



Financial Control Unit Circular 02/2018

To: Beneficiaries of EU Funds managed by the Funds and Programmes Division
From: Financial Control Unit, Funds and Programmes Division
Date: 9th April 2018
Subject: **Addressing Fraud and Corruption in Public Procurement**

Introduction

The public procurement cycle can be defined as a sequence of related activities, from needs assessment to the award stage, up until the contract management and final payment. Principles underlying public procurement include equal treatment, transparency, proportionality and good governance. Fraud and corruption in procurement undermine these principles. Preventing fraud and corruption is a cost-effective approach to deal therewith (i.e. with fraud and corruption). Investigation and prosecution are costly and may take years to achieve results and are often too late.

A number of key points

In this light, the Department of Contracts within the Ministry for Finance published a document in May 2017 titled 'Addressing Fraud and Corruption in Public Procurement'. The document can be accessed through the link - <https://contracts.gov.mt/en/Resources/Documents/Addressing%20Fraud%20And%20Corruption%20In%20Public%20Procurement.pdf>.

The Financial Control Unit (FCU) would like to bring to your attention some of the key points included therein:

- a) Prior to a publication in the Official Journal of the European Union (OJEU), preliminary market consultation (PMC) can be used by Contracting Authorities (CAs) to consult economic operators in advance of a public procurement process. Advice acquired may be used, provided that it does not distort competition and does not result in a violation of the principles of non-discrimination and transparency. Therefore, CAs must ensure that the participation of a previously consulted company does not affect competition within the tender procedure.
- b) Companies can be excluded from public procurement procedures if they are convicted of fraud and corruption or if they unduly influence the decision-making process or make false

statements; no economic operator or sub-contractor can be awarded a public contract if he/she is subject to any of the exclusion or blacklisting grounds mentioned under Part VI of the Public Procurement Regulations (2016).

- c) With effect from 4th January 2016, all CAs have to publish electronically all quotations/tenders having a budget estimate of EUR5,000 or more (excluding VAT), through the Electronic Public Procurement System (ePPS). Conducting procurement online can help civil society gain access to information, monitor individual processes and facilitate citizen monitoring.
- d) With the introduction of the Public Procurement Regulations in October 2016, the appeals process has been reformed. Appeals concerning public contracts having an estimated value, which meets or exceeds EUR5,000 excluding VAT, may be lodged directly before the Public Procurement Review Board (PCRB) and shall contain in a very clear manner the reasons for their complaints.

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.

- e) Contracting Authorities are strongly advocated by the Department of Contracts:
 - i) To avoid from engineering a situation whereby only one organisation is invited to bid;
 - ii) To ensure that the criteria used for selection are appropriate, relevant and proportionate to the particular procurement;
 - iii) To avoid disclosing inside information;
 - iv) To preferably avoid having persons involved in drawing up the tender, being also on the team of evaluators.
- f) At the stage of the evaluation of tenders, the Department of Contracts recommends that:
 - i) Evaluation Committee members should have no personal/financial interest in which bidder/s is/are recommended for award;
 - ii) Evaluation Committee members must declare that he/she has no personal interest in any participating bidder(s) and that he/she understands and can perform within the ground rules and procedures, by signing a Declaration of Impartiality and Confidentiality;
 - iii) Evaluation Committee members should have a professional interest that the results of the Committee can be supported and defended;
 - iv) Contact with participating bidders must be strictly through means allowed by the General Rules Governing Tendering and Public Procurement Regulations;
 - v) 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;
 - vi) During the process of evaluation, the committee shall maintain confidentiality;
 - vii) Voting committee members must conduct an individual evaluation of each proposal.
- g) For tenders with an estimated value which falls within article 9(1)(b) of the Public Procurement Regulations 2016 (PPR 2016), the prior approval of the Director of Contracts for variations exceeding 10% of the initial contract value for services and supplies contracts and 15% for works contracts is obligatory.

In accordance with article 246 (b) of the PPR 2016, additional works, services or supplies by the original contractor that have become necessary and that were not included in the initial procurement may only be approved as long as any increase in price does not exceed 50% of the value of the original contract. Notwithstanding, the RA will only sanction additional works, services or supplies if they arise due to ‘unforeseen circumstances’; the concept of ‘unforeseen circumstances’ should be interpreted having regard to what a diligent contracting authority should have foreseen.

In line with article 251 of the Public Procurement Regulations, the Director of Contracts will not sanction retroactive modification approvals. The responsibility of any unapproved modification shall fall upon the head of that contracting authority, in accordance with the Fiscal Responsibility Act.

Conclusion

It is pertinent to be acquainted of the fact that to further ensure good governance, the Department of Contracts introduced the Compliance and Monitoring Unit, having the function of investigating issues raised with respect to all government procurement procedures. Monitoring is considered distinct from auditing, which is typically retrospective and often limited by time, frequency and scope. Monitoring allows for early identification and correction before a problem festers and causes the Contracting Authority to be in non-compliance.