
Public procurement: Golden rules for submitting bids

In this publication, we analyze Supreme Administrative Court Ruling 12/2023 of November 17, which standardizes the caselaw regarding digital signatures on bidding documents. This is our opportunity to outline the golden rules for submitting bids.

Portugal - Legal Update

November 27, 2023



Key aspects

- > Supreme Administrative Court Ruling 12/2023 has standardized caselaw by ruling that submitting a bid in a digitally signed PDF file containing multiple separate documents that have not been electronically signed does not fulfill the requirement of having an individual signature on each document under the Public Procurement Code and Law 96/2015.
- > In light of this caselaw, we take the opportunity to outline the best practices to follow when submitting bids in public procurement tenders.



Ruling standardizing caselaw

- > [Supreme Administrative Court Ruling 12/2023](#) addresses the issue of the legal treatment that should be applied for grouping bidding documents into a single PDF file with a qualified signature. Specifically, it determines whether (i) this method of submitting a bid meets the applicable legal requirements, and (ii) a contracting authority is legally bound to interpret and apply the rules in this way.
- > In the contested ruling (2021), the Supreme Administrative Court had ruled that including various bidding documents in a single PDF file must be interpreted as “one single document,” and that the qualified electronic signature on this single PDF file would have to be understood as the “signature on each and every one of the documents” included in it.
- > However, in its foundational ruling (from 2018), the Supreme Administrative Court had ruled that “whenever multiple documents are combined into a single file, each of them should contain a signature, as there are no reasons justifying a different regime for documents submitted in a ZIP file format compared to documents submitted in other file types, such as when a PDF file consists of a folder where several individual documents are grouped together as opposed to a single electronic document.”
- > The Supreme Administrative Court justices decided that PDF grouping, while guaranteeing material compliance with the requirements provided for in article 57 of the Public Procurement Code, does not guarantee compliance with the formal requirements (i.e., signing all documents), which ensure equal and non-discriminatory treatment of bidders.
- > **Conclusion:** All documents within the bid must be signed individually, even if they are submitted as a single file.

Rules for submitting bids

- (i) Bids must be written in Portuguese, except in cases where the tender program/invitation to tender allows for certain documents to be written in a foreign language and specifies the permitted languages.
- (ii) The bid must be accompanied by:
 - a) a declaration in accordance with Schedule I to the Public Procurement Code or, in tenders where the notice is published in the Official Journal of the European Union, the European single procurement document (ESPD)—afterward, bidders must immediately start preparing to submit the qualification documents;

- b) documents containing the bid attributes, based on the object of the contract and the performance aspects put out to tender in the specifications, and in accordance with which the bidder is willing to enter into contract, along with any other documents the bidder considers indispensable for committing to enter into contract; and
- c) documents required by the tender program or invitation that contain the terms or conditions for contractual performance aspects not put out to tender, but by which the contracting authority wishes the bidder to be bound.

In the case of the documents mentioned in points b) and c), to prevent the submission of bids that do not comply with the tender requirements due to an excess or lack of information, it is crucial to verify the documents and elements that have been specifically requested by the contracting authority. For this reason, bidders should take great care when using templates of bids or previous draft bids.

- (iii) In tenders for public works contracts or concessions, the bid must also contain:
 - a) a list of unit prices for all the types of work envisaged in the execution plan;
 - b) a work plan, if the specifications include an execution plan;
 - c) a financial time schedule—when the specifications include an execution plan—containing a summary of the overall amounts for the established payment intervals, subdivided by the works components to which different price-review formulas correspond; and
 - d) a preliminary study in exceptional cases that are duly justified.
- (iv) The prices contained in the bid are stated in figures and do not include value-added tax. Prices stated in words will prevail over those stated in figures if there is a discrepancy.
- (v) Each of the bidding documents must be signed individually. For this purpose, the declaration under Schedule I to the Public Procurement Code will always be considered a separate document from the other bidding documents.
- (vi) The bidding documents must be signed by a person who is legally empowered to bind the bidder, or by a representative with the powers to bind the bidder, in which case a power of attorney proving this must be attached. This power of attorney must explicitly state the powers to submit bids. For tenders that take place on an electronic platform, the signature must be a qualified electronic signature.
- (vii) When the bid is submitted by a bidding group, the bidding documents must be signed by the common representative of the group members. In this case, the powers of attorney issued for this

purpose by each of its members must be attached. If there is no common representative, the documents must be signed by all the group members or their respective representatives.

- (viii) When the tender program does not allow for the submission of variant bids, each bidder can submit only a single bid. Conversely, when the tender program does allow for the submission of variant bids, bidders are obliged to submit a basic bid.
- (ix) Bidders must submit the bid directly on the electronic platform used by the contracting authority (except in prior consultation and direct award tenders that are not carried out on an electronic platform, in which case the bid must be submitted by electronic data transmission). As several public procurement platforms exist, it is advisable to verify the validity of access details, electronic certificates, and timestamps in good time, as well as to test the bid-submission procedures. By law, all platforms must allow for the progressive uploading of the bid up to the date and time specified for its submission, enabling bidders to prepare the bid directly on the platform.
- (x) The bid must be submitted by the established deadline. Therefore, if the deadline for submitting a bid is—for example—set for 6 p.m. on a given date, a bid submitted at 6:00:20 p.m. will be considered a late submission and will not be accepted.

Once all these steps have been completed, the submission of a bid creates a binding obligation for the bidder, who is obliged to enter the contract under its terms if its bid is successful. The submission also creates a binding obligation for the contracting authority to assess the bid in accordance with the tender rules and the award criteria and to select it when it is the most economically advantageous bid.

However, if the bid does not meet any one of the requirements described above, it may be excluded from the public procurement tender.

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