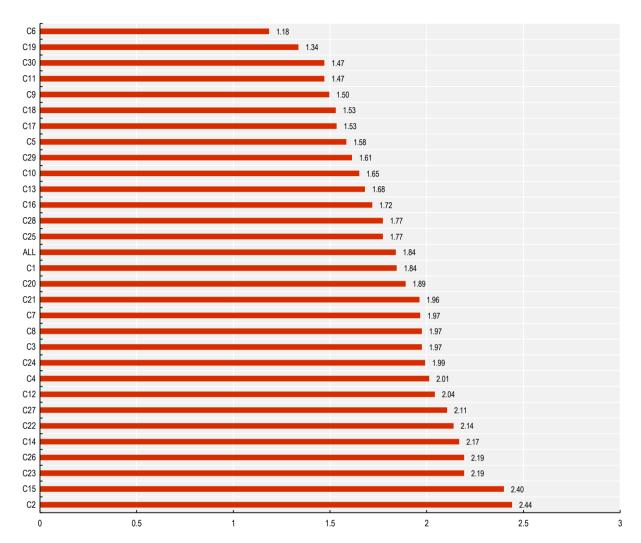


Figure 5.4. Average points of all the participants by competence

Source: ProcurComp<sup>EU</sup> survey result for 15 public entities in Malta (May 2022)

In addition to the self-assessment exercise, all the participants were requested to select five competences of his or her top five choices that require more methodological assistance (such as trainings, guidelines, manuals etc).

Figure 5.5. shows competences selected most as the 1<sup>st</sup>-priority competence that requires more methodological assistance, in descending order.

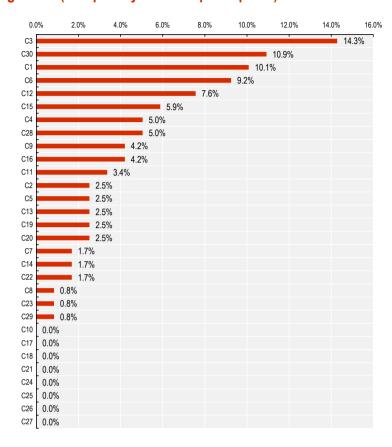


Figure 5.5. Training needs (first priority of all the participants)

Note: % of the participants that selected each competence as the first priority competence that requires more methodological assistance. For example, 17 out of 119 participants (14.3%) selected C3 as the first priority competence that requires more methodological assistance Source: ProcurComp<sup>EU</sup> survey result for 15 public entities in Malta (May 2022)

C3 (Legislation) is selected most as the 1st-priority competence that requires more methodological assistance, followed by C30 (Risk management and internal control), C1 (Planning), C6 (Innovation procurement) and C12 (Procurement strategy). Regarding the legislation, some stakeholders pointed out that the provisions and applicability of contract modification are still considered to be a technical and unclear for contracting authorities. Indeed, 42% of the contracting authorities that answered to the OECD short survey flagged the frequent contract modification as a risk in the contract management phase.

Figure 5.6. shows competences identified most as the ones that require more methodological assistance, taking into account the 1st-5th choices.

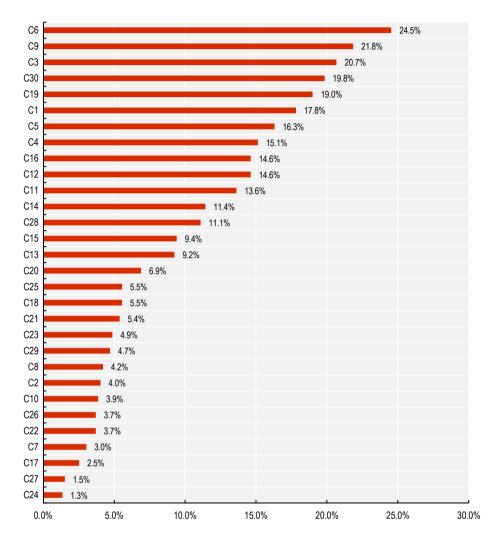


Figure 5.6. Training needs (1st – 5th priorities of all the participants)

Note: Each participant was requested to select 1st to 5th competence that requires more methodological assistance. Then, the result was summed up after the conversion in accordance with the following scoring rule: 1st priority (greatest challenge) = 5 points, 2nd priority = 4 points, 3rd priority = 3 points, 4th priority = 2 points, 5th priority = 1 point. Finally, the total score of each competence was divided by the potential maximum score (in this case, 595 points: 5 points X 119 participants)

Source: ProcurComp<sup>EU</sup> survey result for 15 public entities in Malta (May 2022)

C6 (Innovation procurement) is identified most as the competence that requires more methodological assistance, followed by C9 (Negotiations), C3 (Legislation), C30 (Risk management and internal control), C19 (Conflict resolution / mediation). This aggregated result of trainings needs that consider 1st-5th choices is aligned with the result of the self-assessment shown in Figure 5.4.

Table 5.2. lists the five competences based on the self-assessment and the training needs.

Table 5.2. Summary of the ProcurComp<sup>EU</sup> survey result for all the participants

| Ranking | Average point of self-assessment                 | Training needs (selected most as the first priority competence | Training needs survey (selected most as the 1st - 5th priority) |
|---------|--|--|---|
| 1       | C6 Innovation Procurement (1.18 point)           | C3 Legislation (14.3%)   | C6 Innovation Procurement (24.5%)                               |
| 2       | C19 Conflict resolution / mediation (1.34 point) | C30 Risk management and internal control (10.9%)               | C9 Negotiations (21.8%)   |
| 3       | C30 Risk management and internal control (1.47)  | C1 Planning (10.1%)  | C3 Legislation (20.7%)  |
| 4       | C11 Market analysis & engagement (1.47 point)    | C6 Innovation Procurement (9.2%)                               | C30 Risk management and internal control (19.8%)                |
| 5       | C9 Negotiations (1.50 point)                     | C12 Procurement strategy (7.6%)                                | C19 Conflict resolution / mediation (19.0%)                     |

Source: ProcurComp<sup>EU</sup> survey result for 15 public entities in Malta (May 2022)

In accordance with the ProcurComp<sup>EU</sup> self-assessment survey, Malta could benefit from considering the identified top priority competences for further development of capabilities.

# 5.3. Reinforcing a capacity-building system

Sound public procurement system requires a highly skilled public procurement workforce. Lack of capacity is nonetheless a risk identified by many contracting authorities over the three stages of the procurement cycle, according to the OECD short survey. Indeed, 33% of contracting authorities identified it as a risk during the pre-tendering phase, 25% during the tendering phase and 58% during the contract management phase.

Strengthening the capability of the public procurement workforce requires the development of a solid capacity-building system. Key elements of the capacity-building system consist of trainings and a series of methodological assistance. The methodological assistance constitutes a key pillar to strengthen the capacity-building system of the public procurement workforce, in addition to the development of an adequate training system (See Figure 4.7).

Methodological assistance includes manuals/guidelines, standardised templates, and help desks. Guidelines and manuals provide practical information on specific procedures and topics. Standardised templates are ready-to-use forms that contracting authorities can use to facilitate their work. The help desk is a contact point centre to assist contracting authorities and/or economic operators in clarifying their inquiries related to their daily tasks of public procurement. It functions as an efficient tool to provide quick and tailor-made information. Developing a methodological assistance contributes to supporting procurement officials and economic operators to undertake the processes related to public procurement effectively, and complements what is learnt through training courses.

This section overviews the current state of play of the capacity-building system in Malta.

#### 5.3.1. Trainings

Strengthening the training system

Strengthening the capability of the public procurement workforce requires the development of an adequate training system. DoC, through the Institute for the Public Services (IPS), provides a series of training opportunities on public procurement. IPS is an entity within the People & Standards' Division, Office of the Prime Minister, and functions as the main provider of public procurement training and learning

development opportunities for public procurers in Malta. (The Institute for the Public Services, n.d.[9]) Table 5.3. lists the public procurement trainings provided by the DoC through the IPS. Trainings for the members of the Tender Evaluation Committee (TEC) are not mandatory, however they are recommended. Given their role in the procurement process, Malta could benefit from making some trainings mandatory for the TEC members and provide a realistic timeline for the entry into force of such provision, taking into account the IPS capacity.

Table 5.3. Public procurement trainings provided by the DoC through the IPS

| Course name   | Duration | Mandatory for whom                                       |
|---|----------|--|
| Procurement by Contracting Authorities (introductory level)                   | 8 hours  | Optional   |
| Continuous Development Award in Public Procurement Regulations (intermediate) | 25 hours | Recommended for Chairperson and secretary of the TEC (*) |
| Public Procurement in Practice - A follow up programme (advanced)             | 24 hours | Optional   |
| Electronic Public Procurement   | 12 hours | Recommended for Chairperson and secretary of the TEC     |
| Evaluators Training for e-Tenders   | 4 hours  | Recommended for all TEC members                          |
| Introduction to Green Public Procurement                                      | 5 hours  | GPP officer One of the TEC members                       |
| Using Best Price Quality Ratio (BPQR) as Award Criteria in Public Procurement | 4 hours  | Optional   |

Note: A Tender Evaluation Committee (TEC) shall be composed of a minimum of five persons: a Chairman, a Secretary and three or an odd number of evaluators

Source: Prepared based on the information available in (The Institute for the Public Services, n.d.[10]) and provided by the DoC

Procurement by Contracting Authorities is an introductory course. This course offers a general overview of procurement procedures. It delves into the basic principles of public procurement, procedures to follow, the various thresholds applicable, estimates, types of tendering procedures, selection criteria, technical specifications and terms of reference, adjudication of tenders, implementation of the contract and compliance. (The Institute for the Public Services, n.d.[11])

Continuous Development Award in Public Procurement Regulations is an intermediate course. It consists of the modules: Procurement and Planning, Procurement Procedures and Award Criteria, ESPD (Exclusion Criteria/Blacklisting/ Selection Criteria), The Evaluation Process and Compliance, Modifications and Post-Contracting Issues. Completing the introductory course was a prerequisite to register for this intermediate-level course, but it is not required anymore now. (The Institute for the Public Services, n.d.[12])

Public Procurement in Practice - A follow up programme is an advanced-level course. Participants need to have successfully completed the intermediate-level course at least one year ago to be eligible for this course. It consists of various modules: Concessions, Competitive Dialogues and Innovation Partnerships, Compilation of a procurement document, Award Criteria preparation, The Evaluation Process in practice, Application of Modifications, and Fraud and Corruption. (The Institute for the Public Services, n.d.[13])

Introduction to Green Public Procurement (GPP) includes the topics such as the concept of GPP, the evolution of GPP in Malta, the second National Action Plan, GPP criteria, GPP in practice, and practical case studies. (The Institute for the Public Services, n.d.[14])

Trainings related to Electronic Public Procurement covers the different stages of the procurement process through the Electronic Public Procurement System (ePPS).

In addition to these training packages, the DoC also coordinates, through the IPS, ad-hoc trainings which are tailor-made to the needs of contracting authorities. The IPS also sponsors a three-year full-time bachelor degree program in Procurement & Finance delivered at the Malta College for Arts, Science and Technology (MCAST), (Malta College for Arts, Science and Technology (MCAST), n.d.[15])

According to the ProcurComp<sup>EU</sup> survey result for 15 public entities in Malta (May 2022), 94% (112 out of 119 officials) have completed at least one IPS training course in the past 6 years. 16.8% (20 officials) have completed all the IPS training courses. Figure 5.7. shows the shared of ProcurComp<sup>EU</sup> survey participants that completed each IPS training. The completion rate of the advance-level training, Public Procurement in Practice, is the lowest because participants need to have successfully completed the intermediate-level course at least one year ago to be eligible for this course.

10% 20% 30% 40% 50% 60% 70% 80% Electronic Public Procurement 76% Procurement by Contracting Authorities Continuous Development Award in Public 66% Procurement (MQF Level 4) Introduction to Green Public Procurement **Evaluators Training** 56% Public Procurement in Practice - A follow up 38% programme to the NPPR Others 29%

Figure 5.7. Share of ProcurComp<sup>EU</sup> survey participants that completed each IPS training

Source: ProcurComp<sup>EU</sup> survey for 15 public entities in Malta (May 2022)

Malta has a well-structured training system for public procurement but could benefit from developing and reinforcing trainings for selected relevant competences of ProcurComp<sup>EU</sup> competence matrix.

Table 5.4. summarises the benchmarking exercise of 30 ProcurComp<sup>EU</sup> competences by (i) set target level (1: basic, 2: intermediate, 3: advanced, 4: expert) for each job profile (AM: Assistant Manage, MI: Manager I, MII: Manager II and SM: Senior Manager) for the ProcurComp<sup>EU</sup> pilot project of DoC in 2020 and the ProcurComp<sup>EU</sup> for 15 public entities in 2022 (See section 5.2), (ii) availability of training and manual, and (iii) level covered in training and manual.

Table 5.4. Mapping of the set target for each job profile and availability of training and manual

| #   | Competence                           | Set target level for each job profile in the ProcurComp <sup>EU</sup> pilot survey in 2020 |    |     | Availability |          | Level<br>(Up to what level do training and manual<br>cover?)<br>T: Training, M: Manual |                    |                        |                    |                  |
|-----|--------------------------------------|--|----|-----|--------------|----------|--|--------------------|------------------------|--------------------|------------------|
|     |                                      | AM   | MI | MII | SM           | Training | Manual   | Basic<br>(level 1) | Intermediate (level 2) | Advanced (level 3) | Expert (level 4) |
| C1  | Planning                             | 1  | 2  | 3   | 3            | Yes      | No   | T                  | T                      | -                  | -                |
| C2  | Lifecycle                            | 1  | 2  | 3   | 3            | Yes      | No   | Т                  | Т                      | T                  | -                |
| C3  | Legislation                          | 1  | 2  | 3   | 3            | Yes      | No   | Т                  | Т                      | T                  | -                |
| C4  | e-Procurement and other IT tools     | 1  | 2  | 3   | 4            | Yes      | Yes  | T, M               | Т                      | Т                  | -                |
| C5  | Sustainable procurement              | 1  | 1  | 2   | 3            | Yes      | Yes  | T, M               | -                      | -                  | -                |
| C6  | Innovation procurement               |  | 1  | 2   | 3            | Yes      | No   | -                  | -                      | Т                  | -                |
| C7  | Category specific                    |  | 2  | 3   | 4            | No       | No   | -                  | -                      | -                  | -                |
| C8  | Supplier management                  | 1  | 2  | 3   | 3            | No       | No   | -                  | -                      | -                  | -                |
| C9  | Negotiations                         |  | 1  | 2   | 3            | No       | No   | -                  | -                      | -                  | -                |
| C10 | Needs assessment                     | 1  | 2  | 3   | 3            | Yes      | Yes  | T, M               | Т                      | -                  | -                |
| C11 | Market analysis & engagement         | 1  | 2  | 3   | 3            | Yes      | Yes  | T, M               | Т                      | -                  | -                |
| C12 | Procurement strategy                 |  | 1  | 2   | 3            | Yes      | No   | Т                  | Т                      | -                  | -                |
| C13 | Technical specifications             | 1  | 2  | 3   | 3            | Yes      | Yes  | T, M               | T, M                   | Т                  | -                |
| C14 | Tender documentation                 | 1  | 3  | 3   | 4            | Yes      | Yes  | T,M                | Т                      | Т                  | -                |
| C15 | Tender evaluation                    | 1  | 2  | 3   | 4            | Yes      | Yes  | T, M               | Т                      | Т                  | -                |
| C16 | Contract management                  | 1  | 2  | 3   | 3            | No       | No   | -                  | -                      | -                  | -                |
| C17 | Certification and payment            | 1  | 1  | 2   | 2            | No       | No   | -                  | -                      | -                  | -                |
| C18 | Reporting and evaluation             | 1  | 2  | 2   | 3            | Yes      | Yes  | М                  | Т                      | Т                  | -                |
| C19 | Conflict resolution / mediation      |  | 1  | 2   | 2            | No       | No   | -                  | -                      | -                  | -                |
| C20 | Adaptability and modernisation       | 1  | 2  | 3   | 3            | No       | No   | -                  | -                      | -                  | -                |
| C21 | Analytical and critical thinking     |  | 2  | 3   | 4            | No       | No   | -                  | -                      | -                  | -                |
| C22 | Communication                        | 1  | 3  | 3   | 4            | No       | No   | -                  | -                      | -                  | -                |
| C23 | Ethics and compliance                | 2  | 3  | 4   | 4            | Yes      | Yes  | М                  | Т                      | Т                  | -                |
| C24 | Collaboration                        | 2  | 3  | 3   | 3            | No       | No   | -                  | -                      | -                  | -                |
| C25 | Stakeholder relationship management  | 1  | 2  | 3   | 3            | No       | No   | -                  | -                      | -                  | -                |
| C26 | Team management and leadership       |  | 1  | 3   | 3            | No       | No   | -                  | -                      | -                  | -                |
| C27 | Organisational awareness             | 2  | 3  | 4   | 4            | No       | No   | -                  | -                      | -                  | -                |
| C28 | Project management                   | 1  | 2  | 3   | 4            | No       | No   | -                  | -                      | -                  | -                |
| C29 | Performance orientation              | 1  | 2  | 3   | 4            | No       | No   | -                  | -                      | -                  | -                |
| C30 | Risk management and internal control | 1  | 2  | 3   | 4            | No       | No   | -                  | -                      | -                  | -                |

Source: Prepared based on the information provided by the DoC and short benchmarking exercise carried out by the DoC

This mapping exercise resulted in identifying key challenges related to training. First, the proficiency level 4 (expert) is not covered in any of the 30 competences under the current trainings and manual, although the competence level 3 (advanced) and 4 (expert) are set as the target level in many competences of Senior Manager and Manager II. In other words, the ProcurComp<sup>EU</sup> proficiency level is covered up to advanced level in the existing IPS trainings, namely, (i) Procurement by Contracting Authorities (introductory course), (ii) Continuous Development Award in Public Procurement Regulations (Intermediary course), and (iii) Public Procurement in Practice - A follow up programme (advanced course).

Second, there are no trainings nor manuals available for the six procurement specific competences such as C9 (Negotiations) and C16 (Contract management).

Third, there are no trainings nor manuals available for the soft competences except C23 (Ethics and compliance). For example, according to the short OECD survey, all the contracting authorities reply that none of their officials have ever taken the training related to risk management in procurement and therefore highlighted their strong needs for capacity building activities on risk management in public procurement. It should be noted, however, that the IPS provides senior-level civil servants with training programmes that include trainings for some soft competences. Those programmes are, to name a few, Induction Programme for Newly-Appointed Principals / Managers I, Preparatory Programme for the post of Senior Principal / Manager II, and Entry to Senior Management Programme. Training topics of these senior-level programme cover many ProcurComp<sup>EU</sup> soft competences. These include, but are not limited to, communication, performance management, leadership, teamwork, stakeholder management, strategic management (analytical thinking), strategic change management, and risk management. As already mentioned earlier, however, these trainings are only open to senior-level civil servants, and oriented to general aspects without being customised to the context of public procurement.

Therefore, Malta could benefit from further developing trainings currently not available and reinforcing further the coverage of proficiency levels. The priority shall be determined by considering the results from the ProcurComp<sup>EU</sup> self-assessment survey.

Providing the trainings to other key stakeholders within contracting authorities

Carrying out public procurement processes is not the sole responsibility of public procurement officials. Indeed, procurement processes involve different actors within contracting authorities, although the procurement departments are usually responsible for the overall procedure. For example, technical departments or the end-users play critical role in defining the technical aspects of procurement such as market analysis and technical specifications. Finance department is a key actor to make payments. (See Table 5.5.) They contribute to achieving the desired outcome of public procurement.

Table 5.5. Division of tasks at contracting authorities and interaction with other entities

|       | Procurement Tasks  | Public procurement<br>Department | Technical<br>Departments | Other Department(s) or bodies   | SPD / DOC* |
|-------|--|----------------------------------|--------------------------|---------------------------------|------------|
| i.    | Needs Analysis / procurement planning                    | ✓                                | ✓                        |                                 |            |
| ii.   | Market analysis  | ✓                                | ✓                        |                                 |            |
| iii.  | Preparation of tender documents                          | ✓                                | <b>√</b>                 |                                 |            |
| iv.   | Preparation of technical specifications                  |                                  | <b>√</b>                 |                                 |            |
| ٧.    | Call for tender  | ✓                                |                          |                                 | <b>√</b>   |
| vi.   | Clarification on tender documents from potential bidders | ✓                                |                          |                                 | ✓          |
| vii.  | Tender opening   |                                  |                          |                                 | √          |
| viii. | Evaluation of tender                                     | <b>√</b>                         | <b>√</b>                 | √ Evaluation Committee, DCC/GCC |            |
| ix.   | Issuance of contract award                               |                                  |                          |                                 | ✓          |
| Χ.    | Signing of contracts                                     |                                  |                          | ✓                               | √          |
| xi.   | Overall contract management                              | ✓                                | <b>√</b>                 |                                 |            |
| xii.  | Modification of contract                                 | ✓                                | <b>√</b>                 |                                 |            |
| xiii. | Payment  |                                  | <b>√</b>                 | √<br>Finance                    |            |

Note: \* SPD and DOC administer procurement on behalf of Schedule 16 entities. In the case of Schedule 3 entities, they manage their own procurement. The respective head of department generally approves needs analysis, market analysis, tender documents, technical specifications whilst the SPD or DOC approves clarification on tender documents, tender opening, and modification of contracts. Source: Prepared based on the information obtained through the fact-finding interviews with contracting authorities

Fact-finding interviews show that procurement officials sometimes encounter arguments with the endusers that are not familiar with the principles of public procurement such as the transparency and equal treatment required for the preparation of technical specifications. Therefore, the trainings shall be provided not only to procurement officials but also to key actors within contracting authorities such as the end-users at technical departments.

In addition, public procurement trainings shall be also provided to the top management of contracting authorities such as CEOs, board members or heads of departments. The management staff of contracting authorities play a key role in increasing the uptake of strategic procurement. However, fact-finding interviews show that most of them are not familiar with the concept of public procurement including its strategic importance to pursue broader policy objectives such as circular economy, SMEs development, and innovation, and RBC. Therefore, Malta could benefit from developing a procurement training programme oriented to the top management of contracting authorities to raise their awareness of the strategic role of public procurement.

# 5.3.2. Methodological assistance

Methodological assistance constitutes a key pillar to strengthen the capacity-building system of the public procurement workforce, in addition to the development of an adequate training system. Methodological assistance includes standardised templates, manuals/guidelines, and help desks.

# Standardised templates

Standardised templates are ready-to-use forms that contracting authorities can use to facilitate their work. The DoC provides standardised tender documents since 2010. It was updated on a regular basis in order to adapt quickly to the reality and needs of public procurement. However, some contracting authorities expressed their concern that the templates are updated too frequently, bringing unnecessary administrative burdens. In fact, CAs are required to prepare tender documents again from zero based on the new templates if they are published before the approval or vetting by the SPD or DoC's Operations Directorate. Contracting authorities would also welcome prior notice and consultation on the new templates to allow for their feedback. DoC is aware of this situation and decided to limit the update to twice per year. It is indispensable to avoid the situation in which contracting authorities are obliged to prepare tender documents again when the new templates are published. Malta could benefit from setting a clear cut-off date for using the updated templates with decent prior notice and providing the opportunity of public consultation on the updated content.

#### Guidelines and manuals

Guidelines and manuals provide practical information on specific procedures and topics. The DoC provides a wide range of guidelines and manuals: Manual of Procedures, Contracts Circulars, Guidance Notes, Procurement Policy Notes, Standard Operating Procedures for the SPD, Standard Operating Procedures / Guidelines For Tender Evaluation. For example, short manual is available for BPQR (Best Price Quality Ratio) criteria in Procurement Policy Note # 8 (Utilisation of the BPQR) and # 25 (BPQR – Precarious Services). These documents briefly provide examples of the actual use of BPQR. However, contracting authorities consider that most of the guidelines and manuals could be more user-friendly. For example, the Manual of Procedures has more than 200 pages, but this is very similar to what is found in the PPR and has not been updated since 2016. Malta could benefit from developing more user-friendly manuals and guidelines. In addition, it is beneficial to prepare manuals aligned with the training programme.

# Help desk

The help desk is a contact point centre to assist contracting authorities and/or economic operators in clarifying their inquiries related to their daily tasks of public procurement. It functions as an efficient tool to provide quick and tailor-made information. In Malta, a help desk is not formally established, but the DoC receives any kinds of questions through phone calls, e-mails, and online forms, which can be found in the DoC website. The DoC could benefit from collecting statistics on the number and category of questions received from the different stakeholders. These statistics could for instance inform the decision on developing relevant guidelines. It should be noted that the Ministry for the Energy, Environment and Enterprise (MEEE) administers a help desk exclusively for green public procurement.

# 5.4. Competency model and certification framework

Currently, Malta does not have a competency model. The Government of Malta set up four job profiles for the public procurement career stream: (i) Assistant Manager (Procurement), (ii) Manager I (Procurement), (iii) Manager II (Procurement), and (iv) Senior Manager (Procurement). However, the use of these job profiles is limited to the DoC and the public service since 2020, and it is still not used by all contracting authorities. In fact, contracting authorities use different job titles for their procurement officials. In addition, there is no certification framework that could certify the capabilities associated to these four job profiles through certain requirements such as the completion of trainings and exams.

However, Malta has a strong basis to establish a competency model and a certification framework. Firstly, Malta has already set up the aforementioned four job profiles that contain a description of tasks associated with their scope and mandate. Secondly, Malta specified the target competency levels of 30 ProcurComp<sup>EU</sup> competencies for these job profiles when DoC carried out the pilot project in 2020. Additionally, the RPL pilot was also built upon the ProcurComp<sup>EU</sup>. (See Table 5.4). Indeed, the same target levels were also used in the ProcurCompEU survey for 15 public entities carried by the OECD. (See Section 5.2) Therefore, Malta is in an advantage position to develop a competency model, built upon the said favourable conditions and the result of ProcurComp<sup>EU</sup> pilot survey.

Malta could benefit from developing a competency matrix by adjusting ProcurComp<sup>EU</sup> competency matrix to the local context and reflecting the key takeaways from the ProcurComp<sup>EU</sup> pilot survey. In addition, Malta could benefit from developing a national certification framework of the public procurement workforce, aligned with the competency matrix to be developed for each job profile. Training courses should be updated and aligned with the competency models and certification framework to be developed.

# References

| Department of Contracts (2021), Contracts Circular N° 17/2021 on PROCURCOMP EU -   | [6]  |
|--|------|
| European Competency Framework for Public Procurement Professionals, https://contracts.gov.mt/en/Circulars/2021/Pages/Circulars2021.aspx (accessed on   |      |
| 22 February 2022).   |      |
|  |      |
| European Commission (2020), <i>ProcurCompEU</i> – the European competency framework for public procurement professionals, <a href="https://ec.europa.eu/info/policies/public-procurement/support-">https://ec.europa.eu/info/policies/public-procurement/support-</a>  | [7]  |
| tools-public-buyers/professionalisation-public-buyers/procurcompeu-european-competency-framework-public-procurement-professionals_en (accessed on 25 June 2021).   |      |
| European Commission (2020), <i>ProcurCompEU: Implementation in Malta</i> , <a href="https://doi.org/10.2873/606579">https://doi.org/10.2873/606579</a> .   | [8]  |
| European Commission (2020), "Study on professionalisation of public procurement in the EU and selected third countries", <a href="https://op.europa.eu/fr/publication-detail/-/publication/400d4892-8542-11eb-af5d-01aa75ed71a1/language-en">https://op.europa.eu/fr/publication-detail/-/publication/400d4892-8542-11eb-af5d-01aa75ed71a1/language-en</a> .   | [4]  |
| Malta College for Arts, Science and Technology (MCAST) (n.d.), <i>Bachelor of Arts (Honours) in Procurement and Finance</i> , <a href="https://www.mcast.edu.mt/courses/bc6-03-21/">https://www.mcast.edu.mt/courses/bc6-03-21/</a> (accessed on 24 February 2022).  | [15] |
| OECD (2021), Government at a Glance 2021, OECD Publishing, Paris, <a href="https://doi.org/10.1787/1c258f55-en">https://doi.org/10.1787/1c258f55-en</a> .  | [1]  |
| OECD (2020), Public procurement and infrastructure governance: Initial policy responses to the coronavirus (Covid-19) crisis, <a href="https://www.oecd.org/coronavirus/policy-responses/public-procurement-and-infrastructure-governance-initial-policy-responses-to-the-coronavirus-covid-19-crisis-c0ab0a96/">https://www.oecd.org/coronavirus/policy-responses/public-procurement-and-infrastructure-governance-initial-policy-responses-to-the-coronavirus-covid-19-crisis-c0ab0a96/</a> (accessed on 7 July 2021). | [2]  |
| OECD (2015), OECD Recommendation of the Council on Public Procurement, <a href="https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0411">https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0411</a> .   | [3]  |
| Office of the Prime Minister (2021), Achieving a Service of Excellence: A 5-year Strategy for the Public Service.  | [5]  |
| The Institute for the Public Services (n.d.), 4F2016 Continuous Development Award in Public Procurement Regulations, <a href="https://publicservice.gov.mt/en/institute/prospectus/Pages/CAT-06/Modules/4F2016/default.aspx">https://publicservice.gov.mt/en/institute/prospectus/Pages/CAT-06/Modules/4F2016/default.aspx</a> (accessed on 24 February 2022).   | [12] |
| The Institute for the Public Services (n.d.), <i>About IPS</i> , <a href="https://publicservice.gov.mt/en/institute/Pages/About/aboutips.aspx">https://publicservice.gov.mt/en/institute/Pages/About/aboutips.aspx</a> (accessed on 24 February 2022).   | [9]  |
| The Institute for the Public Services (n.d.), Introduction to Green Public Procurement, <a href="https://publicservice.gov.mt/en/institute/prospectus/Pages/CAT-06/Modules/OC5519/default.aspx">https://publicservice.gov.mt/en/institute/prospectus/Pages/CAT-06/Modules/OC5519/default.aspx</a> (accessed on 18 July 2022).  | [14] |
| The Institute for the Public Services (n.d.), IPS   Prospectus,<br>https://publicservice.gov.mt/en/institute/prospectus/Pages/default.aspx (accessed on 24 February 2022).   | [10] |

| The Institute for the Public Services (n.d.), <i>OF2118 Procurement by Contracting Authorities</i> , <a href="https://publicservice.gov.mt/en/institute/prospectus/Pages/CAT-06/Modules/OF2118/default.aspx">https://publicservice.gov.mt/en/institute/prospectus/Pages/CAT-06/Modules/OF2118/default.aspx</a> (accessed on 24 February 2022). | [11] |
|--|------|
| The Institute for the Public Services (n.d.), OF4518 Public Procurement in Practice - A follow up  | [13] |
| programme, https://publicservice.gov.mt/en/institute/prospectus/Pages/CAT-   |      |
| 06/Modules/OF4518/default.aspx (accessed on 24 February 2022).   |      |

# **6** Developing a comprehensive measurement framework in Malta

This chapter discusses the development of a comprehensive public procurement performance measurement framework in Malta. To support Malta in setting such a framework, the chapter highlights key elements to consider in setting up a performance measurement framework, including i) the category of indicators (efficiency/effectiveness, compliance, strategic ones), ii) the procurement stage, and iii) the relevant stakeholders. The chapter also reviews the availability of data to assesses the procurement processes.

# 6.1. State of play on measurement framework in Malta

Public procurement is a key tool for providing public services to citizens. From an economic perspective, it should contribute to an efficient and effective management of public resources. (OECD, 2015[1]) How countries spend taxpayers' money and how they deliver services makes procurement an increasingly important tool to go beyond the economic aspects of "value for money." (OECD, 2021[2]). As seen in previous chapters, public procurement has been widely used as a strategic tool for achieving different policy objectives and supporting governments in advancing their strategic agenda.

To achieve these different objectives, countries implemented specific strategies and used specific tools and mechanisms throughout the procurement cycle. In this context, measurement frameworks are needed to i) assess progress and achievements and ii) to identify potential gaps. This will enable governments and contracting authorities to take relevant actions and/or tailoring specific strategies. The OECD Recommendation on Public Procurement highlights the need to drive performance improvements through evaluation of the effectiveness of the public procurement system, from individual procurements to the overall system, at all levels of government where feasible and appropriate (OECD, 2015<sub>[1]</sub>) (see Box 6.1).

# Box 6.1. The principle on Evaluation of the OECD Recommendation on Public Procurement

i. Assess periodically and consistently the results of the procurement process.

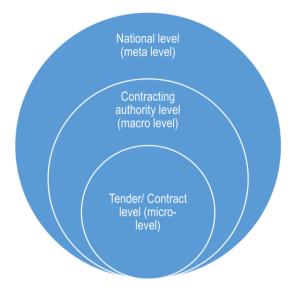
Public procurement systems should collect consistent, up-to-date and reliable information and use data on prior procurements, particularly regarding price and overall costs, in structuring new needs assessments, as they provide a valuable source of insight and could guide future procurement decisions.

ii. Develop indicators to measure performance, effectiveness and savings of the public procurement system for benchmarking and to support strategic policy making on public procurement

Source: (OECD, 2015[1])

This evaluation is usually conducted by defining key performance indicators (KPIs) that are monitored over time. The performance of public procurement systems can be assessed at three levels: tender/ contract level (micro-level), contracting authority level (macro level) and national level (meta level) (see Figure 6.1. . There are clear links between the 3 levels as each level is feeding the upper one (OECD, 2018<sub>[3]</sub>).

Figure 6.1. Three levels for assessing the performance of public procurement



Source: (OECD, 2018[3])

Only 45% of countries responding to the 2018 survey on the Implementation of the 2015 OECD Recommendation of the Council on Public Procurement<sup>1</sup> mentioned the establishment of a formal performance management system, including KPIs. (OECD, 2019<sub>[4]</sub>)

Currently in Malta, no KPIs related to public procurement have been set. Aware of the benefits of establishing such indicators, however, the DoC is fully committed to advancing the performance measurement agenda. Indeed, monitoring procurement activities with the aim of ensuring adherence to the Maltese regulations and to ensure that the results of these monitoring activities are made available to the public through appropriate means of information is part of the duties of the DoC (DoC Malta, 2016<sub>[5]</sub>). The Procurement Policy and Quality Assurance Directorate oversees the monitoring of public procurement activities. In addition, it is worth mentioning that as an EU member state, Malta is committed to sending its "Procurement Monitoring Report" to the European Commission on a regular basis in view of the Member States' reporting process under the Directives 2014/23/EU, 2014/24/EU and 2014/25/EU. The first report was published in 2017 and the second one in 2021 (European Commission, 2021<sub>[6]</sub>). This report includes key information on the procurement system of each member state and includes relevant quantitative indicators that could be relevant to consider (see Box 6.2).

# Box 6.2. Example of relevant indicators included in the Procurement Monitoring Report of EU member states

- Number of procedures by procurement category (supplies, services, works)
- Number of notices/ contracts above and below European Union thresholds
- Value of procurement above and below European thresholds
- Share of contract awards that received 1 bid
- Share of negotiated procedures without prior publication
- Share of contracts awarded to companies with concealed ownership structure
- Number of above-threshold contracts awarded to SMEs and total value of contracts above threshold won by SME
- Share of public procurement procedures incorporating green criteria out of the whole volume of procurement at national level

Source: (European Commission, 2017[7])

In terms of reporting obligations, contracting authorities must submit the following documents/information:

- Publication every 6 months in the Gazette of a full list of contracts awarded with a value exceeding EUR 5 000, including direct awards, and a list of all cases involving variations which exceed the original contract values by more than 5%.
- GPP reporting to the Ministry for the Environment, Energy and Enterprise (MEEE) (see section 4.1.4).

The only reporting obligation that is tied with indicators is the one related to GPP reporting. This calls upon Malta to develop a comprehensive measurement framework for public procurement, with relevant KPIs, which could, on its turn, allow the country to measure progress and their efforts to improve the public procurement system against a given baseline in different domains.

# 6.2. Setting the appropriate KPIs and reporting requirements

The OECD Recommendation on Public Procurement calls for developing indicators to measure performance, effectiveness and savings of the public procurement system for benchmarking and to support strategic policy making on public procurement (OECD, 2015[1]). Each country has its own institutional settings, policy objectives and legislative framework (OECD, 2019[8]), but all of them need to assess progress and achievements and to identify potential gaps. In this context, different elements need to be considered: i) the category of indicators (efficiency/effectiveness, compliance, strategic ones), ii) the procurement stage, and iii) the relevant stakeholders (procurement authorities vs contracting authority or Central Purchasing Body - CPB, etc.).

When establishing and implementing measurement frameworks, countries can adopt different strategies. For instance, a country can decide to start with a specific procurement stage, or to start with specific categories of procurement indicators.

Figure 6.2. Different parameters to develop and establish measurement frameworks

Different categories of public entities (eg. CAs, Procurement authority, CPB)

Different categories of performance indicators:
- Efficiency
- Compliance
- Strategic

Pre-tender

Tender

Contract
Management

# 6.2.1. Different categories of procurement performance indicators

Public procurement refers to the process of identifying what is needed; determining who the best person or organisation is to supply this need; and ensuring that what is needed is delivered to the right place, at the right time, for the best price and that all this is done in a fair and open manner. It is increasingly considered as a crucial pillar of services delivery for governments. Because of the sheer volume of spending it represents, well governed public procurement can and must play a major role in fostering public sector efficiency and establishing citizens' trust and advancing the government agenda. This involves considering indicators in three main categories: compliance, efficiency and strategic objectives (OECD, 2015<sub>[1]</sub>).

Figure 6.3. Three categories of public procurement performance indictors



**Compliance KPIs** aim at assessing whether procurement processes and outcomes are in line with the national or any applicable legislation. In this context, KPIs could cover issues related for instance, the use

of appropriate procedures, integrity breaches, transparency requirements, challenges of procurement decisions or litigation during the contract execution phase.

Efficiency KPIs aim at assessing whether the procurement processes enable to achieve the best procurement outcomes and effectiveness and the best "value for money". This involves assessing inputs and outputs, the use of the different procurement methods, and the implementation of different efficiency tools such as FAs, DPS, etc. Efficiency can be commonly defined as a ratio between outputs and inputs while effectiveness is the ratio of defined outcomes to defined inputs and is conditional on the quality-of-service provision (OECD, 2019[8]). For instance, KPIs could cover savings (in monetary value and time), level of market participation in specific procedures, duration of procurement processes (including vetting), etc.

**Strategic KPIs** aim at assessing how public procurement processes and outcomes contribute to achieving pressing policy goals such as environmental protection, innovation, job creation and the development of small and medium enterprises (OECD, 2015<sub>[1]</sub>). In this context, KPIs could include the share of sustainable goods and services, the share of procurement awarded to SMEs (in number and volume), the share of procurement involving innovation features. In addition, in mature systems, KPIs could be related to effective impacts such as the reduction in CO2 emissions or energy consumption

# 6.2.2. Indicators covering the whole procurement cycle

Performance indicators should be related to different stages of the procurement cycle from tender preparation to the completion of the contract. Figure 6.4. provides an example of some performance indicators throughout the procurement cycle.

Figure 6.4. Performance indicators throughout the procurement cycle

Pre-tendering

- Compliance: Number of appropriate procurement procedure
- Efficiency/Effectiveness: Number of framework agreements
- Strategic: Number of procurement opportunities with green elements

Tendering

- · Compliance: Number of successfull challenges to public procurement decisions
- Efficiency/Effectiveness Number of bids received
- Strategic: Number of bids received from SMEs

Contract Management

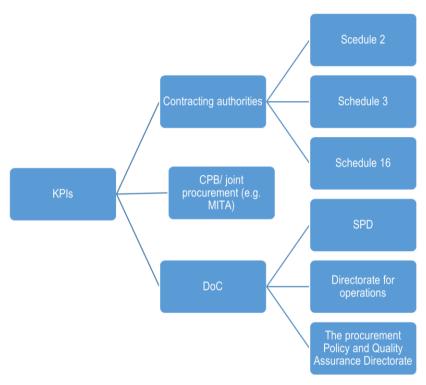
- Compliance: Share of deliveries in accordance with contract terms
- Efficiency/Effectiveness: Savings (using life cycle approach)
- Strategic: Share of goods and services delivered with green elements

# 6.2.3. Indicators considering the national institutional framework

When developing and establishing KPIs, it is pivotal to consider the national institutional setting and the potential existence of specific entities in charge of implementing public procurement procedures. In Malta there are 3 categories of contracting authorities; Each of them must follow specific processes depending on specific thresholds for the vetting of procurement procedures that could be undertaken by the DoC,

namely the SPD directorate (if the contracting authority is under schedule 16) or the Directorate for Operations (if the contracting authority is under schedule 2) (see section 1.1.2). In this context, specific indicators might be relevant for each of these categories but also for the directorates of the DoC involved in the procurement process. In addition to the SPD and the Directorate for Operations, the Procurement Policy and Quality Assurance Directorate could also be considered as it is in charge of vetting BPQRs. In addition, other entities could be considered, such as those in charge of the remedies system (The Public Contracts Review Board in Malta).

Figure 6.5. Public entities involved in the procurement process that might require specific indicators



In addition, data from the 2016 Public Procurement Survey show that an overwhelming majority of respondents have at least one Central Purchasing Body (CPB) to conduct central purchasing (OECD, 2019[4]). CPBs usually have specific processes and tailored indicators to assess the performance of their activity. For example, indicators related to Framework Agreements used by CPBs can include calculating the number of staff and time to develop framework agreements centrally. Table 6.1. provides a description of examples of indicators and metrics for measuring CPB performance related to framework agreements. The public procurement regulation mentions that DoC and Malta Information Technology Agency (MITA) are considered as CPBs. In addition, aware of the benefits of centralisation, the DoC is currently considering the possibility of expanding its CPB function. (see section 2.3.2). Therefore, Malta should consider integrating indicators related to the aggregation of needs.

Table 6.1. Examples of metrics for measuring CPB performance

| Objective   | Metric description  | Implication for government   | Data requirements   |
|---|---|--|---|
|   | Inputs – Fran   | nework Agreements (FAs)  |   |
| Cost of establishing framework agreements (FAs)   | Number of staff and time to develop FA centrally  | Can be used as a benchmark of cost of central vs decentralised purchasing  | Cost and time of staff (inside and outside of CPB) spent on establishing and managing FAs   |
| Competition in FAs  | Trends in supplier participation in FA tender processes   | Indication of increased interest in working with government, as well as assumption that increased competition reduces prices.  | Numbers of bids submitted for different stages of each FA (including call-off stage)  |
| SME participation in FA tenders   | Proportion and number of bids received from SMEs in FA tenders  | Measure of success of policies to<br>reduce barriers to SME participation in<br>order to increase economic activity of<br>SMEs | Number of bids submitted for<br>different stages of each FA by<br>businesses categorised as SMEs  |
|   | Outputs –   | Framework Agreements   |   |
| FA hard savings   | Reduction in price from FAs compared to market price, related to amount of contracting authority spend through the FA | Increased value from government spending   | Cost of goods and services<br>agreed in FA (or cost paid by CAs<br>in second stage) versus market<br>rate for CA or centrally agreed<br>rate, depending on methodology                |
| FA time savings   | Measurement of time savings from contracting authorities' (CA) use of FAs   | Increased efficiency for civil service   | Average time spent by CA personnel to establish a contract for the relevant good or service   |
| FA customer satisfaction  | Level of satisfaction of CAs that FAs meet price, service and quality expectations                                    | Indication that FAs are effectively supporting the delivery of public services   | Survey results from users of FAs from within CAs  |
| Efficiency in second-stage<br>FA processes/ through<br>dynamic purchasing<br>system (DPS)/other<br>instruments – businesses | Time taken to complete second stage process   | Value for money (i.e. revenue received compared to cost of competing) for private sector in participating in FA tenders        | Assessment of time taken for businesses (averaged across several business profiles) to compete in initial and call-off stages of tender with and without efficiency tools such as DPS |

Source: (OECD, 2019[8])

# 6.3. Relevant indicators for Malta

#### 6.3.1. General indicators for CAs

The level of formal performance monitoring with KPIs varies among OECD countries and the systematic evaluation of procurement outcomes remains a challenge (OECD, 2019<sub>[4]</sub>). In addition to monitoring frameworks that may exist at the national level, contracting authorities can also develop relevant KPIs that will help them assess the performance of their procurement and their contribution to achieve their mandate.

Some surveyed contracting authorities (14%) use reporting mechanisms to monitor project outputs with limited and very basic public procurement KPIs such as the number of direct orders/negotiated procedures or the number of contracts signed. The majority of surveyed contracting authority (86%) do not have specific KPIs. The main reasons mentioned by contracting authorities for not setting KPIs are: i) lack of capacity of procurement officials, ii) lack of digitalisation, and iii) the perception that performance indicators were not a value added in the procurement system.

In this context, Malta should consider raising awareness of the different contracting authorities on the benefits of setting public procurement measurement frameworks and ensuring that the framework to be developed at the national level does not involve extensive workload from contracting authorities.

# 6.3.2. Specific indicators for DoC

Despite the lack of formal performance management system with relevant KPIs in Malta, the DoC is committed to advancing the performance measurement agenda. In addition to the indicators on the performance of the public procurement processes, it is key to monitor the effectiveness of the organisational structure and related processes of key stakeholders in Malta. Given the involvement of different DoC directorates in public procurement processes and their impact on time and outcomes, it is key for the DoC to develop tailored internal KPIs to measure its efficiency and effectiveness. In particular these indicators are relevant for, the SPD, the Directorate for Operations (OD), and the Directorate Procurement Policy and Quality Assurance (DPPQA).

Both the SPD and the OD are in charge of administering procurement procedures and vetting tender documents depending on the schedule to which the entity belongs to, the threshold and the type of procedure. However, the administration of procurement processes and in particular the vetting process requires time that may lead to some delays for contracting authorities (See section 2.2.1)

However, as mentioned in section 2.2.1, the SPD and the OD also mentioned the lack of responsiveness of some contracting authorities that may delay some procurement processes. As a mitigation measure, for instance, the SPD and OD are setting deadlines to cancel procedures when no feedback is received from contracting authorities.

Therefore, it is key to set up the indicators to measure the efficiency and effectiveness of the organisational structure and related processes of DoC directorates. To establish such indicators, it is key to first detail the processes, indicate an estimated timeline or a maximum timeline, and indicate who is responsible for each of them. These indicators could be developed per procurement procedure, procurement categories or DoC directorate or unit. Table 6.2. provides examples of relevant indictors of internal processes for DoC to consider.

Table 6.2. Examples of relevant indicators for DoC processes

|   |   | I   |
|---|---|---|
| Process   | Person or directorate responsible   | Indicator   |
| Confirmation of Receipt of tender documents by the vetter                         | DoC   | Average time to send the confirmation of receipt of tender documents to contracting authorities                 |
| Approval of the fist vetter   | First vetter  | Average time to approve the document by the first vetter  |
| Update of the tender documents by contracting authorities after the first vetting | Procurement official within the CA  | Average time taken by contracting authorities to update tender documents after the feedback of the first better |
| Approval by the second ( or additional) vetter                                    | Second (or additional) vetter   | Average time to approve the document by the second (or additional) vetter                                       |
| Approval of BPQR  | DPPQA   | Average time between the submission of request to use BPQR and the final decision                               |
| Preparation of the tender evaluation report                                       | Tender Evaluation Committee   | Average time to prepare the tender evaluation report  |
| Approval of the tender evaluation report  | Departmental Contracts Committee (DCC) or General Contracts Committee (GCC) | Average time to approve the evaluation report by the DCC or the GCC   |
| Preparation of contracts  | Relevant DoC directorate  | Average time to prepare a contract  |
| Signature of the contract ( when the tender is administered by the OD)            | Director General of DoC   | Average time between the finalisation of the contract and the signature of the contract by DoC                  |
| Contract amendment (when the tender is administered by the OD)                    | Director General of DoC   | Average time between the receipt of the request for amendment and the signature of the contract amendment       |

Source: Based on DoC internal processes

In addition to the duration of each process, it could be relevant to assess the performance of DoC by assessing for instance, the share of procedure that received clarification requests. In addition, given the

intermediate role of DoC, it could be relevant to assess in a regular basis the satisfaction of the users of its services: contracting authorities

# 6.4. Ensuring the availability of relevant data to assess the efficiency and quality of procurement processes

There are many challenges in measuring the performance of public procurement systems including the scarcity of available data (OECD, 2019[4]). As highlighted in the previous work of the OECD in Malta, access to data is essential to measure the efficiency and effectiveness of a procurement system. The data need to be able to be collected for each step of the procurement process (OECD, 2019[9]).

To measure the performance of the Maltese public procurement system throughout the public procurement cycle, data could be provided from the e-procurement system: ePPs and internal system of contracting authorities and DoC, as the department in charge of specific aspects of procurement processes (See Figure 6.6.).

Figure 6.6. Potential data sources for KPIs throughout the public procurement system



# ePPS:

- · Mainly for Tendering
- · Rarely for pre-tendering/contract management



Internal system of contracting authorities:
Mainly for pre-tendering and contract management

# 6.4.1. Improving data availability from the e-procurement system and governmental systems

Improving data availability in the e-procurement system of Malta

The use of e-procurement systems is a prerequisite for effective measurement. Indeed, data availability is improved by widespread and coherent use of these systems across levels of government, for all procedures and throughout the procurement cycle (OECD, 2019[4]).

In Malta, ePPS was established in 2011 and since 2016 the vast majority of procurement procedures with a value of EUR 5 000 (excluding VAT) or above are published electronically through the system. (OECD, 2019[9]). In 2021, the ePPS introduced some new functionalities and fields that enable for instance to collect information on the category of economic operators and on the GPP criteria of the tender. Box 6.3 provides the list of data available in ePPS as of January 2021. In addition to general information, data covers the pre-tendering and the tendering stage and the contract management stage (for certain cases). The analysis of the available data shows three categories of gaps: i) data is not available, ii) data cannot be

extracted automatically, or iii) contracting authorises or economic operators are not filling or filling partially some information (poor data quality).

Regarding the pre-tendering and tendering phase, data is not available or cannot be extracted automatically regarding the social criteria, innovation features, the duration of efficiency tools such as DPS and framework agreements. In addition, data related to the number of participating suppliers in DPS and framework agreements and the financial volume for each call cannot be extracted from ePPS. It is extracted manually from the original contract notice. Data on the number of qualified bids is not available, neither. Regarding appeals, ePPS includes a functionality to challenge public procurement decisions. However, despite the existence of this functionality, economic operators still challenge procurement decisions by sending paper letters to the public contracts review board. In addition, data about the challenges outcomes and the duration of the process are not recorded in ePPS.

Significant data gaps have also been identified in the contract management phase. Indeed, ePPS did not have the function to record key information regarding this phase such as contract amendments and contract payments until 2020 when it recently introduced a module on contract management that is optional and can include data on key milestones, timeframes and payments. However, discussions with contracting authorities highlighted that the system is not widely used as i) it duplicates with other tools available within contracting authorities and ii) it is not accessible to all relevant people involved in contract management (as they would need to be registered in ePPS). In this context, the government of Malta should work towards improving data availability and quality in the e-procurement system to ensure a comprehensive evaluation of the performance of the procurement function. It should also consider gradually mandating contracting authorities and economic operators to use some modules and functionalities such as the contract management one and the functionality to challenge decisions. Regarding the contract management module, the DoC should explore the possibility to integrate it with other systems used by contracting authorities.

In addition, in specific cases, after the DoC approval, some direct award procedures are taking place outside the ePPS. Discussions with the DoC and contracting authorities highlighted that those cases refer mainly to urgency situations or exceptional cases when the market is not capable of using the e-procurement system. However, although stakeholders mentioned that those cases represent a minor share of the national public procurement volume, data related to these procedures is not recorded in ePPS, even after signing of contracts. This impacts the data availability and quality on these procedures. For those specific cases, despite the fact that economic operators might be granted some exceptions to be exempt of using ePPS, it is recommended that contracting authorities record all the relevant data in the system to ensure the availability of comprehensive data on these categories of procedures.

## Box 6.3. Data available in ePPS as of 2022

#### **General information**

- Identification number of Contracting authorities
- Contracting authority name
- Supplier Name
- Supplier Nationality
- Supplier size (since 2020)
- Call for tender Status

#### Pre-tendering

Entity in charge of publishing the call for tender

- Call for tender number
- Call for tender name
- Call for tender publication date
- Relevant EU Directive
- Estimated value of the contract
- Type of Procedure
- Procurement category Supply /services/works
- Number of "envelopes"
- Lots and number (if any)
- Call for tender Closing Date
- Award Criteria (Price/BPQR)
- Other Procurement Tools (framework agreements /DPS)
- EU funded calls for tenders
- Above/below threshold tender
- The use of e-auction
- The relevant CPV code
- GPP criteria (since 2021)

### **Tendering**

- Number of electronic submissions
- Contract award value
- Award Date
- Number of tenderers
- Unique number of tenders
- Number of appeals

# **Contract Management (if inputted by contracting authorities)**

- Contract amendments
- Key milestones
- Payments

Source: data provided by the DoC

# Advancing the integration of the e-procurement system with other platforms

Countries have been expanding functionalities of e-procurement systems to achieve better outcomes and deliver services more effectively and efficiently (OECD, 2021[10]), including Malta with the implementation of ePPs and its improvement through new features since 2016. Following these technological advances, vertical and horizontal integration of e-procurement systems with other governmental platforms are the next steps to achieve a fully integrated procurement system to provide government with full visibility on the use of public funds across different government departments (OECD, 2018[11]) and to achieve various efficiency gains for both the public and the private sector (OECD, 2018[11]). In this context, there are two categories of integrations to consider: horizontal integration and vertical integration (see Figure 6.7.). Vertical integration refers to the integration of the national e-procurement system with the internal digital

procurement and management tools of contracting authorities (see section 6.4.2). Horizontal integration involves integrating the e-procurement system with other governmental systems such as the national tax system, the national budgeting/accounting system, or the national security system. In Korea for example, the central procurement agency introduced a fully integrated, end-to-end procurement system called KONEPS which is integrated with about 140 external systems (OECD, 2018[11]).

National Tax System

National E-procurement System

Internal information system of entity 1

Internal information system of entity 2

Horizontal integration

National Budgeting System

Internal information system of entity 3

Internal information system of entity 3

Vertical integration

Figure 6.7. Example of horizontal and vertical integration of the e-procurement system

Source: Adapted from (OECD, 2018[11])

In Malta, the "Once Only Principle" system has been applied in the ePPS, with the integration of the European Single Procurement Document (ESPD). Therefore, economic operators only have to submit information related to their eligibility once as the information is pre-filled the next time (Office of the Prime Minister, n.d.<sub>[12]</sub>). However, after the award, the supplier needs to get different documents.

Regarding contract management, its module is not integrated with the Corporate Financial Management Solution (CFMS), the accounting system used by public entities in Malta. This integration could provide further efficiency gains and enhance the visibility on public procurement spending. Malta could consider the possibility of integrating the ePPS contract management module with the CFMS.

Finally, when it comes to external platforms, it is key to consider the integration with the banking system, in particular for processing performance guarantees which are required for the majority of procurement operations when the procurement value exceeds EUR 5 000. Currently, the performance guarantee is not provided in a digital format which impacts the efficiency of the system and increases the administrative burden for tenders. In this context, Malta could consider advancing the integration of ePPS with the banking system.

# 6.4.2. Improving internal information systems of contracting authorities and DoC

In addition to e-procurement platforms, the digitalisation of the procurement process relies also on the digitalisation of internal systems supporting whole-of-procurement activities, including tender preparation and contract management till the completion of the contract. In addition to better spend visibility, better stock management, faster validation of processes, a strong IT system also enables improved data collection (OECD, 2018<sub>[3]</sub>). The COVID 19 outbreak highlighted the need for interoperable IT infrastructures and digital services to avoid the disruption of public services and contributed to accelerate digitalisation of public procurement systems (European Commission, 2021<sub>[13]</sub>), including in Malta.

Progressively digitalising the internal procurement system of contracting authorities

Some KPIs rely on data available at the contracting authority level. In Malta, they include, but are not limited to, the data on procurement procedures below EUR 5 000 (excluding VAT) and the use of social criteria. To enable the regular monitoring of such indicators, it is key to digitise internal procurement systems of contracting authorities.

With the COVID-19 pandemic, some contracting authorities enhanced their digital tools and introduced digital signature. Overall, in Malta, contracting authorities use either manual or digital processes to manage and support their public procurement activities. However, for the majority of contracting authorities, digital processes include basic IT tools such as emails, Teams, Excel, Word, and scanned copies of documents. These basic digital tools have limited features, poor interoperability with governmental systems and might not be sustainable in the future due to the poor storage capacity and the fact that there are not fit data sharing, processing and safety. Only a few contracting authorities (21%) mentioned the use of more sophisticated digital tools such as Enterprise Resource Planning (ERP) for some procurement stages, task management tools or dedicated procurement internal system. However, those systems do not cover the whole procurement stages and are not integrated with governmental systems. For example, approvals with DoC and SPD are performed by email. In this context, contracting authorities could consider progressively digitalising their internal procurement system.

Progressively, the challenge for OECD countries and other countries such as Malta goes beyond introducing digital technologies into public administrations, it is also about integrating their internal information system into the public sector modernisation efforts (vertical integration) (OECD, 2018<sub>[11]</sub>). Indeed, for further efficiency gains, contracting authorities' internal information systems should be integrated with the e-procurement system and other governmental platforms. As already mentioned, public procurement internal systems need to be linked to the public sector digital environment to enhance workflows, reinforce digital policy coherence and provide valuable data across all levels of government on public spending.

# Digitalising the internal information system of DoC

Good management and communication tools enhance efficiency and effectiveness of public procurement systems. They are also necessary to ensure data quality and relevant KPIs. In Malta, whilst it is acknowledged that the public procurement system has been digitised through the use of ePPS, as mentioned in section 2.2 some indicators such as those developed in Table 6.2. require data from DoC. However, DoC is using various systems and tools such as Teams, emails and Excel to communicate with contracting authorities and to perform its mandate and role. Indeed, the DoC doesn't have a formal digital management system, which is essential for the efficiency of processes and to track their progress.

Currently, all different stakeholders can contact DoC via a generic email address. A generic number is provided for each request and sent to the relevant department, without any shared tracking mechanism. For instance, OD has an Excel file to track the different requests. This file needs to be filled manually by all staff and on a regular basis. The director reviews the file on a regular basis to identify potential issues such as contracting authorities that are still waiting for feedback from DoC, or contracting authorities that have not been responsive following DoC's feedback. The implementation of a digital management system could enable DoC to track the different requests, to send alerts when needed, and to monitor the performance of its processes in an efficient manner, reducing the risks of delays in the response, mistakes, errors or duplication. In addition, DoC could consider integrating this system with ePPS, if possible.

# References

| DoC Malta (2016), Manual of Procedures: Public Procurement Regulations, 2016.  | [5]  |
|--|------|
| European Commission (2021), <i>Malta - Procurement Monitoring Report</i> , <a href="https://ec.europa.eu/docsroom/documents/47779?locale=en">https://ec.europa.eu/docsroom/documents/47779?locale=en</a> .   | [6]  |
| European Commission (2021), Report on Public Administrations' Digital Response to COVID-19 in the EU, <a href="https://op.europa.eu/en/publication-detail/-/publication/8b1a7024-9816-11eb-b85c-01aa75ed71a1">https://op.europa.eu/en/publication-detail/-/publication/8b1a7024-9816-11eb-b85c-01aa75ed71a1</a> .  | [13] |
| European Commission (2017), Procurement Monitoring Report Template in view of the Member States' reporting process under the Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, <a href="https://ec.europa.eu/docsroom/documents/47775/attachments/1/translations/en/renditions/native">https://ec.europa.eu/docsroom/documents/47775/attachments/1/translations/en/renditions/native</a> . | [7]  |
| OECD (2021), Public Procurement in the State of Mexico: Enhancing Efficiency and Competition, OECD Public Governance Reviews, OECD Publishing, Paris, <a href="https://doi.org/10.1787/cc1da607-en">https://doi.org/10.1787/cc1da607-en</a> .  | [10] |
| OECD (2021), <i>Unlocking the Strategic Use of Public Procurement in Bratislava, Slovak Republic</i> , OECD Publishing, Paris, <a href="https://doi.org/10.1787/d616e4d9-en">https://doi.org/10.1787/d616e4d9-en</a> .   | [2]  |
| OECD (2019), Productivity in Public Procurement, A case study of Finland: measuring the efficiency and effectiveness of public procurement, <a href="https://www.oecd.org/gov/public-procurement/publications/productivity-public-procurement.pdf">https://www.oecd.org/gov/public-procurement/publications/productivity-public-procurement.pdf</a> .                                      | [8]  |
| OECD (2019), <i>Public procurement in Malta Re-engineering the Department of contracts</i> , <a href="https://www.oecd.org/governance/public-procurement/publications/public-procurement-in-malta.pdf">https://www.oecd.org/governance/public-procurement/publications/public-procurement-in-malta.pdf</a> .   | [9]  |
| OECD (2019), Reforming Public Procurement: Progress in Implementing the 2015 OECD Recommendation, OECD Public Governance Reviews, OECD Publishing, Paris, <a href="https://doi.org/10.1787/1de41738-en">https://doi.org/10.1787/1de41738-en</a> .  | [4]  |
| OECD (2018), OECD Public Governance Reviews Mexico's e-Procurement System Redesigning CompraNet through Stakeholder Engagement, <a href="https://doi.org/10.1787/9789264287426-en">https://doi.org/10.1787/9789264287426-en</a>  | [11] |
| OECD (2018), Second Public Procurement Review of the Mexican Institute of Social Security (IMSS): Reshaping Strategies for Better Healthcare, OECD Public Governance Reviews, OECD Publishing, Paris, <a href="https://dx.doi.org/10.1787/9789264190191-en">https://dx.doi.org/10.1787/9789264190191-en</a> .  | [3]  |
| OECD (2015), OECD Recommendation of the Council on Public Procurement,<br>https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0411.  | [1]  |
| Office of the Prime Minister (n.d.), <i>A national platform for eProcurement</i> , <a href="https://publicservice.gov.mt/en/Pages/News/2020/20200219">https://publicservice.gov.mt/en/Pages/News/2020/20200219</a> EPPS.aspx (accessed on 23 March 2022).  | [12] |

# Note

<sup>&</sup>lt;sup>1</sup> Data gathered from 33 respondents (30 OECD countries plus Morocco, Costa Rica and Peru).

# **Annex A. Summary of recommendations**

| Recommendations   |               | Suggestion timeline for<br>implementation |              |  |
|---|---------------|---|--------------|--|
| Chapter 1: Organisational structure of public procurement   | Short<br>term | Medium<br>Term                            | Long<br>Term |  |
| Malta should continue its efforts to reinforce the monitoring function of the DoC.  | Х             |   |              |  |
| Malta should consider implementing a helpdesk to provide support to the users of the public procurement system in order to improve service and enhance knowledge sharing in a more structured way.  |               | Х   |              |  |
| Malta should consider further strengthening the professionalisation and capacity building functions on public procurement.  | Х             |   |              |  |
| Malta should consider reinforcing the capacity of the SPD to deliver its mandate.   |               | X   |              |  |
| Malta should consider increasing gradually the SPD threshold.   |               | Х   |              |  |
| The current sectoral structure of the SPD could evolve by considering organising progressively the SPD by purchasing categories.  |               |   | Х            |  |
| Malta could consider rethinking the organisational structure of the DoC and exploring the possibility to centralise the tasks related to administering public procurement processes within one directorate.   |               |   | Х            |  |
| Malta could consider introducing criteria for each Schedule for transparency and fairness purposes amongst the different contracting authorities.   | Х             |   |              |  |
| DoC should consider organising regular discussions with contracting authorities using standard and better documented processes.   | Х             |   |              |  |
| DoC could benefit from having formal and regular exchanges with key stakeholders of the public procurement system.  | Х             |   |              |  |
| Chapter 2: Enhancing public procurement processes   |               |   |              |  |
| Strategic planning could be reinforced at the entity level,   |               | X   |              |  |
| Malta should continue its efforts in to integrate in the regulatory framework provisions related to the development and publication of procurement plans  | Х             |   |              |  |
| DoC should consider developing a procurement plan template to be used by all contracting authorities.   | Χ             |   |              |  |
| DoC should consider raising the awareness of contracting authorities to the existence of prior information notice (PIN) and its benefits. It could also promote using the PIN in selected tenders as pilots to demonstrate the value in its use.                                      | Χ             |   |              |  |
| DoC should consider providing further guidance and capacity building activities to contracting authorities on needs and market analysis.  |               | Х   |              |  |
| Contracting authorities should consider streamlining internal processes to get the approval from the head of the contracting authority and the respective permanent secretary (when applicable) in order to enhance the efficiency of the process.                                    | Х             |   |              |  |
| DoC should consider strengthening public procurement officials' capacity in contracting authorities in order to enhance the quality of tender documents received.   |               | Х   |              |  |
| DoC should encourage contracting authorities to validate their own tender documents prior to submission to DoC in order to facilitate the vetting process.  | Х             |   |              |  |
| DoC should consider standardising and reducing the layers of the vetting process in order to limit delays.  |               | X   |              |  |
| DoC should consider reinforcing vetting officials' capacity to ensure coherent feedback throughout the process (through training sessions and other internal workshops to communicate issues and share best practices in order to further standardise the type of feedback provided). |               | Х   |              |  |
| DoC should consider promoting communications and modifications savings (through track changes or other relevant digital tools) between officials in charge of vetting and contracting authorities in order to keep track of previous modifications.                                   | Х             |   |              |  |
| SPD and OD should consider setting minimum and maximum timelines for each process under their responsibility and communicating them to contracting authorities to manage expectations accordingly.  | Х             |   |              |  |

| sighalised, centralised and secure. The choice of the ePPS or a specific platform should be based on a cost-benefit analysis. The system should enable to northy contracting authorities of it he receipt of focuments it), the start of the process and, iii) the stage of the process. The system rould also send to both contracting authorities and DoC directortes alerts when approaching key milestones and deadlines.  DoC and consider providing contracting authorities with access to the ePPS for the clarification stage (when DoC should reconsider their role in the line of communication between the economic operator and contracting authority. DoC could allow contracting authorities to be at the frontline of the communication with economic operators at the definition and evaluation stages.  The use of multiple communication channels in tender evaluation stages should be addressed by having one paralities digital channel across the various stakeholders.  DoC should reconsider the need to review and approve each clarification or rectification request put forward by the evaluation committee. In doing so, evaluation committees capacity should be reinforced.  DoC may consider improving or enabling enhancements of tender evaluation functions in the ePPS.  DoC should reconsider to intermediary role, and empower contracting authorities to issue letters of award brough the ePPS.  When challenging procurement decisions, Malta should consider making the use of the ePPS mandatory.  X here of the ePPS in the evaluation of the expectation of the exp | In efforts to increase efficiency, DoC should consider removing gradually the BPQR approval method. In tandem, the capacity of officials in establishing adequate BPQR criteria should be reinforced.  |   | Х |   |
|--|--|---|---|---|
| DoC abundirectors the tender).  DoC should reconsider their role in the line of communication between the economic operator and x contracting authority. DoC could allow contracting authorities to be at the frontline of the communication with economic operators at the tendrication and evaluation stages. The use of multiple communication channels in tender evaluation stages.  X between the communication channels in tender evaluation of the communication channels in tender evaluation or rectification or request put forward x price and consider the need to review and approve each clarification or rectification request put forward x price and committees. The consider is intermediary role, and emprover contracting authorities to issue letters of award x process through the ePPS.  DoC should reconsider its intermediary role, and emprover contracting authorities to issue letters of award x process through the ePPS.  When OD is involved, deadlines for contract modification approval by the GCC should be established, to x crosses efficiencies and reduce delays.  CoC could consider standardising contract signing lowards signing by the respective contracting authority.  X by the experimental contracting authorities are to eliminate inconsistencies between the directorates within DOC and increase the scountability of contracting processes throughout the procurement cycle. This includes regarding additional features use in as the e-signature (eliminating hard copies of procurement documents) and using ePPs or other relevant platforms for exchanges between DoC and contracting authorities.  X and a sundard consider promoting the use of BPQR for different procurement categories and developing the x activation of the procurement categories on the use of BPQR with detailed rehandour of criteria and concrete examples from sifferent procurement categories to use a contracting authorities.  X by the experiment of the procurement and DQPS is orbitative and procurement categories to use them.  A contracting and procurement of the procu | In order to enhance the vetting process, communication means with contracting authorities should be digitalised, centralised and secure. The choice of the ePPS or a specific platform should be based on a cost-benefit analysis. The system should enable to notify contracting authorities of i) the receipt of documents ii), the start of the process and, iii) the stage of the process. The system could also send to both contracting authorities and DoC directorates alerts when approaching key milestones and deadlines. |   |   | X |
| contracting authority. DoC could allow contracting authorities to be at the frontline of the communication with economic operators at the clarification and evaluation stages.  The use of multiple communication channels in tender evaluation stage should be addressed by having one provided of the communication channels in tender evaluation or rectification or request put forward and the control of the communication of the commu | DoC administers the tender).   |   |   |   |
| centralised digital chamnel across the various stakeholders.  DoC should reconsider the need to review and approve each clarification or rectification request put forward by the evaluation committee. In doing so, evaluation committees (capacity should be reinforced.)  DoC may consider improving or enabling enhancements of tender evaluation functions in the ePPS.  X DoC should reconsider is intermediary role, and empower contracting authorities to issue letters of award brough the ePPS.  When challenging procurement decisions, Malta should consider making the use of the ePPS mandatory.  When oD is involved, deadlines for contract modification approval by the GCC should be established, to not recease efficiencies and reduce delays.  DoC could consider standardising contract signing towards signing by the respective contracting authority. This would serve to eliminate inconsistencies between the directorates within DOC and increase the accountability of contracting authorities.  Walta should consider further digitising all processes throughout the procurement cycle. This includes net regarding additional features such as the e-signature (eliminating hard copies of procurement documents) and using ePPs or other relevant platforms for exchanges between DoC and contracting authorities.  Walta should consider promoting the use of BPCIR of different procurement categories and developing the existing guidelines on the use of BPQIR with detailed breakdown of oriteria and concrete examples from different procurement categories.  To enhance the uptake of DPS, Malta should consider removing thresholds to use DPS.  X Malta could consider reducing or eliminating the involvement of DoC directorates at the mini competition stage derived from signed framework agreements and DPSs to enhance the efficiency of the process.  DoC should increase the uptake and effective adoption of DPS.  DoC should consider responsibility of centralising some relevant procurement schemes, with angible examples; and promoting MITA's contracts.  Pacifi | DOC should reconsider their role in the line of communication between the economic operator and contracting authority. DoC could allow contracting authorities to be at the frontline of the communication with economic operators at the clarification and evaluation stages.   | Х |   |   |
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| Chapter 4: Strategic procurement   | Malta should consider involving suppliers and business associations in the discussion, exchange and sharing of experiences related to establishing and improving the management of public procurement risks in the country.  | Х |   |   |
|  | Chapter 4: Strategic procurement   |   |   |   |

| Malta could consider assessing the possibility to use ePPS for GPP clearance.   |   | X |   |
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| MEEE should monitor the implementation of the 2nd NAP to identify eventual bottlenecks and challenges related to achieving its higher goals.  | Х |   |   |
| Malta could consider the possibility of promoting the use of specific eco labels, when relevant, in each GPP criteria through the capability-building activities.   | Х |   |   |
| Malta could benefit from complementing the existing guidelines on GPP by adding concrete case studies and examples.   |   | Х |   |
| Malta could consider the possibility of making the GPP training mandatory, and update the course module as the guidelines and manuals are revised with concrete case studies and examples   |   | Х |   |
| Malta could consider the possibility of preparing the responses to the frequently asked questions by the GPP helpdesk to publish them online as well as to update the manuals and the training module.  | Х | X |   |
| Malta could benefit from communicating on the compliance of GPP criteria on a regular basis.  | Χ |   |   |
| Public Procurement for Innovation   |   |   |   |
| Malta should assign the leading role on public procurement for innovation (PPI) to one entity and ensure coordination mechanisms with the other stakeholders  | Х |   |   |
| Malta could benefit from developing a comprehensive strategy / action plan to advance public procurement for innovation.  |   | Х |   |
| Malta could benefit from reinforcing the capability-building system of PPI by developing a practical manual and establishing a competence centre for innovation procurement.  |   | Х |   |
| Malta could consider the possibility of promoting the use of BPQR criteria and market analysis in order to ncrease the uptake of GPP and PPI.   | Χ |   |   |
| SME development   |   |   |   |
| Malta could consider the possibility of assessing the impact of performance bonds on SMEs participation and, if relevant, increasing the threshold for requesting such bonds.   |   | Х |   |
| Malta could benefit from an SME strategy that clearly mention not only the role of public procurement in promoting SMEs development but also the role that SMEs play in promoting innovative solutions through public procurement.  |   | X |   |
| Malta could consider the possibility of developing supporting tools to promote SMEs participation in public procurement and their role in bringing innovative solutions through public procurement.   |   | X |   |
| Chapter 5: Enhancing the capability of the public procurement workforce   |   |   |   |
| Malta could benefit from elaborating a public procurement professionalisation strategy  |   | Χ |   |
| n accordance with the ProcurComp <sup>EU</sup> self-assessment survey, Malta could benefit from considering the dentified top priority competences for further development of capabilities.   |   | X |   |
| Given their role in the procurement process, Malta could benefit from making some trainings mandatory for the TEC members and provide a realistic timeline for the entry into force of such provision, taking into account the IPS capacity.  |   | X |   |
| Malta could benefit from further developing trainings currently not available and reinforcing further the coverage of proficiency levels. The priority shall be determined by considering the results from the ProcurComp <sup>EU</sup> self-assessment survey.   |   | Х |   |
| Public procurement trainings shall be provided not only to procurement officials but also to key actors within contracting authorities such as the end-users at technical departments.  | Х |   |   |
| Malta could benefit from developing a procurement training programme oriented to the top management of contracting authorities to raise their awareness of the strategic role of public procurement.  |   | Х |   |
| Malta could benefit from setting a clear cut-off date for using the updated templates with decent prior notice and providing the opportunity of public consultation on the updated content.   | Χ |   |   |
| Malta could benefit from developing more user-friendly manuals and guidelines.  |   | X |   |
| Malta could consider preparing manuals aligned with the training programme.   |   | Х |   |
| Malta could benefit from developing a competency matrix by adjusting ProcurComp <sup>EU</sup> competency matrix of the local context and reflecting the key takeaways from the ProcurCompEU pilot survey  |   |   | X |
| Malta could benefit from developing a national certification framework of the public procurement workforce, aligned with the competency matrix to be developed for each job profile. Training courses should be updated and aligned with the competency models and certification framework to be developed. |   |   | X |
| Chapter 6: Towards the development of a comprehensive measurement framework in Malta  |   |   |   |
| Malta should develop a comprehensive measurement framework for public procurement, with relevant KPIs, which could, on its turn, allow the country to measure progress and their efforts to improve the public procurement system against a given baseline in different domains.                            | Χ |   |   |

| Malta should consider specific indicators which might be relevant for the different categories of contracting   | Х |   |   |
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| authorities but also for the directorates of the DoC involved in the procurement process. In addition, other entities could be considered, such as those in charge of the remedies system.  |   |   |   |
| Malta should consider integrating indicators related to the aggregation of needs.   | X |   |   |
| Malta should consider raising awareness of the different contracting authorities on the benefits of setting public procurement measurement frameworks and ensuring that the framework to be developed at the national level does not involve extensive workload from contracting authorities. | Х |   |   |
| Malta should work towards improving data availability and quality in the e-procurement system to ensure a comprehensive evaluation of the performance of the procurement function.  |   | Х | Х |
| Malta should also consider gradually mandating contracting authorities and economic operators to use some modules and functionalities such as the contract management one and the functionality to challenge decisions.   | X |   |   |
| When economic operators are granted some exceptions to be exempt of using ePPS (in very specific cases), it is recommended that contracting authorities record all the relevant data in ePPS to ensure the availability of comprehensive data.  | X |   |   |
| Malta could consider the possibility of integrating the ePPS contract management module with the accounting system (CFMS).  |   |   | Х |
| Malta could consider advancing the integration of ePPS with the banking system.   |   |   | X |
| Contracting authorities could consider progressively digitalising their internal procurement system.  | X |   |   |
| Contracting authorities' internal information systems should be integrated with the e-procurement system and other governmental platforms   |   |   | Х |
| DoC could consider implementing a digital management system to track the different requests, to send alerts when needed, and to monitor the performance of its processes in an efficient manner, reducing the risks of delays in the response, mistakes, errors or duplication.               |   | Х |   |
| DoC could consider integrating a digital management system with ePPS, if possible.  |   |   | X |

Note: Short term: recommendations could be implemented within the next 12 months; Medium term: recommendations could be implemented between 1 to 2 years; Long term: recommendations could be implemented in more than 2 years.

# **OECD Public Governance Reviews**

# **Public Procurement in Malta**

# **BUILDING CAPACITY AND MANAGING RISKS**

In Malta, public procurement accounted for approximately 6% of GDP in 2019 and is recognised as a strategic instrument for achieving government policy goals, including recovery from the COVID-19 pandemic. Despite recent efforts, the public procurement system still faces several challenges in several areas. This report provides an overview of the procurement system and tailored recommendations in six main areas: i) the organisational structure of the public procurement system, ii) public procurement processes, iii) risk management, iv) the strategic use of public procurement, v) the professionalisation of the procurement workforce, and vi) the performance measurement framework.





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