

MALTA

KEY FACTS AND FIGURES

Key Facts and Figures in Malta						
Overview	Total procurement 700,000,000€		Procurement % GDP 10%		2013 GDP 7,508,300,000€	Contracting authorities 152
Procedures applied	Open 100%	Restricted 0%	Negotiated procedure with call 0% no call 0%		Competitive dialogue 0%	Direct award 0% Other 0%
Share of contract notices by buyer	National 86%		Regional/local 0%		Body governed by public law 3%	Other 11%
Contract type	Services 21%		Works 9%		Supplies 70%	Framework agreement 5%
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Not met
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Mandatory	Uptake rate 1%
Perceived corruption	Corruption widespread in society			Corruption widespread in procurement		
	Businesses 74%		Individuals 83%		At national level 57%	At local/regional level 50%
TED indicators	Value of tenders 250,053,909€		Of total procurement 36%		# contract notices 314	# contract awards 208
Other indicators	Received single bid 11%		# days for decision 115.4		Price only criteria 97%	MEAT criteria 3%
	Won by foreign firms 10%		Related to EU funds 49%		Joint purchase 71%	Central purchasing Yes, DoC

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Malta is the smallest country of the EU in both population and size, allowing for a relatively centralised governmental system, including in the exercise of procurement. There is a single departmental agency charged with all national-level procurement responsibilities, and which also acts as a central purchasing body. The majority of contracts are still handled by individual central and local government contracting authorities.

Since approval of its Partnership Agreement in 2014, Malta has hired additional skilled personnel and put in place a training regime to bring their administrative capacity up to the level foreseen in their Action Plan. As a result, it has now fulfilled all the procurement *ex-ante* conditionality criteria.

DESCRIPTION OF FEATURES

Legal features of public procurement system

EU Directives 2004/18/EC and 2004/17/EC have been transposed into Maltese Law by Legal Notice 296/2010 and Legal Notice 178/2005 respectively. The Public Procurement Regulations (Legal Notice 296/2010) rules the contracts above and below the EC thresholds. In addition, Legal Notice 255 of 2009, as amended by Legal Notices 416 of 2011 and 475 of 2014, regulates tendering procedures for Local Councils.

Maltese Law defines multiple levels of national thresholds below EU thresholds. For two of these thresholds, simplified procedure is allowed: for contracts of less than EUR 2,500, direct award is allowed and for contracts between EUR 2,500 and EUR 6,000, restricted or negotiated procedure with or without publication can be applied. In 2012, contracts awarded below the EU thresholds accounted for approximately 60% of the total amount of contract award¹.

Institutional system

Within the Ministry of Finance, the Department of Contracts (DoC) is the single centralised public procurement body in Malta. It is responsible for drafting procurement legislation and policy, preparing guidelines and instructions, collecting statistical data and preparing annual monitoring reports on the functioning of the procurement system. In addition, the DoC provides legal and other advice to contracting authorities jointly with the Attorney General.

The DoC also acts as the central purchasing body for all contracts above EUR 120,000 for most of the contracting authorities listed in the Public Procurement Regulationsⁱⁱ. This does not include local councils, which are empowered to administer their own public procurement, nor contracts between EUR 6,000 and EUR 120,000, which are procured through departmental calls for tender with limited intervention from the Department of Contractsⁱⁱⁱ. Ad-hoc committees can also be established by the DoC to monitor the procurement process for contracts exceeding EUR 120,000. Within the DoC, the General Contracts Committee plays a supportive role by collecting information on and investigates claims of irregularities, and making recommendations on tender decisions to the DoC and local contracting authorities.

The main oversight bodies are the National Audit Office (NAO) and the Internal Audit and Investigation Department (IAID). The NAO conducts an independent supervision of public organisation, including public procurement. It regularly issues thematic analysis of the performance of the public procurement system, including tenders carried out within EU-funded programmes. Within the NAO, the Public Accounts Committee (PAC) has an implicit role in public procurement, due to its remit to scrutinise and assess the financial administration of the public sector and to promote improvements where necessary, and encourage the economic, efficient and effective utilisation of public sector resources. The IAID carries out audits on several areas of government policies. In 2012, it conducted 32 audits including procurement in construction work and education^{iv}. IAID reports are not made publicly available.

The Public Contracts Review Board is the main body responsible for receiving complaints from bidders related to procurement contracts whose value exceeds EUR 12,000. This threshold is set to decrease to EUR 10,000 between 2015 and 2016 in line with new EU rules. Its decisions are binding for all parties and the award of the contract has to comply with this decision. Appeals of the decisions issued by the Review Board or the DoC can be brought before the Court of Appeal^v. More than 57,000 appeals on awarded tenders were processed by the board in 2014. The number of hearings adjudicated totalled 134, of which 102 were rejected and 32 were upheld^{vi}. Complaints for contracts below EUR 12,000 have to be brought before the Local Councils Tendering Appeals Board, which is responsible for hearing and deciding on such appeals.

Key issues that have a bearing on administrative capacity

Human resources: Human resources levels and the internal organisation of the DoC have experienced several changes over the past few years reflecting the broader reorganisation of the public procurement system, in particular the introduction of e-procurement and the management of EU Funds.

The DoC is composed of 42 employees divided among various sub-departments^{vii}. In 2013, an internal operations review recommended that the existing workforce would need to be expanded to address the increasing workload due to the new EU-funded programmes for 2014-2020. Consequently, several recruitments were completed especially for high level positions. In addition, 10 procurement managers were recruited and trained. Some of them will be deployed in various Ministries in order to increase the overall public procurement knowledge of the State Administration^{viii}. The DoC has also strengthened its internal capacity, creating a dedicated position of e-

procurement manager and strengthening the IT and information security services^{ix}. The DoC has also recently required the creation of a green public procurement function within contracting authorities in order to implement the national strategy on green public procurement^x.

At the contracting authority level, lack of administrative capacity is likely to be a key factor in Malta's above average procedure durations. Although there has been considerable progress in recent years, the current average length of 115 days in 2014 remains above EU norms.

Structures: The Centre for Development, Research and Training (CDRT) is the body responsible for the training of public administration officials on a wide range of topics. It provides 20 hour long trainings on public procurement regulations and procedures, a one day training for contracting authorities, and specific trainings on e-procurement and green procurement. It works with the DoC to design trainings relevant to the needs of procurement practitioners and to promote trainings among them.

In addition, the Malta College for Arts, Science and Technology, in cooperation with the DoC and CDRT, has launched a Diploma in Procurement and Supplies. The program is available to all public officers in charge of procurement process and focuses on negotiation, planning, risk management and data analysis.

Training: Training sessions on public procurement issues are provided for DoC employees, contracting authorities and economic operators. DoC employees benefit from six seminar modules dealing mainly with local legislation. In 2013, three modules were organised gathering 100 public officials. The CDRT also offers a two half day course for public procurement managers in contracting authorities. 19 public officials attended this course in 2013. The DoC encourages all of its employees to attend at least one training course organised by the CDRT each year and notes that most of them attend several courses^{xi}. In addition, some public procurement officials at the State level and especially employees of the DoC follow trainings on public procurement abroad. Finally, in March 2015, training on procurement regulations was delivered to prospective candidates of local council elections, which are will be held in April 2015.

E-procurement procedures are also the subject of a dedicated training provided to public procurement officials at all levels and economic operators. As regards economic operators, the DoC is responsible for the training in collaboration with the CDRT. Workshops with economic operators are organised by the DoC to discuss the e-procurement issues they might face and support them particularly for the use of the e-procurement portal^{xii}. A number of such workshops were organised just prior to the launch of the e-procurement portal to enable economic operators to familiarise themselves with the system and gain confidence in using it. Moreover, a workshop is organised in line with each tender launched on the e-procurement system, for prospective bidders to be able to raise any issues or questions with respect to the tool.

Both procurers and economic operators also benefit from access to trainings focused on green public procurement^{xiii}.

Systems/tools: The main source of information and guidance on public procurement matters is the website of the DoC. It provides notifications and award information for economic operators, but also procurement policy notes, overall introduction to the public procurement legislation and relevant circulars issued by the Department. The website also offers information on the workings of the General Contracts Committee and the Public Contracts Review Board.

In addition, the e-tenders portal of the Maltese Government^{xiv} publishes practical information on public procurement. They include a calendar on e-procurement information sessions organised by the DoC and provide economic operators with

interactive walkthroughs and tender preparation tools to participate in e-procurement^{xv}.

E-procurement

Maltese law has already made all three major elements of e-procurement, e-notification, e-access and e-submission, mandatory for contracts above EUR 120,000, i.e. those managed by the DoC. As a result, the level of e-procurement uptake for contracts whose value is above that threshold is close to 100%^{xvi}. E-notification and e-submission for contracts below this threshold are not mandatory but most contracting authorities do already publish their contracts on the central e-procurement platform, e-PPS¹. E-PPS can be used by all Maltese contracting authorities and provides a wide range of services to both contracting authorities and economic operators.

The Maltese Government has set the objective to reach 100% e-procurement uptake by 2015. To reach this target, awareness campaigns and trainings to encourage contracting authorities and economic operators to make the transition to e-procurement have been organised. Intensive trainings are provided by both the CDRT and the Malta Information Technology Agency, which manages the implementation of IT-related governmental programmes, in particular within the framework of the Malta National Digital ICT Strategy 2014-2020. In 2012, more than 400 public procurers were trained to the use of e-PPS^{xvii}.

However, the adoption of e-procurement by contracting authorities remains a challenge for Malta. The DoC recently asked all Ministries to elaborate a plan to transition towards e-procurement for all contracting authorities in their portfolio. The plan must indicate the deadline for the transition and include a contact person at the Ministry level. As of January 2015, only 4 Ministries had proposed a plan, prompting the DoC to reissue its request^{xviii}.

Corruption

Some studies rank Malta in the group of EU Member States presenting the lowest risk of corruption in general thanks to its combination of strong deterrent measures and low opportunities for corruption^{xix}. However, this does not mean that Malta is corruption-free, and in fact on some measures, such as the number of businesspeople that claim corruption prevented them from winning a contract, Malta compares unfavourably to EU averages^{xx}. Furthermore, recent procurement cases in energy markets have highlighted Maltese vulnerabilities to corruption.^{xxi}

In 2008, Malta adopted a National Anti-Fraud and Corruption Strategy based on four pillars: capacity building, communication, national co-operation and co-ordination and international co-operation. Among the bodies implementing this strategy are the Anti-Fraud and Corruption Unit of the IAID, which reviews government activities and carries out internal financial investigations. In 2013, the Maltese government introduced the Protection of the Whistleblower Act as a further means to counter corruption. In addition, the NAO controls public procurement through it audits activities and keeps records relating to the accounts of the bodies audited which can be useful in initiating or pursuing investigations.

From the prevention angle, Malta provides procurers with a code of conduct focusing on conflicts of interest and favouritism, and has implemented screening processes to assess to vulnerability to corruption of officials involved in tenders^{xxii}.

¹ <https://www.etenders.gov.mt>

Europe 2020 Agenda

Environmental and innovation considerations in public procurement are explicitly promoted in several Maltese national strategy documents. Yet, adoption by contracting authorities and economic operators has not met expected levels.

The principle of green public procurement has formally been included in Malta's strategic framework since 2005. In 2012, the green public procurement National Action Plan (NAP) defined the overall strategy and a comprehensive set of measures to reach 50% green public procurement take-up by 2015 (both in value and number of tenders). The same target was adopted in the previous NAP for 2009 but was not achieved. It has been noticed that although most of the tenders published included environmental criteria, few of them indeed met the EU green public procurement common criteria^{xxiii} due to a lack of information at the local level and lack of specific targets and monitoring^{xxiv}.

The Green Public Procurement Office, within the Ministry for Sustainable Development, the Environment and Climate Change, is responsible for the implementation and monitoring of the 2012-2015 NAP and works in close collaboration with the DoC. It provides contracting authorities with guidelines on 18 priority product groups and detailed environmental criteria to be integrated to tenders. The NAP states that all tenders falling under EU-funded programmes must be prepared according to these guidelines, a goal that was achieved in 2013^{xxv}. In addition, various trainings and information sessions are organised to raise awareness on green procurement among both contracting authorities and economic operators. Besides, all procurements issued by the DoC or others contracting authorities have to be scrutinised and cleared by the GPP office to ensure that they properly integrate sustainable development criteria^{xxvi}. In 2012, 4.5% of tenders falling within 18 priority product and service groups identified in the GPP NAP were fully compliant with GPP criteria^{xxvii}.

Malta has also made a priority of promoting innovation through public procurement. One initiative of the National Strategic Plan for Research and Innovation for 2007-2010 suggested that the Malta Council for Science and Technology (MCST) and the DoC should to define transparent mechanisms to ensure that innovation is rewarded in public procurement^{xxviii}. It has been implemented by workshops and information sessions but few actions have been carried out so far towards local procurers to help them implementing the strategy^{xxix}.

Irregularities and findings of national Audit Authorities

In 2015, the National Audit Office published an analysis of the most frequent irregularities observed in public procurement within the programmes co-funded by the EU Structural Funds. The most frequent irregularities involved breach of the principle of equal treatment. In particular, the report points to lack of clarity with respect to the tender award criteria. In addition, non-compliance with the advertising procedures or failure to state all the selection and contract award criteria in the tender documents or tender notice have been observed. Finally, cases of attribution of contracts without competition in the absence of extreme urgency and other unjustified resort to direct award have been detected. Overall irregularities detected during the period 2010-2013 are estimated to comprise 1.6% of the total value of projects declared to the EC and carried out through public procurement^{xxx}. Such infringements have also been observed at local level^{xxxi}.

In their separate assessments of the financial accounts of the main administrative bodies, the NAO pointed to the breaking down of large contracts into smaller tenders to bypass public procurement regulation as an issue.

In addition, the Review Board made an analysis of 135 cases received in 2013 and concluded that 80% of the cases were filed on trivial grounds^{xxxii}. A specific concern is

raised about local councils which represent 30% of the cases and seem to face difficulties in properly implementing procurement procedures.

Outlook

One of Malta's top near-term priorities is implementing the GPP strategy. Training is planned in 2015 for all contracting authorities, and the Government intends to re-launch the GPP Inter-Ministerial Task Force (IMTF), which is responsible for monitoring the implementation of the NAP. The key priorities for the new IMTF will be to undertake a comprehensive review of the first NAP with a view to developing a second NAP for the years 2015 to 2018 to be presented before Cabinet for approval in 2015^{xxxiii}. In addition, the DoC is still encouraging contracting authorities to adopt green public procurement and e-procurement through the publication of circulars. For instance, it requires each contracting authorities to create a GPP coordinator to ensure the compliance of published tenders with green public procurement criteria^x. In addition, the Malta Intelligent Energy Management Agency (MIEMA) is currently reinforcing its human resources with expertise in green public procurement strategies and promotion eco-innovative products within procurements.

In addition, the DoC recently adopted the final version of the Common Assessment Framework, which is a quality management tool aimed at improving the performance of public management. Amongst other things, it promotes the use of the Common Procurement Vocabulary (CPV) among all contracting authorities, in particular when preparing tender specifications.

Moreover, the Review Board has expressed its will to prioritise appeals related to EU-funded projects, health and education in the public hearing of appeals in order to increase the overall performance of public procurement in such strategic fields of the Government policy.

ANALYSIS

Strengths

The effectiveness of the public procurement oversight system in Malta seems quite unique. Supervision is ensured by several bodies both internal and independent from the Government. Their investigations highlight some of the main issues affecting procurement, for instance in terms of corruption or improper application of regulation. The NAO collaborates with law enforcement officials to further investigate suspected cases when it does not have the sufficient resources. In addition, the legitimacy and expertise of the NAO is well recognised, which allows its publications to benefit from substantial media coverage and therefore significantly contribute to public debates and ultimately weight upon the political agenda.

The appeal process through the Review Board has also been significantly improved in recent years, with the average appeals case duration was shortened from two and a half months to an average of six weeks^x, resulting in cost savings for both contracting authorities and economic operators and simplifying the process for economic operators, especially for SMEs.

Malta has a comprehensive legislative and operational framework for public procurement. The centralisation of most of the public procurement competences within the DoC provides it with significant legal and administrative resources to lead the national policy on public procurement and ensure its proper implementation.

Finally, Malta provides a wide range of training opportunities to public procurement practitioners and economic operators that contribute to the overall performance of the system. Offered trainings are consistent with the ongoing evolution of the public procurement system. Including coverage of green public procurement and

e-procurement in particular, which is relevant to ensure the adoption of such changes by contracting authorities and economic operators.

Weaknesses

The efficiency of Malta's procurement system could be improved via further harmonisation of processes both among central agencies, and between the central and local governments. Lack of harmonisation is one of the major factors behind the country's low EU funds absorption rates. During the 2007-2013 period, Malta only managed to implement 49% of the total ERDF and CF allocated to it, the sixth lowest absorption rate of all Member States^{xxxiv}.

The dissemination of procurement-related initiatives to local entities remains a significant challenge. Indeed, both the adoption of GPP and e-procurement is restrained by a lack of awareness and understanding of the procurement procedures at the local level. Furthermore, the relatively high number of appeals originating at the local level indicates an insufficiently harmonised interpretation of procurement procedures. A number of actions have been taken to address this gap, such as comprehensive training opportunities, but more needs to be done.

In addition, while corruption is not particularly widespread, the lack of transparency in the system of funding political parties is a key risk area for misuse. On the administrative side, lack of clearly defined jurisdictional boundaries and insufficient staff resources, such as at the MAC, mean that there is variability in how cases are handled, indicating that coordination between the different anti-corruption actors could be improved^{xxxv}.

Finally, despite a clear improvement in the average speed of procurement procedures in 2014 compared to the previous years, the country scored very low in terms of quality^{xxxvi}. Burdensome procedures impose significant costs on both contracting authorities and economic operators and weigh upon available administrative capacities^{xxxvii}. It is also a barrier to participation for both local and international suppliers, reducing Malta's competitiveness^{xxxviii}.

Recommendations

- **Streamline and harmonise procedures:** Despite Malta's small size and relative centralisation, substantial disparities exist in how procedures are conducted, resulting in inconsistencies and unnecessary delays, and weakening the country's EU funds absorption rate.
 - Standardise procurement procedures across levels of government reduce uncertainty and delay, as well as the cost of implementation.
 - Review the current procedure in line with LEAN principles to reduce unnecessary paperwork and delays.
- **Improve education and training:** Malta has made significant progress in increasing staffing levels to meet expected workload for the 2014-2020 programming period, but more needs to be done on the education and training side to ensure that practitioners have the necessary skills.
 - Enact the DoC's extended training program of mentoring and coursework to increase the capacity of newly hired staff, as laid out in Malta's Partnership Agreement with the EC.
 - Introduce targeted trainings on ESI funds management and control.
 - Institute the long-term procurement diploma program for civil servants, as laid out Malta's Partnership Agreement with the EC.

- **Get the word out:** Information on initiatives related to public procurement, such as the adoption of GPP and e-procurement, is not disseminated systematically to practitioners at local level.
 - Improve communication between the DoC and other practitioners through more frequent updates and meetings.
- **Take procurement online:** The adoption of e-procurement by contracting authorities remains a significant challenge for Malta. The DoC is currently working with several Ministries on plans to transition to e-procurement for all contracting authorities, but so far progress has been slow.
 - Put the ministerial plans into practice and follow up closely on any issues which could hinder the implementation of e-procurement in Malta.
 - Offer dedicated trainings and guidance documents on e-procurement.
- **Bring innovation to the local level:** Malta has made a goal of promoting innovation through the procurement process, but despite organising a number of workshops and information sessions aimed at State level organisations, little progress has been made at the local level.
 - Expand procurement of innovation education and training opportunities to local practitioners.
- **Improve oversight:** Despite a generally strong reputation for fairness, the Maltese procurement system still experiences persistent irregularities, including the artificial splitting of large contracts to avoid regulation.
 - Improve data collection and transparency on below thresholds contracts.
 - Develop monitoring systems that can detect contracting spilling and other irregularities.

ⁱ Ministry for Finance of Malta (2013), Annual Report 2013.

ⁱⁱ Public Procurement Network (2010), Authority for the Supervision of Public Contracts, The comparative survey on the national public procurement systems across the PPN.

ⁱⁱⁱ Public Procurement Regulations, Legal Notice 296 of 2010, as amended by Legal Notices 47, 104, 255 and 312 of 2012 65 and 397 of 2013, and 55, 132, 293 of 2014.

^{iv} European Commission (2013), Annual Public Procurement Implementation Review 2013.

^v Public Contracts Review Board (2013), Annual report 2013.

^{vi} Times of Malta, Tenders to be Simplified in a bid to reduce appeals, 19 March 2015.

^{vii} Public Procurement Network (2010), Authority for the Supervision of Public Contracts, Comparative survey on the transposition of the new EU public procurement package.

^{viii} Ministry for Finance of Malta (2012), Annual Report 2012.

^{ix} *Ibid*

^x Department of Contracts (2014), Mainstreaming green public procurement across the public sector contracting authorities, Circular N° 22/2014.

^{xi} Ministry for Finance of Malta (2013), Annual Report 2013.

^{xii} European Commission (2015), DG MARKT, E-procurement uptake.

^{xiii} European Commission (2014), DG ENV, National GPP Action Plans.

^{xiv} Available at: <https://www.etenders.gov.mt>

^{xv} European Dynamics S.A (2014), Public Procurement Service, Economic operators User Manual.

^{xvi} European Commission (2015), DG MARKT, E-procurement uptake.

^{xvii} European Commission (2013), DG MARKT, Study on e-Procurement Measurement and Benchmarking - EU-country-profiles.

^{xviii} Department of Contracts (2015), Transition to electronic procurement for departmental tenders, Circular N° 01/2015.

^{xix} European Research Centre for Anti-corruption and State-building (2013), The Good, The Bad and the Ugly: Controlling Corruption in the European Union.

^{xx} Flash Eurobarometer (2013), Business' attitudes towards corruption in the EU.

^{xxi} Business Anti-Corruption Portal (2015), available at: <http://www.business-anti-corruption.com/country-profiles/europe-central-asia/malta/show-all.aspx>

^{xxii} European Commission (2013), Identifying and reducing corruption in Public Procurement in the EU.

^{xxiii} European Commission (2008), Public procurement for a better environment.

^{xxiv} Office of the Prime Minister (2011), Green Public Procurement – National Action Plan.

^{xxv} Ministry for Finance of Malta (2013), Annual Report 2013.

^{xxvi} *Ibid*

^{xxvii} Maltese Government (2012), Government reports progress on green public procurement.

- ^{xxviii} MCST, National Strategic Plan for Research and Innovation for 2007-2010.
- ^{xxix} ERAPRISM (2010), Public Procurement for Innovation in Small European Countries.
- ^{xxx} National Audit Office (2015), An Analysis of Types of Errors in Public Procurement within the Structural Funds Programmes.
- ^{xxxi} National Audit Office (2013), Report by the Auditor General on the Working of Local Government.
- ^{xxxii} Ministry for Finance of Malta (2012), Annual Report 2012.
- ^{xxxiii} Ministry of Environment, Green Public Procurement, available at :
<http://environment.gov.mt/en/decc/Pages/environment/gpp/gpp.aspx>
- ^{xxxiv} DG REGIO (2013), Annual Activity Report.
- ^{xxxv} European Commission (2014), DG HOME, EU anti-corruption report, Annex Malta.
- ^{xxxvi} Public procurement performance by the European Commission, available at :
http://ec.europa.eu/internal_market/scoreboard/performance_per_policy_area/public_procurement/index_en.htm#maincontentSec5
- ^{xxxvii} European Commission Malta country report 2015, available at: http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
- ^{xxxviii} European Commission (2014), Assessment of the 2014 national reform programme and stability programme for Malta.