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FOLLOW-UP TRAINING (BOOSTER) ON THE PUBLIC PROCUREMENT REGULATIONS 2016

(to be eligible for this course – participants need to have already attended to and successfully completed the MQF Level 4 course – NPPRs)

Outline programme of the training

Part 1: Competitive Dialogue and Innovation partnership

Part 2: Compilation of a procurement document

Part 3: Award Criteria preparation

Part 4: The Evaluation Process in practice

Part 5: The application of Modifications

Part 6: Fraud and Corruption

Procurement practitioners' jobs are becoming increasingly busy, with staff often expected to demonstrate a high standard of knowledge in a variety of areas, such as technical specifications writing, contract management and general market engagement.

With this in mind, the main aim of the booster training being implemented is to improve the skills of procurers throughout the public sector and to endow them with knowledge of the wider world of procurement, subsequently enabling them to work across a variety of areas, while completing jobs to a high standard and keeping risks to a minimum.

Albeit, through this booster course the Department of Contracts will further increase retention of the key learning objectives imparted in the NPPR (New Public Procurement Regulations) course.

Upon the successful completion of the course one should be able to achieve knowledge on how to procure on behalf of the Government and also secure:

- **Best Value for Money**, which consists of the selection of the offer that best meets the end-users' needs and that presents the best return on investment. Best Value for Money is the result of several factors, including quality, experience, life-cycle costs and benefits, and parameters that measure how well the supplies, works or services allow the beneficiary to meet its social, environmental or other strategic objectives.
- **Fairness, Integrity and Transparency**, which ensures that competitive processes are fair, open, and rules-based. All potential Economic Operators should be treated equally, and the process should feature clear evaluation criteria, unambiguous solicitation instructions, realistic requirements, and rules and procedures that are easy to understand.
- **Effective Competition**, understood as giving all potential Economic Operators, particularly SMEs timely and adequate information on procurement requirements, as well as equal opportunity to participate in procurement calls, and restricting them only when it is absolutely necessary to achieve development goals; and
- **The best utilization of different procurement procedures**, whereby, once a robust procurement strategy and the necessary processes are in place, the next step would be ensuring continuation so as to meet the ongoing objectives. In addition to keeping staff up to date with new developments through training and developing their knowledge, the delivery of the strategy needs to be monitored and evaluated to ensure that it is being successfully implemented, and that its objectives including delivering value for money are achieved.

Throughout the five modules tutors will be making specific reference to the available Contracts Circulars, Manuals, Procurement Policy Notes, Guidance Notes and any reports that are provided regularly by the Department of Contracts.

Training Plan

Part 1: Competitive Dialogue and Innovation Partnership

<i>Introduction</i>	<ul style="list-style-type: none">- General overview of the type of procurement procedures
<i>Objective(s):</i>	<ul style="list-style-type: none">- What is the procedure to follow?- What are the thresholds?- When to utilize these procedures?- Implementation of the Contract
<i>Result(s) desired:</i>	<ul style="list-style-type: none">• Basic principles and knowledge
<i>Means of Delivery:</i>	<ul style="list-style-type: none">- Presentation- Case Study (Work shop)- Practical Examples
<i>Time:</i>	8.30am till 12.30pm
<i>Requirements:</i>	<ul style="list-style-type: none">- Projector/Laptop- Handouts with different case studies- Calculating the estimate

Flow of the Training:

A general overview on what entails in using these types of procurement procedures

Detailed training explanation:

The first stage of the procurement process is to understand and define the goods, services or works needs.

By involving cross functional stakeholders in this process and utilising their expertise you can develop a high level specification.

At this stage one needs to source the necessary financing. Procurement may be financed either 100% from local funds or partly financed through EU funds such as the ERDF, ESF, Agricultural and Fisheries Fund, etc. A good relationship with the Managing Authority of the named fund is fundamental.

Time should be spent in developing the tender documents including a detailed breakdown of specification to ensure consistency on pricing, product quality, operational functionality and that products are fit for purpose in order to reduce the financial impact of the wrong specification further down the line.

When developing specifications it is important to distinguish between product requirements and product preferences and build in tolerances for suppliers to adhere to, not restricting the supply and build cost into a product. The specification will form part of the tender documentation issued to suppliers to quote on a like for like basis.

Once the tenders are submitted, bids must be evaluated and validated in order to select the preferred supplier. Whether tendering contracts for the supply of goods or services, tender evaluation should be carried out in a structured, disciplined and transparent manner.

Most evaluations explore price comparisons alongside technical capability, capacity, quality of service and financial health. Whole life costs could also be considered including the decommissioning, removal or disposal costs.

Once the preferred bidder has been selected a contract is drawn which allows both parties to fully understand their obligations and key success criteria as part of the agreement. This forms the foundation to manage the contract and relationship effectively. The agreed terms and conditions help to minimise contractual risks and exposure during implementation.

Once the contract and terms are agreed then the communication and implementation process can begin with clear timescales and parameters set out on both sides, including relevant stakeholder groups to manage the implementation effectively.

Part 2: Compilation of a procurement document

Introduction	- E-templates
Objective(s):	- Correct use of the templates available
Result(s) desired:	<ul style="list-style-type: none">• Knowledge on the use of procurement documents• Setting the selection criteria, technical specifications and special conditions
Means of Delivery:	<ul style="list-style-type: none">- Presentation- Case Study (Work shop)- Practical Examples
Time:	8.30am till 12.30pm
Requirements:	- Projector/Laptop

Flow of the Training:

- Practical examples on how to compile a procurement document – reference to the new templates
- Requirements vis a vis Eligibility and Selection Criteria, Technical aspect and Conditions

Detailed training explanation:

How one should go about it? What constitutes the drafting of a procurement document? Which template is to be utilised?

Once the above questions are answered through a detailed explanation and of all the clauses/sections of the procurement documents Contracting Authorities will be able to achieve what is often described in terms of the ‘three Es’ – economy, efficiency and effectiveness:

economy – minimising the cost of resources for an activity (‘doing things at a low price’)

efficiency – performing tasks with reasonable effort (‘doing things the right way’)

effectiveness – the extent to which objectives are met (‘doing the right things’).

Part 3: Award Criteria preparation

Introduction	- MEAT (Most Economically Advantageous Tender)
Objective(s):	- Distinction between the BPQR, Price and Life-costing - When and how to use them
Result(s) desired:	• Setting a qualitative scoring criteria for the BPQR and how to set it up through the ePPS
Means of Delivery:	- Presentation - Case Study (Work shop) - Practical Examples
Time:	8.30am till 12.30pm
Requirements:	- Projector/Laptop - Handouts with different examples

Flow of the Training:

- Practical examples on how to compile a BPQR table – reference to the new templates
- The use of BPQR through the ePPS

Detailed training explanation:

The contracting entity is obliged to specify in the procurement documents, the relative weighting (expressed by providing a range) of each criterion for a MEAT contract. Such a provision does not apply for price only tenders. If for objective reasons weighting is not possible, the contracting entity should indicate the criteria in descending order of importance.

Such criteria may include:

- Quality (including technical merit, aesthetic and functional characteristics), accessibility, social, environmental and innovative characteristics as well as trading.
- Organisation, qualification and experience of assigned staff to the contract, where the said staff can have a significant impact on the level of contract performance.
- After-sales service and technical assistance, delivery conditions, completion of contract or commitments with regard to parts and security of supply.

Part 4: The Evaluation in process in practice

Introduction	<ul style="list-style-type: none">- The next steps following the tender closing date- What is the procedure?
Objective(s):	<ul style="list-style-type: none">- Evaluation of offers – clarifications and rectifications- Best Practice and Good Governance when compiling the Evaluation report and scoring (if applicable)- Letters to bidders- What is the PCRB?
Result(s) desired:	<ul style="list-style-type: none">• Basic principles in evaluation of offers
Means of Delivery:	<ul style="list-style-type: none">- Presentation- Case Study (Work shop)- Practical Examples
Time:	8.30am till 12.30pm
Requirements:	<ul style="list-style-type: none">- Projector/Laptop- Notes on what needs to be dealt with during the evaluation stage.

Flow of the Training:

- Practical examples on how to proceed with evaluation of bids – reference to the requirements also under the ESPD
- What constitutes an Evaluation Report?

Detailed training explanation:

- The evaluation committee must make sure that the tenders received are complete and that they comply with all of the requirements set by the contracting authority in the tender documents. The evaluation committee must then apply the pre- announced award criteria.
- Going through the compilation of an evaluation report – what should be included and where?

Part 5: The application of Modifications

Introduction	- Post-contracts issues in practice
Objective(s):	- Modifications to the contract
Result(s) desired:	<ul style="list-style-type: none">• Basic principles in modifications• Am I in line with the regulations?
Means of Delivery:	<ul style="list-style-type: none">- Presentation- Case Study (Work shop)
Time:	8.30am till 12.30pm
Requirements:	<ul style="list-style-type: none">- Projector/Laptop- Practical examples on request for modifications and the process thereof

Flow of the Training:

- Different procedures for modifications for departmental and above the threshold contracts
- How should one go about it?
- What is the MPU's (Ministerial Procurement Unit) role (where applicable)?

Detailed training explanation:

Modifications

Contracts and framework agreements may be modified without a new procurement procedure in the below situations:

- Modifications, irrespective of their monetary value, have been catered for in the initial concession documents in clear, precise, and unequivocal review clauses, which may include value revision clauses or options.
- Additional works or services by the original contractor, which were not included in the initial procurement, have now become necessary, but a change of contractor (i) cannot take place due to economic or technical reasons (such as interchangeability or interoperability with existing equipment, services or installations); and (ii) would cause considerable inconvenience or extensive costs to the contracting authority.

- The required modification (i) took place due to situations that a diligent contracting authority could not foresee and it (ii) does not change the overall nature of the contract.
- A new contractor is replacing the original contractor as a result of (i) an unequivocal, precise and clear review clause or option; or (ii) a universal or partial succession into the position of the initial contractor; or (iii) if the contracting authority acquires the responsibilities and obligations itself, towards the subcontractors, previously held by the main contractor.
- The modifications are not substantial, significant or extensive.
- The value of the modification is below both of the following values: the threshold is below 10% of the value of the initial contract value for service and supply contracts and below 15 % of the initial contract value for works contracts.

Part 6: Fraud and Corruption

Introduction	- What is fraud and corruption?
Objective(s):	- Fighting Fraud and corruption by identifying Red Flags and OECD Integrity Risks
Result(s) desired:	- Are there fraudulent activities present in the procurement?
Means of Delivery:	- Presentation - Case Study (Work shop)
Time:	- 8.30am till 12.30pm
Requirements:	- Projector/Laptop - Practical examples

Flow of the Training

The goal of public procurement is to spend public money in an efficient and proper manner so as to achieve the best value for money. Public Authorities spend around 14% of the EU GDP on procurement, therefore it has a very significant impact on the economy of the EU. Due to its importance, and the harm that can be potentially caused, certain rules for Public Procurement are setup to guarantee transparency and prevent malpractice.

This can occur in a number of ways, namely fraud, which explains the act of deliberately practicing deception of law so as to gain something unfairly and cause actual/potential financial loss to a person/entity. It can also occur through corruption, which refers to a person, who is in a position of trust, abusing this position for personal gain or to put another person/entity at an advantage/disadvantage. Corruption conduct can take a number of different forms such as bribery, blackmail, conflict of interest, embezzlement and so on. Malpractice can also occur through collusion, which can be defined as potential bidders agreeing to bids and allowing preselected contractors to win and limit competition.

Fraudulent Activities in Procurement

Maltese law provides criminal penalties for fraud, corruption and collusion, which is prevented by the Malta Police and Permanent Commission against Corruption, which came into force on 4 October 1988, which conducts investigations on its own initiative as well as organisations such as the Internal Audit and Investigation Department (IAID), Commercial Sanctions Tribunal and Public Contracts Review Board (PCRB).

On 16 September 2013, the Whistle-Blower Act also entered into force. The aim of this is to provide people with a direct method of disclosing information regarding improper practices by their employers or other employees.

Public procurement is one of the government activities most vulnerable to corruption. According to the Code of Ethics for employees in the public sector, no public officer should accept a gift or benefit as it could be interpreted as an intention to cause the official to do his/her job in a particular way. In addition to the volume of transactions and the financial interests at stake, the risks of fraud occurring are exacerbated by the complexity of the process, along with 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);

Legislative and Non-Legislative Measures

The Department of Contracts has adopted various tools and measures throughout the years to assist in reducing and fighting corruption and Fraud. Some of these include:

- Publication of all Procurement above €5000
- Declaration of Impartiality and Confidentiality in the Evaluation Process
- Publication of Standard Templates
- Contract Performance and Modifications e.g. No Retroactive Approvals
- Rules for Departmental Tenders
- Procurement Statistical Report sent to Commission

The Department of Contracts also introduced a Compliance and Monitoring Unit, which is responsible for monitoring the compliance and performance of public procurement systems. It has also made available the electronic Public Procurement System (ePPS) where quotations having a budget estimate of €5,000 or more (excluding VAT) must be published. This can make access easier for stakeholders, as they can view tender notices and bidding documents, any clarifications issued, minutes of clarification meetings, a record of bids received and the names of contract awardees and price information. EPPS also enables a reduction in the amount of discretion, therefore limiting opportunities for corruption.

Besides the Compliance and Monitoring Unit and ePPS, the Department of Contracts has also introduced a reform of appeals process, which allows more remedies and appeals to occur through PCRB for contracts published in the ePPS (exceeding €5,000 excluding VAT). In extreme cases, the Director of Contracts is also empowered to blacklist or exclude an Economic Operator whereby corruption is detected or information is held back that the operator has been subject to a conviction by final judgement.

Detailed Training Explanation

The procurement process is examined in relation to 3 stages of procedure, including:

- Preparation of Tender Documentation
- Selection of Tenderers
- Execution of Contracts

Whilst there are a number of key principles for anti-corruption in place, they can still be manipulated, therefore further measures must be taken to prevent fraudulent activities. It is important to note that in each of the above processes specific risks known as ‘Red Flags’ are identified. Generally, a combination of Red Flags indicates a higher chance of corruption. The European Commission recommended each Member State develops its own Red Flags, however, according to the World Bank, some general Red Flags include:

- Unobservable Red Flags – Identification of pressures on Bid Evaluation Committee members.
- Uncollectible Red Flags – Failure to provide secure storage of bids received.
- Potentially Irrelevant Red Flags – Failure to include names of Bid Evaluation Commission in the evaluation report.
- Observable, Collectible and Relevant Red Flags – Difference between cost estimate and winning bid.

Besides identification of Red Flags, in different stages of the Pre-Tendering, Tendering and Post-Award phases, close observation is always required as there may be indications of OECD Integrity risks, which also indicate that there may be corruption present. These include:

<i>Phase</i>	<i>Stage of Phase</i>	<i>Indication</i>
Pre-Tendering	Needs Assessment and Market Analysis	Informal Agreement on Conduct
Pre-Tendering	Planning and Budgeting	Poor Procurement Planning
Pre-Tendering	Development of Specifications/ Requirements	Requesting unnecessary samples of goods and services
Pre-Tendering	Choice of Procurement Procedure	Lack of proper justification for the use of the Negotiated Procedure
Tendering	Request for Proposal	Absence of Public Notice for the Invitation to bid
Tendering	Bid Submission	Lack of Competition

Tendering	Bid Evaluation	Conflict of Interest
Tendering	Contract Award	Lack of Access to records on the procedures
Post-Award	Contract Management	Abuses of the Supplier in performing the Contract
Post-Award	Order and Payment	False or duplicate invoicing

Tutors:

Part 1:

DG Contracts

Part 2:

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Part 3:

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Part 4:

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Part 5:

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Part 6:

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