

PART 3

The different types of public procurement procedures

**LUCA AMATO**

While these procedures together represent the majority of procurement methods adopted by contracting authorities, there are some other methods which, though not as common, cater for specific scenarios that ought to be mentioned.

The “design contest” is a procedure taking the form of a contest that leads to the award of a public service contract, or otherwise results in the granting of prizes or payments to partici-

In my articles published in *The Malta Business Weekly* editions of 17 February and 10 March I discussed several public procurement procedures available to contracting authorities under Maltese law, namely the open and restricted procedures, the competitive procedure with negotiation, the competitive dialogue, the innovation partnership and the negotiated procedure without prior publication

pants. The procedure is particularly useful when a contracting authority needs to acquire services entailing a design element, such as for urban planning, architecture, infrastructure projects or engineering services. The adjudication of the award or prize is carried out by an independent jury and where a

particular professional qualification is required from participants in the contest, at least a third of the members of the jury must have that qualification or an equivalent qualification. The jury shall examine the plans and projects submitted by the candidates anonymously based on the criteria indicated in the

contest notice. It shall record its ranking of projects in a report, signed by its members, noting the merits of each project and any remarks and points that may need clarification. The jury may also request candidates to answer any questions it may have.

“Reserved contracts” are contracts that are reserved for sheltered workshops, economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons, and sheltered employment programmes – in all cases provided that at least 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers. Clearly, the aim of this procedure (itself derived from EU law) is to help disabled or disadvantaged workers enter the workforce. The law identifies several sectors where reserved contracts may be granted, which include health and social services, hotel and restaurant services and postal services, to name a few.

When following this procedure, contracting authorities must still abide by certain general public procurement obligations such as the publication of the tender via the appropriate channels and the publication of the contract award notice. Moreover, they are bound to follow general principles such as transparency and equal treatment of economic operators and to ensure that the procedures they adopt are reasonable and proportionate, particularly regarding the time limits allowed for the submission of the offers. Authorities may also decide to adopt the

rules established for other procurement procedures. Crucially, contracting authorities would be expected to consider quality, continuity, accessibility, affordability, availability and comprehensiveness of the services, the specific needs of different categories of users (including disadvantaged and vulnerable groups), the involvement and empowerment of users and innovation.

Contracting authorities may further restrict the right for organisations to participate in procedures for the award of certain public contracts relating to health, social and cultural services. In such cases, organisations would only be allowed to participate if: (i) their objective is the pursuit of a public service mission linked to the delivery of the aforementioned services; (ii) profits are reinvested with a view to achieving the organisation’s objective; (iii) the structures of management or ownership of the organisation are based on employee ownership or participatory principles or require the active participation of employees, users or stakeholders and (iv) the organisation has not been awarded a contract for the services concerned by the contracting authority concerned within the previous three years. Moreover, contracts awarded under this procedure shall have a maximum duration of three years.

The last procurement procedure is the so-called “procurement by Schedule 3 entities” procedure. It is a de-regulated process to some extent, in that the law allows those contracting authorities listed under Schedule 3 of the Public Procurement Regulations to administer and determine their own procurement procedure without requiring the prior approval of the Director of Contracts (though the written consent of the relevant head of department would be required). They are thus not bound by standard public procurement procedures and enjoy autonomy in their procurement, though they are still obliged to follow general principles of law such as transparency and equal treatment.

This article is part of a series of articles on public procurement in Malta. Luca Amato is a senior associate within the Corporate and Commercial Law department of Fenech & Fenech Advocates.

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