

Public Procurement Regulation

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Context

The European Commission has proposed a new Regulation to overhaul and simplify the EU's public procurement system, making public spending on infrastructure, healthcare, energy, and transport more efficient and strategically aligned with EU goals.

As proposed, the Regulation is expected to save €650 million annually by cutting administrative red tape (€570M saved for businesses, €80M for public buyers). It also directly addresses systemic issues highlighted by the European Court of Auditors, such as shrinking market competition, low SME participation, lack of cross-border bidding, and the heavy prevalence of single-bid contracts.

The proposal translates recent EU leadership calls—including the Draghi and Letta reports—into action by using public procurement as a strategic engine to reinforce Europe's industrial base, drive green and digital transitions, and secure economic stability.

The Malta Business Bureau presents this policy brief to summarise the proposal for a new Public Procurement Regulation.

Simplifying and increasing the flexibility and coherence of procurement rules

1. Procedures

The proposal replaces the previous three 2014 Directives with a single, directly applicable Regulation to streamline and simplify procurement. It establishes two main new procedures, an innovation procedure, and a simplified mechanism for emergency situations:

- *Open Procedure:* Any interested economic operator can express interest and submit a tender. Public buyers can choose whether or not to apply selection criteria or conduct negotiations, significantly reducing participation barriers for SMEs.
- *Dynamic Procedure:* Designed for purchasing from a pre-constituted supplier base. Suppliers express interest by sharing an eligibility profile, and buyers can later invite them to tender or negotiate as procurement needs arise.
- *Innovation Procedure:* A dedicated procedure allowing public buyers to present societal challenges rather than strict technical specifications. It covers co-creation, testing, validation, and the direct commercial purchase of the final developed solution.
- *Simplified Direct Procurement:* Used strictly for emergency, crisis, or public health situations to maintain essential services without full competition.

2. Award Criteria

The proposal shifts the focus from lowest upfront cost to long-term public value through quality-based procurement:

- **Best Price-Quality Ratio (BPQR):** Public contracts must, as a general rule, be awarded using BPQR, which evaluates price alongside quality criteria like environmental impact, social justice, innovation, security, and life-cycle costs.
- Buyers can derogate from the minimum quality weightings if contract quality is fully guaranteed through technical specifications or performance conditions.

3. Negotiation

Negotiation rules are modernised across procedures to give public buyers flexibility while preserving fairness:

- Negotiations are permitted as an option across procedures (including open and dynamic procedures) to help buyers refine solutions and contractual terms to achieve the best value.
- Negotiations can only cover non-essential characteristics of the works, supplies, or services. Essential conditions and non-negotiable elements must be clearly specified upfront.

4. Direct Awards

The regulation limits direct awards to prevent the circumvention of general procurement principles, restricting them to specific situations:

- *Emergency and Crisis Situations:* Simplified direct awards are permitted when rapid purchasing is required to respond to urgent public needs, safeguard health/safety, or handle crises.
- *Food Distribution Services:* Due to limited cross-border impact and the need to support sustainable, healthy, and local food systems (e.g., school and hospital canteens), related services are subject to a direct award framework with broad leeway for buyers.
- *General Limitation:* Awards without competition remain strictly exceptional and are only valid when competition is objectively impossible or manifestly inappropriate.

5. Digital Infrastructure

The proposal replaces fragmented national eProcurement platforms with a unified, interconnected digital ecosystem:

- Sets up an interoperability network and semantic standards that allow different eProcurement systems across Member States to communicate smoothly.
- Introduces a digital business credential tool based on the "once-only" principle. Businesses upload their profiles once, allowing automatic verification of eligibility, exclusion grounds, and capacity across databases.

- *Public Procurement Data Spaces*: Establishes National Public Procurement Data Spaces (NPPDS) linked to a central EU-level Public Procurement Data Space (PPDS) managed by the Commission to enhance transparency, data quality, and anti-fraud monitoring.

6. European Preference

Designed to strengthen EU economic security, resilience, and strategic autonomy under changing geopolitical conditions:

- *Covered vs. Non-Covered Operators*: Clear distinctions are drawn between operators/goods protected under international commitments (e.g., WTO GPA or free trade agreements) and non-covered third-country entities.
- Public buyers can apply European preference rules by requiring minimum Union/covered origin, imposing evaluation preferences, or restricting participation.
- The Commission is empowered to close specific procurement procedures to non-covered third-country operators or goods if required to protect essential Union strategic, security, or geopolitical interests.

7. Modifications

Rules regarding contract modifications during execution are streamlined to clarify when changes are allowed without launching a new tender:

- Introduces clear adjustment mechanisms to handle unforeseen circumstances or predictable adaptations in a balanced manner.
- Substantial changes that alter the economic balance or essential competitive terms of the contract are prohibited and require a new procurement procedure.
- Major modifications exceeding 50% of the initial contract value require ex-ante publication and strictly enhanced transparency obligations to prevent misuse.

8. Exclusion

The proposal consolidates rules on exclusion grounds—previously scattered across various sectoral laws—into a single framework:

- Applied automatically for convictions relating to serious crimes (e.g., fraud, corruption, terrorism, human trafficking, child exploitation, and environmental crime).
- Covers situations that cast doubt on an operator's integrity or professional reliability.
- For optional exclusions, economic operators have the right to demonstrate their reliability by taking corrective actions ("self-cleaning") or proving active cooperation with investigating authorities (e.g., participation in leniency programs for competition law breaches).

9. Subcontracting the Whole Job

The proposed Regulation introduces explicit restrictions on complete delegation to prevent empty shell entities from winning public tenders:

- Contracts can no longer be subcontracted in their entirety to another party, nor can they be further re-subcontracted in full further down the supply chain.
- Public buyers maintain the discretion to require that specific critical tasks or components of the contract be executed directly by the main contractor.
- Buyers gain the right to demand complete visibility on the identity and proportional share of all subcontractors, which is particularly mandatory for contracts involving European preference conditions or security-sensitive infrastructure.

10. Intellectual Property (IP)

The proposal establishes a clear framework for intellectual property rights to clarify ownership while protecting public investments:

- Background IP: Economic operators retain ownership of pre-existing background IP, subject to granting public buyers a non-exclusive license as far as necessary to use, adapt, and maintain the acquired goods or services.
- Foreground IP Ownership: For general procurements, public buyers must specify IP ownership terms in advance within the tender specifications; transfers of full IP ownership to the buyer may be required where necessary, particularly for critical infrastructure projects.
- Default Rights for Innovation: Under the dedicated Innovation Procedure, default ownership of new IP created during the development process rests with the economic operator rather than the public buyer, encouraging private sector participation in co-creating solutions.

The full EU Joint Communication can be found [here](#).

Disclaimer: This is a policy brief to create awareness about the legislative proposal and for information purposes. It is not an official position of the Malta Business Bureau.

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