

GETTING THE
DEAL THROUGH 

Public Procurement 2015

Contributing editor
Hans-Joachim Prieß
Freshfields Bruckhaus Deringer LLP

Publisher
Gideon Robertson
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Business development managers
George Ingledeu
george.ingledeu@lbresearch.com

Alan Lee
alan.lee@lbresearch.com

Dan White
dan.white@lbresearch.com



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Law Business Research Ltd
87 Lancaster Road
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Tel: +44 20 7908 1188
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Portugal

Duarte Abecasis and Lourenço Vilhena de Freitas
Cuatrecasas, Gonçalves Pereira

Legislative framework

1 What is the relevant legislation and who enforces it?

The key legislation in Portuguese jurisdiction is the Public Contracts Code (PCC), approved by Decree-Law 18/2008 of 29 January, as amended. There is a special regime for security and defence contracts established in Decree-Law 104/2011 of 6 October.

Also relevant is the regime of public-private partnerships approved by Decree-Law 111/2012 of 23 May.

Primarily in charge of government purchasing is the Central Purchasing Unit (Entity of Shared Services of the Public Administration, IP, ESPAP), and there is also a relevant central purchasing body in the health sector and other specific units in different ministerial departments. Apart from those bodies, tendering procedures depend upon the competent ministry's decision.

It is also relevant to mention the New Public Procedure Code (PPC) approved by Decree-Law 4/2015 of 7 January.

2 In which respect does the relevant legislation supplement the EU procurement directives or the GPA?

EU directives apply to the Portuguese jurisdiction, as does the GPA. Nevertheless, the PCC develops and details the EU procurement directives, and also enlarges the regimes set forth in the above-mentioned directives, regimes that are therefore applicable to contracts that, owing to their nature and value, are not subject to those directives.

3 Are there proposals to change the legislation?

There are no current proposals to change the legislation. Nevertheless, with the entering into force of the new EU directives, it is quite likely that the PCC will be amended.

4 Is there any sector-specific procurement legislation supplementing the general regime?

As explained, there is a special regime for security and defence contracts established in Decree-Law 104/2011 of 6 October. The general rules of the PCC apply to the public passenger transport procurement and works or services concessions.

Applicability of procurement law

5 Which, or what kinds of, entities have been ruled not to constitute contracting authorities?

The contracting authorities are in Portuguese administrative law the following: traditional administration, bodies ruled by public law, entities operating in special sector or utilities and, due to the PCC extension, some private entities that enter into public works agreements if they are financed more than 50 per cent by contracting authorities. Some publicity rules apply to public works concessions in the above-mentioned situation.

Traditional administration entities are covered by government procurement rules. Those entities are the Portuguese state, the autonomous regions, the local entities, the public institutes, public foundations, public associations or associations of the previous entities.

The procurement rules also apply to bodies ruled by public law. According to Portuguese law, a body ruled by public law is: a legal public or private person, established for the specific purpose of meeting needs in the general interest, without an industrial or commercial character and mainly

financed by a contracting authority, or subject to management supervision by a contracting authority or by an administrative, managerial or supervisory board whose members are mainly appointed by the contracting authority.

Pursuant to the CJEU decisions *Mannesmann* and *ARA v BFI*, and in order to assess what should be regarded as lack of industrial or commercial character, the PCC refers to situations in which the economic activity escapes from the competitive logic of the marketplace. In Portuguese case law, the CTT (then the Public Postal Company, now privatised) was considered not to have an industrial or commercial character.

According to this criterion, some public and mixed-capital controlled entities may be subject to public procurement rules.

Utilities are subjected to procurement rules if they are controlled by a public entity and operate in the water, energy, transportation and postal services, and regarding their contracts of public works (where the value thereof is higher than the directive threshold), public works concession, public services concession, lease or acquisition of movable assets (if their value is superior to the directive threshold), service acquisition (if their value is superior than the directive threshold). There are also several restrictions on the application of the procurement rules to the utilities that operate in these sectors.

6 For which, or what kinds of, entities is the status as a contracting authority in dispute?

The status as a contracting authority can be in dispute regarding the general criteria of bodies ruled by public law, since the above-mentioned criteria are vague. More recently, in recent state budget laws several public companies have been qualified as 'reclassified entities' (a category of entities foreseen in the National Institute for Statistics annual list and in the State Budget Framework Law for entities that under EU law would be in the public administration sector for Eurostat purposes). Those entities are, in principle, bodies ruled by public law, but more entities can qualify as such and are not listed in the budget, although some doubts may arise as to their status as a contracting authority.

Private entities that benefit from special rights that have not been granted in competitive terms are also subject to dispute as to the nature of contracting authorities.

7 Are there specific domestic rules relating to the calculation of the threshold value of contracts?

In the special sectors, and regarding utilities, only contracts with a value superior to the EU thresholds are subject to the procurement rules. Nevertheless, the general procurement principles will apply, as well as the European Commission interpretative guidelines.

For the other contracts in the classic sectors, there are thresholds below which the contracts can follow a direct agreement procedure (this procedure is nevertheless regulated in the PCC). The value is determined as the maximum economic benefit arising from the contract. The direct agreement can only be chosen to enter into works contracts below €150,000, acquisition and lease of moveable assets contracts below €75,000 and any other contracts below €100,000 and the limited tendering with a previous qualification for contracts of any value.

Apart from the financial thresholds, there are also other exceptions that mean that a competitive procedure does not have to take place, both general and specific exceptions for certain types of contracts.

8 Does the extension of an existing contract require a new procurement procedure?

There are some time limits in the PCC for the extension of some types of contracts. Beyond those deadlines, the contract cannot be extended and a new procurement procedure is required. Some scholars maintain that the prorogation must always be done expressly. Also, some scholars maintain that the 'corrective prorogation', prorogation for the financial rebalance of the contract, for instance, is not subject to the above-mentioned deadlines.

In any case, that extension can require a new procurement procedure if the prorogation has a substantial effect on competition, according to the criteria established in the *Presstext* case.

9 Does the amendment of an existing contract require a new procurement procedure?

The amendment of an existing contract can be done either unilaterally or through an agreement by both parties. In any case, the amendment should not affect competition. It is considered that the change affects competition, namely, if it would alter the order of the bids (except if the length of the contract or its nature justifies the alteration). To all these situations, the limits to the contract amendment established in the *Presstext* case apply.

10 May an existing contract be transferred to another supplier or provider without a new procurement procedure?

The transfer to another supplier or provider is possible whether it is foreseen in the contract or not. This always requires the authorisation of the public entity, although that can have been previously granted in the contract. However, if the transfer entails a decrease in the expertise or performance ability, the transfer may require a new tender procedure according to the *Presstext* case.

11 In which circumstances do privatisations require a procurement procedure?

Privatisations usually require a tender procedure, but that procedure is different from the ones set forth in the PCC. Depending on the nature of the privatisation, depending if it is a reprivatisation of a company nationalised prior to 1974, or a privatisation and, according to some doctrine, a reprivatisation of a company nationalised after 1974, the applicable laws differ.

For transactions concerning entities nationalised before 1974 Law 11/90 of 5 of April (amended by Law 102/2003 of 1 November and by Law 50/2011 of 13 September) applies.

For transactions concerning entities nationalised after 1974, Law No. 71/88 of 24 May, Law on the selling of the state shares (and also Decree-Law No. 328/88 of 27 September and its successive amendments) apply.

Law 11/90 allows a direct sale in situations when it is recommended for the national public interest, the strategy for the economic sector of the company to be privatised or the economic and financial situation of the company.

Law 71/88 allows the sale of the company, apart from via public tender, on the stock exchange or through private negotiation. However, if the company is controlled by a public entity or if, because of privatisation that public entity (or a group of public entities) is to lose control of the company, then private negotiation does not apply, except regarding the stocks owned by specific companies mentioned in the same law (Parública, insurance companies, banks, investment companies, risk companies and funds).

12 In which circumstances does the setting up of a public-private partnership (PPP) require a procurement procedure?

Decree-Law 111/2012 establishes a new special regime for public-private partnerships, both for the structural and the contractual ones. The public partners are the Portuguese state, state entities, autonomous public funds, public companies and other entities controlled by the previous ones. This regime is applicable even if the 'private partner' is a public company. The above-mentioned decree-law indicates the following contractual instruments: contract for the concession of public works, contract for the concession of public service, services contract, management contract and cooperation contract. Partnerships involving an expense of less than €10 million or an investment of less than €25 million are excluded from the application of the above-mentioned regime. Also excluded from the application of the public partnership regime are multi-municipal concessions of water and concessions awarded by the Portuguese state through decree-law.

Decree-Law No. 111/2012 establishes a risk-sharing requirement and lays down a procedure for awarding a partnership. The procedure follows the PCC, but there must be prior approval by the Minister of Finance and the minister responsible for the sector in question and the establishment of a project team. The jury is nominated by the said ministers and must include one or two members of the Technical Unit to monitor the partnerships. The decision is to be made by the Minister of Finance and by the Minister of the sector in question. The changing of a partnership is also subject to monitoring by a negotiation commission. The PCC has also established certain rules regarding PPP.

Contracts of structural partnerships can be subject to procurement rules if they can be qualified as bodies governed by public law or if they operate in the utilities sector. The choice of a private partner depends upon a procurement process other than by direct award, unless: a relevant public interest determines the direct award; the private partner's contribution to the public partner's activity and to the public-private partnership project is not subjected to the competition.

Contracts between contracting authorities are only subject to procurement rules if the contract in question is a public works contract, a concession of public works, a concession of public services, a lease or acquisition of moveable assets or an acquisition of services.

A parent company can buy goods from a public-public joint venture company without a tender procedure if that company's activity is mostly pursued for the benefit of the parent company or companies.

13 What are the rules and requirements for the award of works or services concessions?

Awards of works and services concessions are also subject to the PCC. Therefore, the procedures established in the PCC apply. Nevertheless, the same PCC determines that for those kinds of contracts (and also for the contracts to do with the formation of a company) one can choose, regardless of the value, between public tender, limited tender owing to prior qualification and the negotiation procedure. However, when the public interest demands, services concessions and company contracts can be granted by a direct award.

14 To which forms of cooperation between public bodies and undertakings does public procurement law not apply and what are the respective requirements?

Part II of the PCC (procurement procedures) is not applicable to contracts entered into by contracting entities mentioned in article 2, No. 1, of the Code, namely, traditional administrative authorities (state, public institutes, regions and municipalities, public associations and associations of those entities), unless the contract is (or has a part that corresponds to) a public works contract, a works concession, a services concession, a rental and acquisition of a moveable assets contract or a services acquisition.

Part II of the PCC is also not applicable in the case of in-house relations that, following European Court of Justice jurisprudence, are defined as the relation between an entity and another entity over which it exercises the same level of control as it does over its own services and whose principal activities are carried out on its behalf.

The procurement procedures

15 Does the relevant legislation specifically state or restate the fundamental principles for tender procedures: equal treatment, transparency, competition?

The PCC states that the fundamental principles applicable to public tenders are those of principles of transparency, equal treatment and competition. The Constitution and the Public Procedure Code (PPC) also mention as material administrative principles (apart from other procedural principles), besides equal treatment, the following principles: public interest, protection of the rights of the individuals, impartiality, good faith, good administration and justice.

16 Does the relevant legislation or the case law require the contracting authority to be independent and impartial?

The PPC determines that the impartiality principle apply to all administrative actions. This principle has two guarantees: an impediment to participating in the procedure and a request not to participate in the procedure (excuse or the suspension) (see question 17).

17 How are conflicts of interest dealt with?

To deal with conflict of interests the PPC has set up two procedures: impediment and the excuse or the suspicion. In situations where there is some kind of relationship between the contracting authority and the bidders (family, personal friendship or enmity, personal or family interest in the deal, etc), the impediment regime applies and the contracting officer cannot interfere in the decision. In other situations where there is also a relationship between the contracting officer and the bidders (but a relationship different from those regarding the impediment), but which raises doubt as to the impartiality of the contracting officer, the contracting officer must start an excuse procedure; otherwise anybody can start a procedure of suspicion, and their superior officer or other members of the body can decide whether that situation is relevant and whether the officer can participate in the procedure.

18 How is the involvement of a bidder in the preparation of a tender procedure dealt with?

According to the PCC, anyone who has given direct or indirect assistance in drafting the tender rules cannot bid, if such assistance has given them a competitive advantage. Nevertheless, according to CJEU case law, in *Fabricom*, a bid cannot be rejected on the above-mentioned grounds prior to giving an opportunity to justify that the assistance given in drafting the tender rules did not grant them any advantage.

19 What is the prevailing type of procurement procedure used by contracting authorities?

It is the direct award.

20 Can related bidders submit separate bids in one procurement procedure? If yes, what requirements must be fulfilled?

According to the PCC, the members of a grouping bidder cannot enter into another grouping bidder. Moreover, the bids can be excluded if there are strong signs of agreements or acts of the bidders in order to violate the competition.

21 Are there special rules or requirements determining the conduct of a negotiated procedure?

The negotiation procedure can be adopted for public works contracts, rental agreements and contracts for the acquisition of moveable assets, where: all the proposals have been excluded and the technical specifications are not substantially altered according to that procedure; the nature of the contract or the conditions of its execution do not allow the prior fixing of a global price in the technical specifications, and regarding public works contracts when the contracts are signed for the purpose of investigation, experimentation, study or development; and, with regard to services contracts, where the contractual specifications cannot be carefully defined.

The negotiated procedure follows the procedure of the limited tender, with adaptations, and includes a phase for the presentation of the candidacy and qualification, presentation of the initial version of bids, bid negotiation and presentation of the final version of bids and adjudication. The electronic auction cannot be used in this procedure.

22 When and how may the competitive dialogue be used? Is it used in practice in your jurisdiction?

The competitive dialogue procedure can be adopted when the object of the contract is too complex, and therefore does not allow the choice for a public tender or a limited tender with previous qualification. A particularly complex solution can be taken into consideration where the contracting authorities are not objectively able to define the technical means to satisfy these needs or objectives, or are not objectively able to specify the legal and/or financial make-up of the project, unless the contracting authority is responsible for such inability.

23 What are the requirements for the conclusion of a framework agreement?

The administration can only conclude framework agreements with one contractor when all the aspects of the execution of the contracts to be concluded in the scope of said agreement are sufficiently specified. The co-contractor is obliged to enter into contracts under the conditions of the framework agreement when the contracting authority so requests, but the public administration is not bound by that obligation. The maximum

deadline for these framework agreements cannot exceed four years, unless the nature of the contract or the conditions for its execution so require.

The PCC provides for the existence of central purchasing bodies that can be instituted by each contracting authority for one ministerial department or for several ministerial departments, such as the above-mentioned ESPAP. The establishment of contracts subject to the central purchasing bodies is subject to the PCC procurement rules and therefore these central purchasing units can also enter into framework agreements.

24 May a framework agreement with several suppliers be concluded? If yes, does the award of a contract under the framework agreement require an additional competitive procedure?

It is possible to enter into a framework agreement with several suppliers. In such situations, the award of the contract under the framework agreement requires a limited tender, by invitation, that sets out the main aspects of the procedure.

25 Under which conditions may the members of a bidding consortium be changed in the course of a procurement procedure?

In principle, a member of a bidding consortium cannot change during the procurement procedure, since the PCC determines that those members, and only they, must enter into the contract. Some may permit a change of bidding consortium owing to a merger or spin-off of a company member of the bidding consortium.

26 Are unduly burdensome or risky requirements in tender specifications prohibited?

There are no specific provisions in the PCC on this and the previous PPC is only concerned with preventing the public contracting entity entering into a contract that establishes proportional obligations for the contracting authorities. The new PPC does not, however, have any rule regarding this matter.

Nevertheless, the proportionality principle set forth in the PPC applies, and therefore, one cannot, in our view, establish excessively burdensome requirements for the bidders.

27 What are the legal limitations on the discretion of contracting authorities in assessing the qualifications of tenderers?

There are no special limits set forth in the PCC concerning the discretion of the contracting authorities in assessing the qualifications of the tenderers. In the contracts of public works, works and services concessions, renting and acquisition of moveable assets and services acquisition, the award factors cannot refer to the qualities of the bidders. Bidders' qualifications are usually analysed during the limited tender procedures, in the first phase of the procedure. There are two models for this qualification: a simple model where all the candidates that qualify and comply with some preset minimum standards continue to the second stage; and a complex model, where there is an evaluation and selection of the tenderers that can bid, based on criteria previously set (the subcriteria must also be set in advance). Please note that the tenderers can benefit from the expertise of the parent company and for most of the contracts from third parties if those parties commit themselves to performing the parts of the contract for which the expertise is required. The financial capacity can be proved by a bank declaration, or in case of a consortium if one of the members is a bank established in the European Union.

28 Are there specific mechanisms to further the participation of small and medium-sized enterprises in the procurement procedure? Are there any rules on the division of a contract into lots? Are there rules or is there case law limiting the number of lots single bidders can be awarded?

The PCC has no specific rules for fostering participation of small and medium-sized enterprises in the procurement procedure. The tender documents may, however, try to foster that participation by establishing, for instance, prerequisites related to the social impact of the contract proposal, albeit within the limits set down in EU directives and EU case law.

The contracts can be divided into lots, but there are no rules limiting the number of lots that can be awarded to single bidders.

29 What are the requirements for the admissibility of alternative bids?

Alternative bids are allowed if the tender documents so allow.

30 Must a contracting authority take alternative bids into account?

The contracting authority must, if alternative bids are allowed, take those bids into account.

31 What are the consequences if bidders change the tender specifications or submit their own standard terms of business?

The change of the tender specifications that are not subject to competition (according to the tender documents) leads to exclusion. The omission of some terms and conditions demanded by the tender documents may not lead to exclusion, but then the terms and conditions set forth in the tender documents apply.

32 What are the award criteria provided for in the relevant legislation?

The tender can be decided upon the lowest price criterion (if the tender documents fulfil all the details of the contract, leaving only the price as a decisive aspect) or else according to the most favourable proposition from an economic standpoint. In this situation all the factors and subfactors that develop the adjudication criteria must be set in advance. In the contracts of public works, works and services concessions, lease and acquisition of movable assets and services acquisition, the award factors cannot refer to the qualities of the bidders.

33 What constitutes an 'abnormally low' bid?

An abnormally low bid happens when the proposed price is 40 per cent lower than the price established in the tender programme for public works contracts and 50 per cent lower in any other kind of contract.

34 What is the required process for dealing with abnormally low bids?

Prior to the exclusion of such bid, the contracting authority must ask the bidder for clarifications and in its analysis one can take into consideration, namely, the economy in the building processes or in the rendering of services, the exceptional favourable conditions for the service rendering or the technical solutions adopted, the originality of the works, the goods and the services rendered, the specific working conditions of the bidder, the fact that the bidder may benefit from legal state aid.

35 How can a bidder that would have to be excluded from a tender procedure because of past irregularities regain the status of a suitable and reliable bidder? Is the concept of 'self-cleaning' an established and recognised way of regaining suitability and reliability?

Bidders convicted of professional misconduct, of a crime that affects their professional honour, or of crimes such as terrorism and money laundering can only bid after rehabilitation. There is no single rehabilitation procedure. The rehabilitation depends upon the judicial system and the professional orders. There is no self-cleaning, but in the PCC there are deadlines for some sanctions.

Review proceedings and judicial proceedings**36 Which authorities may rule on review applications? Is it possible to appeal against review decisions and, if so, how?**

Administrative decisions relating to the procurement procedure and the tender documents can be challenged through an administrative review application. This review application shall be presented to the contracting authority and must be filed within five days of its publication or notification of the decision in question.

The complaint has no staying effect, but the qualification decision, the negotiation phase or the award decision are subject to a decision being taken thereon.

If the complaint is about the decision of qualification, the adjudication award or the rejection of the administrative complaint, the authority must notify the other tenderers for an administrative hearing. The complaint must be decided within five days, except if there is an administrative hearing, in which case the five-day period runs from the end of the hearing.

The procurement decisions can be also challenged in court by means of a special administrative lawsuit pursuant to the Remedies Directive regime.

The general limit for challenging acts of the contracting authorities for the contract to be annulled is three months, although there is no established limitation period for acts that are null and void. There is also no limit for the tender documents. The limitation period for the annulment of the contract is six months. If the contract is a public works contract, a service contract or a contract for the acquisition of movable assets or a concession contract, then a specific means of judicial challenge is applicable. The limitation period for challenge is one month in all situations (including acts null and void) and six months for the annulment of contracts.

If there is a mediation and dispute resolution clause, a specific lawsuit regime will apply.

37 How long does an administrative review proceeding or judicial proceeding for review take?

The administrative review procedures are usually short. The PCC foresees a deadline of five days for the decision. The judicial proceedings differ if they are urgent or non-urgent. Urgent means such as interim measures and special pre-contractual acts annulment lawsuits (applicable to some kinds of contracts: public works, concessions, services acquisition) usually last from three months to one year. Judicial appeals usually also last from three months up to one year. Other lawsuits can last up to three years at the first instance court. Judicial appeals usually last one or two years.

38 What are the admissibility requirements?

Procurement procedural acts are justiciable and contracts are also justiciable. The requirements for admission, apart from the deadlines discussed below, are the court competence (the Supreme Administrative Court is competent in the first instance for the acts and contracts of the higher officers of the state (eg, President of the Republic, National Assembly, Council of Ministers, Prime Minister, etc); the local administrative courts are competent for the other acts and contracts), a direct and personal interest, an interest in acting (for instance, one cannot challenge a tender based on the illegality of the successful bid if one is classified in fifth place and does not challenge the other bids) and finally the justiciability of the act that must have external effects and cause damage to the applicant.

Procedural acts that are merely internal or that cannot cause damage to the applicant or the bidder cannot be challenged (for instance, a request to obtain proofs that was not directed at the applicant but was requested of a third party). Also, acts that merely confirm a previously notified and challenged act cannot be challenged if they have no new effects.

Regarding contracts, the other bidders can challenge them if they differ from the adjudication act.

39 What are the deadlines for a review application and an appeal?

The deadline to present an administrative review application is five working days after the notification. No administrative review is mandatory. The reviews must be decided in a five-day period.

The deadline to present a judicial appeal differs depending on the kind of lawsuit. For a special administrative lawsuit, it is three months (except if the act is null and void, when there is no deadline); for an urgent lawsuit against pre-contractual acts the deadline is one month (according to the jurisprudence this deadline is applicable even when the act is null and void); for a common administrative lawsuit, there is no deadline, but if the request is to invalidate the contract, there is a six-month deadline. For a request of liability, if it is tort liability, there is a substantive three-year deadline, after which the right to claim damages is terminated.

The three-month deadline is suspended during the administrative review and during judicial vacations. The one-month deadline, being an urgent procedure, is only suspended in case of administrative review.

A special administrative lawsuit must be presented against pre-contractual acts of contract not included in the scope of the urgent lawsuit (or to demand the issuance of an act, the nullity of a regulation or the issuance of a regulation).

The urgent lawsuit must be presented against pre-contractual acts of the contract included in its scope: public works, works and services concessions, lease and acquisition of moveable assets and services acquisitions (this lawsuit is also applicable to challenging tender regulations; scholars consider this lawsuit can also be presented to demand the issuance of an administrative act).

Update and trends

The major development concerning public procurement is the entry into force of the new PPC that, according to its article 8, is applicable to contracts entered into prior to its entering into force. According to its article 202, the PCC will be additionally applicable to all the administrative contracts entered into after the entry into force of the PPC. This is different from the solution set forth in the PCC that was only applicable to contracts entered into after its entry into force.

It is also relevant to mention the decision of the Administrative Supreme Court 2/2014, process 1790/3, according to which the mere mention of the numeric results of the proposal's evaluation is enough reasoning.

There is still no new proposal for the PCC review resulting from the new EU directives.

Common administrative lawsuits are presented to assess the contract's validity, when a contract was entered into or performed or even a mere contract performance without any prior administrative act.

There is no deadline for the judicial decisions.

40 Does an application for review have an automatic suspensive effect blocking the continuation of the procurement procedure or the conclusion of the contract?

The administrative review application does not suspend the procedure, but bars the contracting entity from going on to the next procedural phase until a decision has been taken. In fact, the complaint has no staying effect, however, the qualification decision, the negotiation phase or the award decision are subject to a decision being taken thereon.

The judicial application for review has no automatic staying effect. However, an interim measure of suspension of the effects of some pre-contractual act has an automatic staying effect, an effect that can nevertheless cease if the public entity invokes a public interest in continuing the tender procedure.

41 Must unsuccessful bidders be notified before the contract with the successful bidder is concluded and, if so, when?

Unsuccessful bidders must be notified of the adjudication, but not of the contract. Nevertheless, adjustments to the contract made prior to the contract signing and after the adjudication must be conveyed to all bidders whose bid has not been excluded.

42 Is access to the procurement file granted to an applicant?

Access to the procurement file must be granted to the bidders and in some circumstances even to the non-bidders. The bidders have access via the electronic platform to most aspects of the procedure. In the previous hearing after the preliminary report all aspects of the procedure must be disclosed.

Also, according to PPC, all interested parties have a right to access the administrative files if they have a legitimate interest in accessing those files. To demonstrate a legitimate interest it is sufficient to wish to present a lawsuit for which access to the file is relevant. Apart from that, all terminated procedures are open to public access according to Law 67/2013 of 28 August.

43 Is it customary for disadvantaged bidders to file review applications?

It is customary for disadvantaged bidders to file review applications.

44 May a concluded contract be cancelled or terminated following a review application of an unsuccessful bidder if the procurement procedure that led to its conclusion violated procurement law?

Contracts can be terminated following a judicial review application where it is concluded there was a violation of the procurement law. The administrative courts may, if requested, invalidate not only the adjudication act, but also the contract concluded afterwards. In some situations they can annul the contract directly or declare it null and void if the invalidity is based on direct legal violations by the contract's clauses - violations that stem from any procedural violation.

45 Is legal protection available to parties interested in the contract in case of an award without any procurement procedure?

There is legal protection for interested parties against an award without any procurement procedure. It can be challenged not only by an administrative review application for the maximum responsibility of the public entity that made the award, but also in the administrative courts through the remedies established in the Process Code in the Administrative Courts, through a special administrative lawsuit, through an urgent lawsuit against pre-contractual acts.

The court of auditors must also control most of the contracts that incur expenditure by public bodies and even some public-owned companies.

46 If a violation of procurement law is established in an administrative or judicial review proceeding, can disadvantaged bidders claim damages? If yes, please specify the requirements for such claims.

Disadvantaged bidders can claim damages. The amount of the damages depends upon whether they can prove they had a right to the contract (if the illegality had not occurred), in which case they can ask for the value of all losses, including loss of profit, otherwise they can only ask for compensation for their expenses.

CUATRECASAS, GONÇALVES PEREIRA

Duarte Abecasis
Lourenço Vilhena de Freitas

duarte.abecasis@cuatrecasas.com
lourenco.freitas@cuatrecasas.com

Praça Marquês de Pombal, No. 2
1250-160 Lisbon
Portugal

Tel: +351 21 355 3800
Fax: +351 21 353 2362
www.cuatrecasas.com

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