

International Comparative Legal Guides

# Public Procurement 2026

A practical cross-border resource to inform legal minds

18<sup>th</sup> Edition

Contributing Editor:  
**Edward McNeill**  
Ashurst LLP



iclg

# Expert Analysis Chapter

1

Incentivising Supplier Performance: Regulation of the Management of Public Contracts  
Edward McNeill & Catherine Maddox, Ashurst LLP

## Q&A Chapters

5

**Bulgaria**  
Angel Angelov & Kalina Petkova,  
Kolev, Angelov and Miteva

13

**England & Wales**  
Edward McNeill, Catherine Maddox & Julian Jarrett,  
Ashurst LLP

24

**Finland**  
Juhani Matinlassi, Applex Attorneys Ltd

30

**Germany**  
Paolina Ilieva & Charlotte Schäffer, KP Partners

40

**Greece**  
Gregorios Michailopoulos, Evangelia Micholitsi &  
Astero Kokkosi, Michailopoulos & Associates Law Firm

52

**India**  
Suhaan Mukerji, Shreya Ramakrishnan,  
Jibran Ahmad Khan & Sunidhi Sawhney, PLR Chambers

62

**Indonesia**  
Farid Fauzi Nasution, Berla Wahyu Pratama &  
Herminingrum, Assegaf Hamzah & Partners

73

**Italy**  
Filippo Pacciani & Ada Esposito, Legance

83

**Malaysia**  
Andreanna Ten, Mohamad Izahar bin Mohamad Izham &  
Nadarashnaraj Sargunraj, Zaid Ibrahim & Co

91

**Malta**  
Adrian Mallia, WH Partners

99

**Pakistan**  
Saqib Majeed, Majeed & Partners

106

**Romania**  
Iulia Vass & Alexandra Mititelu, VASS Lawyers

122

**Slovenia**  
Njives Prelog Neffat, Neffat and Partners Law Firm

133

**Sweden**  
Anna Ulfsdotter, Elin Nilsson & Anna Westberg,  
Advokatfirman Ulfsdotter AB

140

**Switzerland**  
Mario Strebel & Fabian Koch, CORE Attorneys Ltd

149

**USA**  
James J. McCullough & Michael J. Anstett,  
Fried, Frank, Harris, Shriver & Jacobson LLP

# Malta

WH Partners



Adrian Mallia

## 1 Relevant Legislation

**1.1 What is the relevant legislation, and, in outline, what does each piece of legislation cover?**

Malta is a member of the European Union and as such has a public procurement regime that is based, in large part, on EU directives. These directives have been transposed into Maltese law by means of a number of legal notices promulgated in terms of the Public Finance Management Act (Chapter 601 of the Laws of Malta), i.e.:

- the Public Procurement Regulations (Subsidiary Legislation 601.03) – this legal notice governs the procurement of goods, services and works by the government and government entities;
- the Public Procurement of Entities Operating in the Water, Energy, Transport and Postal Services Sectors Regulations (Subsidiary Legislation 601.05) – this legal notice governs the procurement of goods, services and works by entities operating in the aforementioned sectors;
- the Public Procurement of Contracting Authorities or Entities in the Fields of Defence and Security Regulations (Subsidiary Legislation 601.07) – this legal notice governs procurement in the aforementioned fields; and
- the Concession Contracts Regulations (Subsidiary Legislation 601.09) – this legal notice regulates the granting of service or works concessions.

These legal notices are further complemented by:

- the Emergency Procurement Regulations (Subsidiary Legislation 601.08);
- the Procurement of Property Regulations (Subsidiary Legislation 601.12); and
- the Electronic Invoicing in Public Procurement Regulations (Subsidiary Legislation 601.10).

**1.2 What are the basic underlying principles of the regime (e.g., value for money, equal treatment, transparency) and are these principles relevant to the interpretation of the legislation?**

In so far as Maltese legislation is based on EU directives on public procurement, it shares the same basic principles of equal treatment, open competition, value for money, transparency, non-discrimination and proportionality. These principles are fundamental to the interpretation of legislation, are very frequently cited in decisions given by the relevant tribunal and court, and have a determinative impact on outcomes.

**1.3 Are there special rules in relation to procurement in specific sectors or areas?**

Specific regulations apply to:

- the utilities sector;
- the defence and security sector; and
- public concession contracts.

The Procurement (Energy and Fuels) Appeals Board Regulations (Subsidiary Legislation 595.06) and the Procurement (Health Service Concessions) Review Board Regulations (Subsidiary Legislation 595.13) allow for the possibility of remedies in certain specified procurement processes to be sought from boards established in terms of the respective subsidiary legislation.

**1.4 Are there other areas of national law, such as government transparency rules, that are relevant to public procurement?**

Yes, some other areas of national law may be of relevance to public procurement, particularly the Freedom of Information Act (Chapter 496 of the Laws of Malta) and the legal notices published under the same Act.

**1.5 How does the regime relate to supra-national regimes including the WTO GPA?**

Malta is a member of the European Union and is therefore bound by the Treaty on the Functioning of the European Union (TFEU), as well as secondary legislation promulgated in terms of the TFEU. The TFEU and its secondary legislation – as well as case law of the courts of the European Union – are of fundamental importance to the Maltese legal system.

Since Malta is a European Union member, Malta is bound by the terms of the World Trade Organization Agreement on Government Procurement.

## 2 Application of the Law to Entities and Contracts

**2.1 Which categories/types of entities are covered by the relevant legislation as purchasers?**

The Procurement of Property Regulations, the Public Procurement Regulations and the Concession Contracts Regulations apply to ‘contracting authorities’, which are defined as follows:

- state, regional or local authorities;
- bodies governed by public law; and
- associations formed by one or several of such authorities or bodies governed by public law.

The Public Procurement of Entities Operating in the Water, Energy, Transport and Postal Services Sectors Regulations apply mainly to procurement by contracting entities – that is, entities that are:

- either contracting authorities or public undertakings; and
- active in one of the specified utility activities.

The Public Procurement of Entities Operating in the Water, Energy, Transport and Postal Services Sectors Regulations also apply to entities that:

- exercise one of the specified activities; and
- operate based on a special or exclusive right.

The Emergency Procurement Regulations apply only to government entities listed in the Schedule, namely: the Central Procurement Supplies Unit; and the Civil Protection Department. Only these entities may make use of these regulations.

The Public Procurement of Contracting Authorities or Entities in the Fields of Defence and Security Regulations apply to both contracting authorities and contracting entities, as defined above.

## 2.2 Which types of contracts are covered?

The Public Procurement Regulations and the Concession Contracts Regulations regulate written contracts for a pecuniary interest that are concluded between one or more economic operators and one or more contracting authorities.

The Public Procurement Regulations divide contracts into:

- (1) public supply contracts;
- (2) public service contracts; and
- (3) public works contracts.

The Concession Contracts Regulations divide contracts into contracts where the economic operator is engaged for the execution of works (referred to as a ‘works concession’), the provision of services (referred to as a ‘services concession’), or a mixture of both. In these types of contracts, the consideration due to the concessionaire must be either the right to exploit the works or services or such a right together with payment.

The Public Procurement of Entities Operating in the Water, Energy, Transport and Postal Services Sectors Regulations are applicable to supply, works and services contracts as defined in the regulations.

The Public Procurement of Contracting Authorities or Entities in the Fields of Defence and Security Regulations regulate the award of contracts that relate to the supply of military or sensitive equipment, works and services related to that equipment, or works and services that are intended for specific military purposes.

The Procurement of Property Regulations apply to contracts where a contracting authority intends to acquire immovable property, by whatever title.

## 2.3 Are there financial thresholds for determining individual contract coverage?

Yes. The Public Procurement Regulations set a threshold of €143,000, and if the value of the contract is below this threshold, the procurement process is to be administered by the contracting authority directly. If the value of the contract exceeds that threshold, the procurement process is administered by the Director of the Department of Contracts on behalf of the contracting authority. However, the procurement process will still be managed by the contracting authority without the

involvement of the Director of the Department of Contracts if the value of the contract is less than €750,000 and the authority is listed in Schedule 16 of the Public Procurement Regulations.

In general terms, processes leading to the award of contracts of a value of less than €10,000 are subject to simplified rules.

The Public Procurement of Entities Operating in the Water, Energy, Transport and Postal Services Sectors Regulations adopt a similar approach; the difference is that a higher threshold of €443,000 is established by those regulations.

The Public Procurement of Contracting Authorities or Entities in the Fields of Defence and Security Regulations apply in full to service and supply contracts that have a value of €134,000 or more and works contracts with a value of €5,186,000 or more. Less stringent rules apply to contracts of a lower value.

The Concession Contracts Regulations apply in full to works and service concessions that have a value in excess of €5,538,000. Concessions lower in value are not subject to all of the rules contained in the Concession Contracts Regulations.

The Procurement of Property Regulations set a threshold of €500,000. Processes that will lead to the award of a contract above this value are to be administered by the Director of the Department of Contracts, and all other processes are to be administered by the contracting authority directly.

Lastly, the Emergency Procurement Regulations apply to contracting authorities within scope that wish to procure supplies, services or works with a value below €135,000.

All amounts are exclusive of value-added tax.

## 2.4 Are there aggregation and/or anti-avoidance rules?

There are rules that are intended to prevent the artificial splitting of contracts into various separate contracts when this is done to avoid the application, or the full application, of legislation.

## 2.5 Are there special rules for concession contracts, and if so, how are such contracts defined?

Yes, the Concession Contracts Regulations regulate concessions. Concessions are contracts where the economic operator is engaged for:

- the execution of works (referred to as a ‘works concession’);
- the provision of services (referred to as a ‘services concession’); or
- a mixture of both.

In the case of contracts regulated by the Concession Contracts Regulations, the consideration due to the concessionaire must be either the right to exploit the works or services or such a right together with payment.

## 2.6 Are there special rules for the conclusion of framework agreements?

The Maltese provisions on framework agreements reflect those contained in EU directives. The rules regulate:

- the duration of such agreements; and
- the minimum number of participants in the process.

## 2.7 Are there special rules on the division of contracts into lots?

The Public Procurement Regulations allow contracting authorities to award a contract in the form of separate lots and to

determine the size and subject matter of such lots. The regulations require contracting authorities to justify their decision not to divide a contract into lots when the contract is above certain value thresholds.

### 2.8 What obligations do purchasers owe to suppliers established outside your jurisdiction?

In general terms, no distinction is made between suppliers established in Malta and those established outside of Malta.

### 2.9 Does the legislation govern contract management?

In general terms, no; however, some aspects of contract modification and contract termination are regulated.

## 3 Award Procedures

### 3.1 What types of award procedures are available? Please specify the main stages of each procedure and whether there is a free choice amongst them.

The Public Procurement Regulations regulate several different award procedures:

- Open procedure: in open procedures, any interested party may submit a bid.
- Restricted procedure: restricted procedures allow for a pre-qualification stage where only pre-qualified candidates are permitted to submit a bid.
- Competitive procedure with negotiation: requiring the prior approval of the Director of the Department of Contracts, this procedure can only be used in certain limited circumstances, such as (1) where the needs of the authority cannot be met through readily available solutions, (2) the technical specifications cannot be defined precisely, (3) after an open or restricted procedure has been held, and (4) when only irregular or unacceptable bids were submitted.
- Competitive dialogue: this procedure may be used, with the approval of the Director of the Department of Contracts, in the case of particularly complex contracts. It entails a process by which:
  - economic operators may request to participate in the process;
  - the contracting authority carries out a dialogue with economic operators with the aim of developing solutions that are suited to its requirements; and
  - participants are then invited to submit bids on that basis.
- Innovation partnership: this procedure requires the approval of the Director of the Department of Contracts and may be used when the needs of the procuring entity cannot be met by purchasing products, services or works that are already available on the market.
- Design contests: this procedure takes the form of a contest as part of a procedure that leads to the award of a public service contract and contests with prizes and payments to participants.

The Public Procurement of Entities Operating in the Water, Energy, Transport and Postal Services Sectors Regulations and the Public Procurement of Contracting Authorities or Entities in the Fields of Defence and Security Regulations allow for the award of contracts through:

- restricted procedures;
- negotiated procedures with or without a prior call; and
- competitive dialogue.

The open procedure and design contests can also be used under the Public Procurement of Entities Operating in the Water, Energy, Transport and Postal Services Sectors Regulations.

### 3.2 What are the minimum timescales?

The minimum timescales vary depending on the procedure being used.

In open procedures, in general terms, the call must be open for at least 35 days, though this can be shortened to 15 days under certain conditions, including the publication of a prior information notice.

Restricted procedures must be open for a minimum of 30 days, to allow for requests to participate, and for a further period of 30 days for the purposes of tender submission. These time periods can also be curtailed subject to certain conditions.

Competitive procedures with negotiation and innovation partnerships must remain open for 30 days initially for requests to participate, and then the minimum time for initial tenders is 30 days. Timings for subsequent phases are not established.

For competitive dialogue procedures, the minimum time for requests to participate is 30 days, with timings for subsequent phases also not established.

### 3.3 What are the rules on excluding/short-listing tenderers?

The procurement document published by the contracting authority will establish the applicable grounds and criteria.

In general terms, a tenderer will be excluded if the exclusion criteria apply. If a tenderer does not meet the selection and eligibility criteria, the procurement document will usually provide that a tenderer will be allowed to rectify its bid within a stipulated time period. If a tenderer does not meet the technical specifications or financial criteria of the tender, the contracting authority may ask it for clarifications, but no changes to the bid are permitted. Tenderers that do not comply with mandatory requirements are eliminated.

### 3.4 What are the rules on the evaluation of tenders and what factors may be taken into account?

The committee entrusted with evaluation will generally:

- assess whether a tender complies with the requirements set forth in the procurement document; and
- determine whether the bidder has been blacklisted or affected by exclusion criteria, and whether the selection criteria have been met.

Thereafter, the technical offers of bidders that have not been eliminated will be evaluated to ensure compliance with the established technical specifications. The financial offer is usually considered last.

Tenders are scored based on the criteria set forth in the procurement document. The document may establish that factors in addition to price are to be considered, in which case these factors will be assessed in accordance with the weighting established in the tender document. These factors can include quality, functional characteristics, organisation, qualification and experience of staff, after sales services, and so forth.

### 3.5 Are there rules on the evaluation of abnormally low tenders and how do those rules work?

Yes, contracting authorities are obliged to ask tenderers to explain the price or costs proposed in the tender in cases where the bid made 'appears' to be abnormally low in relation to the works, supplies or services being procured.

The contracting authority must then assess the information provided by consulting the economic operator. A bid can be rejected where:

- the evidence supplied does not satisfactorily account for the low level of price or costs proposed; or
- no response is received from the tenderer.

### 3.6 What are the rules on awarding the contract?

Contracting authorities award tenders to either:

- the cheapest compliant bidder; or
- the bidder that has the most cost-effective bid, in which case the price along with other criteria (qualitative, environmental and/or social aspects) will be taken into account.

The procurement document published by the contracting authority will indicate which basis for award is utilised.

### 3.7 What are the rules on debriefing unsuccessful bidders?

Unsuccessful tenderers are informed of the outcome of the tender procedure by email through the government electronic online tendering system and, in general terms, reasons have to be given.

### 3.8 What methods are available for joint procurements between purchasers?

Joint procurement can be carried out by contracting authorities with the prior approval of the Director of the Department of Contracts and, in general terms, such procurement is administered by the Director of the Department of Contracts.

Furthermore, contracting authorities may acquire supplies or services intended for contracting authorities from one of the central purchasing bodies – currently the Department of Contracts or the Malta Information Technology Agency.

### 3.9 Are there rules on submitting and evaluating alternative/variant bids?

Yes, the Public Procurement Regulations provide that for tenders above certain values, contracting authorities may authorise or require bidders to submit variants, and contracting authorities are to indicate whether variants are required or authorised in the contract notice. Variants are not to be authorised without such indication.

When variants are authorised or required, then contracting authorities must state in the procurement documents the minimum requirements to be met by the variants and any specific requirements for their presentation, including whether variants may be submitted only where a tender that is not a variant has also been submitted.

Contracting authorities are to ensure that the chosen award criteria can be applied to variants meeting those minimum requirements as well as to conforming tenders that are not variants, and only variants that meet the minimum requirements

may be taken into consideration. In procedures for awarding public supply or service contracts, contracting authorities that have authorised or required variants must not reject a variant on the sole ground that it would, where successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

### 3.10 What are the rules on managing and mitigating conflicts of interest?

Contracting authorities must act with impartiality and independence in order to ensure that they comply with the principle of equal treatment. 'Conflicts of interest' are defined by legislation as any situation in which any person that is involved in the conduct of the procurement procedure or that may influence the outcome of that procedure has, directly or indirectly, a financial, economic or other personal interest that might be perceived to compromise that person's impartiality and independence in the context of the procurement procedure.

Contracting authorities must take appropriate measures to prevent, identify and remedy conflicts of interest. This takes the form of various safeguards of an administrative nature such as, for example, members of evaluation committees being required to declare in writing that they have no conflict of interest prior to carrying out their engagement.

Members of the Public Contracts Review Board (PCRB) must also be free from conflicts of interest, and may be recused if affected by a conflict of interest.

### 3.11 What are the rules on market engagement and the involvement of potential bidders in the preparation of a procurement procedure?

The Public Procurement Regulations and the Public Procurement of Entities Operating in the Water, Energy, Transport and Postal Services Sectors Regulations contain provisions empowering procuring entities to issue preliminary market consultations, which aim to assist the procuring entity in preparing the procurement process and inform economic operators of their procurement plans and requirements.

Procuring entities can seek or accept advice from independent experts or authorities or from market participants. That advice may be used in the planning and conduct of the procurement procedure, but always subject to the condition that such advice:

- does not have the effect of distorting competition; and
- does not result in a violation of the principles of non-discrimination and transparency.

## 4 Exclusions and Exemptions (including in-house arrangements)

### 4.1 Are there any exemptions from running competitive procurements available to purchasers under the relevant legislation? If so, what types of contracts are covered and how do the exemptions operate?

In addition to the special circumstances in which no competitive procurement is required (such as, for example, unforeseen urgency), there are also certain types of contracts that fall outside the scope of legislation, such as, for example, contracts

for the procurement of legal representation services. In general, exemptions reflect those that are contained in EU directives.

#### 4.2 How does the law apply to “in-house” arrangements, including contracts awarded within a single entity, within groups and between public bodies?

In-house arrangements fall outside the scope of the Public Procurement Regulations. This includes contexts where a contracting authority contracts with a person it ‘controls’, as defined by the Public Procurement Regulations, as well as also the inverse situation, i.e., where a controlled person contracts with the contracting authority that controls it, or with another legal person controlled by the same contracting authority.

In certain circumstances, contracts concluded between two or more contracting authorities also fall within the scope of the in-house exemption.

## 5 Remedies

#### 5.1 Does the legislation provide for remedies, and if so, what is the general outline of this?

Yes. Remedies are broadly split into three separate types, namely: (i) remedies that can be exercised prior to the closing date of the tender award; (ii) remedies that are exercised following award or cancellation of a tender; and (iii) remedies that can be exercised for the purposes of obtaining a declaration of ineffectiveness of a concluded contract.

#### 5.2 Can remedies be sought in other types of proceedings or applications outside the legislation?

No, the general catch-all ground for challenging an administrative act is not available under Maltese law in instances where a specific mode of challenge is provided by law.

#### 5.3 Before which body or bodies can remedies be sought?

The main national body responsible for enforcement is the PCRБ, which is an independent tribunal with specialised jurisdiction. Decisions of the PCRБ can be appealed before the Court of Appeal (Superior Jurisdiction).

The Director of the Department of Contracts is also granted statutory powers, which could, in theory, provide remedies; however, in practice, the Director desists from utilising the same.

#### 5.4 What are the limitation periods for applying for remedies?

Applications made prior to the close of a call must be filed within the first two-thirds of the time period allocated in the call for competition for the submission of offers. In the case of concession contracts, the application must be made at least one day before the closing date of the call.

Applications filed for the purposes of challenging an award must be filed no later than 10 calendar days from the date on which the contracting authority publishes the award or cancellation of the procurement process.

Remedies for challenging a contract following its award, and obtaining a declaration of ineffectiveness, are in general terms to be exercised within six months from the conclusion of the contract, but in certain instances shorter periods may apply.

#### 5.5 What measures can be taken to shorten limitation periods?

Time periods cannot be shortened, except in the case of remedies consisting of a declaration of ineffectiveness, where publicity may have the effect of shortening the period within which a remedy may be sought.

#### 5.6 What remedies are available after contract signature?

An interested party or tenderer may file an application before the PCRБ, asking it to declare that a contract that has been awarded is ineffective. This action is available only:

- where the contract exceeds a certain value; and
- on certain limited grounds, such as where a contract has been awarded without the publication of a prior notice.

#### 5.7 What is the likely timescale if an application for remedies is made?

Proceedings are in general terms swift, in so far as both the PCRБ and the Court of Appeal, in the event of an appeal, are required to decide proceedings within relatively short time frames. The PCRБ has six weeks from the date of closure of written pleadings to decide a matter before it, and the Court of Appeal has four months from the day when the appeal was filed and all parties have been notified with the appeal.

In order for proceedings to work through all stages, an estimate of around six months is realistic.

#### 5.8 What are the leading examples of cases in which remedies measures have been obtained?

There are numerous cases of each form of remedy having been sought and granted.

In Case 288/18 (*Virtu Ferries Limited v Ministry for Transport, Infrastructure and Capital Projects et*), the court acceded to a request for pre-contractual remedies, and ordered certain changes to a call for concessions aimed at making the contest more competitive.

In Case 2150 (CT 2345/2024) before the PCRБ, the court upheld a challenge to a tender award, and directed that a re-evaluation of bids be carried out.

In Case 292/2018 (*Virtu Holdings Limited v Gozo Channel (Operations) Limited et*), the court in effect acceded to a request for a contract to be declared ineffective.

#### 5.9 What mitigation measures, if any, are available to contracting authorities?

In general terms, it is advisable for contracting authorities to be transparent throughout the procurement process, as this will avoid placing bidders in situations where they must resort to instituting legal proceedings for the purposes of obtaining information.

## 6 Changes During a Procedure and After a Procedure

**6.1 Does the legislation govern changes to procurements after the commencement of the procedure (e.g., changes to contract specifications, procurement timetable, and evaluations criteria)? If not, what are the underlying principles governing these issues?**

In general terms, contracting authorities can modify tender specifications and conditions, prior to the closing date of the call, by issuing clarifications. Standard procurement documents utilised by contracting authorities impose a limit on the latest date by which clarifications of contracting authorities may be issued.

Any modifications must comply with the general principles, underlying all procurement, of transparency, non-discrimination and so forth.

**6.2 What are the rules on changes to the membership of bidding consortia and nominated subcontractors during a procurement?**

Before a procurement procedure closes, any changes are permitted.

After a procurement procedure closes, the General Rules Governing Tenders provide that all members of a consortium or joint venture must remain part of it until the conclusion of the procurement process. In so far as subcontractors are concerned, these may be changed during the procurement process if the contracting authority allows it.

**6.3 What is the scope for negotiation with the preferred bidder following the submission of a final tender?**

Excluding procedures that necessitate a degree of discussion or negotiation, or a combination thereof, as a general rule, negotiations are not permitted after the contract has been awarded.

**6.4 What scope is there to negotiate changes to a contract following contract signature and does the legislation provide specific rules on permitted modifications?**

Modifications to awarded contracts are allowed subject to certain conditions.

The Public Procurement Regulations provide that a contracting authority can allow for the modification of a contract, with the prior consent of the Director of the Department of Contracts, in the following cases:

- The modification, irrespective of its monetary value, has been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options. The clauses must state the scope and nature of possible modifications or options and the conditions under which they may be used; however, they may not provide for modifications or options that would alter the overall nature of the contract or the framework agreement.
- Additional works, services or supplies by the original contractor have become necessary and were not included in the initial procurement and a change of contractor: (i) cannot be made for economic or technical reasons, such

as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement; and (ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority. In any case, the increase in price cannot exceed 50% of the value of the original contract.

- If all of the following conditions are fulfilled: (i) the need for modification has been brought about by circumstances that a diligent contracting authority could not foresee; (ii) the modification does not alter the overall nature of the contract; and (iii) any increase in price is not higher than 50% of the value of the original contract or framework agreement.
- The modifications, irrespective of their value, are not substantial – that is, they do not make the public contract materially different in character.

The Concession Contracts Regulations and the Public Procurement of Entities Operating in the Water, Energy, Transport and Postal Services Sectors Regulations provide similar grounds on which a contract can be modified.

Contracts awarded under the Emergency Procurement Regulations cannot be modified.

**6.5 To what extent does the legislation permit the transfer of a contract to another entity following contract signature?**

Contracting authorities – and, in particular, the Department of Contracts – are not generally amenable to permitting the transfer of a contract to a third party following the award of the contract.

That said, the Public Procurement of Entities Operating in the Water, Energy, Transport and Postal Services Sectors Regulations, the Concession Contracts Regulations and the Public Procurement Regulations provide, in broad terms, that the transfer of a contract to a third party can take place in the following circumstances:

- there is an unequivocal review clause or option allowing this;
- the universal or partial succession into the position of the initial contractor takes place following a corporate restructuring – including a takeover, merger, acquisition or insolvency – of another economic operator that fulfils the criteria for qualitative selection initially established, provided that this: (i) does not entail other substantial modifications to the contract; and (ii) is not aimed at circumventing the application of the law; or
- the contracting authority itself assumes the main contractor's obligations towards its subcontractors.

## 7 The Future

**7.1 Are there any proposals to change the law, and if so, what is the timescale for these and what is their likely impact?**

The European Parliament adopted a resolution on public procurement in September 2025 (2024/2103(INI)), calling for a number of changes to procurement legislation. In so far as Malta is a member of the European Union, any changes resulting from this proposal will eventually require transposition into Maltese law.

In addition, the Malta Chamber of Commerce published a report in 2021 calling for the implementation of a number of reforms. Though the Chamber remains vocal on the importance of implementing the suggested reforms, the government has not yet officially indicated whether it will take any of the reforms on board and implement the same by means of legislative amendments.

**7.2 Have there been any significant regulatory or caselaw developments in the last two years that have or are expected to impact public procurement law in your jurisdictions? If so, what are those developments and their implications?**

Earlier in 2025, a number of amendments came into effect revising the financial thresholds that determine when the full national regime implementing the EU directives applies, and

when procurement must involve the Department of Contracts, as opposed to being managed 'departmentally'. A further legal notice empowered the Prime Minister to appoint persons as additional permanent members of the PCRFB.

A case decided by the Court of Appeal (*Cherubino Limited v Central Procurement & Supplies Unit & DoC*, decided on 3 September 2024, ref. 214/2024/1) articulated in detail the circumstances under which the cancellation of a call for tenders may be challenged and emphasised the importance of a contracting authority giving reasons for a cancellation.



**Adrian Mallia** joined WH Partners as Of Counsel in July 2025, bringing over 20 years of experience in public procurement and public concessions, aviation law, asset financing, dispute resolution, and M&A. He has extensive experience acting on both the buy side and the sell side of procurement and concession processes, advising public authorities and private operators on the structuring, negotiation, and execution of complex concession arrangements. Adrian has repeatedly assisted clients in challenging irregular or unlawful tender and concession awards and has frequently supported bidders in exercising pre-contractual remedies to ensure that discriminatory, unfair, or illegal tender criteria are removed from tender documentation. He has successfully litigated multi-million-euro procurement disputes before the Public Contracts Review Board and the Court of Appeal (Superior Jurisdiction). In addition, Adrian advises on M&A transactions and asset financing, particularly in the aviation and maritime sectors. He assists airline clients with obtaining Air Operator Certificates (AOC) and with aircraft registrations before TM-CAD in Malta.

**WH Partners**

Level 5, Quantum House  
75, Abate Rigord Street  
Ta' Xbiex XBX 1120  
Malta

Tel: +356 2092 5100  
Email: [adrian.mallia@whpartners.eu](mailto:adrian.mallia@whpartners.eu)  
LinkedIn: [www.linkedin.com/in/adrianmallia](http://www.linkedin.com/in/adrianmallia)

WH Partners is a law firm with a strong focus on supporting businesses driving the digital economy. We have law offices in Malta, Italy, and Romania, operate Czech and Polish desks, and maintain a worldwide network of correspondent firms.

The firm has a well-established practice, advising clients on corporate, M&A, fintech & financial services, tax, public procurement & public concessions, gaming & gambling, dispute resolution, intellectual property, data privacy & personal data, consumer protection & advertising, real estate, employment & immigration, sports, technology & media, and competition & state aid. WH Partners is highly ranked by *Chambers and Partners*, *The Legal 500*, *IFLR1000*, and *Who's Who Legal*.

As part of our overall WH offering, we also operate a corporate service provider arm in Malta and the UAE.

[www.whpartners.eu](http://www.whpartners.eu)

WHPARTNERS



The **International Comparative Legal Guides** (ICLG) series brings key cross-border insights to legal practitioners worldwide, covering 59 practice areas.

**Public Procurement 2026** features one expert analysis chapter and 16 Q&A jurisdiction chapters covering key issues, including:

- Relevant Legislation
- Application of the Law to Entities and Contracts
- Award Procedures
- Exclusions and Exemptions (including in-house arrangements)
- Remedies
- Changes During a Procedure and After a Procedure
- The Future

