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Public Procurement 2026

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Portugal: Law and Practice

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VdA





Law and Practice

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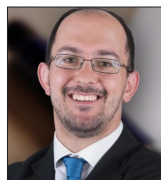
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1. Overview

1.1 Public Procurement Legislation

The Public Contracts Code (PCC) – approved by Decree-Law 18/2008, of 19 January 2008, as amended – is the key legislation regulating public procurement and government contracts in the Portuguese legal system.

Decree-Law 111-B/2017, of 31 August 2017, amended the PCC, transposing Directive 2014/23/EU (the “Concession Contracts Directive”), Directive 2014/24/EU (the “Public Procurement Directive”) and Directive 2014/25/EU (the “Utilities Directive”), all dated 26 February 2014, to the Portuguese legal system. This amendment significantly modified the legal framework applicable to public procurement procedures and public contracts, revoking 35, adding 54 and changing 155 articles.

The last significant change to the PCC was approved by Decree-Law 54/2023, of 14 July 2023, which introduced minor changes to the PCC, reducing limitations on subcontracting in public works contracts. More recently, Decree-Law 112/2025, of 23 October 2025, made it easier for entities to enter into public contract works in a “design and build” model, as set forth in **5.5 Legislative Amendments Under Consideration**.

Even if it did not alter the PCC, Law 43/2024, of 2 December 2024, is worth mentioning, as it provided a specific framework for contracts related to projects supported by EU funds – namely, in regard to:

- prior clearance from the Audit Court;

- the suspensive effect arising from judicial claims; and
- the incentive to use arbitration as a suitable dispute resolution mechanism.

The PCC is currently under revision. In April 2026, the government proposed a draft bill that significantly amends the Code. This amendment is expected to be approved in the latter half of 2026. Should that occur, several matters will be deeply impacted, namely the procedures that may be adopted and the circumstances under which that can occur.

Further Relevant Laws

Also relevant is Law 96/2015, of 17 August 2015, which establishes the legal framework for the access and use of electronic platforms for public procurement purposes, as well as Decree-Law 111/2012, of 23 May 2012, amended by Decree-Law 84/2019, of 28 June 2019, and Decree-Law 170/2019, of 4 December 2019 (the application of the latter having been stopped by Parliament Resolution No 16/2020), which provides for a special legal framework for public-private partnerships.

Additionally, Decree-Law 28/2019, of 15 February 2019, as amended by Decree-Law 48/2020, of 3 August 2020, was established in the context of SIMPLEX+, a programme that sets forth a series of measures to simplify and modernise the Portuguese public administration.

As such, the Portuguese government has promoted the implementation of digital receipts/electronic invoicing. The main objective of this measure was to reduce paper tax invoices and stimulate the digital

transition, as well as to promote less bureaucracy in public administration.

Autonomous Administrative Regions

Portugal has two autonomous administrative regions, Madeira and the Azores, each of which has adapted regional public procurement rules according to the particularities of their territories. In Madeira, the most relevant piece of legislation is Regional Legislative Decree 34/2008/M, of 14 August 2008, as amended by Regional Legislative Decree 26/2022/M, which introduced minor adjustments to the national legal framework. In the Azores, the regional government approved Regional Legislative Decree 27/2015/A, of 29 December 2015, as amended by Regional Legislative Decree 3/2017/A, which consolidated the main provisions referring to the award of public contracts in the region and implemented some provisions of the EU directives on public procurement not yet transposed into the national framework.

The APC and ACPC

Reference must be made to the Administrative Procedure Code (APC), approved by Decree-Law 4/2015, of 7 January 2015, as amended, and to the Administrative Courts Procedure Code (ACPC) and the Statute of Administrative and Tax Courts, as amended; all three apply to public procurement procedures in general.

Reference should also be made to the incorporation of specific units, within the administrative courts, to handle public procurement litigation – the so-called specialised public contract units (*Juízo de Contratos Públicos*) – in order to speed up the decision timeline. So far, only two specialised public contract units have been created (Lisbon and Oporto), as these jurisdictions have higher numbers of annual claims regarding public procurement.

Although the post COVID-19 pandemic period and the exceptional economic situation created by the wars in Ukraine – and, more recently, Iran – have affected the Portuguese economy, the year 2025 and the first semester of 2026 were marked by a change of government, calamitous consequences of several storms, a housing crisis, a change in immigration laws and a proposed amendment for the reform of labour law. In

addition, the deadline for the conclusion of projects supported by EU funds is rapidly approaching.

1.2 Entities Subject to Procurement Regulation

The PCC establishes a wide concept of contracting authorities. However, until the revision of the PCC introduced by Decree-Law 149/2012, of 12 July 2012, certain public entities – eg, public foundations for university education or corporate public hospitals – were excluded from its subjective scope of application.

Portuguese legislation currently recognises three main categories of contracting authorities.

Category One

Article 2 (1) of the PCC enshrined the first group of entities; it is generally composed of the traditional public sector and includes:

- the Portuguese state;
- the autonomous regions;
- local authorities;
- municipalities
- public institutes;
- independent administrative authorities;
- the central Bank of Portugal;
- public foundations;
- public associations; and
- associations financed, for the most part, by the previously listed entities – or subject to the management supervision of the aforementioned authorities or bodies, or where the bulk of the members of the administrative, managerial or supervisory board are, directly or indirectly, appointed by the aforementioned entities.

Category Two

In accordance with Article 2 (2) of the PCC, the second group of entities includes bodies governed by public law, as follows.

- Bodies governed by public law that, regardless of their public or private nature:
 - (a) were established for the specific purpose of meeting needs in the general interest;
 - (b) do not have an industrial or commercial character (ie, are not subject to competition); and

- (c) are financed, for the most part, by any entity in the traditional public sector or by other bodies governed by public law – or are subject to their management supervision, or where more than half of the members of the administrative, managerial or supervisory board are, directly or indirectly, appointed by the aforementioned entities.
- Any entities that are in the same situation set forth in the previous paragraph in relation to an entity that is a public contracting authority under the same paragraph.
- Associations financed, for the most part, by the previously mentioned entities – or that are subject to the management supervision of the aforementioned authorities or bodies, or where the bulk of the members of the administrative, managerial or supervisory board are, directly or indirectly, appointed by the aforementioned entities.

Category Three

The third group of contracting authorities is set forth in Article 7 of the PCC and is composed of entities operating in the utilities sectors (water, energy, transport and postal services) that fall within the following three subcategories:

- legal entities that are not included in the aforementioned categories of Article 2 but operate in one of the utilities sectors, and over which any of the entities referred to in the foregoing may exercise, directly or indirectly, a dominant influence;
- legal entities that are not included in the aforementioned categories of Article 2, and that hold special or exclusive rights that have not been granted by means of an internationally advertised competitive procedure, with the effect of reserving to themselves or jointly with other entities the exercise of activities in the utilities sector and substantially affecting the ability of other entities to carry out such activities; and
- entities that were exclusively incorporated by the entities referred to in the two foregoing paragraphs, are financed or managed by the same (for the most part) or have an administrative, managerial or supervisory board on which more than half the members are directly or indirectly appointed by

said entities, provided that they are destined to jointly operate in the utilities sectors.

Further Categories

Further to the three main categories of contracting authorities referred to in the foregoing, the PCC extends its scope of application to entities that enter into public works contracts or associated public service contracts, provided those contracts are directly financed, for more than 50% of the contractual price, by contracting authorities – and the values of the contracts to be executed are equal to or greater than the relevant thresholds (Article 275, PCC).

Additionally, the PCC extends the application of certain public procurement rules to contracts to be carried out by public works concessionaires or by entities holding special or exclusive rights, under certain circumstances expressly defined in Articles 276 and 277 of the PCC.

1.3 Types of Contracts Subject to Procurement Regulation

The contracts that are subject to procurement regulation are those whose scope is, or may be, subject to competition. In this sense, in accordance with the PCC, the following contracts are considered to be subject to competition, without limitation:

- public works contracts;
- public works concessions;
- public services concessions;
- acquisition or lease of goods;
- acquisition of services; and
- company contracts.

Relevant thresholds (referring to threshold values exclusive of VAT) may vary depending on the contracting authority, and on whether the contracting authority pertains to the traditional public sector or the utilities sector.

All public contracts executed by entities pertaining to the traditional public sector, or that are considered bodies governed by public law, fall within the scope of procurement law, regardless of the contract value. Nevertheless, contracts whose value is under certain amounts can be awarded through a non-competitive

procedure (direct award), and their terms are also regulated by the PCC.

Part III of the PCC is applicable (at least, in part) to all public contracts, regardless of their qualification as administrative contracts. Although this regime mainly pertains to the performance of administrative contracts, some of its provisions (eg, regarding invalidity, contractual amendments, assignment and subcontracting) apply to all contracts that were subject to a public procurement procedure, even if they are not administrative contracts.

The scope of application of the direct award was reduced by one of the latest amendments to the PCC, with the inclusion of a new procurement procedure (prior consultation) that imposes the consultation of three entities for the award of a contract when its value exceeds a certain threshold.

Utilities Sector

For contracting authorities in the utilities sector, regardless of the general application of the public procurement principles to all contracts carried out by those entities, the European thresholds apply and are as follows:

- for the provision of services contracts, goods supply or leasing contracts – EUR432,000;
- for public works contracts – EUR5,404,000; and
- for service contracts for social and other specific services – EUR1 million.

All public works concession contracts and public service concession contracts, as well as companies' incorporation contracts, fall within the scope of the PCC, regardless of their value.

1.4 Openness and International Competition

The PCC does not establish any restrictions on the opening of contract award procedures. However, the regulated competitive public procurement procedures must be advertised in the national gazette (*Diário da República*) and in the Official Journal of the European Union (OJEU) if their value exceeds the European thresholds.

1.5 Key Obligations of Awarding Authorities

According to Portuguese legislation, the award of contracts is subject to compliance with the principles of the Treaty on the Functioning of the European Union – in particular, the free movement of goods, freedom of establishment and freedom to provide services – as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality, competition and transparency.

Additionally, the law sets forth key obligations regarding the opening and selection of procurement procedures, notices, tender documents, procedure phases and the course of the procedure, bidders' requirements and impediments, qualification and bid submission and evaluation, award, contract execution and performance.

2. Contract Award Process

2.1 Prior Advertisement

Regarding the advertising of contract award procedures, contracting authorities are obliged to adopt two types of notices.

Prior Information Notices

According to Article 34 (1) of the PCC, prior to the formal opening of the pre-contractual procedures, and in accordance with the transparency principle, the contracting authorities should disclose their annual procurement plan in a prior information notice that complies with the model provided in Article 48 (1) of the Public Procurement Directive for publication in the OJEU, provided that the aggregate contractual value of the contracts to be executed during the following 12 months equals or exceeds the European thresholds (see 1.3 Types of Contracts Subject to Procurement Regulation).

In accordance with Article 34 (2) of the PCC, contracting authorities may also send a prior information notice for publication in the OJEU that complies with the model provided in Article 31 (2) and (3) of the Concession Contracts Directive, in the case of service contracts for social and other specific services listed in Appendix IV of the Directive.

Additionally, pursuant to Article 35 of the PCC, contracting entities in the special utilities sector may send an indicative periodical notice for publication in the OJEU, with the particulars provided for in Article 67 of the Utilities Directive, and covering a period of 12 months as a rule.

Notices may not be published on the purchaser's profile until notice of their publication in this form has been sent to the Publications Office of the European Union, and the date of dispatch of the second notice must be expressly stated in the first notice.

Contract Notices

As mentioned in 1.3 Types of Contracts Subject to Procurement Regulation, depending on the value and the scope of the contract, public contract authorities are, as a rule, bound to advertise the awarding procedures. With the exception of the direct award and the prior consultation procedures, all public procurement procedures are required to be advertised in advance in the *Diário da República* and, in certain cases (ie, when the contract's estimated price exceeds the European thresholds), also in the OJEU.

The information to be included in the contract notices is provided for in Annex V of the Public Procurement Directive (for announcements to be published in the OJEU) or in Ministerial Order 371/2017, as amended (for notices to be published in the *Diário da República*), and varies according to the type of procedure. However, regardless of the type of procedure, the following information is expected to be disclosed in all advertisements:

- the identity of the contracting authority;
- the internet address at which the procurement documents will be available;
- the type of contracting authority and main activity;
- a description of the procurement (nature and extent of works, nature and quantity or value of supplies, nature and extent of services);
- the estimated total order of magnitude of the contract;
- admission or prohibition of variant bids;
- the timeframe for delivery or provision of supplies, works or services and, as far as possible, duration of the contract;

- the conditions for participation;
- the type of award procedure, and, where appropriate, reasons for use of an accelerated procedure;
- the criteria to be used for the award of the contract or contracts; and
- the time limit for receipt of tenders (open procedures) or requests to participate (restricted procedures, competitive procedures with negotiation, dynamic purchasing systems, competitive dialogues, innovation partnerships).

2.2 Preliminary Market Consultations

The amendments made to the PCC in 2017 included the introduction of Article 35-A, regarding "preliminary market consultations". As a result of this, it became clear that the awarding authorities may conduct informal market consultations before the launch of the contract award procedure: namely, requesting the opinion of experts, independent authorities or economic operators.

2.3 Tender Procedure for the Award of a Contract

The PCC provides for the following procurement procedures:

- direct award – one bidder will be invited to submit bids;
- prior consultation – at least three (non-related) entities will be invited to submit bids;
- open procedure – any interested entity is free to submit bids after the publication of a tender notice;
- restricted procedure with pre-qualification (limited tender) – similar to an open procedure but comprising two stages, namely, (i) submitting technical and financial qualification documents, and selecting candidates, and (ii) submitting bids, evaluating bids and award;
- negotiated procedure – including the same two phases as the restricted procedure, with pre-qualification and a third phase for the negotiation of bids;
- competitive dialogue – whenever a contracting authority is not able to specify a definitive and concrete solution for the contract and launches a tender to which bidders submit solutions; and
- partnership for innovation – whenever a contracting authority seeks to contract the performance of

activities of R&D of goods, services or innovative works, with a purchasing intention.

Both the prior consultation procedure and the partnership for innovation were introduced in the PCC's 11th amendment, of 2017.

Negotiation With Bidders

The use of procedures involving negotiation with bidders in Portugal is limited to specific circumstances, and the PCC establishes two main procedures that involve negotiation with bidders: the competitive dialogue and the negotiation procedure. Currently, the PCC provides that the adoption of a competitive dialogue or a negotiation procedure may occur if:

- the contracting authority's needs cannot be fulfilled without adapting easily available solutions;
- the goods or services include the adoption of innovative solutions;
- it is not objectively possible for the contract award to occur without any previous negotiation due to the contract's specific nature, complexity, legal or financial composition or risk;
- it is not objectively possible to precisely define, in a detailed manner, the technical solution to be implemented by referring to a certain rule or standard; or
- in a prior public tender or limited tender with prior qualification, all bids have been excluded based on certain legal grounds.

In addition to the aforementioned cases, provided that some requirements are fulfilled (in particular, if it is provided for in the procedure programme), a negotiation phase can be entered into in respect of the procedures of direct award, or in prior consultation or public tenders, including in public tenders for the award of public works or public services concession contracts – or for the award of public works, supply or lease of goods or services, or provision contracts whose value is below certain thresholds.

2.4 Choice/Conditions of a Tender Procedure

In general, awarding authorities may freely choose to adopt an open procedure or a restricted procedure with pre-qualification.

For contracts designed for the utilities sector, awarding authorities may freely choose between the open procedure, the restricted procedure with pre-qualification, the negotiation procedure, the competitive dialogue and, if the respective requirements are fulfilled, the partnership for innovation. Also, for public works or public services concessions, as well as for company incorporation contracts, awarding authorities may freely choose between the open procedure, the restricted procedure with pre-qualification, the negotiation procedure or the competitive dialogue. In both cases, other procedures may be adopted provided certain criteria legally set forth – based on the value of the contract or material criteria – are met.

Regarding the defence and security sector, Decree-Law 104/2011 provides three procedures:

- competitive dialogue;
- a restricted procedure with pre-qualification (both governed by the rules of the PCC); and
- a negotiation procedure, which may or may not be preceded by a contract notice.

Special procedural instruments are also set forth for design procedures, dynamic purchasing systems and qualification systems, with the latter being applicable to the utilities sector.

As the EU directives state the importance of simplifying and dematerialising procurement procedures with a view to ensuring greater efficiency and transparency, the PCC opts unequivocally for electronic procurement, and the awarding authorities are bound to adopt electronic procurement procedures.

Further to the foregoing, specific criteria have to be fulfilled for the adoption of certain types of procedures based on the contract value, material criteria or type of contract.

Criteria Based on Contract Value

For entities pertaining to the traditional public sector or that are considered bodies governed by public law, the thresholds are as follows.

- For the provision of services contracts, goods supply or leasing contracts

- (a) direct award may be adopted for contracts whose value is below EUR20,000;
- (b) prior consultation may be adopted for contracts whose value is below EUR75,000 (EUR75,000 was the previous threshold for a direct award); and
- (c) public tender or limited tender with prior qualification (or negotiation procedure or competitive dialogue when the conditions are met), without notice in the OJEU, may be adopted for contracts whose value is below the European thresholds (EUR140,000 or EUR216,000, depending on whether the contracting authority is the state or other entities, respectively).
- For public works contracts:
 - (a) direct award may be adopted for contracts whose value is below EUR30,000;
 - (b) prior consultation may be adopted for contracts whose value is below EUR150,000 for prior consultations (EUR150,000 was the previous threshold for a direct award); and
 - (c) public tender or limited tender with prior qualification (or negotiation procedure or competitive dialogue when the conditions are met), without notice in the OJEU, may be adopted for contracts whose value is below the European threshold (EUR5,404,000).
- For other types of contracts:
 - (a) direct award may be adopted for contracts whose value is below EUR50,000; and
 - (b) prior consultation may be adopted for contracts whose value is below EUR100,000 (EUR100,000 was also the previous threshold for direct award).
- For contracting authorities in the utilities sector, regardless of the general application of the public procurement principles to all contracts carried out by those entities, the European thresholds apply and are currently as follows:
 - (a) for the provision of services contracts, goods supply or leasing contracts – EUR432,000; and
 - (b) for public works contracts – EUR5,404,000; and
 - (c) for service contracts for social and other specific services – EUR1 million.

However, in some situations, a direct award may be adopted irrespective of the contract value, in particu-

lar when the following material criteria are met, among others (Article 24 of the PCC).

- No participant has presented any bid, or all bids have been excluded (based on certain legal grounds only) in a previous open procedure or restricted procedure with pre-qualification, if the specifications and the minimum technical and financial requirements are not substantially altered. In this context, if direct award is adopted because, in a previous public tender or tender restricted by prior qualification, no applications or tenders were submitted or all tenders were excluded, and provided that the specifications have not been substantially modified, the choice of direct award must be made within six months from the end of the period fixed for the submission of applications or tenders, and shall lapse if no invitation to tender is issued within this period. Contracts concluded on these terms must be reported to the European Commission.
- Insofar as is strictly necessary, and for reasons of extreme urgency resulting from unforeseeable events by the awarding authority, the deadlines concerning other procedures cannot be fulfilled, provided that the circumstances invoked are not in any way attributable to the awarding authority.
- The services covered by the contract are mainly to enable the awarding authority to provide one or more telecommunications services to the public.
- The contract can only be allocated to a determined entity when the scope of the procedure is the creation or acquisition of a work of art, or an artistic event, or when there is no competition for technical reasons or it is necessary to protect exclusive rights (namely, intellectual property rights).
- Other material criteria are set forth in the law, specifically for each type of contract (Articles 25–27 of the PCC).

Even when one of the material criteria for the adoption of a direct award or a prior consultation is met, the law specifies that prior consultation should be adopted whenever recourse to more than one entity is possible and compatible with the criteria used for the adoption of such a procedure.

Negotiated Procedures and Competitive Dialogues

The awarding authorities can adopt a negotiated procedure or a competitive dialogue when:

- their needs cannot be met without the adaptation of easily available solutions;
- the goods or services include the design of innovative solutions;
- it is objectively impossible to award the contract without prior negotiation due to specific circumstances related to its nature, complexity, or legal and financial arrangements, or to the risks associated with it;
- it is objectively impossible to precisely define the technical specifications by reference to a standard, European technical homologation, common technical specifications or technical source; or
- in a prior public tender or limited tender with prior qualification, all bids have been excluded based on certain legal grounds.

Partnerships for Innovation

The awarding authorities may adopt the partnership for innovation when they intend to carry out research activities and develop innovative goods, services or works, irrespective of their nature and areas of activity, according to their subsequent acquisition, provided that they correspond to the levels of performance and prices previously agreed between them and the participants in the partnership.

Mixed Contracts

Finally, there are specific rules and conditions regarding the adoption and scope of a specific procedure for the award of mixed contracts.

2.5 Direct Contract Awards

The legislation permits direct contract awards under the circumstances established in **1.3 Types of Contracts Subject to Procurement Regulation**.

2.6 Timing for Publication of Documents

As a rule, apart from procedures where the submission of a proposal depends on an invitation (ie, direct award and prior consultation), the award authorities shall provide free, unrestricted and full direct electronic access to the procurement documents, from the date of publication of the notice. In other cases –

ie, when direct award or prior consultation is adopted – the documents of the procedure shall accompany the invitation.

Additionally, the PCC also establishes the obligation to disclose, in the public procurement portal (known as BASE), information related to the pre-contractual procedure and performance of public contracts through a form conforming to the model in Annex III of the PCC. In this respect, Ministerial Order 318-B/2023, of 25 October 2023 (which repealed Ministerial Order 57/2018, of 26 February 2018), regulates the operation and management of the public procurement portal. This portal was designed to centralise the most important information relating to all pre-contractual procedures, which must be carried out electronically as required by the PCC. It is a virtual space where the elements regarding the pre-contractual procedure and performance of public contracts are publicised, thus enabling their follow-up and monitoring.

See also **2.1 Prior Advertisement**.

2.7 Time Limits for Receipt of Expressions of Interest or Submission of Tenders

Pursuant to Article 63 (1) of the PCC, the awarding entity may broaden the timescales in the procedure documents with respect to the time limits stipulated by the PCC, which establishes the minimum timescales to present applications (technical and financial qualification documents) or bids in open public procurement procedures.

As to invitation procedures (direct award and prior consultation), no minimum time limit is provided by law; nevertheless, the courts consider that the time limit should not be less than the period considered reasonable for the submission of the proposal.

In any event, Article 64 (2) of the PCC foresees the possibility of extending the deadline for the submission of proposals, namely when the corrections or clarifications provided for in Article 50 are communicated after the deadline set for this purpose. In these cases, the extension must have at least the same duration as the delay, and it cannot be fewer than six days (when the contract notice has been published in the OJEU) or four days (in the situations provided for

in Article 136 (3) and Article 174 (2) and (3), in which the time limit set for the submission of applications or proposals, as the case may be, is reduced to 15 days).

Open Procedure

If the notice is not subject to publication in the OJEU, the PCC establishes a minimum time limit to submit bids of six days after notice is sent for publication, unless the proceeding concerns the formation of public works contracts, in which case the time limit is 14 days. If the works are sufficiently simple, the time limit of 14 days can be reduced to six days. If the notice is published in the OJEU, the minimum time limit is 30 days, which can be reduced to 15 days in cases of urgency duly reasoned by the awarding entity, or if a prior information notice has been published complying with certain conditions set forth in the law. In urgent open procedures, the time limit is 24 hours on working days for the acquisition or lease of goods or the acquisition of services, and 72 hours on working days for public works contracts.

Restricted Procedure With Pre-Qualification

- Submission of applications for technical and financial pre-qualification: if the notice is not subject to publication in the OJEU, the minimum time limit for the presentation of the application is six days (14 days for public works contracts) after notice is sent for publication. If the notice is subject to publication in the OJEU, the minimum time limit for presenting the application is 30 days (reduced to 15 days in cases of urgency duly reasoned by the awarding entity or contracts in the utility sector).
- Submission of bids: the minimum time limit is six days after the invitation is sent if the notice is not subject to publication in the OJEU, unless the proceeding concerns the formation of public works contracts, in which case the time limit is 14 days. If the works are sufficiently simple, the time limit of 14 days can be reduced to six days. If the notice is publicised in the OJEU, the minimum time limit is 25 days, which can be reduced to ten days in cases of urgency duly reasoned by the awarding entity, or if a prior information notice has been published complying with certain conditions set forth in the law – and for contracts in the utilities sector.

The possibility of shortening the deadline for the submission of applications and bids in public tenders or limited tender procedures by prior qualification is also foreseen, pursuant to Articles 136 (3), 174 (2) and 191 (5) of the PCC, provided that the contracting authority states reasons justifying urgency.

Negotiated Procedure

Submission of applications for technical and financial pre-qualification

According to the PCC, the time limit for the presentation of applications is 30 days after notice is sent for publication, or 25 days if a prior information notice has been published complying with certain conditions set forth in the law. If the notice is sent electronically for publication, this timescale may be reduced by seven days.

Submission of bids

The rules concerning restricted procedures apply.

Competitive Dialogue

The minimum period in which to submit tenders is 40 days after the invitation is sent. Regarding prior phases for the submission of applications for technical and financial pre-qualification, and for the submission of solutions, no minimum deadlines are set forth in law, and the awarding entity is bound to indicate the same in the notice and in the invitation, respectively.

Partnership for Innovation

Submission of applications for technical and financial pre-qualification

The rules applicable to the negotiation procedure also apply to the partnership for innovation procedure.

Submission of proposals for R&D projects

There are no minimum deadlines set forth in the law, and the awarding entity is bound to indicate the same in the invitation.

2.8 Eligibility for Participation in a Procurement Process

Public procurement law sets forth conditions for interested parties to participate in tenders. If a bidder does not comply with these requirements, it will be disqualified and excluded from the tender. These requirements certify the professional and personal suitability of bid-

ders and are distinct from the technical and financial capacity requirements whereby candidates' technical and financial qualifications are assessed.

Eligibility criteria include:

- (a) insolvency or similar;
- (b) conviction for crimes affecting professional reputation;
- (c) administrative sanctions for a serious professional breach;
- (d) non-payment of tax obligations;
- (e) non-payment of social security obligations;
- (f) sanction prohibiting participation in public tenders set forth in special legislation;
- (g) sanction for a breach of legal obligations in respect of employees subject to payment of taxes and social security obligations;
- (h) conviction for crimes concerning criminal organisations, corruption, fraud or money laundering, as set out in the PCC;
- (i) direct or indirect participation in the preparation of tender documents, thus obtaining a special advantage;
- (j) unlawful influence on the competent body for the decision to contract, obtainment of confidential information granting undue advantages or provision of misleading information;
- (k) conflict of interest; and
- (l) significant faults in the performance of a previous public contract in the past three years (bad past performance).

In the situations mentioned in (b), (c), (g), (h) and (l), the PCC allows bidders to demonstrate that sufficient measures have been implemented to demonstrate a bidder's probity for the performance of the contract (self-cleaning).

Besides these eligibility criteria, in procedures allowing for a pre-qualification phase, contracting authorities may establish criteria to evaluate bidders' technical and financial capacity. These may include factors linked to the bidder, and not to the bid to be presented, as is the case in the EU directives.

2.9 Restriction of Participation in a Procurement Process

In procedures with a pre-qualification phase – restricted procedure with pre-qualification, negotiated procedure, competitive dialogue and partnership for innovation – it is possible to restrict participation to a limited number of qualified interested parties. Following the assessment of the interested parties and their compliance with the technical and financial qualification criteria, a limitation of the number of bidders may occur. There are two legal systems for the selection of the qualified interested parties and limitation of the number of entities that will be invited to submit a bid (“qualification of bidders”), at the free choice of the awarding entity.

Simple and Complex Systems

Under the first system (the simple system), all interested parties that comply with the minimum technical and financial criteria set forth in the tender documents shall be invited to participate and submit their bids. In accordance with the second system – the complex, or selection, system – the technical and financial qualification of the interested parties will be evaluated and ranked, with the criteria of the higher technical and financial capacity prevailing, and only the highest-qualified parties being qualified for the submission of bids.

If the complex system of pre-qualification is adopted, a minimum of five (or a minimum of three, where a competitive dialogue procedure is at stake) interested parties shall be qualified and invited to submit their bids, unless the number of entities that comply with the minimum technical and financial criteria of pre-qualification is fewer than five (or three, in the case of competitive dialogue).

It is important to stress that economic operators may resort to the technical qualification of third parties in order to demonstrate full compliance with the qualification criteria. To do so, they must submit with their qualification documents a declaration in which they state that the third party in question will perform the relevant part of the contract for which such expertise is required.

Non-Competitive Procedures

Beyond the pre-qualification procedures, in non-competitive procedures, such as the direct award and the prior consultation procedure, the selection of the invited entity(ies) is at the discretion of the awarding entity. However, there are limits to the total amount of contracts that may be awarded to the same bidder in consecutive non-competitive procedures. Furthermore, in prior consultation procedures, the entities that are invited to submit a bid (which shall be at least three) must be separate companies and shall not be related (ie, they cannot share board members or have the same shareholders).

2.10 Evaluation Criteria

The only award criterion foreseen in the PCC is the most economically advantageous bid, which may assume one of two forms:

- multifactorial, where the award criteria are composed of a group of factors and sub-factors concerning several aspects of the performance of the contract to be executed; or
- monofactorial, in which case only one aspect (eg, price) is subject to evaluation and the tender documents shall set forth all other aspects of the performance of the contract to be executed.

The factors and sub-factors of the evaluation criteria must be linked to the subject matter of the public contract in question, comprising all, and only, the aspects of performance of the contract to be executed. They may include:

- quality;
- price;
- technical merit;
- aesthetic and functional characteristics;
- environmental characteristics;
- running costs;
- cost-effectiveness;
- after-sales service and technical assistance;
- delivery date and delivery period, or period of completion; and
- environmental or social sustainability.

The rules of the procedure shall establish a tie-breaker criterion in the event of a tied evaluation of bids, which

can be related to the evaluation factors established; the time when the bids were submitted is expressly dismissed as a valid tie-breaker criterion.

2.11 Exclusion of Tenders

The PCC establishes a large number of situations that may lead to the exclusion of tenders. Among others, tenders may be excluded under the following circumstances:

- submission after the established deadline;
- failure to provide the required documents in the tender documents;
- submissions that manifestly disregard the object of the contract to be concluded or do not contain any attributes or terms and conditions set in the tender documents;
- submission of false documents and/or documents that contain false information;
- submission of tenders of a price higher than the maximum price of the procedure;
- submission of tenders with an abnormally low price;
- failure to comply with the rules and limitations applicable to variant bids;
- submission of tenders that contain documents in a foreign (non-Portuguese) language;
- submission of bids following collusion or other anti-competitive behaviour between bidders; and
- submission of tenders whose contract would imply the violation of any applicable legal or regulatory obligations.

As mentioned previously, bids shall also be excluded if the bidders do not meet the eligibility criteria, as explained in 2.8 Eligibility for Participation in a Procurement Process.

3. General Transparency Obligations

3.1 Obligation to Disclose Bidder/Tender Evaluation Methodology

According to the PCC, contracting authorities must be transparent. This general obligation is enshrined in the requirement to properly publicise public tender proceedings, and to make public all procedure documents, which must also be transparent and clear,

thereby ensuring a level playing field among bidders. Elements that must be disclosed include the criteria and evaluation methodology of the bidders (pre-qualification phase, where it exists) and of the bids evaluated.

In accordance with the PCC, there is a general provision that demands the absolute disclosure at the beginning of the procedure of all features of the evaluation methodology that cannot be altered during its course. Thus, the relevant pre-qualification criteria for the selection of bidders, as well as the criteria for the selection of bids and their corresponding weight, the evaluation methodology, and the scoring system for every criterion, factor and sub-factor, must be clearly specified in the tender documents at the beginning of the procedure.

In cases where the award criteria are multifactorial, a bid evaluation model that clearly explains the factors and any sub-factors relating to aspects of the execution of the contract that are subject to competition in the specifications must be drawn up.

3.2 Obligation to Notify Interested Parties Who Have Not Been Selected

Any relevant decisions of the contracting authority shall be notified to all interested parties, including unsuccessful bidders. Also, all proposed decisions taken by the jury of the procedure shall be notified to the same entities.

Thus, all entities or bidders that submit a pre-qualification application or a bid are notified and informed of the preliminary evaluation report, including the unsuccessful bidders. At this stage, bidders are granted a brief period (of five or three working days, depending on the tendering procedure) to comment on the analysis of the jury. They have the opportunity to present a formal request asking for a modification of the preliminary report if they do not agree with its content. A final report and final decision on the pre-qualification, or on the evaluation of bids and award of contracts, is issued and notified to all participating parties, regardless of whether they are successful. If only one bid has been submitted in the procedure, the jury does not have to send the preliminary report to the only competitor under the right to a prior hearing.

3.3 Obligation to Notify Bidders of a Contract Award Decision

The PCC provides that the contract award decision is notified simultaneously to all bidders participating in the procedure, together with the final report prepared by the jury, which must also include the reasoning behind the decision. As open procedures run on electronic platforms, the relevant entities are alerted through a notification on the platform; as to invitation procedures, bidders are usually alerted by means of an electronic message.

3.4 Obligation to Grant a Prior Hearing

Once the preliminary report has been notified to the bidders, the awarding authority is obliged to grant a prior hearing period. This period may vary from a minimum of three to five days, depending on the tendering procedure. As a rule, the comments made by bidders must be taken into account in the final report. If the final report changes the conclusions of the preliminary report regarding the bids, the awarding authority must grant a new prior hearing period before the award decision is taken.

3.5 Requirement for a “Standstill Period”

The PCC stipulates a general standstill period of ten business days between the time of notification of the contract award decision in writing to all bidders and the execution of the contract, so that unsuccessful bidders are allowed to challenge the decision before the contract has been signed.

However, the referred-to ten-day period shall not apply where:

- the contract is executed under a direct award or a prior consultation procedure, or, in other procedures, where the notice has not been published in the OJEU;
- the contract refers to a framework agreement in which the terms cover all the aspects related to the performance of the contract or to a framework agreement executed with one entity only; or
- only one bid has been submitted.

4. Review Procedures

4.1 Responsibility for Review of the Awarding Authority's Decisions

As referred to in 3.2 **Obligation to Notify Interested Parties Who Have Not Been Selected**, the preliminary evaluation report issued by the jury of the tender should be notified to all bidders, allowing them to submit their views, and the report may be reviewed by the jury in the final report.

In Portugal, it is possible to challenge all decisions issued in public procurement procedures through administrative review proceedings that address the contracting authorities (the competent body for the contracting decision), or through judicial review proceedings under the jurisdiction of administrative courts.

4.2 Remedies Available for Breach of Procurement Legislation

Administrative courts may annul administrative decisions, regulations and contracts that breach public procurement rules, and may also award damages (eg, the costs incurred by the bidder for participating in the tender).

Furthermore, the PCC also foresees that breach of procurement rules may represent a misdemeanour; in this regard, the faulty party may be subject to fines (with the amount depending on the seriousness and degree of fault) and other sanctions, namely prohibition of participation in subsequent public procurement procedures for a maximum period of two years.

4.3 Interim Measures

Whenever a public procurement procedure refers to the conclusion of a public works contract, a public works concession, a public services concession, an acquisition or lease of goods, or an acquisition of services, the judicial challenge of the award decision taken by the contracting authority may suspend the effects of the awarding decision or the performance of the contract (if it has already been concluded), provided that:

- the tender's public notice was published in the OJEU; and

- the claim was filed within the stand-still period (meaning the ten business days following the awarding decision, as mentioned in 3.5 **Requirement for a "Standstill Period"**).

The suspension can, however, be lifted by the court, upon request from the contracting authority or the awarded bidder, if it considers that the damages resulting from the suspension are more serious than the ones resulting from its withdrawal.

When the judicial proceeding refers to a different decision taken in the context of a public procurement procedure (ie, an administrative decision other than the award decision), the proceeding does not have an automatic suspensory effect, but the administrative court may be requested to adopt interim measures aimed at ensuring the effectiveness of the final judgment. However, these measures are granted only in exceptional circumstances.

4.4 Challenging the Awarding Authority's Decisions

Any unsuccessful bidder can submit an application for review of a certain decision, tender document or contract, provided it demonstrates it has been directly affected by the infringement in question and that it will obtain an advantage through the review decision sought.

4.5 Time Limits for Challenging Decisions

The appeal proceedings concerning procurement decisions are characterised by their pressing urgency, aimed at avoiding excessive delays in the procurement procedure. An administrative appeal must be brought within five business days. Judicial proceedings regarding pre-contractual litigation must be filed within one month of the relevant decision being issued and notified to the bidder.

4.6 Length of Proceedings

Although urgent, in judicial proceedings related to public procurement, it usually takes at least six to eight months to obtain the first-instance decision (and sometimes can even take more than a year, depending on whether a trial shall take place).

4.7 Annual Number of Procurement Claims

The statistical data regarding this matter show that the number of procurement claims, although varying throughout the years, remains relatively high (in the last decade, around 300–400 procurement claims were filed each year).

4.8 Costs Involved in Challenging Decisions

Administrative appeal of decisions taken by the contracting authorities does not cost the challenging entity. Judicial challenge has an initial cost, regardless of the value of the claim, of EUR204. However, in the event of appeal of the court ruling, a judicial fee will be charged, varying depending on the value of the claim.

5. Miscellaneous

5.1 Modification of Contracts After the Award

According to the PCC, amendments to concluded contracts are permitted without a new procurement procedure only on public interest grounds if:

- the conditions under which the parties entered into the previous agreement have changed in an abnormal and unpredictable way; and
- the contractor's new obligations would seriously increase the risks it assumes under the original contract.

Amendments can be introduced by a unilateral decision of the contracting authority based on public interest grounds, by an agreement entered into by both parties, or by a judicial or arbitral decision.

The amendments introduced cannot alter the overall nature of the contract and cannot affect competition within the procurement procedure launched for the performance of said contract (ie, the changes to be introduced cannot alter the order of the bids previously evaluated). In fact, the amendment cannot substantiate an increase of 25% of the initial contractual price in the mentioned case of change of circumstances, and of 10% in the case of amendments based on public interest. It cannot lead to the introduction of changes that, if included in the contract documents, would objectively change the evaluation of the bids

and the economic balance of the contract in favour of the co-contracting party.

In addition to the objective modification of the contract by agreement of the parties or by judicial or arbitral decision, a third route is possible: modification of the contract by administrative act of the public contracting authority based on reasons of public interest arising from new needs or a new consideration of the circumstances.

As to the grounds for modification of the contract, a new ground is also added: the existence of contractual clauses indicating clearly, precisely and unequivocally the scope and nature of possible modifications, as well as the conditions under which they may be applied.

The referred-to law also clarifies the limits to which each of the grounds for objective modification are subject and sets forth exceptions to which said limits are not applicable. It also extends the obligation to publish objective modifications to all contracts entered into by the public contracting entity on the public contracts portal.

Finally, it extends the application, with the necessary adaptations, of the legal framework of objective modifications of the public works contracts to concession contracts, and of the legal framework of objective modifications of the public works contracts to services acquisition contracts.

Portuguese courts, in relation to amendments introduced to concluded contracts, still follow the Presetext case law.

5.2 Termination of Contracts

The PCC also provides for the termination of contracts, which may occur, inter alia, upon agreement of the parties, by decision of the public contracting party, by decision of the private contracting party or by decision of the court (upon request from any of the parties). Additional termination causes are also provided by law, such as the contract's expiry or its complete fulfilment, among others.

According to the PCC, the parties may terminate the contract at any time upon mutual agreement, which shall have at least the same form as the original contract (ie, if the original contract is in writing, so must the termination agreement be).

The legal framework regarding unilateral termination clearly favours the public contracting party over the private contracting party. In fact, the public contracting party may terminate the contract based on:

- breach of contract by the counterparty;
- reasons of public interest (upon payment); and
- an abnormal and unforeseeable change of circumstances (also upon payment).

The grounds for termination based on breach of contract include:

- failure to comply with contractual obligations;
- disobedience to orders issued by the public contracting party;
- unauthorised assignment of the contract;
- application of contractual penalties up to 20% or 30% of the contract's price; or
- insolvency of the private contracting party.

Furthermore, the unilateral termination of the contract by the public contracting party operates through a mere administrative decision, without the need for a court assessment.

On the contrary, the private contracting party is only entitled to termination of the contract in specific circumstances, such as:

- definitive breach of contract by the counterparty;
- lack of payment (but only if it lasts for more than six months, or if the outstanding amount exceeds 25% of the contract's price); or
- abnormal and unforeseeable change of circumstances (but only if the termination does not cause serious damage to the public interest, or if the performance of the contract, under the new circumstances, may lead to the insolvency of the private contracting party).

In addition, the private contracting party may not terminate the contract by means of a unilateral statement, as a judicial or arbitral decision is generally required, unless the termination of the contract is based on delayed payments by the public contracting party – but, in such case, the latter can block the termination by paying the amount in debt, plus interest.

5.3 Prerogatives of the Awarding Authority

Article 302 of the PCC establishes special prerogatives in favour of the awarding authority. Under this provision, awarding authorities are permitted to:

- direct the performance of the contract;
- supervise the performance of the contract;
- unilaterally modify contract provisions;
- apply sanctions in case of non-performance of the co-contractor;
- unilaterally terminate the contract; and
- determine the assignment of the contract to a third party.

The use of these powers must be based on public interest reasons and find specific limitations in the PCC.

5.4 Recent Important Court Decisions

Several decisions have been taken in relation to public procurement matters, of which the following should be highlighted.

Decision of the Supreme Administrative Court of 5 June 2025 (Case 0118/24.4BEPDL)

The head of a local public entity cannot participate in meetings whose scope pertains to the award of a tender in which one of the bidders was a company represented by said person. Such illegality becomes more serious when the head of the local public entity actively tries to persuade the other board members that his or her company should be awarded the contract.

Decision of the South Central Administrative Court of 23 October 2025 (Case 50631/24.6BELSB)

The tender specifications of a tender are illegal, due to the breach of transparency and equality principles, when it does not disclose sufficient information related to the costs inherent to data migration, delivery,

implementation and setup of the equipment to be purchased, as it prevents other companies (apart from the incumbent) to submit a bid.

Decision of the Administrative Supreme Court of 27 November 2025 (Case 021/25.0BEVIS-SA1)

The awarding entity cannot extend the deadline for the submission of bids in a tender, after the initial deadline has expired, on the grounds that the bidders would have needed more time to inspect the site where the contract should be performed, when no bidder asked for an extension and all the interested parties had the opportunity to proceed to inspection of the site.

5.5 Legislative Amendments Under Consideration

Decree-Law 112/2025

Bearing in mind that public bodies do not always have the know-how required to accurately design the specifications of the works that they need, Decree-Law 112/2025, of 23 October, established that awarding entities are free to choose between having a project on their own or asking the bidders to come up with a project, pursuant to a “design and build” model (*conceção-construção*).

It shall be noted that, before Decree-Law 112/2025 entered into force, the choice for a “design and build” model was exceptional, subject to the demonstration by the awarding entity that the works to be carried out were particularly complex.

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