



TRAINING ON THE NATIONAL PUBLIC PROCUREMENT REGULATIONS 2016

All training is carried out in liaison with the Institute for Public Service (IPS) – therefore any applications are to be forwarded to the IPS accordingly through training.development.ips@gov.mt.

Outline programme of the training (N.B. This is only an outline of the programme and the contents of such shall be updated in line with the relevant changes in national policy accordingly)

Part 1: Procurement Planning

Part 2: ESPD (Exclusion Criteria/Blacklisting/Selection Criteria)

Part 3: Procurement Procedures and Award Criteria

Part 4: Evaluation Process and Compliance

Part 5: Modifications and Post-Contracting issues

This training aims to equip officers, as well as professionals to acquire recent knowledge, skills and competencies to be able to fulfil their role in procurement management. Public sector employees, especially civil servants, may often change their role in their career. This programme will be custom designed for public sector organizations in Malta. The case studies prepared will be based on real-world examples of those working in the public sector environment.

A core component of the course is to deliver practical awareness and understanding of the recent initiatives for procurement in relation to the Public Procurement Regulations 2016.

Participants will learn about:

- the different types of procedures and approaches to procurement policy
- examining the procurement development cycle
- a general know-how of what Government chooses to do or not to do for societal benefit in terms of the Procurement Regulations
- learning how to complete 'due diligence' in order to support the leadership by making informed and effective decisions

The monitoring and evaluation component of this training journey will blend planning and management principles with related skills-development.

Understanding the principle of project management in the post-contracting stage and the application of the same to the project cycle will render the person in charge of any contract capable of managing and planning for change and unforeseen circumstances. The effective project leader will be exposed to the key tools that will help him to adept at maintaining project information and monitoring various aspects of the project's performance particularly should modifications to the contract be deemed necessary.

Through simulated exercises and in-depth group work, participants will gain new knowledge and skills that will enable them to develop, plan and manage more effectively their procurement projects.

Upon the successful completion of the course one should be able to:

- understand and manage the procurement consultation process also in the context of the financial thresholds stipulated (how to get what)
- assess procurement documents and identify between the needs underlying in the broad procurement principles, specific procurement requirements and operational policy (Blacklisting, Exclusion and Selection criteria – which apply?)
- identify the factors that distinguish a policy from a specific tender issue
- assess the relationship between procurement values and principles, decision-making, good practice and policy
- develop an action plan (how do we go about it?)
- create the terms of reference for procurement documents
- identify appropriate qualitative and quantitative data collection techniques (e.g. which award criteria to use)
- identify the necessary stages within the Procurement cycle within a given context (whether it is an open procedure, a restricted, etc.)
- construct an evaluation report
- implement effective project management
- gauge possible modifications to the contract as necessary

Training Plan

Part 1: Procurement Planning

Introduction	<ul style="list-style-type: none">- General overview on the procurement plan and the Public Procurement Regulations 2016
Objective(s):	<ul style="list-style-type: none">- How do we go about it?
Result(s) desired:	<ul style="list-style-type: none">- Knowing what is the next step?
Means of Delivery:	<ul style="list-style-type: none">- Presentation- Case Study (Work shop)- Practical Examples
Time:	<ul style="list-style-type: none">- 8.30am till 12.30pm – one day session
Requirements:	<ul style="list-style-type: none">- Projector / Laptop- Handouts

Flow of the Training:

1. It helps to decide what to buy, when and from what sources.
2. It allows planners to determine if expectations are realistic; particularly the expectations of the requesting entities, which usually expect their requirements met on short notice and over a shorter period than the application of the corresponding procurement method allows.
3. It is an opportunity for all stakeholders involved in the processes to meet in order to discuss particular procurement requirements. These stakeholders could be the requesting entity, end users, procurement department, technical experts, and even vendors to give relevant inputs on specific requirements.
4. It permits the creation of a procurement strategy for procuring each requirement that will be included in the procurement plan. Such strategy includes a market survey and determining the applicable procurement method given the requirement and the circumstances.
5. Planners can estimate the time required to complete the procurement process and award contract for each requirement. This is valuable information as it serves to confirm if the requirement can be fulfilled within the period expected, or required, by the requesting entity.

6. The need for technical expertise to develop technical specifications and/or scope of work for certain requirements can be assessed, especially where in-house technical capacity is not available or is non-existent.

7. Planners can assess feasibility of combining or dividing procurement requirements into different contract packages.

8. The Procurement Plan is the product of the procurement planning process. It can be developed for a particular requirement, a specific project, or for a number of requirements for one or many entities in the public sector.

Detailed training explanation:

The Procurement Plan is important because:

1. It lists all requirements expected to be procured over a period of time.
2. From it the procurement schedule is developed, which establishes the timelines for carrying out each step in the procurement process up to contract award and the fulfillment of the requirement.
3. It allows for the consolidation of similar requirements under one contract or the division of a requirement into several contract packages for economies of scale.
4. From the number of requirements on the procurement plan, the procuring entity can determine beforehand any need for additional staffing, including external assistance for the purpose of completing all procurement requirements listed on the procurement plan.
5. It allows for the monitoring of the procuring process to determine how actual performance compares with planned activities, and thus to alert the pertinent departments and adjust the procurement plan accordingly.
6. It enhances the transparency and predictability of the procurement process.

Part 2: ESPD (Exclusion Criteria/Blacklisting/Selection Criteria)

Introduction:	<ul style="list-style-type: none">- General overview on procurement and the PPR
Objective(s):	<ul style="list-style-type: none">- What is the ESPD?- Blacklisting and Exclusion criteria- Selection criteria
Result(s) desired:	<ul style="list-style-type: none">- The ESPD as a reusable tool for tendering- Basic principles of mandatory criteria- Setting the selection criteria
Means of Delivery:	<ul style="list-style-type: none">- Presentation- Case Study (Work shop)- Practical Examples
Time:	<ul style="list-style-type: none">- 8.30am till 12.30pm – one day session
Requirements:	<ul style="list-style-type: none">- Projector / Laptop- Handouts with different case studies requiring participants to identify what shall be the selection criteria requirements of the tender document

Flow of the Training:

- Main changes of the Directive, with focus on the ESPD
- Advantages of the ESPD
- Explanation on the contents and requirements of the ESPD
- Practical examples on how to compile a procurement document – reference to the templates

Detailed training explanation:

- For all procurements commencing from April 2016, it is mandatory for Contracting Authorities to accept the ESPD where the estimated value is equal to or greater than the OJEU threshold. The introduction of the ESPD is intended by the European Commission to reduce the administrative burden on Economic Operators and to remove some of the barriers to participation in public procurement, especially for small to medium-sized enterprises (SMEs).
- The ESPD is a generic document which should be used across all EU Member States. This means that the questions in the ESPD cannot be amended.

Contracting Authorities must set out the specific selection criteria requirements, including relevant exclusion/black listing grounds as established under part VI of the Public Procurement Regulations and any other minimum standards relevant for the procurement exercise as established in the procurement documents.

- Economic Operators shall submit a completed ESPD in response to the requirements established in the procurement documents. The Economic Operator, subcontractor or other parties may rely on their ESPD response as a self-declaration that they have not breached any of the exclusion grounds.
- If an Economic Operator is in a situation which might result in its exclusion, it may provide evidence to show that it has taken appropriate remedial action to demonstrate its reliability. This is known as self-cleansing. In such cases the Economic Operator must not be excluded from the procurement procedure on such exclusion grounds.
- An electronic word version of the ESPD, for completion by Economic Operators, may be retrieved through the Government's e-Procurement Platform (available from www.etenders.gov.mt/Resources). The items within the sections/parts therein are also numbered for ease of reference.
- Reference to the FAQ document.

Key points for Contracting Authorities

- Must issue and accept the ESPD as part of the [selection process](#) for procurements whose estimated value is equal to or greater than the OJEU threshold;
- Must include the relevant exclusion and selection criteria in the procurement documents;
- Must request a separate ESPD response from subcontractors. If the ESPD verifies that there are grounds for exclusion of any such subcontractor, the Contracting Authority must require a contractor to replace that sub-contractor.
- Must request a separate ESPD response from each member of a consortium to ensure that all members meet the relevant selection criteria;
- Must ask the recommended bidder/tenderer for the relevant evidence and certificates, which support the declarations made in the ESPD, during the evaluation stage or during the pre-awarding of the contract. If a bidder / tenderer is not able to provide the requested ESPD supporting documents, or withholds or misrepresents such information, the bidder/tenderer will be disqualified.
- Must request that the ESPD response be completed for each lot (or group of lots with the same selection criteria) where procurements are divided into lots **and** selection criteria vary from lot to lot.
- One may then delve into how to establish tender requirements proportionate to the procurement type (supplies, services and works) - Suitability, Economic and Financial Standing, Technical and Professional Ability and Quality Assurance Schemes and Environmental Management Standards

Part 3: Procurement Procedures and Award Criteria

Introduction	<ul style="list-style-type: none"> - General overview on the Procurement Procedures allowed in the PPR
Objective(s):	<ul style="list-style-type: none"> - Distinction between the procedures forbidden for departmental tenders and those allowed for tenders above the threshold - Frameworks - Time Limits for tendering - Meet award criteria (3 aspects)
Result(s) desired:	<ul style="list-style-type: none"> - Which procedure should be used? - Basic principles of procurement procedures (what comes next) - Setting a qualitative scoring criteria for the BPQR
Means of Delivery:	<ul style="list-style-type: none"> - Presentation - Case Study (Work shop) - Practical Examples
Time:	<ul style="list-style-type: none"> - 8.30am till 12.30pm – one day session
Requirements:	<ul style="list-style-type: none"> - Projector / Laptop - Handouts with different case studies requiring participants to identify what procedure to use and how to structure the BPQR scores and lifecycle costing

Flow of the Training:

- Main changes of the Directive, with focus on the procedures
- What are now the award criteria available?
- Time limits – clarifications at tendering stage
- Practical examples on how to compile a BPQR table – reference to the templates

Detailed training explanation:

Contracting entities should base the award of contracts on the most economically advantageous tender (MEAT), identified on the basis of the price or cost, using a cost-effectiveness approach (such as life-cycle costing). In addition, it may include the best price-quality ratio, assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the contract.

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.

Member States may restrict contracting entities from using price only or cost only as the sole award criterion or restrict their use to certain categories or types of contracts.

Life-Cycle Costing:

Life-cycle costing covers parts or all of the following costs over the life cycle of a product, service or works: (a) costs borne by the contracting authority relating to acquisition, use (such as energy consumption), maintenance costs, end of life costs (such as recycling costs); (b) costs attributed to environmental factors linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified (such as emissions of greenhouse gases).

Part 4: Evaluation Process and Compliance issues

Introduction	<ul style="list-style-type: none"> - General overview on the next steps following the tender closing date
Objective(s):	<ul style="list-style-type: none"> - Right for Appeal? - Time Limits - What is the procedure? - Evaluation of offers – clarifications and rectifications - Best Practice and Good Governance - Letters to bidders - What happens if an appeal is lodged?
Result(s) desired:	<ul style="list-style-type: none"> - What should one do next? - Basic principles in evaluation of offers - Am I in line with the regulations?
Means of Delivery:	<ul style="list-style-type: none"> - Presentation - Case Study (Work shop) - Practical Examples
Time:	<ul style="list-style-type: none"> - 8.30am till 12.30pm – one day session
Requirements:	<ul style="list-style-type: none"> - Projector / Laptop - Handouts with different case studies requiring participants to identify what needs to be dealt with during the evaluation stage.

Flow of the Training:

- Main changes of the Directive, with focus on the appeal threshold
- Time limits – clarifications and rectifications at evaluation stage
- Technical offer note 3
- Practical examples on how to proceed with evaluation of bids – reference to the requirements also under the ESPD

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.
- The Evaluation Committee shall request rectifications in respect of incomplete/non-submitted information pertinent to the documentation, as permitted in the published tender conditions and only after obtaining the necessary approvals.
- The Evaluation Committee must check admissible tenders for arithmetical errors. Without prejudice to the arithmetical errors the following errors will be corrected as follows:
 - where there is a discrepancy between amounts in figures and in words, the amount in words will prevail;
 - where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will prevail.

The amount stated in the tender will be adjusted by the Evaluation Committee in the event of error, and the tenderer will be bound by that adjusted amount. In this regard, the Evaluation Committee shall seek the prior approval of the Director General (Contracts)/Departmental Contracts Committee/MPU to communicate the revised price to the tenderer. If the tenderer does not accept the adjustment, his tender will be rejected and his tender guarantee forfeited.

Tender Clarifications

The objective at the clarification stage is to clarify the tenders as submitted.

- Tender clarifications may only be forwarded to the respective bidder/s after having obtained approval by the Director General (Contracts)/Departmental Contracts Committee/MPU, as the case may be.

Rectifications

Only documentation accompanied by Note 1 and Note 2 may be rectified. The prior approval of the Director General (Contracts) / Departmental Contracts Committee is required in order to request rectifications, in respect of incomplete / non-submitted information, as determined in the published tender document.

- Rectification/s must be submitted within the pre-established period, currently five (5) working days, from notification.
- Failure to comply to rectification/s requests within the allotted time shall result in the tender offer not being considered any further.
- No rectification shall be allowed in respect of the documentation as accompanied by Note 3.
- A tender guarantee document, accompanied by Note 1, may be deemed rectifiable.

Samples

Samples are requested, by the Evaluation Committee, to corroborate the technical compliance of the offers received.

- Samples, as listed in the published document, will be requested during adjudication stage and these will need to be submitted within a pre-defined working days of being notified to do so.

Ranking Of Offers

Subsequent to the complete adjudication of offers received, based upon the predetermined criterion, the evaluation committee is to determine the final ranking of offers received and thus submit final recommendations.

- Recommendations for tenders whose estimated value does not exceed the departmental thresholds, are to be presented to the Departmental Contracts Committee with the purpose of making definite recommendations for the award of public contracts or cancellation of tenders.
- Recommendations for tenders whose estimated value exceed the departmental thresholds, are to be presented to the General Contracts Committee with the purpose of making definite recommendations for the award of public contracts or cancellation of tenders.
- For departmental tenders having a recommended contract value exceeding the departmental thresholds, after having secured availability of funds through a responsible officer at the respective CA, the evaluation committee must still present recommendations for award to the Departmental Contracts Committee. In addition, the evaluation committee must further propose that recommendations for award should be presented to the General Contracts Committee, since all public contracts, the estimated value of which exceeds the departmental threshold are determined by the Department of Contracts.
- If the selected tenderer refuses the recommendation for award, the Evaluation Committee may be requested to draft a fresh evaluation report thus recommending for award the second ranked offer.

Announcement Of Results

Subsequent to the General Contracts Committee/Departmental Contracts Committee making definite recommendations for the award of contracts or cancellations of call, the Contracting Authority is obligated to inform any tenderer or candidate concerned of the final outcome for the respective tender.

Contract Award Notice

The contracting authority or central government authority is to publish a contract award notice for tenders for which the tender estimate was over the EU threshold.

Remedies

Remedies Before Closing Date of A Call For Competition

Prospective candidates and tenderers may, prior to the closing date of a call for competition, file a reasoned application before the Public Contracts Review Board, as set in the Public Procurement Regulations.

The application by the complainant shall be affixed on the notice board of the Public Contracts Review Board and shall also be published on the website of the same board.

The procurement procedure is temporarily suspended, pending decision subsequent to PCRБ hearing.

Appeals from decisions taken after the closing date for the submissions of a tender

Should there be any objection/s, the process of the call for tenders shall be suspended in accordance with the Public Procurement Regulations. Members of the Evaluation Committee shall be present during the public hearing and may be called upon to give witness and provide clarifications and evidence on how the decision was reached.

Stand Still Period

The objection shall be filed within ten calendar days following the date on which the contracting authority or the Department of Contracts has by fax or other electronic means sent its proposed award decision or the rejection of a tender or the cancellation of the call for tenders after the lapse of the publication period.

- The objection shall only be valid if accompanied by a deposit equivalent to 0.50 per cent of the estimated value set by the contracting authority of the whole tender or if the tender is divided into lots according to the estimated value of the tender set by the contracting authority for each lot submitted by the tenderer
- In no case shall the deposit be less than four hundred euro (€400) or more than fifty thousand euro (€50,000) which may be refunded as the Public Contracts Review Board may decide in its decision.
- The Secretary of the Review Board shall immediately notify the contracting authority that an objection had been filed; thereby immediately suspending the award procedure.
- After evaluating all the evidence and after considering all submissions put forward by the parties, the Review Board shall decide whether to accede or reject the appeal.
- 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 by means of an application filed in the registry of that court within twenty calendar days from the decision on which that decision has been made public.

Part 5: Modifications and Post-Contracting issues

Introduction	<ul style="list-style-type: none">- General overview on the next steps following the signing of the contract
Objective(s):	<ul style="list-style-type: none">- Project Management- Guarantees- Modifications to the contract- Dispute settlement
Result(s) desired:	<ul style="list-style-type: none">- What should one do next?- Basic principles in modifications- Am I in line with the regulations?
Means of Delivery:	<ul style="list-style-type: none">- Presentation- Case Study (Workshop)
Time:	<ul style="list-style-type: none">- 8.30am till 12.30pm – one day session
Requirements:	<ul style="list-style-type: none">- Projector / Laptop- Practical example on request for modifications

Flow of the Training:

- Guarantees
- Main changes of the Directive, with focus on the procedures for modifications
- Defects Liability Period, Provisional acceptance, retention monies, etc
- Snag lists
- Disputes

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.

Lack of programmed Project Management particularly in Works contracts

Any contract must be expertly managed to deliver on-time and on-budget results. To be able to do this one is to apply knowledge, skills, tools, and techniques to project activities to meet the project requirements.

One of the main factors to be adhered to during the implementation of a contract are the milestones defined at tendering stage. For example in a works contract the Gantt chart is fundamental and a snag list may be necessary to identify any defects during construction and how such details would need to be addressed promptly.

Milestones are the most important targets one is to keep track and to help to update activities being performed by the Contractor.

Key Performance Indicators

The key to developing effective results is to obtain measures that can provide truthful and significant results. Cost, schedule/time and quality are the main indicators of a contract. This is significant because it lays down how contractors' performance is to be measured. This will allow best practices identification and improvements to be made.

Risk Monitoring and Risk Control

Risk monitoring/control is the process of keeping track of the identified risks, monitoring residual risks and identifying new risks, ensuring the execution of risk plans, and evaluating their effectiveness in reducing risk. Risk monitoring and control is an ongoing process for the life of the project. The risks change as the project matures, new risks develop, or anticipated risks disappear. Risk monitoring will eventually lessen ad hoc decisions and possible crisis management.

Good risk monitoring and control processes provide information that assists with making effective decisions in advance of the risk's occurring.

The purpose of risk monitoring is to determine if:

- Risk responses have been implemented as planned.
- Risk response actions are as effective as expected, or if new responses should be developed.
- Project assumptions are still valid.
- Risk exposure has changed from its prior state, with analysis of trends.
- Proper policies and procedures are followed.
- Risks have occurred or arisen that were not previously identified.

Risk control may involve choosing alternative strategies, implementing a contingency plan or taking corrective action.

Tutors:

Part 1: Procurement Planning

DG Contracts / Directors

Part 2: ESPD (Exclusion Criteria/Blacklisting/Selection Criteria)

Ninette Gatt / Franco Agius

Part 3: Procurement Procedures and Award Criteria

Lorraine Mangion Duca

Part 4: Evaluation Process and Compliance

Nicholas Aquilina / Mark Mizzi

Part 5: Modifications and Post-Contracting issues

Jacqueline Gili / Franco Agius