
ADDRESSING FRAUD AND CORRUPTION IN PUBLIC PROCUREMENT

May 2017



DEPARTMENT OF CONTRACTS

Ministry for Finance

OUR MISSION

The Department of Contracts was founded to regulate and administer public procurement initiatives and procedures, as laid down in the Public Procurement Regulations, Subsidiary Legislation 174.04.

Our mission is to deliver an efficient and effective service to both Economic Operators and Contracting Authorities alike.

Furthermore, the Department of Contracts offers a level playing field amongst all Economic Operators, thus, it is ensured that there is no discrimination between them and they are always treated equally and transparently.

OUR VISION

The Department of Contracts shall strive to build a professional team, committed to deliver high quality, timely and proactive procurement services, utilising online technology and offline value-added administrative assistance.

Our vision is to ensure that all public procurement is conducted transparently and endowed with integrity, whilst constantly adhering to the provisions as set in the Public Procurement Regulations. To this effect, vigilant monitoring of procurement initiatives and procedures is core to a successful delivery of the Department's mission.

OUR FUNCTION

The Department of Contracts, headed by the Director of Contracts, is responsible for the overall functioning of the public procurement processes. The Director is obliged to monitor procurement activities with special emphasis to the adherence of procurement regulations, the results of which are to be made public.

Furthermore, the Department supports Contracting Authorities when undertaking, planning and executing procurement, in addition to providing assistance on the interpretation and application of procurement regulations.

In fulfilling this function, the Director may also implement corrective measures to regulate the Contracting Authorities who default from adhering to the procurement regulations.

The Director is also duty bound to carry out, amongst others, the following functions:

- Setting up the modus operandi to be pursued during the publication of calls for tenders, receipt of offers, opening of bids, evaluation of tenders and award of contracts;
- Drawing up and maintaining a list of blacklisted persons; and
- Reporting violations of the regulations or systematic problems in procurement procedures, to the appropriate authority.

Moreover, the Director of Contracts is also responsible for a number of functions, which relate to above threshold procurement. Such responsibilities include, amongst others, vetting and approving procurement documents before and during publication, drawing up and signing contracts on behalf of Contracting Authorities, authorising variations, approving contract extensions and implementing suitable measures to monitor contract execution.

The Department of Contracts also acts as the Central Government Authority as well as a Central Purchasing Body. Therefore, the Department is the provider of centralised purchasing activities, hence, the procurer of supplies and/or services intended to be availed of by Contracting Authorities and the award of Public Contracts/Framework Agreements for works, supplies or services.

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INTRODUCTION

This report is being generated with the intent to highlight the various measures being adopted by the Department of Contracts to combat fraudulent activities in public procurement. Notwithstanding, the Commission's initiatives through new Directives, the Department of Contracts, as a regulator, has embarked on a mission to further enhance good governance, transparency and public accountability.

Corruption weakens the rule of law, leads to vulnerable public institutions, inefficient use of resources and suboptimal quality of public services. Most of all, corruption erodes citizens' trust in governments and institutions. Tackling corruption has huge potential to foster growth, stimulate competition and investment, and enhance the welfare effects of the EU's internal market.

As transparency is among the most effective ways of fighting corruption and malpractice in public procurement, the new Public Procurement Directives include numerous measures directly enhancing the openness of the procurement process, transparency and tackling corruption.

The new Public Procurement Regulations contain measures directly enhancing transparency and tackling corruption. Among others, the most prominent changes are the provisions on minimum standards in the definition of conflicts of interests, the obligation to take appropriate measures to detect, prevent and tackle conflicts of interests, the extension of exclusion grounds in respect of bidders, and the introduction of mandatory use of e-procurement as of January 2016.

As the post-award period is particularly vulnerable to corruption, the rules for modifying contracts during their term have been clarified to remove any doubts.

With the aim to strengthen transparency, in 2015, the Director of Contracts established the Compliance and Monitoring Unit (CMU). Two of the main functions of this unit entail enhancing monitoring in public procurement, thus consolidating the role of the Unit as a regulatory body, and the handling of complaints received by aggrieved unsuccessful bidders, potential interested Economic Operators, Contracting Authorities and the General Public.

General Observations

The ultimate goal of public procurement is to spend public money in an efficient and proper manner to achieve best value for money. Given the economic significance of public procurement in the EU, fraud, corruption and collusion in this field dramatically harm the economy and public finances – both national and EU funds.

What is Fraud?

Fraud: “A fraudulent practice is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.” (World Bank Group)

Fraud takes place when a person deliberately practices deception in order to gain something unlawfully or unfairly. Fraud is dishonest activity causing actual or potential financial loss to any person or entity.

What is Corruption?

Corruption: “A corrupt practice is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.” (World Bank Group)

Corruption is dishonest activity in which a person abuses his/her position of trust in order to achieve personal gain or advantage for themselves, or provide an advantage/disadvantage for another person or entity.

Corrupt conduct can take many forms including:

- conflicts of interest
- taking or offering bribes
- dishonestly using influence
- blackmail
- fraud
- theft
- embezzlement
- nepotism and favouritism

What is Collusion?

Collusion: “A collusive practice is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.”
(World Bank Group)

Collusive Bidding is defined as bidders secretly agreeing to submit complementary high bids to allow preselected contractors to win. Suppliers and contractors agree to prohibit or limit competition and manipulate prices to increase the amount of business available to each participant.

OLAF - The Main EU Body for Combating Fraudulent Activities

Protecting the financial interests of the European Union is a priority for the European institutions to ensure that taxpayers' money is put to best use. OLAF, a specialised anti-fraud office, is tasked with conducting investigations where there is suspicion of the improper use of EU funds, or the evasion of taxes, duties and levies which fund the EU's budget. OLAF can also examine cases such as alleged serious misconduct among officials, **irregularities in tendering procedures**, conflicts of interest, counterfeiting, violations of intellectual property rights and corruption, both in Europe and internationally. OLAF is the only EU body mandated to detect, investigate and stop fraud with EU funds. While it has an individual independent status in its investigative function and thus is competent to carry out investigations independently of the Commission, OLAF is also part of the European Commission.

The lifecycle of an OLAF investigation

OLAF receives information about possible fraud and irregularities from a wide range of sources. In most cases, this information results from controls by those responsible for managing EU funds within the European Institutions or in Member States.

All allegations received by OLAF undergo an initial assessment to determine whether the allegation falls within the remit of the Office and meets the criteria for opening an investigation. When a case is opened, it is classified under one of the following three categories:

- **Internal Investigations:** Internal investigations are administrative investigations within the European Union institutions and bodies for the purpose of detecting fraud, corruption, and any other illegal activity affecting the financial interests of the European Communities; including serious matters relating to the discharge of professional duties.
- **External Investigations:** External investigations are administrative investigations outside the European Union institutions and bodies for the purpose of detecting fraud or other irregular conduct by natural or legal persons. Cases are classified as external investigations where OLAF provides the majority of the investigative input.

- **Coordination Cases:** OLAF contributes to investigations carried out by national authorities or other Community departments by facilitating the gathering and exchange of information and contacts.

What can EU Countries do to Prevent Corruption?

The new Public Procurement Directives contain measures directly enhancing transparency and tackling corruption. For instance:

- **Fraud and conflict of interests** occur when public procurement practitioners can be influenced by a private or personal interest that could lead them to attempt to gain a personal advantage. In response, the new Directives define the notion of "conflicts of interest" at EU level for the first time. The new definition makes it easier to identify and manage fraud and conflict of interest cases. EU countries and contracting authorities have an obligation to take appropriate measures to effectively prevent, identify and remedy such cases.
- In accordance with Article 40 of Directive 2014/24, prior to a publication in the Official Journal of the European Union (OJEU), **preliminary market consultation (PMC)** can be used to consult economic operators in advance of a public procurement process. Advice acquired may be used, provided that it does not distort competition and does not result in a violation of the principles of non-discrimination and transparency. Therefore, CAs must ensure that the participation of a previously consulted company does not affect competition within the tender procedure.
- Under the new directives, **companies can be excluded** from public procurement procedures if they are convicted of fraud and corruption or if they unduly influence the decision-making process or make false statements.
- As the post-award period is particularly vulnerable to corruption, the rules for **modifying contracts** during their term have been clarified to remove any doubts. In particular, a new call for tenders will not be required where the modifications have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses and the changes are not substantive. In other words, they do not change the nature or the economic balance of the contract.
- EU countries are required to report violations of the new public procurement laws to national authorities, to make the results of their monitoring activities public, and to

submit **a report to the Commission every three years** on the most common sources of misapplication or legal uncertainty.

Malta's Efforts to Combat Fraud, Corruption and Collusion

Maltese law provides criminal penalties for official corruption, and the government generally implements these laws effectively. The Malta Police and the Permanent Commission Against Corruption are responsible for combating official corruption.

In 2008, Malta adopted a National Anti-Fraud and Corruption Strategy, aiming to set up a normative, institutional and operational framework, reflecting local requirements and international obligations. The Financial Management Monitoring Unit and the Internal Audit Investigations Directorate had drafted the strategy.

After having had received any form of reporting denoting fraudulent activities in public procurement, the **Director of Contracts**, after having conducted his own investigations, can forward reports and findings to the following:

- Malta Police Commissioner
- Internal Audit and Investigations Department

Malta Police Commissioner

The Malta Police Force is the main law enforcement authority in Malta. It is the responsibility of the Malta Police Force to 'preserve public order and peace, to prevent, detect and investigate offences, to collect evidence' and to ultimately bring offenders before court.

The Internal Audit and Investigations Department (IAID)

The IAID is the designated interlocutor of OLAF in Malta and is the Anti-Fraud coordinating Service (AFCOS) for Malta; this implies that this IAID Unit can conduct joint investigations with OLAF, the European Anti-Fraud Office, with respect to EU funds availed of by Malta. The Unit reports irregularities to OLAF on a quarterly basis with respect to Pre-accession Funds, Transition Facility Funds, Structural Funds, Cohesion Fund and Agricultural Funds. The Unit also provides substantial contributions, including feedback, to various sub-units within OLAF all in charge of protecting the EU financial interests under different facets. Directorates within the IAID are:

- The Internal Audit and Risk Management Directorate
- Central Harmonization Directorate
- EU Funds Audits Directorate
- Financial Investigations Directorate

The **Financial Investigations Directorate** has the remit to conduct financial investigations in Government Departments and in any other public or private entities which are beneficiaries, debtors or managers of public funds, including EU funds, for the purpose of protecting such funds against irregularities and fraud or otherwise to assess such public or private entities' liability to contribute to such funds.

The **Central Harmonization Directorate** is tasked with the harmonization of decentralized internal audit functions in public entities having their own internal audit units and the following five (5) ministries:

- Ministry for Education and Employment
- Ministry for Energy and Health
- Ministry for the Family and Social Solidarity
- **Ministry for Finance**
- Ministry for Gozo

Commercial Sanctions Tribunal

The Commercial Sanctions Tribunal was set up to strengthen efforts in eliminating precarious employment by companies and individuals participating in public tenders and awarding of contracts.

The Commercial Sanctions Tribunal is also empowered to blacklist offending parties precluding them from bidding in public tenders for a period, which can extend from six months to two years. Once blacklisted, a company or individual is prohibited from carrying out any procurement within the public sector whether directly or as a sub-contractor, member of a consortium and, or joint venture.

Code of Ethics for Employees in the Public Sector

The Code of Ethics for Employees in the Public Sector¹ states that no public officer should accept a gift or benefit if considering the circumstances it could be interpreted as intended or likely to cause the official to do his or her job in a particular way, or deviate from the proper course of duty. As a general rule, a line may be drawn in situations where a gift could be seen by others as either an inducement or a reward which might place an official under an obligation.

The Whistleblower Act

A key challenge in preventing and fighting corruption is to detect and expose bribery, fraud, theft of public funds and other acts of wrongdoing. One of the most direct methods of shining the light on corruption is whistleblowing.

The Whistleblower Act entered into force on 16 September 2013. The aim of the Whistleblower Act is to make provision for procedures in terms of which employees in both the private sector and the public administration may disclose information regarding improper practices by their employers or other employees.

To further ensure good governance and potentially promote whistleblowing, the Department of Contracts launched a **Compliance and Monitoring Unit**, falling under the remit of the Policy Development and Programme Implementation Directorate.

Financing of Political Parties Act

The Financing of Political Parties² Act came into force on 1st January 2016, in order to regulate the formation, the inner structures, functioning and financing, of political parties and their participation in elections.

The Group of States against Corruption (GRECO) established in 1999 by the Council of Europe to monitor States' compliance with the organization's anti-corruption standards, hailed Malta's adoption of party-financing rules as commendable, after Malta registered significant progress in the implementation of nine proposals designed at strengthening party financing rules.

The Permanent Commission Against Corruption

Permanent Commission against Corruption Act³ came into force on 4th October 1988 to make provision for the establishment and functions of a permanent commission against corruption, and for purposes connected therewith. The Commission conducts investigations either on its own initiative or following reports made to it by any person provided that in these instances, the allegations are confirmed on oath. (Article 5).

1 - The Code of Ethics for Employees in the Public Sector - The Public Administration Act (Chapter 497 of the laws of Malta)

2 - Financing of Political Parties Act - Chapter 544 of the Laws of Malta

If, during the course of an investigation, the Commission discovers an act or omission that could be connected with the act of corruption itself, then it could investigate also such act or omission. (Article 7).

The functions of the Commission are:

- To consider alleged or suspected corrupt practices and to investigate such allegations or suspicions when it determines that there are sufficient grounds for an in-depth investigation.
- To investigate the conduct of any public officer, including Ministers or Parliamentary Secretaries, which in the opinion of the Commission may be corrupt or may be connected with or may be conducive to corrupt practices.
- To investigate the conduct of any person who is or had been entrusted with functions relating to the administration of a partnership or other body in which the Government, local government, statutory body etc has a controlling interest or effective control, where the Commission is of the opinion that such conduct could be corrupt or connected with or conducive to corrupt practices.
- To investigate the practices and procedures of government departments, local government authorities, statutory bodies or other bodies in which the Government has a controlling interest or effective control in order to facilitate the discovery of any corrupt practices and to recommend the revision of work methods or procedures that could be conducive to corrupt practices.
- To instruct, advise and assist Ministers or other persons who are entrusted with the administration of government departments and other bodies where the Government has a controlling interest or effective control on ways in which corrupt practices could be eliminated.

Public Contracts Review Board

The Public Contracts Review Board is set up by Subsidiary Legislation 174.04, and its function is to hear and determine complaints submitted by any person having or having had an interest in obtaining a particular public supply, public service or public works contract, and who has been or risks being harmed by an alleged infringement by any authority listed in Schedule 1 of the Public Procurement Regulations.

The Public Contracts Review Board is composed of a Chairman and two members who are appointed by the Prime Minister for a period of up to three years with the possibility of re-appointment. The Prime Minister may appoint a substitute, or such number of substitutes, as Chairman and as members of the Review Board to act on different Review Boards, in which case the members shall serve for predetermined periods of time, in accordance with such distribution of duties, including provisions for inability of members to serve and other circumstances, as the Prime Minister may establish. The Board also has a secretary.

Complaints submitted are heard by the Board during public sessions and the relevant decisions are delivered in writing and published.

The decisions taken by the Review Board must be rendered in writing, be signed by all members and be dated. In its decision the Review Board shall indicate the reasons upon which such decision was taken. Any party who feels aggrieved by a decision taken by the Review Board may appeal to the Court of Appeal as constituted in accordance with Article 41(1) of the Code of Organization and Civil Procedure.

Department Of Contracts – Legislative Measures & Non-Legislative Measures

Public procurement is one of the government activities most vulnerable to corruption. In addition to the volume of transactions and the financial interests at stake, corruption risks are exacerbated by the complexity of the process, the close interaction between public officials and businesses, and the multitude of stakeholders.

The Public Procurement Regulations cover contracts awarded by central or local authorities and bodies governed by public law. The Department of Contracts is responsible for the administration of procurement procedures. The **Director of Contracts** is assisted by the **General Contracts Committee** and, in cases that require specialised expertise, the Special Contracts Committee. The two committees are required to report any irregularities detected in the tendering process, and to make relevant recommendations.

Preventing corruption is a task for all public institutions; the Department of Contracts focuses its efforts on:

- raising awareness of the new public procurement regulations among all public procurement officials (Training)
- overhauling the organisation of the public sector (MPUs)
- promoting a culture of integrity in the public service and among businesses (CMU)
- ensuring better collection and analysis of data on procurement, both for above and below EU thresholds, to improve public procurement governance (CMU)
- establishing public procurement irregularities databases based on remedies and audits;
- ensuring better interaction and cooperation between public procurement units, the public, and all stakeholders (CMU) ;

The Compliance and Monitoring Unit

Public procurement contracts represent a major share of any country's GDP and public expenditure budget. For this reason monitoring the compliance and performance of public procurement systems is of the utmost importance. Monitoring is considered distinct from auditing, which is typically retrospective and often limited by time, frequency and scope. Monitoring allows for early identification and correction before a problem festers and causes the Contracting Authority (CA) to be in non-compliance.

Monitoring of public procurement involves the following steps:

- Collection of information acquired during investigations
- Analysis of findings
- Dissemination of submitted feedback

Information collected through monitoring is useful for the purposes of:

- Developing policies
- Determining better value for money
- Drawing conclusions within the parameters of public procurement
- Fulfilling pre-defined objectives and targets

The Compliance and Monitoring Unit has rendered its services in support of more than 75 cases raised during 2015 and more than 80 cases during 2016.

E-Procurement

In the year 2011, the Department of Contracts introduced the Government's e-Procurement Platform. Albeit on a voluntary basis, at that time, Contracting Authorities were urged to make use of the **Electronic Public Procurement System (ePPS)**. However, through Contracts Circular N° 13/2015 all Contracting Authorities were notified that with effect from 4th January 2016 all **quotations/tenders** having a budget estimate of EUR5,000 excluding VAT or more, had to be published electronically through the ePPS; this was enforced through Regulation 100 (2) of the new Public Procurement Regulations, 2016 (L.N. 352 of 2016).

Although not a stand-alone anti-corruption measure, the use of e-procurement has been a transformative element in public contracting, providing opportunities to reduce corruption during all phases of the procurement process.

In particular, e-procurement increases and improves opportunities for civil society to monitor procurement processes. Conducting procurement online can help civil society gain access to information, monitor individual processes and facilitate citizen monitoring. E-procurement can increase the number of suppliers and the amount of competition by making access easier and significantly enhancing transparency by centralizing all information related to the procurement process in a publicly available web portal.

E-procurement can limit the opportunities for **corruption** by automating procedures and reducing the amount of discretion exercised by procurement officials and their personal contact with private sector representatives.

E-procurement systems facilitate access for all stakeholders to view:

- Tender notices and bidding documents
- Tender clarifications issued by contacting authorities
- Minutes/records of clarification meetings/site visits
- Record of bids received and publicly opened
- Names of contract awardees and price information

Reform of the Appeals Process

With the introduction of the new Public Procurement Regulations, in October 2016, the appeals process has been reformed. Appeals concerning public contracts having an estimated value, which meets or exceeds €5,000 excl. VAT may be lodged directly before the Public Procurement Review Board (PCRB) and shall contain in a very clear manner the reasons for their complaints. Appeals from decisions taken may include an alleged infringement, a proposed contract award, a rejection of a tender or a cancellation of a call for tender after the lapse of the publication period.

The right of redress is present at various stages of the procurement cycle, thus, augmenting the transparency element in public procurement and reducing the possibility of abuses.

Remedies and Appeals are categorized as follows:

- Remedies before Closing Date of a Call for Competition, through the PCRB
- Appeals from decisions taken after the closing date for the submissions of offers, through the PCRB
- Court of Appeal, following a PCRB decision which was against the appellant
- Ineffectiveness of a Contract, through the PCRB

Exclusion and Blacklisting of Economic Operators

No economic operator or sub-contractor can be awarded a public contract if he/she is subject to any of the exclusion or blacklisting grounds mentioned under Part VI of the Public Procurement Regulations.

If during a procurement process, it is determined that a nominated sub-contractor falls under any of the exclusion or blacklisting grounds, then the bidder is given the chance to replace the offending sub-contractor. The Contacting Authority responsible for that procurement process shall require that the economic operator replace the offending sub-contractor. If the economic operator does not replace the sub-contractor within the time-frame given, the offer shall be automatically excluded.

Exclusion of Economic Operators

Regulation 192 of the Public Procurement Regulations sets out grounds for exclusion of economic operators from procurement procedures. The authority responsible for the tendering process must exclude an economic operator from participation in a procurement procedure where it has established or is otherwise made aware that such an economic operator has been the subject of a conviction by final judgment as follows:

- participation in a criminal organization
- corruption
- fraud
- money laundering
- terrorist offences / financing
- child labour and other forms of human trafficking

Blacklisting

In September 2015, Malta introduced a “blacklist” for companies that breach the Public Procurement Regulations or employment laws.

Blacklisting assists in the curbing of precarious work and also allows the exclusion of companies or individuals convicted of corruption, fraud, money laundering, tax evasion,

evasion of employees' social security contribution, organized crime, employment of minors, unprofessional behaviour and distortion of competition.

The Public Procurement Regulations, state that no economic operator or sub-contractor shall be given a public contract if he is subject to any of the exclusion or black listing grounds mentioned under such regulations.

Effectively, there exist two types of blacklisting:

- Black Listing by the **Director of Contracts**
- Black Listing by the Director of Employment and Industrial Relations

In accordance with Regulation 199 of the Public Procurement Regulations, **The Director of Contracts** is empowered to black list an economic operator from participating in a procurement procedure where the economic operator:

- has been declared guilty by any court or tribunal of an offence relating to labour law;
- has been convicted of an offence concerning his professional conduct which renders its integrity questionable;
- has entered into agreements with other economic operators aimed at distorting competition;
- has shown significant or persistent deficiencies in the performance of a substantive requirement in a public contract, or a public concession contract, which led to early termination of that contract, damages or other comparable sanctions;

The **Director of Contracts** is also empowered to blacklist an economic operator from participating in a procurement procedure where the economic operator has undertaken:

- to unduly influence the decision-making process of the contracting authority
- to obtain confidential information that may confer upon it undue advantages in the procurement procedure
- to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award

Any economic operator who feels aggrieved by such a decision may file an objection before the **Commercial Sanctions Tribunal**.

In accordance with Regulation 206 of the Public Procurement Regulations, the Director of Employment and Industrial Relations may request the Commercial Sanctions Tribunal to blacklist an economic operator, from participating in procedures for the award of public contracts if economic operator:

- has failed to provide his employees with a written contract of service;
- has failed to provide his employees with a detailed pay slip;
- has failed to deposit wages or salaries by direct payment in the employee's bank account;
- has failed to provide the relevant bank statements of wages and salaries' deposit and copies of the detailed payslips, which are to be made available as and when required by the DIER;
- has subcontracted a public contract to another person employing the same employees of the principal contractor to carry out the same or similar duties for the execution of the said public contract;

Publishing Calls for Tenders and/or Quotations

Public procurement (and planning) must conform to the three pillars of Integrity, Transparency and Accountability. Care should be taken to ensure that the procurement document is **complete, relevant and proportionate to the need**. To this effect, the

Department of Contracts strongly advocates CAs:

- to avoid from engineering a situation whereby only one organization is invited to bid
- to ensure that the criteria used for selection are appropriate, relevant and proportionate to the particular procurement
- to avoid disclosing inside information
- preferably persons involved in drawing up the tender should not be on the team of evaluators

Evaluation of Tenders

The evaluation of tenders is the stage during which a CA identifies which of the tenders submitted, meeting the set requirements, is the best one on the basis of the preannounced award criteria. To this effect an Evaluation Committee is appointed. To further ensure transparency throughout this process, the **Department of Contracts** recommends that:

- committee members should have no personal/financial interest in which bidder/s is/are recommended for award;
- committee members must declare that he/she has no personal interest in any participating bidder(s) and that he/she understands and can perform within the ground rules and procedures, by signing a **Declaration of Impartiality and Confidentiality**;
- committee member should have a professional interest that the results of the Committee can be supported and defended;
- contact with participating bidders **MUST** be strictly through means allowed by the General Rules Governing Tendering and the Public Procurement Regulations;
- any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors, or influence the committee during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of his candidacy or tender and may result in administrative penalties;
- during the process of evaluation, the committee shall maintain confidentiality;
- voting committee members must conduct an individual evaluation of each proposal;

Publication of Standard Templates

In order to promote consistency and clarity, the **Department of Contracts** publishes templates, intended to be utilized by all contracting authorities.

Through standard templates for CfTs, the **Department of Contracts** maintains that in order to be considered eligible for the award of the contract, economic operators must provide evidence that they do not fall under any of the exclusion or blacklisting grounds, as mentioned under Part VI of the Public Procurement Regulations.

Contract Performance and Modifications

Contracting authorities may lay down conditions relating to the performance of a contract, provided that they are linked to the subject-matter of the contract within the meaning of regulation 239(4) and (5) and indicated in the call for competition or in the procurement documents. Those conditions may include economic, innovation related, environmental, social or employment-related considerations.

For tenders with an estimated value which falls within regulation 9(1)(b), the prior approval of the **Director of Contracts** for variations exceeding 10% of the initial contract value for services and supplies contracts and 15% for works contracts is obligatory.

In accordance with Regulation 246 (b) of the Public Procurement Regulations, additional works, services or supplies by the original contractor that have become necessary and that were not included in the initial procurement may only be approved as long as any increase in price does not exceed 50% of the value of the original contract.

It is important to highlight that in line with Regulation 251 of the Public Procurement Regulations, the **Director of Contracts** will not sanction **retroactive modification approvals**. The responsibility of any unapproved modification shall fall upon the head of that contracting authority, in accordance with the Fiscal Responsibility Act.

Rules Applicable to Departmental Tenders

The prior written consent of the **Director of Contracts** is required whenever a contracting authority wishes to carry out a procurement process through a design contest, a framework agreement, an innovation partnership or a restricted procedure. In approving the use of these procedures, the **Director of Contracts** may impose any condition he may deem appropriate for the correct execution of the said procedure.

Procurement procedures involving the competitive dialogue, competitive procedure with negotiation, dynamic purchase systems, electronic auctions and negotiated procedure without public notice are not permitted.

Albeit, direct contracts falling under the threshold established under regulation 9(1)(a), do not require his prior approval, the **Director of Contracts** emphasizes the proper utilization of direct orders.

Report to the Commission

In the new EU Directives 2014/24, it was stipulated that each Member State shall forward a Procurement Statistical Report to the Commission. The targeted date was the 18th April, 2017 and every three years thereafter. However, due to various initial difficulties encountered, the

Commission came to the decision that such proposed date was not feasible and therefore suggested that the target year should be 2018, pending a collective consensus by all Member States.

The resultant statistical reports, that will have to be presented to the Commission, shall not be restricted to contracts above the departmental threshold, i.e. €135,000 Excluding VAT, but will reflect all contracts affected by Government. To this effect, Contracting Authorities would be expected to compile detailed reports including all departmental procurement, and forward such reportings for the attention and perusal of the **Director of Contracts**.

The **Director of Contracts** will need to primarily ensure full adherence by all contracting authorities, and subsequently collect the relative information from all entities. Audit checks would be carried out, should the need arises. Ultimately, through the Compliance and Monitoring Unit, the **Director of Contracts** shall forward to the Commission a statistical report for procurement as set out in the EU Directive 2014/24.

Conclusion and Way Forward

Bribes are hard to detect, but the results of corruption, poor implementation and low quality deliverables are often obvious. Better inspections will help detect the fraud and deter the underlying corruption.

As a Regulator, the Department of Contracts plans to extend its monitoring duties outside the premises. Monitoring at the level of contracting authorities helps to ensure efficiency and effectiveness of operations, identifies strengths and weaknesses in performance and sets priorities for improvement.

The basis for an adequate regulatory system is a risk analysis of the government process and its environment in question. In turn, the observations may yield insights on new and emerging risks or red flags, allowing updating and refining the system.