

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

Purpose and key features of the template

- This template aims at facilitating Member States' (MS) reporting in the context of the new procurement directives. The template sets out the scope of the reporting requirements and recommends MS a methodology to gather and systematise the collection of relevant information. Furthermore, it strives to propose a harmonised structure of the reports so as to allow easier comparison of the information provided by the MS.
- The questions in this template are non-binding specifications of the directives' legal obligations on monitoring reports. The template should be followed only as far as possible by the Member State, especially as concerns the availability of quantitative information. When information is not available, this may be noted in the report, possibly together with an explanation of whether there are plans to start collecting such information and including it in the future edition of the report.
- MS' reports will be published on the European Commission website. The information will feed the new Report on the implementation and best practices of national procurement policies in the internal market to be issued by the European Commission. The information provided by the MS will support the policy analysis work of the Commission.
- The template covers all domains for which reporting requirements are defined under the 2014 procurement directives.
- The template contains the following types of questions:
 - i) qualitative descriptions and assessment,
 - ii) supporting documents which provide the evidence for the descriptions and assessment made above,
 - iii) quantitative indicators.

- In the tables below, the left side contains the name of the information to be submitted, while the right side contains further specifications of what this means. The report should be submitted as a text (.doc) and PDF document based on this template.
- To avoid duplication of reporting obligations and reduce administrative burden, MS are invited to indicate any information/data requested in this template that has been already provided to the Commission via another channel (e.g. procurement irregularities falling within the scope of ESIF funds). When it is the case, please specify these channels, the context of the reporting and the nature of the information already provided.

General Information

Scope of Reporting

The report covers the period between 1st January 2017 and 31st December 2017.

For quantitative data based on Procurement Notices, this means that the Contract Award Notice should have been awarded in this period.

Quantitative Data – Contracts Awarded

The quantitative data presented in this report covers contracts awarded between 1st January 2017 and 31st December 2017.

Malta (MT) has transposed the Procurement Package into national law on 28th October 2016, as per legal notices hereunder:

- Directive 2014/24/EU: Public Procurement - L.N. 352 of 2016: Public Procurement Regulations.
Since October 2016, LN 352/2016 (S.L. 174.04) has been amended by Legal Notices 155 of 2017 and 233 of 2017.
- Directive 2014/25/EU: Utilities Procurement - L.N. 351 of 2016: Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations.
- Directive 2014/23/EU: Concessions Contracts - L.N. 353 of 2016: Concession Contracts Regulations

In addition, Malta has also published an Emergency Procurement Regulations (L.N. 350 of 2016), the scope of which is to regulate procurement in emergency situations. Thus, such regulations are applicable only to two (2) specific Contracting Authorities, namely the Central Procurement Supplies Unit (CPSU) and the Civil Protection Department (CPD). Emergency procurement, in the context of Malta's legal notice shall mean the procurement of supplies, services or works, which becomes necessary either due to an unforeseen surge in the use of supplies resulting in a month stock level, or which are otherwise necessary due to issues of national health, security or strategic importance. The contracts procured through this legal notice (which for the reporting period are only attributable to CPSU) were included in the total value of procurement awards as well as in the total value of open procedure. Other quoted statistics do not include such data.

All thresholds and quantitative values quoted in this report are exclusive of VAT.

Contracting Authorities in Malta

For this time only since the report covers only the full calendar year of 2017, all the Contracting Authorities falling within the remit of each Ministry have been requested to compile a full quantitative statistical report.

As per the two (2) legal notices i.e. Public Procurement and Entities operating in the Water, Energy, Transport and Postal Services Sectors, the definition of Contracting Authorities is *“the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law”*.

As per the Concessions Awards legal notice the definition of Contracting Authorities means *“State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law other than those authorities, bodies or associations which pursue one of the activities referred to in Schedule 4 and award a concession for the pursuit of one of those activities”*.

Further to the above, “a body governed by public law”, as per below extract, means *“bodies that have all of the following characteristics:*

(a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

(b) they have legal personality; and

(c) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.”

Also, upon transposition of the EU Directives, Malta has started a decentralisation of public procurement across ministries with the setting up of Ministerial Procurement Units (MPUs). An MPU is defined as *“an entity that is established under each ministry which processes, publishes, administers and recommends the award of a call for tenders published under the open procedure, where the estimated value of this call for tenders exceeds €10,000 but does not exceed €250,000”*. During the period under review only five (5) ministries were decentralised, none of which utilise the utilities legal notice. This process is ongoing.

It is to be noted that Malta has a number of Contracting Authorities who administer their own public procurement irrespective of the estimated value of procurement; such authorities are referred to as Schedule 3 and include the Local Councils.

Thresholds

With regard to thresholds, Malta's Legal Notices take into account a number of departmental thresholds (excluding VAT) as described further hereunder. It is to be noted that the quantitative statistical data is being submitted on simple totals below the EU thresholds and totals above the EU thresholds. This is in view that compiling the report by each departmental threshold was not possible since:

1. Not all ministries were decentralised and various thresholds were applicable across ministries.
2. In June 2017 a general election was held following which Ministries changed portfolios and thus in terms of collecting data, Contracting Authorities had partial data under a pre-election Ministry and partial data post-election Ministry.
3. Consequently, the data is too staggered as it could not be collected directly via the Electronic Public Procurement System (ePPS) and most of it had to be done manually.

Nevertheless, Malta is preparing for the next submission of this report in three years time in order to provide a wider view of departmental procurement. Also by the time when the next report is due, it is being presumed that all ministries would be decentralised. However, this does not exclude that during this legislature portfolios of Ministries are reshuffled.

The EU thresholds during 2017 were:

Public Procurement:

Services and Supplies: € 135,000

Works: € 5,225,000

Public Procurement (awarded by Sub-Central & Schedule 3 Entities):

Services and Supplies: € 209,000

Works: € 5,225,000

Utilities Procurement:

Services and Supplies: € 418,000

Works: € 5,225,000

Concessions:

Services and Works: € 5,225,000

The locally adopted thresholds during 2017 were:

Public Procurement:

Call for Quotations: € 5,000.01 - € 10,000

Call for Departmental Tenders: € 10,000.01 - € 134,999.99

Call for Tenders published by DoC*¹ (non-decentralised ministries): From € 135,000

Call for Tenders published by MPUs*²: € 10,000.01 - € 250,000

Call for Tenders published by DoC for MPUs: From € 250,000.01

Departmental Direct Orders through the Head of the Contracting Authority - € 5,000.01 - € 10,000

Departmental Direct Orders through the Ministry of Finance: € 10,000.01 - € 134,999.99

Utilities Procurement:

Call for Quotations: € 5,000.01 - € 10,000

Call for Departmental Tenders: € 10,000.01 - € 417,999.99

Call for Tenders published by DoC: From € 418,000

Departmental Direct Orders through the Head of the Contracting Authority - € 5,000.01 - € 10,000

Departmental Direct Orders through the Ministry of Finance: € 10,000.01 - € 417,999.99

Concessions Procurement:

Services and Works Procurement: € 5,225,000 [No local threshold is in place]

Emergency Procurement:

Call for Procurement: Less than € 135,000

*¹ DoC – Department of Contracts / *² MPUs – Ministerial Procurement Units

General information

Procurement Procedures

With regard to the number of Procurement Procedures (i.e. the number of notices announcing a call for competition) issued through the ePPS during 2017, there was a total of 1,398 published calls, having an awarded price equal to or exceeding €5,000, across all Contracting Authorities. However, it is to be noted that these procurement processes are not all finalised since some of them are still in the Evaluation Process or the Contract Award Notice has not yet been published. Furthermore, some of these calls have been cancelled.

This amount of procurement notices does not include any calls for competition that may have been published in a traditional manner through the Malta Government Gazette; for example the Emergency Procurement contracts, although an open call was adopted, they were not awarded via ePPS since procurement procedures were published only via the Contracting Authority's Website and advertised through the Malta Government Gazette. Hence, the publication of the Emergency Procurement calls was not retrievable from Government's e-procurement platform.

The methodology used for the Total Number of Procurement Procedures is explained in Annex 2

Awarded Procedures

A total of 5522 contracts were awarded/contracted during 2017. This total includes the procurement of all Contracting Authorities across all applicable thresholds above €5,000 for all of Malta's Legal Notices (LN350-2016, LN351-2016, LN 352-2016, LN 353-2016). Out of 5522 awarded contracts, 5150 are below EU threshold and 372 are above EU threshold.

This total was retrieved by adding manually all the contract submissions of the Contracting Authorities. Therefore, this total includes all contracts ensued via direct orders, traditional procurement, calls issued on the Malta Government Gazette and calls awarded through the ePPS. In addition, this total includes contracts awarded in 2017 for which the procurement notice was published prior to 2017 as well as a number of awarded modifications for which the original contract was awarded prior to 2017.

The methodology used for the Total Number of Awarded Public Procurement Contracts is explained in Annex 2

Funding of Procurement Procedures

Malta has also gathered statistical information in respect to funding.

In 2017, out of 5208 procurement contracts (through the public procurement and utilities), 5007 contracts (96.14%) were locally-funded, whereas 201 (3.86%) were EU-funded. These statistics exclude Emergency Procurement and Concession Awards.

The tab titled 'Funding' forming part of the 'Main Data Sheet' at Annex 3 provides the split of the type of funding per Ministry.

Nature of the Procurement Contract

Malta has also gathered statistical information in respect to the nature/type of the procurement contract.

In 2017, out of 5208 procurement contracts (through the public procurement and utilities), 2442 were supplies and 2144 were services. It is to be noted that 1146 supply contracts relate to health procurement. With regard to works, in 2017, 622 contracts were awarded. These statistics exclude Emergency Procurement and Concession Awards.

The tab titled 'Nature of Contract' forming part of the 'Main Data Sheet' at Annex 3 provides the split of the nature of Contract per Ministry.

Information on Monitoring and Reporting Bodies

The Department of Contracts (DoC) is the only Central Government Authority in Malta who performs the function of a regulator in respect of public procurement and is the sole body performing the public procurement monitoring activities as indicated in Article 85 (National Reporting and Statistical Information) of Directive 2014/24/EU.

The Department of Contracts is in charge of the compilation of this report, based on the information collected from all Contracting Authorities involved in public procurement.

i) Estimation of the aggregated total value of procurement which would have been covered by the directives if its value had exceeded the relevant thresholds

<p>Estimation of the aggregated total value of procurement which would have been covered by the directives if its value had exceeded the relevant thresholds</p>	<p>This section provides for the value of procurement informally referred to as "below the EU threshold". Malta is also including in this section the value of procurement for "above the EU threshold". Furthermore, the Awarded Procurement Value is also being submitted.</p> <p>Awarded Procurement Value</p> <p>"Value of Procurement" is the value of the awarded contracts including modifications if applicable (Final Contract Value).</p> <p>Malta's total awarded value of public procurement, across all three (3) Directives (including MT's Emergency Procurement Legal Notice) for 2017 is being reproduced hereunder.</p> <p>Public Procurement Directive Totals € 651,420,903.61 split as follows:</p> <ul style="list-style-type: none">• Below EU Threshold: € 152,607,160.65• Above EU Threshold: € 498,813,742.92 <p>Emergency Procurement Totals:</p> <ul style="list-style-type: none">• Below EU Threshold: € 6,948,748.86 <p>Utilities Procurement Directive Totals € 49,918,998.80 split as follows:</p> <ul style="list-style-type: none">• Below EU Threshold: € 34, 812, 740.08• Above EU Threshold: € 15,106,258.72 <p>Concessions Awards Directive Totals:</p> <ul style="list-style-type: none">• Below EU Threshold: € 508, 642.16
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A total of €708,797,293.43 (across 5522 contracts) was awarded during 2017. This total includes the procurement of all Contracting Authorities across all applicable thresholds above €5,000 for all of Malta's Legal Notices (LN350-2016, LN351-2016, LN 352-2016, LN 353-2016).

This total was retrieved by adding all the procurement awarded values of the contract submissions as provided by the Contracting Authorities. Therefore, this total includes contracts ensued via direct orders, calls issued on the Malta Government Gazette, traditional procurement and calls awarded through the ePPS. In addition, this total includes contract values awarded in 2017 for which the procurement notice was published prior to 2017 as well as procurement values of awarded modifications for which the original contract was awarded prior to 2017.

As per the tab titled 'Awarded Procurement' forming part of the 'Main Data Sheet' at Annex 3 (which includes the excel files of the totals of the raw data as submitted by the Contracting Authorities), **the awarded procurement value has been split per Ministry across Malta's four (4) Legal Notices. The number of awarded contracts has also been split accordingly.** It is to be noted that each Ministry incorporates the procurement of all Contracting Authorities within its remit.

Since the 68 Local Councils and 5 Regional Committees constitute a substantial amount, rather than including them under the respective Ministry, they have been extracted separately as a main Contracting Authority.

The methodology used for the Total Number and Total Value of Awarded Public Procurement Contracts is explained in Annex 2.

Estimated Procurement Value

Data on Malta's Total Estimated Value of Public Procurement (indicating below and above EU threshold procurement) for 2017 is not available. However, all efforts shall be made so as to provide such data in next report, planned for 2021. Therefore, the methodology used as requested in Annex I has not been compiled.

ii) Most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules

<p>II.1. Qualitative reporting on application of public procurement rules</p>	
<p>Main sources of wrong application or of legal uncertainty</p>	<p>Malta does not have any information in respect of the main sources of wrong application and/or legal uncertainty. However, the Department of Contracts shall endeavour to initiate discussions with relevant stakeholders, so that for the next report, Malta will be in a better position to provide the required qualitative reporting.</p>
<p>Specific legal provisions (from EU or national law) which appear to raise significant problems of application</p>	<p>Malta does not have any information in respect of the specific legal provisions which appear to raise significant problems of application. However, the Department of Contracts shall endeavour to initiate discussions with relevant stakeholders, so that for the next report, Malta will be in a better position to provide the required qualitative reporting.</p>
<p>An assessment on whether a wrong application of rules might exist, by observing patterns of application of the rules which do not by themselves constitute cases of wrong application of the rules, but nonetheless</p>	<p>Malta, through the quantitative statistics, tried to elicit structural and/or recurring problems (if any) which might result in a possible sub-optimal outcome of the public procurement process.</p> <p>To this effect, MT assessed the below elements:</p> <ul style="list-style-type: none"> • Recurrent Low Number of bidders • Recurrent Low Number of non-domestic bidders • Biases towards the Systematic use of certain Award Criteria irrespective of the Context • Frequent use of Derogatory Procedures

point at structural or recurring problems yielding a sub-optimal outcome.

- Frequent use of the Shortest Possible Deadlines

Number of Bidders:

In 2017, there were 7267 bidders for a total of 2135 open procedures (through the public procurement and utilities). Therefore, it is estimated that each procurement procedure has an average of three (3) bidders. Although this might seem relatively low, considering the size of Malta, it is regarded appropriate. Furthermore, the statistics submitted by the Contracting Authorities showed that there were instances when a relatively large number of bidders participated in the procurement procedure.

The tab titled 'Bidders' forming part of the 'Main Data Sheet' at Annex 3 provides the Number of Bidders per Ministry.

Domestic and Non-Domestic Bidders:

In Malta, the majority of the bidders that participate in procurement are domestic. In fact during 2017, for 2135 open procedures (through the public procurement and utilities), out of 7267 bidders, 6793 (93.48%) were domestic Economic Operator, whereas 474 (6.52%) were non-domestic bidders.

However, based on feedback received during consultation meetings, it was advised that further to the obligation by law (October 2016) to publish any procurement which estimate exceeds €5,000 through government's e-procurement platform, there was a noticeable difference of a wider market and increased competition, even across borders. It is pertinent to note that Malta has initially introduced electronic procurement in 2011, however, at that stage it was still on a voluntary basis. Thereafter, in order to prepare for the new Public Procurement Regulations, as a result of the transposition of the Directives, as of January 2016, it became obligatory (as a result of a published Circular) to electronically publish procurement calls with an estimate value of €5,000 or above.

The tab titled 'Bidders' forming part of the 'Main Data Sheet' at Annex 3 provides the Number of domestic and non-domestic bidders per Ministry.

Systematic use of Award Criteria:

As per the new Directives, open calls for procurement are to be awarded on the Most Economically Advantageous

Tender (MEAT) which award criteria may be the Price, Life-cycle Costing or the Best Price Quality Ratio (BPQR).

In 2017, the majority of procurement calls in Malta utilised the Price as the Sole Award Criterion, whereby the tenderer who bid the cheapest priced offer satisfying the administrative and technical requirements was awarded the contract. In fact, out of 2135 open procedures (through the public procurement and utilities), 2085 utilised the Price Award Mechanism.

The price as award criterion is mostly utilised since in the majority of cases, the Contracting Authorities already have an established set of minimum requirements and the technical parameters would not be flexible. This not only provides for savings but also a shorter procurement cycle in view that the evaluation is much more straightforward.

However, during the period under review, Malta has seen an increase in the utilisation of the BPQR. This was noted mostly for the procurement of services.

The following are some of the cited justifications for utilising the BPQR approach:

- Assessing the quality, style and strategy of the service to be provided as against cost
- Quality and methodology were important for the implementation of the Project
- Best value-for-money for the optimum combination of features
- New concept had to be proposed, thus, quality and technical aspect were imperative
- Design and project management were key to the procurement
- Specific and specialised service
- Sound understanding of specific knowledge and directives iro the concerned field
- Best service at the most advantageous price
- Complexity of project

In 2017, out of 2135 awarded contracts utilising the open procedure, in 43 instances the BPQR was utilised; this amounts to 2%.

Additionally, as per the submitted data, 7 procedures utilised the Life-Cycle Cost Award Mechanism; it is to be noted that it is mostly Contracting Authorities working in the Utilities Procurement that made use of this award mechanism.

The tab titled 'Award Criteria' forming part of the 'Main Data Sheet' at Annex 3 provides the number of awards split by type of Award Mechanism, per Ministry.

Frequent use of Derogatory Procedures - Direct Contracts below the local threshold:

The norm in Malta is to procure through the open procedure, which is deemed to be the most transparent and fair process, since it is accessible to domestic and non-domestic Economic Operators, whether registered or not on the ePPS system.

However, Direct Contracts below the local thresholds were resorted to in a number of situations that were justified and approved in terms of the local Legal Notices. Direct Contracts may be procured at the discretion of the Head of the

Contracting Authority up to the threshold of €9,999. Furthermore, Direct Contracts in excess of €10,000 but are of a lesser value than €135,000 / €148,000 as the case may be, the said Direct Order would need to be approved by the Direct Orders Office of the Ministry for Finance.

The following are some of the cited justifications for purchasing through a Direct Contract:

- Technical Merit and/or Expertise and/or Experience
- Specialised Knowledge
- Cultural and/or Artistic Merit
- Extreme Urgency occasioned by unforeseeable events
- Sole supplier of existing Hardware/Network Security
- Sole supplier/agent for intricate/specific procurement
- Sole local ISO accredited Service Provider
- Compatibility of Systems
- No tenders/suitable tenders/applications were submitted in response to an open call
- Authorised sole local agent
- Restriction of Choice/Market Constraints

- Non disruption of ongoing operations
 - Additional supplies/services/works not initially included in the project/contract but which have, through unforeseen circumstances, become necessary for the performance of the supplies/services/works described therein, on condition that the award is made to the Economic Operator executing the contract
 - Protection of Exclusive Rights/Proprietary
 - Contract awarded subsequent to a Design Contest
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Frequent use of Shortest Possible Deadlines – Accelerated Procedure:

As per Malta's legal notices, when setting the time limits for the receipt of tenders or requests to participate, Contracting Authorities take account of the complexity of the procurement, without prejudice to the established minimum time limits.

To this effect, when a call for competition with an estimated procurement value above the local threshold is published through the electronic ePPS system, the said call shall be on the market for a minimum of thirty (30) days. However, as per regulation 116(3) of Malta's L.N. 352/2016 it is permissible to have an accelerated open procedure *'Where a state of urgency duly substantiated renders impracticable the time limit laid down in sub-regulation (1), the authority responsible for the tendering process, upon approval of the Director, may fix a time limit which shall be not less than fifteen (15) days from the date on which the contract notice was sent to the Publications Office of the European Union'*. In addition, the reason for urgency must be disclosed in the contract notice for any procurement which estimated value is above the local threshold.

On the other hand, when the procurement has an estimated value which meets or exceeds €10,000 but does not exceed €135,000 (the local departmental threshold in 2017), the minimum time limit is set at twenty (20) days from the date of publication.

However, as established in regulation 116(5) of Malta's L.N. 352/2016, the *'time limit can be reduced to fifteen (15) days in cases of extreme urgency with the prior approval of the head of the authority responsible for the tendering process'*.

	<p>The following are some possible justifications that lead a Contracting Authority to resort to publishing a tender via an open accelerated procedure:</p> <ul style="list-style-type: none"> • When no tenders or no suitable tenders or no applications have been submitted in response to a previous open procedure. • When the time-limits referred to in the Public Procurement Regulations cannot be respected for reasons of extreme urgency occasioned by unforeseeable events. The circumstances invoked to justify urgency must not be attributable to the Contracting Authority. • When a Prior Information Notice (PIN) would have been published. <p>Therefore, it is worth noting that the data collected in respect of open procedures might incorporate a minimal number of open accelerated procedures.</p> <p>With regard to shortest possible deadlines, the Emergency Procurement regulations, due to their scope allow for a minimum time limit for receipt of offers of four (4) days from the date of publication.</p>
<p>II.2 Supporting documents</p>	
<p>Please provide any available evidence of the issues identified under section II.1.</p>	<p>Malta does not have any supporting documents in respect of section II.1. However, the Department of Contracts shall endeavour to initiate discussions with relevant stakeholders, so that for the next report, Malta will be in a better position to provide the required documentation.</p> <p>However, it is to be noted that the National Audit Office (NAO), which is an independent body, publishes a number of publications in respect of the Work and Activities carried out in the previous year, including Financial Audits and Investigations, Compliance Audits and Value for Money (performance) Audits. Nonetheless, by the time of compilation of this report, such publications for year 2017 were not yet available. In addition, the Compliance Audits which forms part of the Annual Report on the Public Accounts is earmarked to be published in November.</p>

II.3. Quantitative indicators

Indicators about the national review system

In Malta, as permitted by the relevant legal notice, 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 (PCRB); this is also known as a pre-contractual remedy. In addition, where the estimated value of the public contract meets or exceeds €5,000, any tenderer or candidate concerned, or any person, having or having had an interest or who has been harmed or risks being harmed by an alleged infringement or by any decision taken including a proposed award in obtaining a contract, a rejection of a tender or a cancellation of a call for tender after the lapse of the publication period, may file an appeal by means of an objection before the PCRB, which shall contain in a very clear manner the reasons for their complaints.

To this effect, Malta proceeded to gather statistics in respect of a number of indicators relating to its National Review System. The Public Contracts Review Board submitted the following statistics pertaining to the appeals lodged in 2017.

Remedies before the closing date of a call for competition: pre-contractual remedy

- Total number of appeals lodged – 17
- Total number of resolved appeals – 17
- Total number of appeals resolved in favour of Complainant/Appellant – 10
- Total number of appeals resolved in favour of Contracting Authority – 7
- The average length of the review procedure – 1.38 (month)

Appeals from the decision taken after the closing date for the submission of an offer

- Total number of appeals lodged – 99
- Total number of resolved appeals – 86 (13 were still unresolved by end 2017)
- Total number of appeals resolved in favour of Complainant/Appellant – 27
- Total number of appeals resolved in favour of Contracting Authority - 59
- The average length of the review procedure – 1.00 (month)

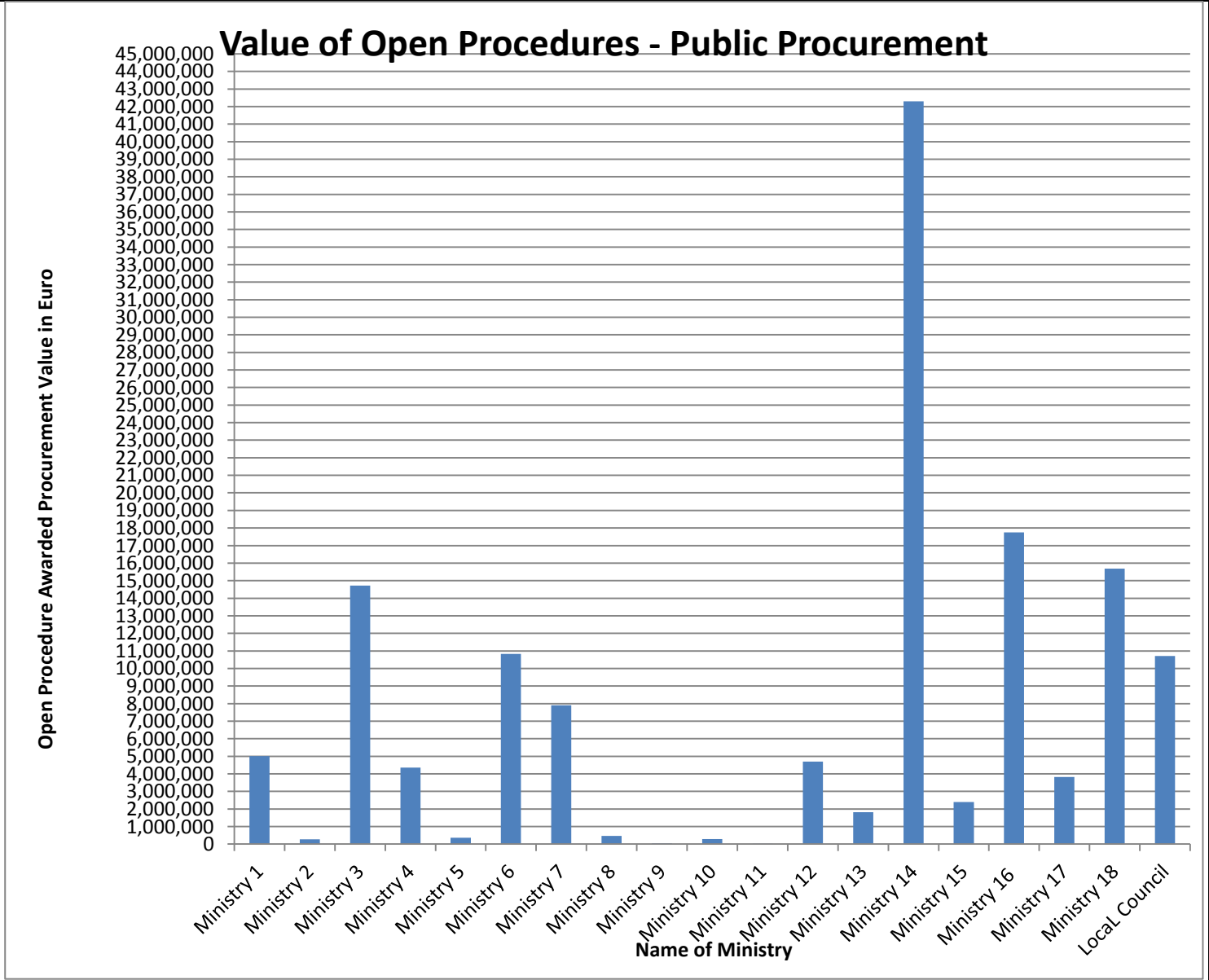
In addition, it is to be noted that from their experience the PCRB advised that the most frequent appeals lodged tend to

	<p>relate to Health Supplies and Cleaning Services.</p> <p>It is to be noted that the above statistics incorporate any appeals lodged at the PCRB during 2017; therefore, the data relates both to the old national Legal Notice as well as the new Legal Notices (as a result of the new Directives).</p>
<p>Histogram of values of procedures, covering also procedures below the thresholds</p>	<p>Public and Utilities Procurement: Open Procedure</p> <p>A total of 2432 contracts for the value €162,994,223.08 was awarded during 2017 whereby the open procedure was used. This total includes the procurement of all Contracting Authorities across all applicable thresholds above €5,000 for all of Malta’s Legal Notices (including Emergency Procurement but excluding Concession Awards).</p> <p>This total was retrieved by adding the procurement awarded values of the contract submissions as provided by the Contracting Authorities. Therefore, this total includes all procurement awarded values of contracts ensued via calls issued on the Malta Government Gazette, traditional procurement and calls awarded through the ePPS. In addition, this total includes contract values awarded in 2017 for which the procurement notice was published prior to 2017. It is to be noted that, some Ministries/Contracting Authorities did not include any modification values to the original contract value when submitting such data to the Department of Contracts. As a result, Malta is not necessarily submitting the full total value of procurement utilising the open procedures.</p> <p>As per the tab titled ‘Open Awarded Procurement’ forming part of the ‘Main Data Sheet’ at Annex 3 (which includes the excel files of the totals of the raw data as submitted by the Contracting Authorities), the awarded procurement value of the open procedures has been split per Ministry, across three (3) Legal Notices. The respective number of awarded contracts has also been split accordingly.</p> <p>It is to be noted that each Ministry incorporates the procurement of all Contracting Authorities within its remit. Since the 68 Local Councils and 5 Regional Committees constitute a substantial amount, rather than including them under the respective Ministry, they have been extracted separately as a main Contracting Authority.</p> <p>The methodology used for the Total Number and Total Value of Awarded Public Procurement Contracts utilising the Open Procedure is explained in Annex 2.</p>

Public Procurement and Utilities Procedures

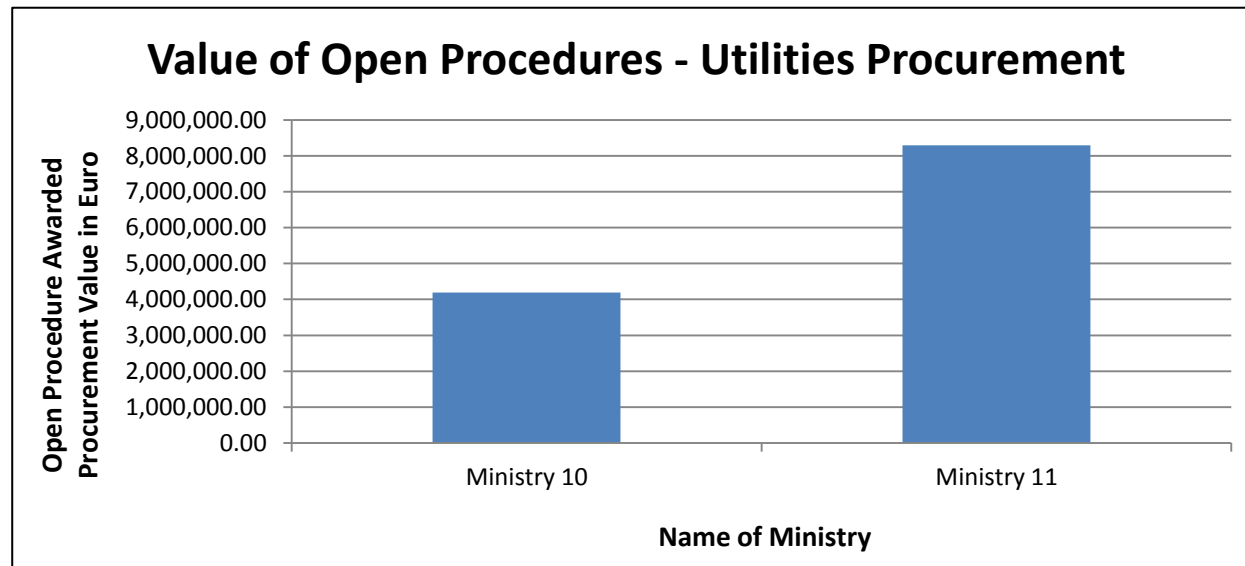
It is to be noted that Histogram bins with a breadth of Euro 10,000 was too low; in fact, the graph could not be properly represented. Thus, the procurement values are spread across Euro 1,000,000 strata.

The following histogram portrays the bunching of values for open procedures from €5,000 upwards, utilising the Public Procurement Directive.



A clearer graph may be viewed as per Tab titled 'Open Public Procurement Graph' forming part of the 'Main Data Sheet' at Annex 3

The following histogram portrays the bunching of values for open procedures from €5,000 upwards, utilising the Utilities Procurement Directive.



A clearer graph may be viewed as per Tab titled 'Open Utilities Graph' forming part of the 'Main Data Sheet' at Annex 3

It is to be noted that the Maltese Contracting Authorities utilised other procedures, namely the Restricted Procedure and the Competitive Dialogue. However, as per the statistics hereunder, the number of such procedures is minimal:

- Restricted Procedure: 6 Contracts
- Competitive Dialogue: 1 Contract

It is to be noted that a small number of Contracting Authorities cited 'other' procedure; however, no further information was forthcoming.

Concession Procedures

In addition to the above, a very small number of Contracting Authorities awarded a simple form of Concession, mostly through the Price Award Mechanism, whereby the awardee was the highest concession fee.

The following are the concessions awarded:

- Five (5) Concessions for setting up of Stalls at Ghammieri during Christmas Village 2017
- Concession for the Provision of Canteen Services
- Provision of electric trolley vehicle route in Valletta
- Trackless Train: Cospicua, Kalkara, Vittoriosa
- Eight (8) Concessions for the running of a School Tuckshop at Secondary/Middle Schools for scholastic year 2017/2018
- Concession for the Operation of a Catering Service booth and the provision of the same booth at Hastings Garden Valletta

iii) **Prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interests and other serious irregularities**

<p>III.1. Qualitative reporting on fraud, corruption, conflict of interests etc.</p>	
<p>Describe the actions undertaken and/or mechanisms put in place to ensure compliance with the new provisions on the prevention, detection and adequate reporting of public procurement irregularities including fraud and corruption</p>	<p>Mechanisms in place: The Maltese law provides criminal penalties for official corruption, and the government endeavours to implement these laws effectively. The Malta Police and the Permanent Commission against Corruption are responsible for combating official corruption.</p> <p>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.</p> <p>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: Malta Police Commissioner Internal Audit and Investigations Department</p> <p>A 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.</p> <p>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.</p>

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 & Monitoring Unit, falling under the remit of the Policy Development and Programme Implementation Directorate.

The Internal Audit and Investigations Department

The Internal Audit and Investigations Department is regulated by a legislation conferring rights and responsibilities to the Department. The Internal Audit and Financial Investigations Act, Chapter 461 of the Laws of Malta, provides for the regulation of the internal and financial investigative functions, including the power to carry out effective independent internal audits and financial investigations, providing for the necessary safeguards to ensure the protection of the financial interests of Government including the funds it may receive or be required to manage under Malta's international obligations.

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=16550&l=1>

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 Permanent Commission Against Corruption

Permanent Commission against Corruption Act came into force on 4th October 1988 to make provision for the establishment and functions of a permanent commission against corruption. 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.

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.

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8800&l=1>

The National Audit Office

The functions and powers of the Auditor General and the role 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.

The Constitution and the Act empower the Auditor General to audit the accounts of all Departments and Offices of the Government of Malta, and of such public authorities or other bodies administering, holding, or using funds belonging directly or indirectly to the Government of Malta.

The Act extends this mandate further to include the Performance audit of Central Government Departments and Offices and other public sector entities, as well as the audit of the operations of companies or other entities in which the Government of Malta owns not less than 51 per cent of the shares.

The Auditor General publishes an Annual Audit Report on Public Accounts. The NAO reports on the operations of various Ministries, Departments and other Government entities, including an analysis of the Financial Report of that particular year. The report summarises the conclusions reached following audits carried out by the NAO. With respect to public procurement, the key issue is the overall 'Non-compliance with Public Procurement Regulations'.

<http://nao.gov.mt/en/recent-publications>

At the time of compilation of this report, the Annual Audit Report on the Public Accounts for the year 2017 is not available.

Main procurement related shortcomings identified by the NAO for the preceding year were the following:

- Procurement processes not covered by a formal contractual document
- Departments seeking retrospective approvals from the Department of Contracts
- Direct Order approvals not traced
- Direct Order approvals requested retrospectively

- A continuous series of short-term contracts by direct order
- Variations obtained in lieu of issuing a fresh call for tender
- Late start to contractual renewal process
- Lack of clearly defined objectives in contractual provisions
- Deficiencies in contractual provisions
- Inadequate performance safeguards in contractual document
- Weak enforcement of contractual provisions
- Contracts/services extended repeatedly

Electronic Procurement

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. E-procurement significantly enhances transparency by centralizing all information related to the procurement process in a publicly available web portal. <https://www.etenders.gov.mt/epps/home.do>

Reform of the Appeals Process - (Part IX of the PPR)

With the introduction of the new Public Procurement Regulations (L.N. 352/2016), 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 at the Public Procurement Review Board (PCRB).

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

The Compliance & Monitoring Unit

With the aim of strengthening transparency, ensuring good governance and potentially promote whistleblowing, the Department of Contracts introduced a Compliance & Monitoring Unit.

Contrary to auditing, which is typically retrospective, monitoring allows for early identification and correction before a problem festers and causes the Contracting Authority to be in non-compliance.

The main functions of the Compliance & Monitoring Unit:

- Monitoring of Public Procurement
- Investigating Complaints
- Ensuring adherence to the Public Procurement Regulations
- Assisting in the correct application of the Public Procurement Regulations
- Compilation of the EU Monitoring Report

The Compliance & Monitoring Unit has rendered its services in support of circa 75 cases during 2015 and more than 80 cases in 2016. During the year 2017, 64 cases have been lodged and successfully solved. In May of 2017, the CMU collated and published a full report entitled '*Addressing Fraud And Corruption In Public Procurement*'.

<http://contracts.gov.mt/en/Resources/Pages/Resources.aspx>

Public Contracts Register

During 2017, the Department of Contracts embarked on exploring the introduction of a Public Contracts Registry (PCR). PCRs go beyond the well-known electronic portals of information on public contract opportunities, such as TED. PCRs are important because they serve as an audit trail of how the process was carried out and subsequently as evidence of all actions taken to award contracts. Through the Public Contracts Registry, Government intends to publish detailed tender and contractual information; such info will be made available to everyone.

On a general level, PCRs may be utilised:

- as a transparency tool
- to react to perceived shortcomings in public governance (corruption scandals)
- to strengthen public administration processes

	<ul style="list-style-type: none"> • to support enhanced access to information by stakeholders • to enable more intense scrutiny by the public in general <p>At a specific level, these registers aim at:</p> <ul style="list-style-type: none"> • facilitating contract management oversight • creating an additional layer of public exposure of contract-related decision-making, thus expanding the scope of procurement transparency beyond the award phase • allowing interested parties to prompt administrative reviews of specific procurement decisions (pre-award and post-award) <p>The main goals and justifications are to:</p> <ul style="list-style-type: none"> • preserve the integrity of public contract administration • increase the robustness of anticorruption tools by facilitating general oversight • significantly increase the levels of transparency • create full transparency of public procurement and public contract management
<p>Describe the actions undertaken and/or mechanisms put in place to ensure compliance with the new provisions on the prevention, detection and adequate reporting of conflicts of interests</p>	<p>Conflict of Interest</p> <p>The Public Procurement Regulations, Subsidiary Legislation 174.04 - Legal Notice 352 /2016, clearly define transparency as one of the pillars in the shaping of public procurement. In particular Regulation 39 (Equal Treatment, Transparency and Proportionality) provides as follows:</p> <ol style="list-style-type: none"> (1) ‘Contracting Authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.’ (2) ‘The tenderer must be selected in a transparent manner and according to a prescribed procedure.’ (3) ‘Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators.’

Vetting of Tenders

Through the vetting process, the Department of Contracts / Ministerial Procurement Units ensure that Contracting Authorities:

- are in conformity to the Public Procurement Regulations as well as respecting the general principles of EU law
- make all information available to all, regardless of the EU country they are registered in
- do not discriminate against businesses registered in another EU country
- do not make reference to specific brands, trademarks or patents when describing the characteristics of products & services they wish to procure
- do not refuse to accept supporting documents (certificates, diplomas, etc.) issued by another EU country, as long as such documents provide the same level of guarantee

Clarifications at Tendering Stage

Clarification requests may arise either by queries posted by interested parties through the Government's e-Procurement Platform or else in the case where an error was identified and needs to be rectified by the Contracting Authority/Central Government Authority.

Clarification Notes may be issued by Contracting Authorities or the Central Government Authority in order to:

- explain requirements within the procurement document
- provide additional information
- remove or amend possible discrepancies or inaccuracies

Clarification Notes are mainly intended to 'clarify' what is already published in the tender document. Clarification notes do not include new information that changes the scope of the tender.

Adjudication of Tenders

To further ensure transparency throughout the process of adjudication of tenders, the Department of Contracts recommends that:

- each TEC member must sign a Declaration of Impartiality & Confidentiality Form, thus declaring that he has no personal interest or connections with any of the participating economic operators, accordingly avoiding any conflict of interest issues, and that s/he understands and can perform within the ground rules and procedures
- any appointed consultants/advisors must complete and sign the Declaration of Impartiality & Confidentiality Form

	<ul style="list-style-type: none"> • 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 must maintain confidentiality • voting committee members must conduct an individual evaluation of each proposal <p>Rectifications and Clarifications during Adjudication of Tenders</p> <p>During the adjudication process, queries may arise on submissions that require clarifications. The Tender Evaluation Committee (TEC) may request clarifications, on condition that such clarifications do not alter the substance of the contents of the tender.</p> <p>Rectifications may be requested on any of the documentation requested in the procurement documents; usually rectification requests are only of historical and/or administrative nature.</p> <p>Before proceeding with a request for rectification/clarification, the evaluation committee must obtain the prior approval, accordingly; the actual text to be sent to bidder must be included in the request for approval.</p>
<p>III.2. Supporting documents</p>	
<p>Please provide any available evidence on the actions/mechanisms and measures described under section III.1. above demonstrating compliance with the new</p>	<p>Procurement Policy Note #18 http://contracts.gov.mt/en/ProcurementPolicyNotes/Pages/ProcurementPolicyNotes.aspx Guidance Note #10 https://www.etenders.gov.mt/epps/viewInfo.do?section=statistics&selectedItem=viewInfo.do%3Fsection%3Dstatistics</p>

<p>provisions on the prevention, detection and adequate reporting of public procurement irregularities and conflicts of interests</p>	<p>Procurement Policy Note #29 http://contracts.gov.mt/en/ProcurementPolicyNotes/Pages/ProcurementPolicyNotes.aspx Guidance Note #02 https://www.etenders.gov.mt/epps/viewInfo.do?section=statistics&selectedItem=viewInfo.do%3Fsection%3Dstatistics</p> <p>Training & Online Assistance</p> <p>The Maltese Government invests in procurement training, thus creating an efficient and solid base to its administrative structure. The Department of Contracts, in conjunction with the Institute for Public Service (IPS), https://publicservice.gov.mt/en/institute/Pages/Home.aspx, organises various training courses and workshops for both Contracting Authorities' and Economic Operator's employees. Training is offered free of charge and covers:</p> <ul style="list-style-type: none"> • Departmental Procurement • National Public Procurement Regulations • Electronic Public Procurement System <p>In its mission to standardise and ensure uniformity in all Public Procurement procedures, the Department of Contracts endeavoured to publish various Procurement Policy Notes, Contracts Circulars and Manuals, which are available by accessing the official DoC website on the below URL Link. http://contracts.gov.mt/en/Pages/Home-DepartmentOfContracts.aspx</p> <p>By logging in on the Government E-Procurement Platform, and clicking on Resources one can find a folder entitled Standard Templates for CfTs containing various Guidance Notes and templates intended to facilitate the understanding and compiling of tenders by contacting authorities. https://www.etenders.gov.mt/epps/home.do</p>
<p>III.3. Quantitative indicators</p>	
<p>Statistical distribution of buyers by frequency of actual competition</p>	<p>The number/percentage of procurement procedures where only one (1) sole bid was received is being presented by Ministry which for this quantitative indicator is being deemed to be the main Contracting Authority.</p>

Since the 68 Local Councils and 5 Regional Committees constitute a substantial amount, rather than including them under the respective Ministry, they have been extracted separately as a main Contracting Authority.

To this effect, the requested information in respect of how many Contracting Authorities fall within each of the set intervals for Sole Bidders is being represented as per table below:

<0%, 10%>	10%, 20%>	20%, 30%>
3 Ministries	10 Ministries	4 Ministries

The other percentage brackets were not included since no Ministry had such high percentages of 1 bid per procurement call.

Further to the above, it is to be noted that 2 Ministries did not have any sole bidders, thus, they were not included in the table.

Out of 2135 awarded procurement contracts utilising the open procedure (through the public procurement and utilities), only 404 contracts received one (1) bid; this equates to 18.92%. On the other hand, Contracting Authorities receive an average of three (3) bids (3.41%) per procurement procedure.

The tab titled ‘Sole Bidders’ forming part of the ‘Main Data Sheet’ at Annex 3 provides the number and percentage of sole bidders per Ministry.

Statistical distribution of buyers by frequency of using a negotiated procedure without the prior publication of a call of competition

As per the previous requirement of section ‘III.3. Quantitative indicators’, statistics are being presented by Ministry which for this quantitative indicator is being deemed to be the main Contracting Authority. Since the 68 Local Councils and 5 Regional Committees constitute a substantial amount, rather than including them under the respective Ministry, they have been extracted separately as a main Contracting Authority.

To this effect, the requested information in respect of how many Contracting Authorities fall within each of the set intervals for utilisation of a negotiated procedure without the prior publication of a call for competition is being represented as per table below:

<0%, 10%>
16 Ministries

The other percentage brackets were not included since no Ministry had such high percentages of negotiated procedures without the prior publication of a call for competition.

	<p>Further to the above, it is to be noted that 3 Ministries did not utilise the negotiated procedure without the prior publication of a call for competition, thus, they were not included in the table.</p> <p>Out of 5208 awarded procurement contracts (through the public procurement and utilities), only 92 contracts utilised the Negotiated Procedure without prior Publication; this equates to 1.77%. This statistical figure implies that the Maltese Contracting Authorities prefer to utilise other procedures, namely the open procedure, which is deemed more transparent.</p> <p>The following are some of the cited justifications for procuring through a Negotiated Procedure without prior Publication:</p> <ul style="list-style-type: none"> • Internationally recognised Expertise iro Banking and Financial Services • Sole supplier for intricate/specific Procurement • Restriction of Choice • Unique Service Provider’s Technical Expertise • The protection of exclusive rights, including intellectual property rights • Extreme Emergency • Technical or Artistic reasons • Time-limits for open, restricted or negotiated procedures cannot be respected for reasons of extreme urgency occasioned by events unforeseeable by the contracting authority • No tenders/suitable tenders/no requests to participate/no suitable requests to participate have been submitted in response to an open or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission where it so requests <p>The tab titled ‘Negotiated Procedure’ forming part of the ‘Main Data Sheet’ at Annex 3 provides the number and percentage of Negotiated Procedures without the prior publication of a call for competition per Ministry.</p>
<p>Quantitative assessment of collusion risks</p>	<p>Malta does not have any information in respect of the quantitative assessment of collusion risks. However, the Department of Contracts shall endeavour to initiate discussions with relevant stakeholders, so that for the next report, Malta will be in a better position to provide the required qualitative reporting.</p>

Risk of undiscovered conflict of interest	Malta does not have any information in respect of Risks of undiscovered conflict of interest. However, the Department of Contracts shall endeavour to initiate discussions with relevant stakeholders, so that for the next report, Malta will be in a better position to provide the required qualitative reporting.
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IV. Level of SMEs' participation in public procurement

SMEs are defined in the Commission Recommendation (2003/361/EC) as having less than 250 persons employed and an annual turnover of up to EUR 50 million or a balance sheet total of no more than EUR 43 million. Further information is available at http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en.

IV.1. Qualitative reporting on SME participation	
Key challenges encountered	<p>SMEs in Malta</p> <p>Malta's SME sector have expanded throughout the past years and retains a largely positive outlook for the years ahead. Overall, the performance of the SME sector has been positive but remaining challenges exist. Lack of access to finance has repeatedly been cited as one of the major problems faced by SMEs in addition to excessive bureaucracy and lack of the necessary structures to support SMEs.</p>
IV.2. Supporting documents	
<p>Please report any available evidence or supporting document for point IV.1, illustrating the measures, achievements or challenges faced, relating to the facilitation of the participation of SMEs in public procurement</p>	<p>Aid to SMEs</p> <p>Small businesses play a central role in the Maltese economy. In an effort to assist SMEs, throughout the past years, the Department of Contracts, had implemented a number of pro-active measures to encourage potential economic operators to participate in government procurement, namely:</p> <ul style="list-style-type: none"> • Experience Criterion may only be requested for tenders exceeding the estimate of the €500,000 excl.VAT • The Performance Guarantee for contracts, whose value is below €500,000 excl.VAT, has been reduced from 10% to 4% • The re-introduction of the Single Bond; economic operators have the possibility to provide the Contracting Authority with a Single Bond covering the performance guarantees for all the contracts with the same Contracting Authority; • The Tender Guarantee (Bid Bond) is requested only for tenders whose estimated value exceeds €500,000 excl.VAT

	<p>http://contracts.gov.mt/en/Pages/Home-DepartmentOfContracts.aspx</p> <p>In its endeavour to facilitate the participation of SMEs in Public Procurement, and to further lessen financial burdens, during 2017 the Department of Contacts through Procurement Policy Note #31 established that in a Call for Tenders (CfT), a Bid Bond (Tender Guarantee) is to be requested only for those CfTs whose estimated value is equal to, or more than, €2,000,000 exclusive of VAT.</p> <p>In addition, when a CfT is divided into lots, no Bid Bond is to be requested for individual lots having an estimated value lower than €2,000,000 excluding VAT and when the CfT allows submission for one lot, any lot, or all of the lots, the tenderer may add up the values of the individual lots (whose stand-alone value is ≥ €2,000,000) that shall be tendered for and submit one whole Bid Bond covering the total amount.</p> <p>Through Procurement Policy Note 35, the Department of Contacts abolished the Euro50 administrative fee which was charged when requesting rectifications from Economic Operators.</p> <p>http://contracts.gov.mt/en/ProcurementPolicyNotes/Pages/ProcurementPolicyNotes.aspx</p>
<p>IV.3. Quantitative indicators</p>	
<p>Please provide, when available, any quantitative data (statistics, etc.) illustrating the achievements and challenges identified under section IV.1. above</p>	<p>Malta does not have a Business Register, thus, it was not possible to specifically identify the percentage of Small and Medium Enterprises (SMEs) in comparison to the business sector. However, it is estimated that the vast majority of the Maltese Economic Operators are SMEs, as per the definition provided by the Commission Recommendation (2003/361/EC), whereby, SMEs are defined as having less than 250 persons employed and an annual turnover of up to EUR 50 million or a balance sheet total of no more than EUR 43 million.</p> <p>To this effect, according to statistics by the European Commission, the total number of SMEs in Malta is 28,636, which equates to 99.8% share of the Maltese enterprises.</p>

However, it is to be noted that these are estimates for 2016 produced by DIW Econ, based on 2008-2014 figures from the Structural Business Statistics Database (Eurostat). Such data include the non-financial business economy; industry, construction, trade and services. However, it excludes agriculture, forestry and fisheries, as well as the largely non-market service sectors, namely education and health. (Source:http://ec.europa.eu/growth/smes/business-friendly-environment/performance-review_en#sba-fact-sheets).

As part of its data collection strategy, Malta has tried to gather SME statistics in respect of the number and value of procurement contracts (above and below the EU threshold) awarded to SMEs as well as data that relate to SME participation in public procurement which estimate value is equal to or above Euro 5,000 (excluding VAT). However, the Ministries and the Contracting Authorities within its remit were finding it difficult to obtain this information, since no Business Registry is available in Malta.

Nonetheless, some of the Ministries (depending on what data was forthcoming from the Contracting Authorities within their remit) were able to provide partial statistics since the awarded contractors were prepared to indicate whether or not they are an SME or not.

The SME statistics were initially out of the 5208 procurement contracts (through the public procurement and utilities) awarded in 2017. However, since a number of Ministries and/or Contracting Authorities within their remit, had no data available whatsoever, the population was reduced accordingly. Therefore, out of 3541 procurement contracts, 2561 (72.32%) were awarded to SMEs as per below split:

- Below EU Threshold: 2477 Contracts (72.60%) out of 3410 were awarded to SMEs
- Above EU Threshold: 84 Contracts (64.10%) out of 131 were awarded to SMEs

It is to be noted that these totals include all contracts ensued via direct orders, traditional procurement and calls awarded through the ePPS for any awarded procurement that equals or exceeds Euro 5,000.

The above statistics are only to be regarded as an indicative estimate, based only on a partial number of awarded contracts. Furthermore, it is to be noted that the information submitted by the Ministries/Contracting Authorities was not always full data.

For example, if a Ministry had 318 awarded contracts and 82 were awarded to an SME, it does not mean that the balance of 236 contracts was won by large companies; it is very likely that the majority of such contracts were still awarded to SMEs, however, the contractors failed to submit a reply to the Contracting Authorities, in respect of their commercial status.

With regard to procurement below the EU threshold, although the statistics in hand indicate that 72.60% of the contracts were awarded to SMEs, from the feedback obtained from relevant stakeholders, it is estimated that over 80/85% of contracts is awarded to SMEs, in view that the vast majority of bidders are Maltese enterprises whose commercial status is that of SMEs.

However, with regard to procurement above the EU threshold, which in comparison is a smaller proportion in number to the total number of public contracts awarded in 2017, the percentage of awarded contracts to SMEs is slightly lower (64.10%). It is understood that for very large projects, there is a tendency that these are awarded to larger companies or joint ventures/consortia. Nonetheless, through consultation meetings, it was noted, that, the possibility of sub-contracting and/or forming a joint-venture/consortium/partnership as well as the splitting of lots resulted in a larger number of SMEs indirectly partaking in public procurement of a large magnitude.

Malta would like to be able to provide a more realistic scenario in respect to SME participation and awarding within the field of procurement since it is felt that the correct figure should be well over 90%. Thus, as explained in Section VI 'Replicability', a different methodological approach to collecting this information shall be taken into consideration in the next report.

Malta shall seek the possibility of enhancing its current electronic system, so as to be able to elicit the below statistics, through a mandatory field whereby the Economic Operator/Bidder shall be prompted to indicate whether s/he is an SME or not:

- Number of below EU threshold Procurement Contracts awarded to SMEs
- Number of above EU threshold Procurement Contracts awarded to SMEs
- Total value of procurement contracts above EU threshold won by SMEs
- Total value of procurement contracts below EU threshold won by SMEs

iv) Information on the practical implementation of national strategic procurement

<p>V.1 Green procurement ('GPP')</p>	<p>Green Public Procurement ('GPP') is defined as "a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured."² A voluntary target of 50% GPP per Member State in number and value of relevant procedures was proposed by the Commission and welcomed by the Council in 2008.</p>
<p>V.1.1 Qualitative reporting</p>	
<p>Key challenges encountered</p>	<p>One of the key challenges encountered during 2017 has been the shifting of ministries' portfolios which resulted in the relocation of staff; namely GPP coordinators. In fact during 2017, five (5) new GPP coordinators were nominated to this new role. Another key challenge was delivering training to all ministries in lieu of the second National Action Plan on GPP. Although a total of 536 personnel were trained during 2017, the GPP office came across several hurdles such as lack of attendance or attendance of officials who do not work on procurement just to mention two.</p> <p>In terms of measures the GPP Office has provided support to the newly appointed coordinators and has shadowed them in their stead. It has also provided an ad hoc advisory role when the coordinators felt they could not offer such guidance. For training, a specific officer was appointed at the Institute of Public Service to coordinate all 29 training sessions.</p> <p>The difficulties to date are consistent to any year of implementing GPP in Malta. Implementing GPP involves several public officers at various levels. It has therefore been difficult at times achieving targets since the procurement units do not necessarily take decisions.</p>

² Commission Communication (COM (2008) 400) "Public procurement for a better environment"

	<p>The addition of GPP requirements on top of the already complex public procurement practices has proven to be a daunting undertaking, even to the most determined officials.</p> <p>Throughout 2017, it has been persistently observed that the personnel involved at the various stages of the procurement chain are often not conversant with the GPP requirements or procedure. This shortcoming is often the reason as to why tender documents do not include the relevant or mandatory GPP criteria.</p> <p>Another challenge encountered locally in promoting green public procurement is the lack of compliant bidders with some of the GPP criteria. Therefore, contracting authorities tend to not 'green' tenders which fall under the scope of certain non-mandatory GPP criteria. Such criteria mostly include those which fall under the scope of the following product groups: 'Food and Catering Services', 'Electricity', 'Road Construction and Traffic Signs', and 'Street Lighting and Traffic Signals'.</p>
<p>V.1.2. Supporting documents</p>	
<p>Please report any available evidence or supporting document for point V.1, illustrating the measures, achievements or challenges faced, relating to the promotion of green public procurement.</p>	<p>Malta's national definition of green and 'green public procurement' is identical to that adopted by the European Commission. So no supporting documents which are different in this regard are being provided. As far as the National Action Plan is concerned, it is currently being discussed internally prior to it being launched later next year.</p>
<p>V.1.3. Quantitative indicators</p>	
<p>Please provide, when available, any quantitative data (statistics, etc.) illustrating the achievements and challenges identified under section V.1.1 above.</p>	<p>Table overleaf</p>

To the extent possible, these indicators should be further grouped by type of legal problem.

Table 1

2017 – GPP Compliance by Number			
Total number of tenders published	Total number of tenders screened by GPP coordinators	Total number of tenders under the scope of GPP	Total number of tenders compliant with GPP
4346	1072	428	269

Table 1 shows the GPP compliance by number during 2017. It is important to note that the total number of tenders screened by GPP coordinators excludes tenders issued by the Medicines and Medical Devices team within CPSU. In this regard, the GPP office had made an agreement with the Ministry for Health to the effect that GPP reports do not include tenders concerned with the procurement of medicines and medical equipment which are issued by the Medicines and Medical Devices team within CPSU. This also applies to Table 2 with regards to the total value of tenders published.

Table 2

2017 – GPP Compliance by Value			
Total value of tenders published (€)	Total value of tenders under the scope of GPP (€)	Total value of tenders compliant with GPP (€)	% of GDP in terms of 'greened' procurement
358,914,679.6	122,850,431.94	55,598,951.59	0.5

Table 2 shows that for the data collected during 2017, government expenditure amounted to €358,914,679.6 of which €55,598,951.59 were potentially 'greened'. In terms of reaching the 50% target, this transpires that Malta has exceeded the target for tenders including GPP by number (63%). Expressed as a function of tenders by value Malta is broadly in line with the 50% target, having achieved compliance of 45.26% of tenders under the scope of GPP.

Table 3

% Compliance for Mandatory GPP Product Groups - 2017							
Copying and Graphic Paper	Office Equipment	IT	Textiles	Gardening Products and Services	Cleaning Products and Services	Thermal Insulation	Wall Panels
100	81.5		80	61.9	76.7	63.3	93.8

As per results in Table 3, the 100% mandatory target has only been achieved for GPP product group 'Copying and Graphic Paper'. As for the non-mandatory criteria, the national target for 30% was achieved for the following product groups: 'Furniture', 'Construction', 'Hard Floor Coverings' and 'Windows, Glazed Doors and Skylights'. It is important to note that during 2017, no tenders fell under the scope of the non-mandatory GPP product groups for 'Mobile' and 'Combined Heat and Power'.

Measures to promote further compliance of tenders falling within the scope of GPP are included in the second National Action Plan whereby support mechanisms and incentives to foster awareness and knowledge on the subject are intended to be undertaken both with the Contracting Authorities and Economic Operators.

V.2 Socially responsible public procurement ('SRPP')

Socially Responsible Public Procurement ('SRPP') is defined as procurement that takes into account one or several social considerations for advancing social objectives. SRPP covers a wide spectrum of social considerations, such as for example employment opportunities, decent work conditions, compliance with social and labour rights, social inclusion, equal opportunities and accessibility.

<p>V.2.1 Qualitative reporting</p>	
<p>Key Challenges Encountered</p>	<p>Malta has included the concept of Socially Responsible Public Procurement through the following measures. In addition, discussions have ensued with relevant stakeholders but are still in the early stages.</p> <p>Reserved Contracts As per MT’s Public Procurement Regulations (LN352-2016), Reserved Contracts, which are a form of SRPP are defined as follows: <i>“A contracting authority may reserve the right to participate in public procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons or may provide for such contracts to be performed in the context of sheltered employment programmes, provided that at least 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.”</i></p> <hr/> <p>Working Conditions For the past years, since 23rd December 2014, in an effort to mitigate precarious working conditions, the Government, in collaboration with the Department of Industrial and Employment Relations (DIER), assisted by the Department of Contracts have published a number of Circulars, whereby the minimum hourly rates payable to the contractor working in the field of precarious services have been established. In addition, at times, the said Circulars also established the minimum hourly rates payable by the contractors to their employees.</p> <p>Further to the above, experience has shown that in numerous instances, Economic Operators submitting an offer were bidding with the same exact rate/price, that is, the identical minimum rate as per the aforementioned circulars.</p>

Thus, in order to overcome this challenge and continue to curb precarious employment, through National Policy (reflected also in a Contracts Circular), in April 2016, it was established that such services shall be procured through the BPQR Award Mechanism. In fact, a number of procurement calls made reference to the said documentation as their justification for utilising the BPQR approach.

It was deemed that the BPQR approach was the best tool to safeguard employees as well as attain a high standard service since a Contracting Authority may establish a number of other criteria (such as the quality, delivery, and after-sales) in addition to the price. Each chosen criterion is given a relative weighting by the Contracting Authority, reflecting its relative importance. Thus, identifying the tender that offers the best value-for-money.

In order to assist the Contracting Authorities to appropriately develop criteria for the BPQR approach, a Procurement Policy Note (PPN) illustrating model award criteria that may be utilised was concurrently published with the aforementioned Contracts Circular.

The utilisation of the BPQR Award Mechanism is still deemed to be relatively new; thus, invariably, any BPQR criteria for quotations and tenders are screened and approved by the Department of Contracts prior to publication.

The precarious services which have pegged rates and a specific Award Mechanism are as follows:

- Cleaning
- Care Working
- Clerical Duties
- Security Guards
- Street Sweeping

	<p>However, in order to further advance social objectives in respect of employment opportunities, the below additional services, which relate mostly to employment on the ferry service between Malta and Gozo, have had their rates pegged and the BPQR award mechanism was adopted, as and when necessary:</p> <ul style="list-style-type: none"> • Cabin Attendants • Seamen • Customer Service Sales • Mooring Men • Cafeteria Attendants <p>Malta is fully aware that eradicating precarious employment is not an easy feat and recognises that certain contractors try to bypass the system or adopt unlawful payment conditions or below the set minimum standards, thus, part of the DIER's role is to monitor conditions of employment and process workers' complaints. This involves an ongoing programme of inspections to target particular sectors or to investigate specific complaints.</p>
<p>Please report any available evidence or supporting document for point V.2.1 illustrating the measures, achievements or challenges faced, relating to the promotion of SRPP.</p>	<p>Reserved Contracts</p> <p>The following link directs the reader to national Subsidiary Legislation SL 174.04, specifically LN 352-2016: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9532&l=1</p> <ul style="list-style-type: none"> • Reserved Contracts and Contracts for Social and Other Specific Services: Articles 161 till 165 <p>Working Conditions</p> <p>The following is the link to the Circulars issued by the Department of Contracts; https://contracts.gov.mt/en/Circulars/Pages/Circulars.aspx</p>

The Contracts Circulars to date that relate to precarious employment are as follows:

- CC No. 27/2014
- CC No. 04/2015
- CC No. 20/2016
- CC No. 04/2016
- CC No. 01/2017
- CC No. 07/2017
- CC No. 08/2017
- CC No. 20/2017

The Procurement Policy Note that relates to precarious employment is PPN #25, and the link to such policies is as per the following link;

<http://contracts.gov.mt/en/ProcurementPolicyNotes/Pages/ProcurementPolicyNotes.aspx>

Equal Opportunities

With regard to socially responsible clauses, as part of the General Rules Governing Tenders, Malta has the below article in respect of Gender Equality, which applies to all Call for Tenders:

In carrying out his/her obligations in pursuance of this contract, the tenderer shall ensure the application of the principle of gender equality and shall thus 'inter alia' refrain from discriminating on the grounds of gender, marital status or family responsibilities. Tenderers are to ensure that these principles are manifest in the organigram of the company where the principles aforementioned, including the selection criteria for access to all jobs or posts, at all levels of the occupation hierarchy are amply proven. In this document, words importing one gender shall also include the other gender.

V.2.3. Quantitative indicators																													
<p>Please provide, when available, any quantitative data (statistics, etc.) illustrating the achievements and challenges identified under section V.2.1 above.</p>	<p>Since all BPQR approvals are channelled through the Department of Contracts, Malta is submitting the below table illustrating the number of screened procurement utilising the BPQR (socially responsible award criteria) approach iro precarious services;</p> <p>Screened in 2016 – 37 Procurements</p> <table border="1" data-bbox="810 491 2047 703"> <thead> <tr> <th>Type of Service</th> <th>Cleaning Services</th> <th>Security Guards</th> <th>Clerical Duties</th> <th>Care Working</th> <th>Mooring Men</th> <th>Seamen</th> </tr> </thead> <tbody> <tr> <td>No. of Screened Procurement</td> <td>19</td> <td>13</td> <td>1</td> <td>2</td> <td>1</td> <td>1</td> </tr> </tbody> </table> <p>Screened in 2017 – 47 Procurements</p> <table border="1" data-bbox="810 826 2047 1038"> <thead> <tr> <th>Type of Service</th> <th>Cleaning Services</th> <th>Security Guards</th> <th>Clerical Duties</th> <th>Care Working</th> <th>Mooring Men</th> <th>Seamen</th> </tr> </thead> <tbody> <tr> <td>No. of Screened Procurement</td> <td>23</td> <td>13</td> <td>6</td> <td>3</td> <td>1</td> <td>1</td> </tr> </tbody> </table>	Type of Service	Cleaning Services	Security Guards	Clerical Duties	Care Working	Mooring Men	Seamen	No. of Screened Procurement	19	13	1	2	1	1	Type of Service	Cleaning Services	Security Guards	Clerical Duties	Care Working	Mooring Men	Seamen	No. of Screened Procurement	23	13	6	3	1	1
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V.3 Public procurement of innovation	<p>An innovative solution is defined in 2014/24/EU Art.2 (1.22) as "a new or significantly improved product, service or process". This includes not only those solutions resulting from R&D but also those solutions resulting from activities, "including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations."</p>																												

<p>V.3.1 Qualitative reporting</p>	
<p>Key challenges encountered</p>	<p>In Malta, our Subsidiary Legislation SL 174.04, specifically LN 352-2016 (Public Procurement Regulations), does not utilise the terminology ‘Innovative Procurement’. However, it is generally explained as follows: ‘Procurement of Innovation means the purchase of goods and services that do not yet exist, or need to be improved, and hence need research and innovation to meet the specified user needs.’ Such procurement would require new instruments and procedures.</p> <p>In line with the above, LN 352-2016 makes reference to ‘Innovation Partnership’, whereby a Contracting Authority, once the necessary approvals are granted by the Director of Contracts, may utilise such a procedure in order to procure products/services/works that are not readily available on the market.</p> <p>As yet Malta has not carried out any Innovation Partnership Procurement. However, the Department of Contracts is working in collaboration with the Agriculture Ministry to publish a tender through the use of such an Innovative Partnership in search of new technologies of treatment of waste liquid manure slurry since no such treatment plant exists on the island and very few technologies exist in Europe.</p> <p>As allowed by Malta’s Public Procurement Regulations a number of procedures may be resorted to when the:</p> <ol style="list-style-type: none"> a) needs of the Contracting Authority cannot be met without adaptation of readily available solutions; b) procurement includes design or innovation solutions; <p>The procedures in respect of the above are as follows:</p> <ul style="list-style-type: none"> • Competitive Procedure with Negotiation • Competitive Dialogue

	<p>Although not specifically Innovative Procurement, Contracting Authorities in Malta are utilising the Preliminary Market Consultation (PMC) to seek or accept advice from independent experts/authorities/market participants with respect to best practices in the concerned field. In fact, through a PMC, participants are encouraged to recommend changes to the project if there exists a better or more innovative approach. However, a PMC shall not lead to a contract.</p> <p>It is the opinion of the Department of Contracts that Contracting Authorities are not well versed on what constitutes Innovation Procurement, thus, they are unaware of how to reap its benefits.</p> <p>Thus, in the coming years, the Department shall endeavour to set up workshops with different stakeholders, so as to discuss Innovation Procurement in relation to:</p> <ul style="list-style-type: none">• Definition and Applicability• Legal Framework• Designing Tenders• Selection Criteria• Developing Technical Criteria (performance & functional)• Variant Solutions• Award Criteria• Post-Contract Monitoring <p>The consultation sessions shall serve as the first measure to address the main challenge, that being, a concrete definition and understanding of Innovation Procurement and its applicability. Further to such discussions, the next step shall be the development of an Innovation Procurement document.</p>

<p>V.3.2. Supporting documents</p>	
<p>Please report any available evidence or supporting document illustrating the measures, achievements or challenges faced, relating to the promotion and implementation of innovation procurement.</p>	<p>Currently Malta does not have a National Action Plan in respect of Procurement of Innovation. However, the Department of Contracts, shall endeavour to develop a comprehensive Innovation Procurement document which shall as a minimum provide:</p> <ul style="list-style-type: none"> • Definition (including innovative solutions as well as R&D) • Applicability • Advantages • Procurement Procedures • Innovation-Friendly Tools <p>In addition, the said document shall provide guidelines of how to implement the procurement procedures that relate to the Procurement of Innovation.</p> <p>The following link directs the reader to national Subsidiary Legislation SL 174.04, specifically LN 352-2016: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9532&l=1</p> <ul style="list-style-type: none"> • Competitive Procedure with Negotiation: Articles 123 till 127 • Innovation Partnership: Articles 128 till 139 • Competitive Dialogue: Articles 140 till 149 <ul style="list-style-type: none"> • Preliminary Market Consultation Article is 47

v) Replicability

This section should provide information allowing anyone to *fully* replicate the quantitative results presented in the report.

<p>Links to datasets used to prepare the report</p>	<p>No Links to datasets are available for this first report.</p> <p>However, the Department of Contracts shall endeavour to initiate discussions with its service provider (European Dynamics) so as to possibly create an open source data, similar to the ‘Tenders Electronic Daily’ database, whereby data is extracted from the National Contract Notice and the National Contract Award Notice. Such a procedure would entail a number of enhancements to the current Government’s e-procurement platform, better known as the Electronic Public Procurement System (ePPS).</p> <p>Further to the above, the Department shall seek the possibility of attaining additional statistics required in this template through possible enhancements to the ePPS, whereby both the Contracting Authorities and the Economic Operators/Bidders will be required to fill-in new mandatory fields as necessary.</p> <p>As one may appreciate, such a revamp to the ePPS requires a substantial amount of funding, in addition to high-ranking decisions. Therefore, it is not yet known whether the next EU Procurement Monitoring Report, due by 18th April 2021, shall be based on an electronic gathering of data.</p> <p>Furthermore, the Department shall also initiate discussions with the National Statistic Office (NSO) for further guidance on how to systematically and methodically collect data for the next report.</p>
<p>Files used to obtain the results from the datasets</p>	<p>The Department of Contracts has compiled the quantitative data through the collection of procurement statistics submitted by each of the Ministries forming part of the Maltese Government. Each submission included one (1) consolidated Procurement Monitoring Report, whereby each Ministry collected and validated the returns of each Contracting Authority within its remit.</p> <p>It is to be noted that each quantitative data report received at the Department had to be filtered, further validated and consolidated accordingly.</p>

**Files used to obtain the results from the datasets
Cont...**

At times, even consolidation of the Contracting Authorities within the remit of specific Ministries had to be done by the Department.

The above-mentioned data was gathered through the submission of filled-in excel sheet templates. Therefore, manual tasks related to counting, tallying and other statistical procedures had to be carried out as necessary.

To this effect, as per Annex 3 enclosed with this report, the Department of Contracts is submitting the 'Main Data Sheet' which includes the excel files of the totals of the raw data as submitted by the Contracting Authorities, split per Ministry across Malta's four (4) Legal Notices, as applicable. It is to be noted that each Ministry incorporates the procurement of all Contracting Authorities within its remit.

The 'Main Data Sheet' contains the below statistics as follows:

Data Captured	Title of Tab in the Main Data Sheet
Number and Value of Awarded Procurement	Awarded Procurement
Number and Value of Awarded Open Procedure Procurement	Open – Award Procurement
Graph representing the Awarded Open Procedure Public Procurement	Open – Public Procurement - Graph
Graph representing the Awarded Open Procedure Utilities Procurement	Open – Utilities - Graph
Number and Percentage of Negotiated Procedures without prior Publication	Negotiated Procedures
Number of Awards split by Award Mechanism	Award Mechanism
Number of Bidders	Bidders
Number and Percentage of Sole Bidders	Sole Bidders
Number of Awards split by Funding	Funding
Number of Awards split by Nature of the Contract	Nature of the Contract

It is to be noted that since the quantitative data was gathered bi-annually, some of the excel sheets provided are split accordingly, per Ministry.

Annex I:

Methodology for **Estimating the Value of Procurement** which would have been covered by the directives if its value had exceeded the relevant thresholds

1. Classification and methodology

1.1. General approach:

1.2. Source of data:

Scope:		
Source of data:	Below national publication thresholds [✓]	Above national publication thresholds [✓]

2. Methodology description

Data Not Available

Annex 2:

i) Background

In June 2017 a General Election was held, whereby three (3) Ministries were dissolved, a new Ministry was set-up and portfolios reshuffled as necessary. Therefore, in terms of collecting data, Contracting Authorities had partial data under a pre-election ministry and partial data under a post-election ministry.

Between January and June (up to the General Elections) 2017, Malta had 17 Ministries (composed of 161 Contracting Authorities), 68 Local Councils and 5 Regional Committees. Post-election, the number of Ministries was reduced to 15, totalling 163 Contracting Authorities.

As already explained in section 'Scope of Report', with regard to thresholds, Malta's Legal Notices take into account a number of departmental thresholds, however, it is to be noted that the quantitative statistical data is being submitted on simple totals below and above the EU thresholds, split per Ministry, each incorporating the Contracting Authorities within its remit. This is in view that compiling the report by each departmental threshold was not possible since only part of the ministries were decentralised, thus, various staggered thresholds were applicable across Ministries.

Lastly, it is to be noted that Malta's Procurement Monitoring Report incorporates, *whenever possible*, the totals of procurement, across all applicable thresholds above €5,000 excluding VAT, for all four (4) National Legal Notices

- Directive 2014/23/EU: Concessions Contracts - L.N. 353 of 2016: Concession Contracts Regulations
- Directive 2014/24/EU: Public Procurement - L.N. 352 of 2016: Public Procurement Regulations.
Since October 2016, LN 352/2016 (S.L. 174.04) has been amended by Legal Notices 155 of 2017 and 233 of 2017.
- Directive 2014/25/EU: Utilities Procurement - L.N. 351 of 2016: Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations.
- L.N. 350 of 2016: Emergency Procurement

ii) Methodology Process

Further to the receipt of the Procurement Monitoring Report Template issued by the European Commission, Malta proceeded to gather and systematise the collection of relevant procurement statistics across Government. In view of Malta's size, the Department of Contracts opted out of utilising a sample-based methodology for the quantitative data; instead, the information collected was based on all of Malta's Contracting Authorities.

To this effect, MT published Contracts Circular no. 13/2017, whereby each Contracting Authority was requested to submit a Procurement Monitoring Report detailing the procurement activities awarded during the given period, i.e. between 1st January 2017 and 31st December 2017. The said Procurement Monitoring Report was composed of a set of templates structured in such a way so as to facilitate and harmonise reporting across all Ministries/Contracting

Authorities. Although the basis of the report related to the quantitative aspect, the Department of Contracts tried to elicit additional information of a qualitative nature, so as to be in a better position to substantiate its report to the European Commission.

The Procurement Monitoring Report was to be completed by all Contracting Authorities (including Schedule 3 Entities); thereafter, they were to submit such a report to their respective Ministry, whereby the latter was to collate, validate and consolidate the information from all the Contracting Authorities within its remit and submit them collectively to the Department of Contracts. Since the 68 Local Councils and 5 Regional Committees constitute a substantial amount, rather than including them under the respective Ministry, they have been extracted separately as a main Contracting Authority.

The Ministries (especially in cases where an MPU has already been established) were directly involved in this statistical exercise since they have tighter control and a clearer, holistic overview of the specific procurement activities of each Contracting Authority within their remit, thus, reducing the possibility of unresponsiveness and incorrect statistical information. In addition, reporting to the Department of Contracts, by each Ministry, was to take place bi-annually, so as to allow the Department to analyse the responses obtained and rectify any misnomers, if and when possible.

In order to assist the respective Contracting Authorities with the compilation of the templates, thus, lessening the issues of missing data and/or erroneous data, a 'Supplementary Documentation' booklet defining the salient terminology and guidance to the compiler was also enclosed with said Contracts Circular. Furthermore, the Contracting Authorities were encouraged to submit any queries to Department via email or telephone. Alternatively, each Ministry was also given the possibility to request a meeting with the Department of Contracts so as to attain a clearer direction when compiling the statistical data.

Upon receipt of the Procurement Monitoring Reports from each Ministry, the Department of Contracts proceeded to consolidate the returns submitted. Annex 3, which contains the 'Main Data Sheet', portrays the global statistical information per Ministry. It is to be noted that at times, certain statistics are presented as captured, thus, biannually.

The data for this report could not be collected directly via the electronic public procurement system (ePPS), first and foremost because the electronic platform is not specifically a database, thus, enhancements would be required if one is to reap the benefits of record keeping. Secondly, the applicable numerous thresholds and the reshuffling of portfolios, as a result of the general elections made is even more difficult to elicit data electronically. Therefore, most of it had to be done manually, whereby, the totals were retrieved by manually adding all the contract submissions of the Contracting Authorities.

Furthermore, through this exercise, Malta, as much as possible, sought to capture procurement data across all contracts, including those ensued via direct contracts, traditional procurement, calls issued on the Malta Government Gazette and calls awarded through the ePPS. In addition, it is to be noted that the Procurement Templates forwarded to the Contracting Authorities did not request a division between traditional or electronic calls for competition. Although traditional procurement is very minimal, this detail will be taken into consideration for the next report.

iii) **Non-Sampling Errors**

Malta's methodology is based on the full population, i.e. all the Contracting Authorities across Government. Therefore, any possible errors are not attributable to sampling fluctuations. To the contrary, the methodology may be subject to a number of non-sampling errors, which refers to the presence of any factor, whether systemic or random, whereby the submitted data deviates from the 'true' value, thus, not accurately reflecting the population. Research lists a number of reasons that may lead to non-sampling errors. The following are the major ones:

- Data Processing Errors; Tabulation/Coding Data
- Errors in Estimation Methodology
- Poorly Designed Surveys/Questionnaires/Forms
- Defective Data Collection/Verification Methods
- Duplication of Subject/Response
- Errors due to Non-Responsiveness
- Inadequate Scrutiny of Primary Data
- Inconsistent Data/Inadequate Data Specifications
- Data Clarification Errors
- Lack of Trained Researchers
- Lack of Supervision of Primary Workforce

The Department of Contracts took note of any possible non-sampling errors and tried to mitigate them, as and when possible, by applying any recommended solutions, thus, pre-empting their occurrence.

Simple Pilot Study

Further to the above, first and foremost, prior to publishing the set of templates (forming part of Contracts Circular no. 13/2017), a Simple Pilot Study was carried out within the Department, whereby a number of officials were requested to evaluate each of the templates and provide feedback in respect of their strengths and weaknesses. Based on the preliminary comments received, the templates were adjusted as necessary.

Although such a procedure assisted greatly in improving the templates designed, in hindsight it was deemed more appropriate had the pilot taken place across Ministries, since feedback would have been more wide-spread, especially in view that procurement is such a dynamic and an all-encompassing field.

Non-Sampling Errors

With regard to **Coverage Errors**, which are errors due to divergences between the frame population and the target population, the Department of Contracts deduces that it is very unlikely that the submitted statistics have been subject to such errors because the Ministry was specifically requested to contact all the Contracting Authorities in its remit and in the eventuality that no procurement awards took place in the given period by a specific authority, a nil reply was still to be provided.

Furthermore, Template 1 (T1) requested that the Ministry lists the name of the Contracting Authority and to note whether a report was submitted; in the rare cases that a 'no' was provided for a specific authority, the Department of Contracts requested that the Ministry enforces the submission since data is compulsory and crucial to achieve full compliance as specified in the European Commission's Directives. However, it is to be noted that a small number of Contracting Authorities rather than submitting a bi-annual report, especially in view of Malta's General Elections in June 2017, submitted one (1) report for the whole year under review.

Unfortunately, non-sampling errors are often difficult to eliminate entirely, however, when consolidating the quantitative statistics submitted by the Ministries, the Department of Contracts tried to reduce errors as much as possible.

The Department of Contracts is of the opinion that the Procurement Monitoring Report was probably subject to the following Non-Sampling Errors:

- Measurement
- Non-Response
- Processing

A data collection questionnaire/approach should be valid, i.e. it measures accurately what it professes to measure. However, **Measurement Error** (or Observational Error), which is the difference between a measured value of a quantity and its true value, are a regular occurrence. These types of errors occur during data collection in view of inaccuracies of measurement, for example erroneous reading, calculation, or recoding of numerical values. It may occur due to incorrect recoding of an accurate response and the correct recoding of an inaccurate response.

With regard to Measurement Error, the Department construes that such errors are attributable to all parties (Contracting Authorities, Ministries and Department itself) and are not easily deduced. In addition to the above-mentioned errors, the Department notes that a number of Ministries/Contracting Authorities provided an incorrect computation of percentages, as well as incorrectly interpreting the data being requested.

When consolidating the statistics to create the 'Main Data Sheet' (Vide Annex 3), the Department of Contracts tried to reduce Measurement Errors by adopting the following verifications:

- Double checking of measurements for accuracy by inputting data on different worksheets and comparing them accordingly
- Making sure that formulas are correct, through multiple checks as necessary
- Multiple measures for the same indicator were utilised, through the completion of more than one template

Furthermore, whenever (if at all) possible, upon noticing a possible error, the Ministry/Contracting Authority was contacted and the information, if available, was re-submitted accordingly.

Non-Response Errors occur as a result of missing values present in the final data collected; this may be due to a respondent who does not provide an answer, either out of unwillingness to do so or out of the inability to reply. This error, in fact, relates to the difference between the statistics computed from the collected data and those that would be computed if there were no missing values. The Department opines that this error was mostly due to the inability to reply, tight timeframes, and unavailable information from third parties.

Based on the submitted Procurement Monitoring Reports, non-responsiveness was minimal; it mostly related to justifications in respect of the utilisation of the BPQR Award Mechanism, Direct Contracts and awards established via the Negotiated Procedures without prior Publication procedure. In addition, the most frequent non-response error related to SMEs statistics, specifically to 'Contracts (and Percentages of Contracts) Awarded to SMEs' and 'SME Participation (and related Percentages)'. Whenever possible, upon noticing a missing value, the Ministry/Contracting Authority was contacted and the information, if available, was submitted accordingly.

Nonetheless, this does not exclude that there were some instances whereby other parts of the templates were left unanswered and no further information was forthcoming from the Ministries/Contracting Authorities.

Lastly, it was also noted that a times, totals were not provided. Therefore, such calculations had to be tackled at the Department's end.

Another type of non-sampling error attributable to all involved parties (Contracting Authorises, Ministries and Department itself) is **Processing Errors**, which occurs during the data processing stages, and relates to errors during data entry, data editing (checks, corrections), coding, and imputation. Data editing is the process whereby erroneous values are detected because they violate logical rules or because there are doubts about their validity. On the other hand, Imputation is the process by which values are assigned as a replacement for missing responses. Whenever possible and allowed, such data was subsequently corrected by plausible values.

Furthermore, it is pertinent to point out that at times although the data was to be submitted by each Ministry to the Department of Contracts as consolidated, this was not always the case. Thus, in order to alleviate the possible burden on the Ministries/Local Councils, the consolidation was undertaken by the Department. Hence, potential processing errors were slightly increased.

iv) Methodology Description for Specific Quantitative Data

The methodology adopted for all quantitative statistics is as described above; nonetheless, through the below description Malta shall explain how and what specific total numbers and values as requested in the Procurement Monitoring Reports incorporate.

Total Number of Procurement Procedures

The number of procurement procedures (i.e. the number of notices announcing a call for competition) was obtained through the ePPS during 2017. However, it is to be noted that these procurement processes, at the time of completion of this report, were not all finalised since some of them are still in the Evaluation Process or the Contract Award Notice has not yet been published. Furthermore, some of these calls have been cancelled.

It is to be noted that this amount of procurement notices does not include any calls for competition that may have been published in a traditional manner through the Malta Government Gazette; for example the Emergency Procurement calls was not retrievable from Government's e-procurement platform.

Total Number and Value of Awarded Public Procurement Contracts

The number and value of awarded public procurement contracts incorporates the manual summation of the contract submissions of all Contracting Authorities across all directives (including MT's Emergency Procurement Legal Notice). Therefore, this total includes all contracts ensued via direct contracts, traditional procurement, calls issued on the Malta Government Gazette and calls awarded through the ePPS. In addition, this total includes contracts awarded in 2017 for which the procurement notice was published prior to 2017 as well as a number of awarded modifications for which the original contract was awarded prior to 2017.

In addition, the Procurement Monitoring Report Template did not specify clearly how fee-based contracts awarded on for example rates per hour were to be inputted or calculated in relation to a total award value. Such contracts are normally accompanied with a maximum capping of value of contract based on the estimate quantities. Thus, when possible, for such contracts, the capped contract value was deemed to be the awarded value. Nonetheless, it is to be noted that this data was not fully available for all fee-based contracts at the time of compilation of this report.

Total Number and Value of Public Procurement Contracts utilising Open Procedure

The number and value of awarded open procedure public procurement contracts incorporates the manual summation of the contract submissions of all Contracting Authorities across all directives (including MT's Emergency Procurement Legal Notice but excluding Concession Awards).

Therefore, this total includes all procurement awarded values of open procedure contracts ensued via traditional procurement, calls issued on the Malta Government Gazette and calls awarded through the ePPS. In addition, this total includes contracts awarded in 2017 for which the procurement notice was published prior to 2017.

However, it is to be noted that, since the Procurement Template did not specify clearly what the 'Total Value of Procurement Contracts in € utilising the Open Procedure' should include. Some Ministries/Contracting Authorities did not include any modification values to the original contract value when submitting such data to the Department of Contracts. As a result, Malta is not necessarily submitting the full total value of procurement utilising the open procedures.

Total Number and Percentage of Contracts awarded to SMEs

The total number and percentage of contracts awarded to SMEs incorporates the manual summation of the submissions of all Contracting Authorities across the Public Procurement and Utilities directives only. Therefore, this total includes all such contracts ensued via direct contracts, traditional procurement, and calls awarded through the ePPS. In addition, this total includes contracts awarded in 2017 for which the procurement notice was published prior to 2017 as well as a number of awarded modifications for which the original contract was awarded prior to 2017.

It is to be noted that since a number of Ministries and/or Contracting Authorities within their remit, had no SME data available whatsoever, the population (i.e. the total number of awarded contracts) of this indicator, at times was reduced accordingly. In addition, the information submitted by the Ministries/Contracting Authorities was not always full data because the contractors failed to submit a reply to the Contracting Authorities, in respect of their commercial (SME or not) status. However, when percentages were worked out, the non-response from contractors *was not* excluded from the totals.

Other Quantitative Statistics

With regard to the statistics of the below indicators, it is to be noted that data incorporates the manual summation of the submissions of all Contracting Authorities across the Public Procurement and Utilities directives only. Thus, the Emergency Procurement and the Concession Awards were excluded.

- Number and Percentage of Negotiated Procedures without prior Publication
- Number of Awards split by Funding (Local vs EU)
- Number of Awards split by the Nature of the Contract

On the other hand, with regard to the statistics of the below indicators, it is to be noted that data incorporates the manual summation of the submissions of all Contracting Authorities across the Public Procurement and Utilities directives for *open* procedures only. The Emergency Procurement and the Concession Awards were excluded.

- Number of Awards split by Award Mechanism
- Number and Percentage of Sole Bidders
- Number of Bidders