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Portugal's Recovery and Resilience Plan Public procurement framework

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Public procurement framework

Global legal framework in Portugal

All public contracts executed by entities in the traditional public sector or that are considered bodies governed by public law fall within the scope of public procurement rules contained in the Public Contracts Code (“PCC”).

The PCC transposed EU Directives 2014/23/EU, 2014/24/EU and 2014/25/EU of 26 February and EU Directive 2014/55/EU of 16 April.

Portugal embraced e-procurement, implemented via private platforms in 2009, and nowadays the e-procurement environment system is well-established, covers the entire procurement value chain and is often cited as a source of best practices for other EU Member States.

Other specific legal rules may also be relevant in the assessment of opportunities within the scope of the RRP, including:

- Rules applicable to projects involving the awarding of grants;
- Procurement of R&D and innovation products and services;
- The award of tax incentives to Foreign Direct Investment.



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Main concepts for potential bidders to consider

Participation criteria: other than the excluding grounds foreseen in the PCC, which follow EU public procurement Directives (eg. Insolvency, conviction for crimes affecting professional honorability, default to tax or social security authorities), contracting authorities are only allowed to assess bidders' qualifications if they launch a procedure with a qualification phase. The qualitative criteria, in such cases, shall refer to the economic and financial standing of the bidder and to its technical and professional ability.

Award criteria: most economically advantageous bid, which may assume one of the following regimes:

- (i) best price-quality relationship - the award criteria consist of a group of factors, and subfactors, concerning aspects of the execution of the contract to be entered into (eg. quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, operating costs, after-sales services and technical assistance, delivery date, etc.); or
- (ii) evaluation on the price or the cost only, in which case the tender documents shall establish all other aspects of the execution of the contract to be entered into.

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Electronic addresses to consider



Public Procurement Portal: <https://www.base.gov.pt/Base4/en/> centralizes the most important information on all pre-contractual procedures, thus enabling their follow-up and monitoring.

The procedure documents (namely the program and the specifications) are available for download at the electronic platform used by the contracting entity. These are the licensed platforms in Portugal:



<https://www.acingov.pt/acingovprod/2/>



<https://anogov.com/r5/en/>



<https://www2.compraspt.com/v5/en/home>



<https://www.vortal.biz/vortalgov/>



<https://www.saphetygov.pt/>

There are no costs for the supplier companies subscribing to the platforms for services available directly on the platform to respond to a public procedure. Without prejudice to this free access, the legislation imposes some requirements which are not the direct responsibility of the electronic platforms and which may imply costs for the entities using the electronic platforms (e.g. obtaining a digital certificate and chronological validation seals issued by an accredited certification body).

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RRP expected tender procedures (1/3)

Main award procedures in PCC	Brief description
Direct award	A procedure whereby the awarding entity invites only one entity to present its bid.
Prior consultation	A procedure whereby the awarding entity invites at least three potential bidders to present their bids. The awarding entity may then negotiate with the bidders some previously identified features of the contract.
Open tender	A procedure that starts with a publication of a notice in an official journal and any interested party may submit a bid, which shall be assessed pursuant to the award criteria established in the tender documents.
Restricted tender with Prior qualification	Also starts with a notice, for candidates to present their applications, and only the ones that are considered qualified candidates, pursuant to a set of predetermined technical and financial requirements, are invited to submit bids.
Negotiation procedure	Similar to the restricted tender but including a phase where bids are negotiated between the bidders and the awarding entity.
Competitive dialogue	A more uncommon procedure, whereby the awarding entity discusses with the bidders how to meet a requirement for which no solution, or no clear solution, is yet known. It includes: the submission of the applications and qualification of the candidates; presentation of the solutions and dialogue with the qualified candidates; and presentation and analysis of the proposals and award of the contract.
Innovation Partnership	A procedure intended for the development and subsequent acquisition of a good or service that is still unavailable on the market. This procedure has three phases, which may be adapted according to the complexity and financial importance of the partnership to be established: submission of applications; submission of proposals of R&D projects by qualified candidates; and negotiation of proposals and award of the partnership.

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RRP expected tender procedures (2/3)

General overview of main stages of procedures	Invitation / Notice	Qualification phase	Bid submission	Negotiation	Preliminary decision	Prior hearing	Award / Signing	Indicative timeline
Direct award	✓ invitation	X	✓	X (but bidder may be requested to improve bid)	X	X	✓	1,5 / 3 months
Prior consultation	✓ invitation	X	✓	✓ (possible)	✓	✓	✓	4 / 10 months
Open tender	✓ notice	X	✓	X (possible only in restricted cases)	✓	✓	✓	8 / 12 months
Restricted tender with Prior qualification	✓ notice	✓	✓	X	✓	✓	✓	10/ 14 months
Negotiation procedure	✓ notice	✓	✓	✓	✓	✓	✓	12 / 16 months
Competitive dialogue	✓ notice	✓	✓	X ("dialogue" occurs prior to bid submission)	✓	✓	✓	14 / 18 months
Innovation Partnership	✓ notice	✓	✓	✓	✓	✓	✓	16 / 20 months

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RRP expected tender procedures (3/3)

Depending upon the choice of the award procedure, there may be a threshold for individual contract coverage, as pictured by the following examples:

Award procedure	Type of contract	Value (current)	Specific changes for RRP* (proposal)
Direct award	Lease or acquisition of assets and provision of services	<€20.000,00 (general) or <€5.000,00 (simplified)	≤€15.000,00 (simplified)
	Public Works	<€30.000,00 (general) or <€10.000,00 (simplified)	≤€15.000,00 (simplified)
Prior consultation	Lease or acquisition of assets and provision of services	<€75.000,00	Below applicable EU threshold (€139.000,00 - Central Government or €214.000,00 - other awarding authorities) Procedure is simplified, but at least 5 entities
	Public Works	<€150.000,00	<€750.000,00 Procedure is simplified, but at least 5 entities
Open tender	National	Lease or acquisition of assets and provision of services	Below applicable EU threshold (€139.000,00 - Central Government or €214.000,00 - other awarding authorities) No change, but procedure is simplified
		Public Works and Concession Agreements	Below applicable EU threshold (€5.350.000,00) No change, but procedure is simplified
	International	All contracts	Any value No change

* There is an ongoing legislative process aimed at introducing some changes to the Public Procurement rules, particularly applicable to projects financed through the RRP. The first draft bill was vetoed by the Portuguese Republic's President last December and an amended version was discussed last week in Parliament and shall be published soon.

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Expected changes in RRP special public procurement rules



Quicker procedures (shortened deadlines for submitting proposals, prior hearings, administrative challenge etc.)



Less demanding on the financial capability and standing with tax and social security authorities of bidders



Performance bond may not be required



All contracts necessarily subject to the court of Auditors for review



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