



TENDERIO

Improving SME's access to public procurement

Guide to country specific elements on public procurement: Portugal



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List of Acronyms

Acronym	Title
CAE	Contracting Authority Entity
GDP	Gross Domestic Product
EU	European Union
MEAT	Most Economically Advantageous Tender
OJEU	Official Journal of European Union
PCC	Public Contracts Code
SME	Small and Medium – sized Enterprise

The current guide was prepared under the Task 2.5 of the TENDERIO project which is funded by the COSME programme of the European Union (Grant Agreement No 739966) and aims to increase SME's access to public procurement in EU.

Within this concept, a series of national guides on public procurement was developed for Czech Republic, Estonia, Greece, Ireland, Latvia, Lithuania, Portugal, Slovakia, Spain and United Kingdom targeting to support in particular SMEs who are interested in participating in public procurement processes in EU Member States and need to know more regarding the national procedures.

National guides are available in the project's official website: www.tenderio.com

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Executive summary

The current guide aims to support European SMEs to access the Portuguese public procurement market. In particular, it presents data and specific elements of public procurement in Portugal along with the procedures to be followed in order to submit a bid for a Portuguese public contract.

Official 2016 statistics on Portuguese public procurement are not available yet. Therefore the following considerations are based on 2015 data.

Compared to the preceding years, 2015 saw a decrease in the number of public contracts reported to the BASE portal (more information on BASE portal is provided in section 5.5). This change was particularly marked in the case of goods and services, where there was a decrease of 27% from 2014 to 2015 (although it corresponds to an increase of 159% in relation to 2011). Compared to 2014, public works saw an increase of 8%, which nevertheless represents a decrease of 6% over 2011.

As regards the contractual amounts, there was an overall decrease of 6.7% (-EUR 329 million) over 2014, and of 3.2% (-EUR 153 million) over 2011. This evolution corresponds to a positive change for goods and services (+6%, i.e. +EUR 199 million when compared to 2014, and +70% when compared to 2011) and a negative one for public works (-33.1%, corresponding to -EUR 528 million in comparison with 2014; and -60.2%, i.e. -EUR 1,613 in relation to 2011).

However, this situation is about to change. The new EU directives on public procurement (2014) have already been transposed into the Portuguese legal framework. The latter, has significantly simplified the tender procedures facilitating European SMEs to access Portuguese public contracts.

All in all, by fully adopting and implementing the latest EU common rules on public procurement, Portugal is now in better place to attract foreign SMEs to participate in its domestic public procurement market, trigger their collaboration with local partners and in general take advantage of the skills and offerings of a broader pool of potential suppliers, i.e. that of European SMEs.

1 Introduction

The current guide was elaborated under the activities of the TENDERIO project. TENDERIO project is funded by the COSME program of the European Union (Grant Agreement No 739966) and aims to increase SMEs' access to public procurement in EU.

This guide is addressed to SMEs and to any other economic operator interested in participating in Portuguese public contracts and wishes to know more about the public procurement procedures in Portugal.

Chapter one, introduces the scope and the content of this guide and lays out the concept within which it was developed.

The second chapter focuses on the potential of EU public procurement market, emphasizing the performance of European SMEs' in the cross-border procurement contracts and briefly presenting the key points of the new EU legislative framework (2014) on public procurement.

Moreover, the third chapter sets light on the current status of public procurement in Portugal. In particular, it provides an overview of the public procurement framework in Portugal along with a summary of key data regarding the Portuguese market size, i.e. the value of contract notices, the number of contract notices, the market share among supplies, services, works, the top sectors, as well as data regarding the cross-border procurement i.e. the implementation of Portuguese public contracts by companies located in another EU Member State.

Chapter four, briefly comments on the national procedures of public procurement in Portugal. More specifically, it includes information regarding:

- the contracting authorities;
- the award procedures;
- the eligibility of the potential bidders;
- the publication of the contracts notices;
- the time limits for the submission of an offer;
- the bid's submission and the bid's evaluation procedure;
- the award criteria;
- the complaints and the prejudicial objections.

In addition, the fifth chapter lists key points for the SMEs that are interested in submitting offers in Portuguese public contracts.

The guide concludes with a reference on how TENDERIO platform could support European SMEs in applying for a public contract abroad.

2 General Information on public procurement in EU

According to European Commission, the term “Public Procurement” refers to the process by which public authorities, such as government departments or local authorities, purchase work, goods or services from companies, i.e. the building of a state school, purchasing furniture for a public prosecutor's office, contracting cleaning services for a public university etc¹.

Public procurement market in EU



Every year nearly 2 trillion euros are paid in Europe for public contracts, i.e. 14% of EU GDP.



At least 250.000 public authorities conduct public procurements annually.



Public authorities are the major buyers in sectors such as energy, transport, waste management, social protection and the provision of health or education services.



The estimated value of general government expenditures on works, goods, and services -excluding utilities- has increased by 4,2% in 2015. Almost all EU Member States increased their expenditure on public contracts between 2014 to 2015².



The estimated value of tenders published in the Tenders Electronic Daily³ (TED) in 2015 was 450.21 billion euros which stands for 6.9% more than it was in 2014.

Overall, the public procurement represents a substantial portion of the EU economy offering lot of opportunities and innovation prospects for the European SMEs.

European SMEs' participation in cross-border procurement

¹ <http://ec.europa.eu/growth/single-market/public-procurement/>, 2017

² DG GROW G4, 2016. *Public Procurement Indicators 2015*.

³ The online version of the 'Supplement to the Official Journal' of the EU, dedicated to European public procurement.

The term “cross-border procurement” refers to a procedure by which a public contract in a Member State is partly or fully performed by firms located in another EU Member State.

SMEs account 99,8% of the registered enterprises in Europe (20,8 million SMEs) and they are considered to be the backbone of the EU28 economy. European SMEs could participate in procurements across borders either directly or indirectly through its local subsidiaries (Figure 1). However, the past years the overall participation of European SMEs in public procurement across borders is considered to be low.

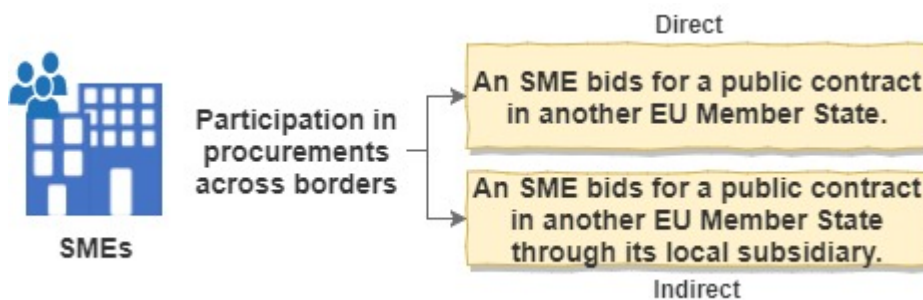



Figure 1 - How European SMEs can participate in cross border public procurements

 The share of European SMEs in direct cross-border procurement accounts for 27% in terms of number of awards and 24,5% in terms of the value of awards, which is significantly lower compared to their contribution to the European GDP (58%)⁴.

The share of European SMEs in indirect cross-border procurement is estimated at 3% both in terms of number and value of awards⁵.

Obstacles to SMEs’ participation in cross-border procurement

The low level of SMEs’ participation in cross-border procurement the past years was due to (Figure 1):

⁴ European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, 2017. *Measurement of impact of cross-border penetration in public procurement.*

⁵ European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, 2017. *Measurement of impact of cross-border penetration in public procurement.*



Figure 2 - Main obstacles that SMEs face when they participate in cross-border public procurement

Despite the fact that SMEs are facing difficulties in their participation to cross-border public procurement, however the contracting authorities see high potential in cross border contractors as they could benefit by having a better choice in terms of quality and price and by concluding contracts when there is absence or limited availability of suppliers at national level.



European Commission has introduced legislative measures to improve SMEs' access to public contracts, aiming to open up national public procurement markets and increase the levels of cross-border public procurement.

Legislative Framework

In 2014, the EU Parliament and the European Council introduced a new common legislative framework in public procurement aiming to simplify the procedures and encourage the SME's to access public contracts. The reform included two directives:

- 2014/23/EU on the award of concession contracts;
- 2014/24/EU on public procurement and
- 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors.

More specifically the new EU directions aim to (Figure 3):

Encourage contracting Limit the required turnover to Exploit the full benefits of the



Figure 3 - Objectives of the new EU directives on public procurement

The reform of public procurement legislation reduces the bureaucracy and makes public procurement in Europe more efficient within a single market facilitating that way the SMEs' participation in public contracts.

3 Current status on public procurement in Portugal

3.1 Legal framework

The principal relevant piece of legislation is the “Public Contracts Code” (hereinafter “PCC”), approved by Decree-Law no. 18/2008, of 29 January, amended by Decree-Law no. 278/2009, of 20 October, Law no. 3/2010, of 27 April, Decree-Law no. 131/2010, of 14 December, Law 64-B/2011, of 30 December, and Decree-Law no. 149/2012, of 12 July. The PCC, which transposed Directives 2004/18/CE and 2004/17/CE, covers public procurement rules and the material regime regarding public contracts.

There are other relevant diplomas, namely:

- the Administrative Procedural Code (approved by Decree-Law no. 4/2015, of 7 January), which contains the general rules on administrative procedures;
- the Procedural Code of the Administrative Courts (approved by Law no. 15/2002, of 22 February, amended by Decree-Law 214-G/2015, of 2 October), which contains the rules on litigation regarding pre-contractual procedures and public contracts; and
- Ordinance no. 701-A/2008, of 29 July, to Ordinance 701-J/2008, of 29 July, which regulate several aspects referred to in the PCC.

Special rules in relation to procurement for specific areas

The PCC has special rules regarding procurement by awarding entities in the water, energy, transport and postal services sectors.

Regarding defence, a specific legal framework is provided by Decree-Law no. 104/2011, of 6 October. It transposed to Portuguese Law the EU Directive 2009/81/EC. This legal framework is applicable for the purchase of contracts for military and sensitive equipment, contracts for public works, supply contracts, and contracts to provide services regarding military and sensitive equipment, as well as contracts for public works, supply contracts and contracts to provide services aiming to pursue military goals.

Portal - BASE

Taking in account the legal framework described above, the entity responsible for the public contracts and for maintaining the website <http://www.base.gov.pt> is the IMPIC – Instituto dos Mercados Públicos do Imobiliário e da Construção.

This website is centralized and dedicated portal to public procurement and includes all the announcements and information related with those.

3.2 General overview

Portugal initiated an important shift in 2017 that positions the countries in one of the leaders in terms of e-procurement that is mandatory since 2009 both for contracting entities and contractors. Reference to Public Procurement Law and regulations, certified platforms and pending tenders is accessible through the official Public Contracts site <http://www.base.gov.pt>.

Portugal and the Portuguese government has a decentralized approach with the central government, two autonomous administrative regions, the islands of Madeira and Azores and the municipalities, each of which has adapted the national public procurement rules to the particularities of their area of intervention.

The main three categories of contracting authorities are:

1. The traditional public sector (central, regional and local authorities). This group includes the Portuguese state, the autonomous regions of Madeira and Azores, municipalities, public institutes, public foundations and public associations.
2. Bodies governed by public law, namely, entities with legal personality, independently of their public or private nature, provided they were established for the specific purpose of meeting needs in the general interest; do not have an industrial or commercial character; and are financed, for the most part, by any entity of the traditional public sector or by other bodies governed by public law.
3. Entities operating in the utilities sector – water supply, energy supply, transport and postal services sector.

In the scheme below, the 1st position belongs to category number 2, 2nd, 3rd and 4th belong to category 3 and the 5th belong to category 1. It is important to refer that Rede Ferroviária Nacional – REFER, E.P.E doesn't exist anymore and was replaced by Infraestruturas de Portugal E.P that also incorporates the previous Estradas de Portugal, EP SA.

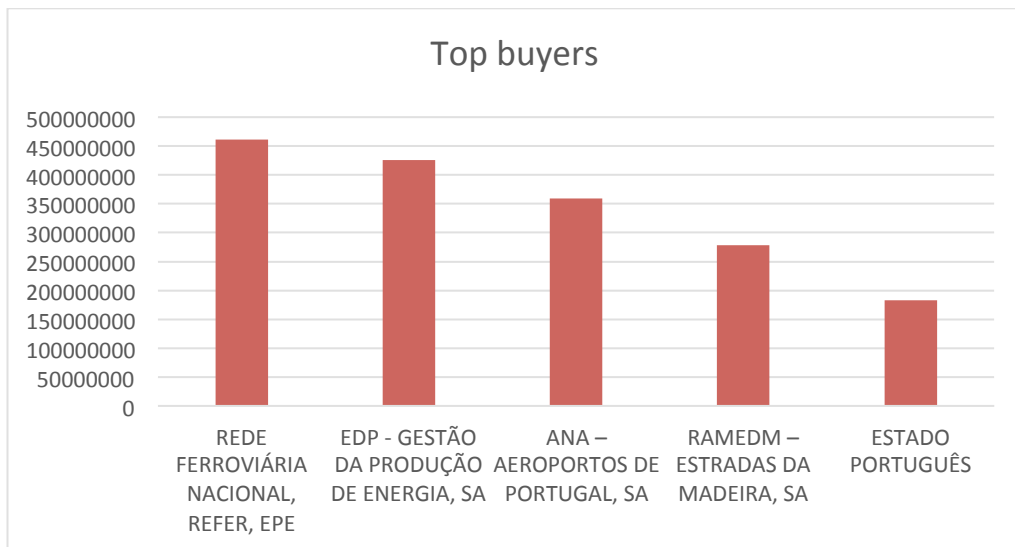


Figure 4 - Top buyers

The graphics below show the top sellers in Portugal during the period of 2013, together with the share of contract notice by buyer, the procedures applied (check “section 5.3. Available types of award procedures” to know about these type of procedures) and contract type.

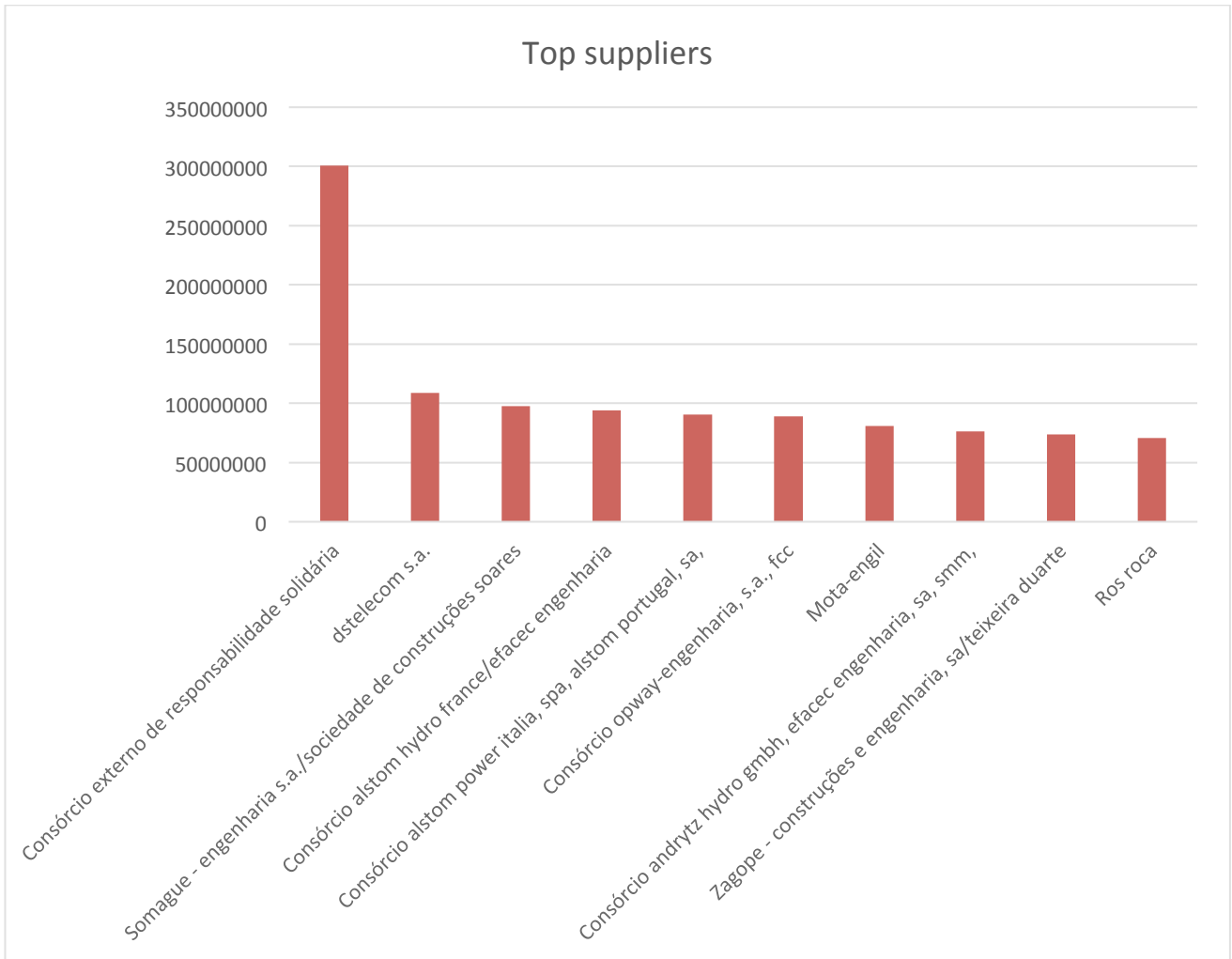


Figure 5 - Top suppliers

The share of contract notices sees a prominent role played by public entities, more than half of contract notices are indeed shared by bodies governed by public law.

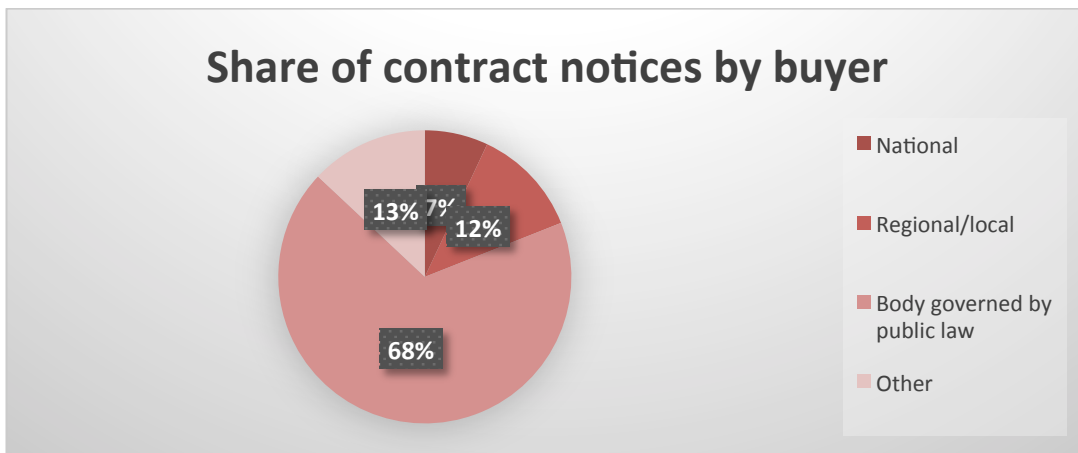


Figure 6 - Share of contract notice by buyer

Applied procedures in Portugal reveal a two-fold scenario.

Open procedures are used in almost 50% of public procurements, leaving the other half to the application of other procedures.

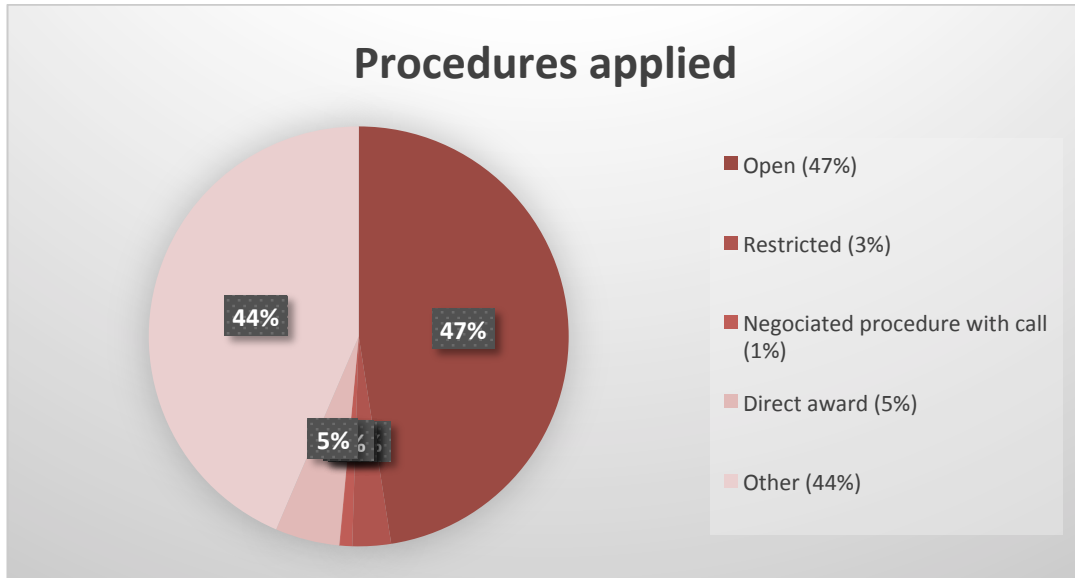


Figure 7 - Procedures applied

Supplies play a peculiar prominent role in Portuguese public procurement market. Together with services, they cover almost 90% of the whole Portuguese public procurement market.

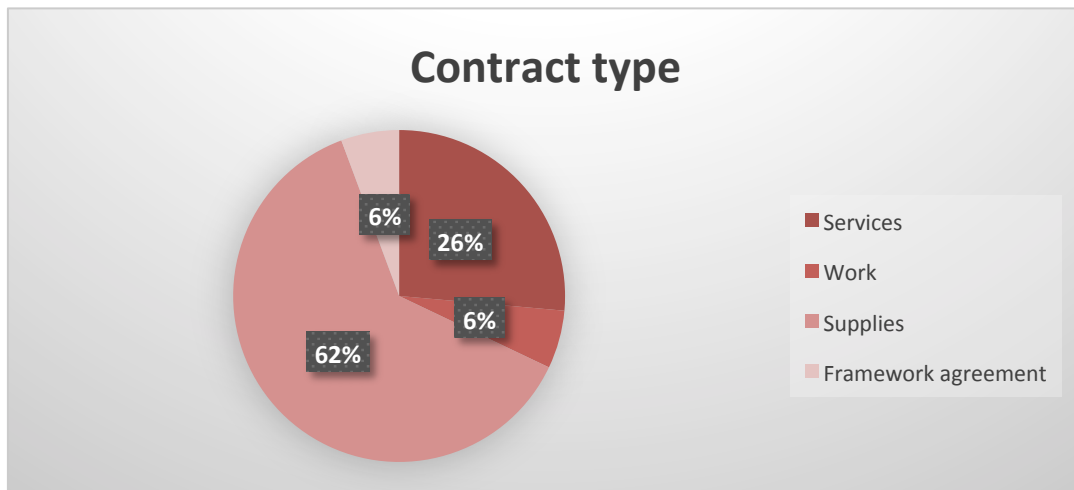


Figure 8 - Contract type

Table 1 - Other indicators

	Received single bid	No. Of days for decision	Price only criteria	MEAT criteria	Won by foreign firms	Related to EU funds	Joint purchase
Other indicators	15%	94.1	56%	44%	1%	27%	2%

The indicators described above refer to all tenders submitted during 2016 period.

The number of contracts per economic sector is quite balanced, with the exception of the medical equipment, pharmaceutical and personal care, and the construction work sector.

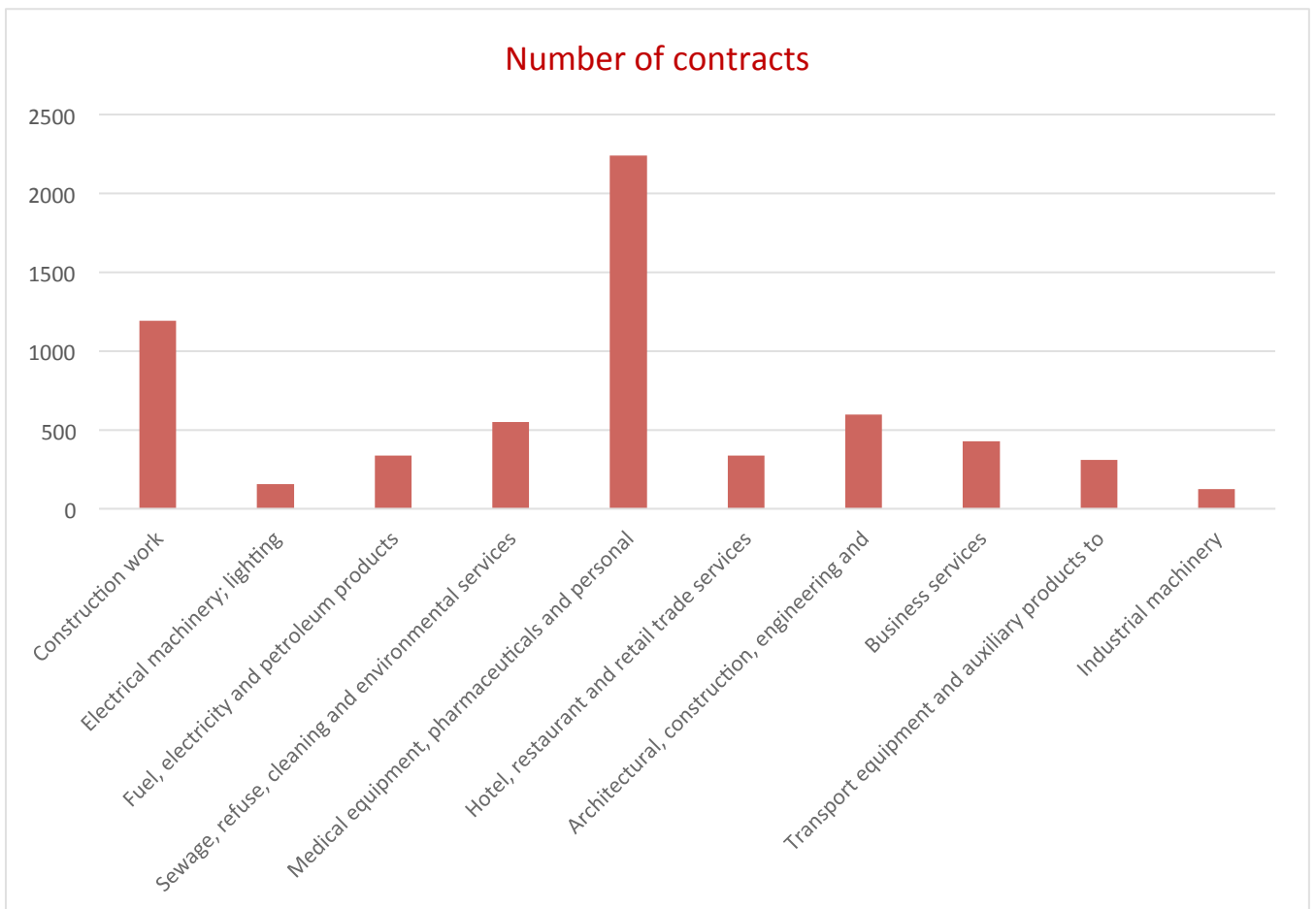


Figure 9: Number of contracts per economic sector

Even though the medical equipment, pharmaceutical and personal care sector counts the highest number of contracts, the sector with the highest contracts value is the construction work one.

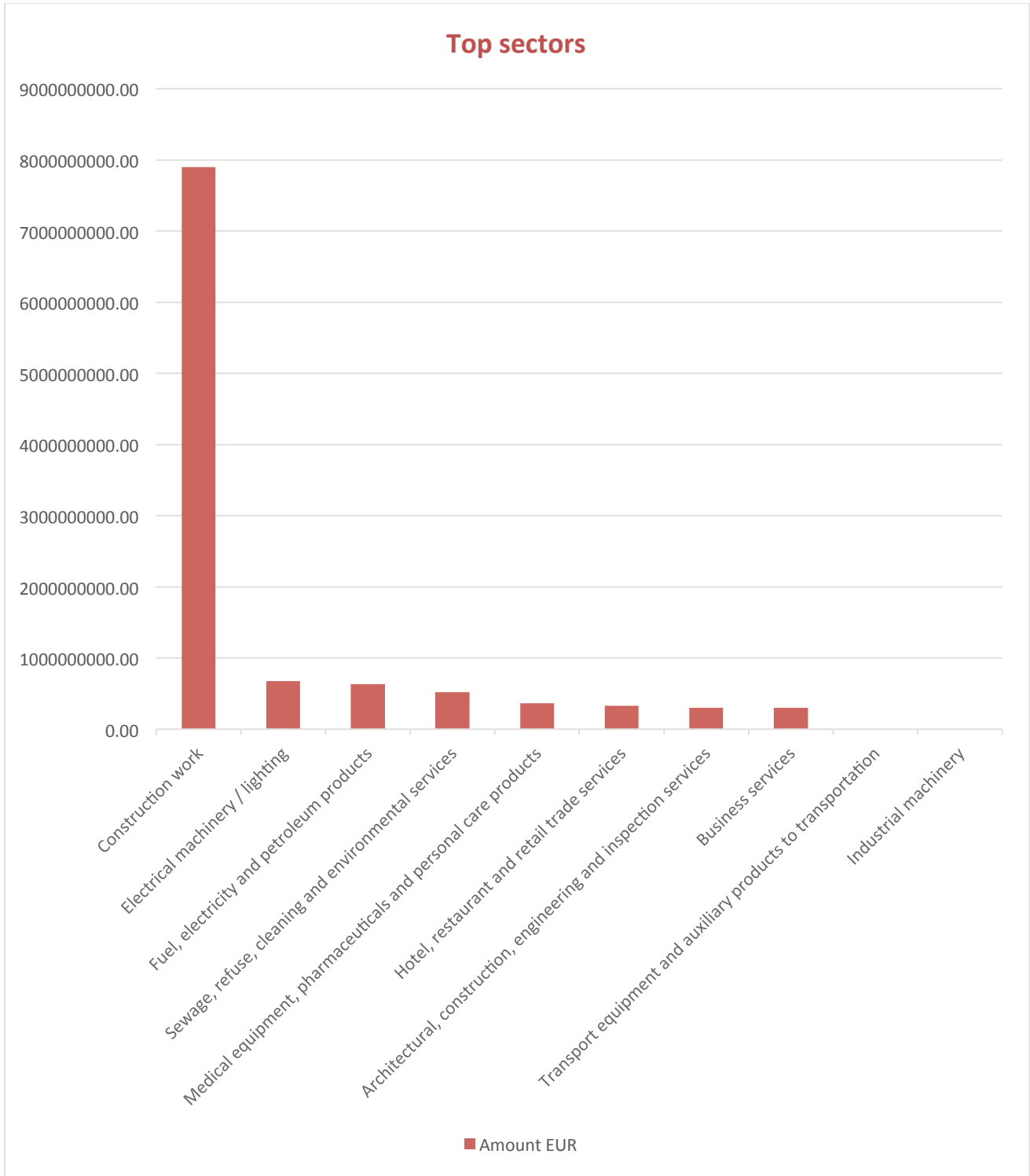


Figure 10 - Top sectors of public contracts: Euros

3.3 Tenders in Portugal published by EU institutions and agencies (2012-2015)

In the context of the graphics below, CAE is the Contracting Authority Entity. There was a total of 144 offers between 2012 and 2015 and all the graphics refers to that total number. As an example, the graphic titled “CAE by Value Awarded” should be read in the following way: there was 33 offers below 100k Euros, 48 offers in a value between 101k and 300K euros, 23 offers between 301k and 500K euros, 17 between 501k and 1mil euros, 18 between 1 mil and 10mil euros, 5 between 10mil and 50mil and finally none with a value above 50mil. This totalise the 144 offers for the period.

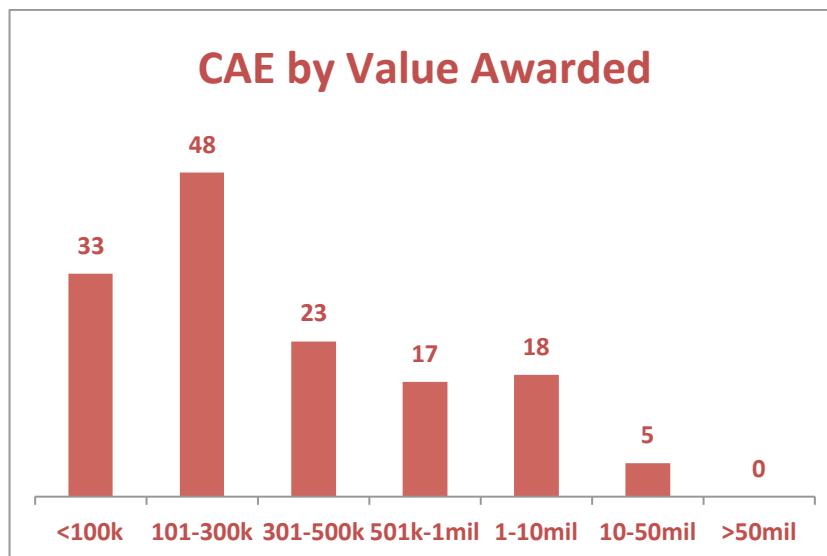


Figure 11 - CAE by value awarded

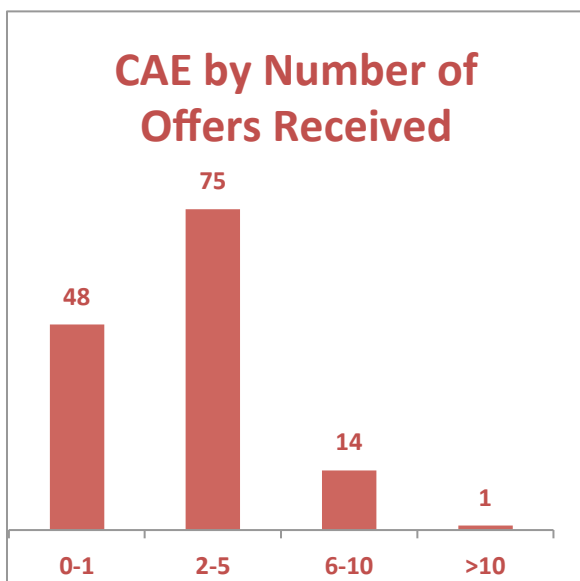


Figure 12 - CAE by Number of Offers Received

The graphic on the left gives a general idea on the level of competition in Portugal for tenders published by Eu institutions and agencies. As you see, there were 48 tenders receiving 1 or none bids, while much more receiving between 2 and 5 bids. Tenders with a much higher level of competition (6-10 or more than 10 bids per tender) are significantly lower compared to the abovementioned ones.

2013 revealed a significant increase of awarded contracts published by EU institutions and agencies. While for the other periods the number of awarded contracts remains stable.

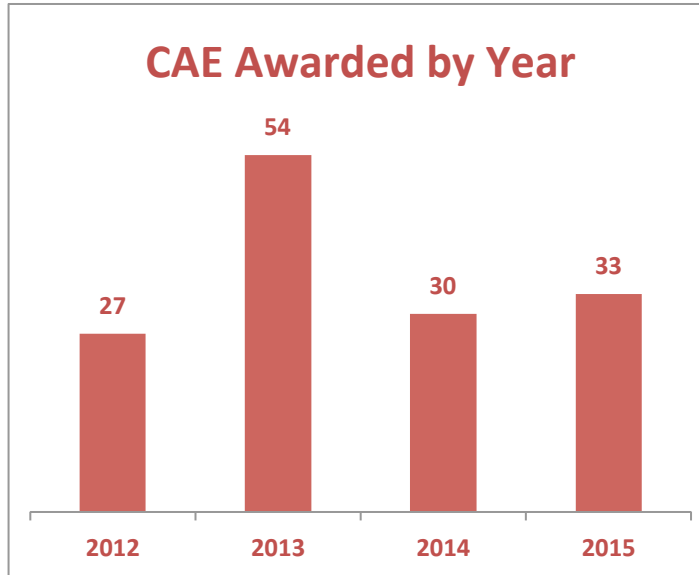


Figure 13 - CAE awarded by year

Differently from general contract type data, where supplies are the most prominent contracts, services are the most prominent type of contract published by EU institutions and agencies.

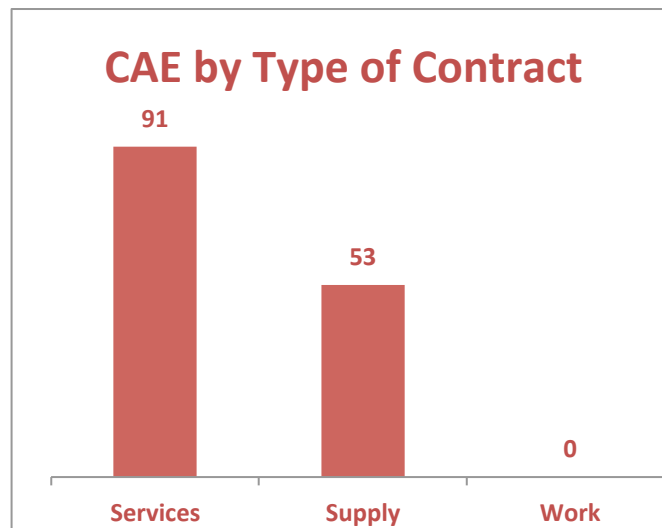


Figure 14 - CAE by type of contract

The first six foreign winner countries are, in decreasing order: Spain, Germany, Others, UK, France, the Netherlands. Followed by Italy, Belgium, Denmark, Finland, Cyprus.

This overview reveals an established presence of Spain and Germany in Portuguese public procurement market, while a dynamic and less established presence of different other foreign countries.

As usual, Portugal is the most prominent country in its domestic public procurement market.

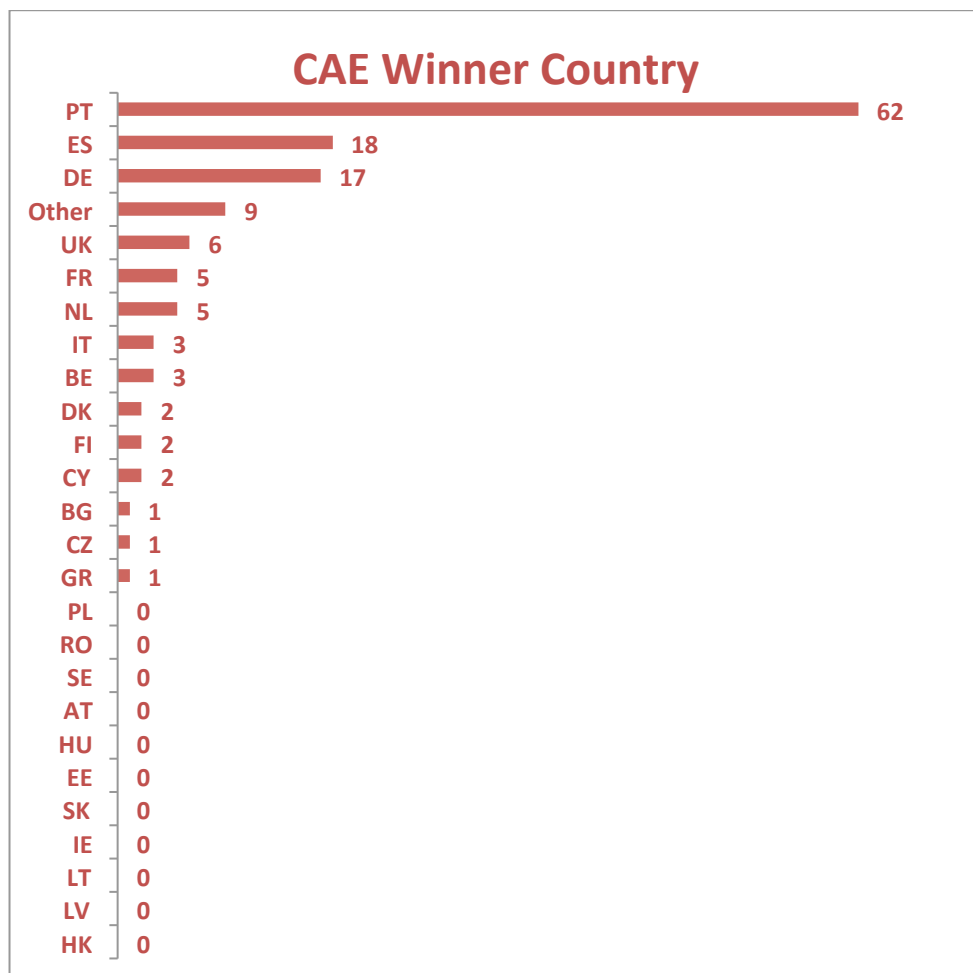


Figure 15 - CAE winner country

4 National Procedures on public procurement

4.1 Public Entities implementing public procurements

- The Portuguese State
- Autonomous Regions
- Local authorities
- Public institutes
- Public foundations
- Public associations or associations financed and controlled by the abovementioned entities
- Bodies governed by public law
- Legal entities which are mainly financed or controlled by a body governed by public law

- Associations where one or more of their members are governed by public law

Portuguese Public Contracts Code also considers as awarding entities:

- Any legal entities not included above that pursue their activity in the water, energy, transport or postal services sectors, regarding which any of the above entities may exercise, directly or indirectly, a dominant influence
- Any legal entities not included above which enjoy special or exclusive rights, not granted through an international tender procedure, whereby such rights:
 - reserve to such an entity, either solely or together with another entity, the exercise of one or several activities in the water, energy, transport or postal services sectors; and
 - substantially affect the capacity of any other entity to exercise one or more of those activities

4.2 Thresholds

Depending upon the choice of the award procedure, there may be a threshold for individual contract coverage (Articles 19 to 21 of the PCC).

Open and restricted tender with pre-qualification

For public works, the open or restricted tender procedures may be adopted, irrespective of the contract value if the notice is published in the Official Journal of the European Union (“OJEU”). If the notice is not published in the OJEU, the contract value cannot exceed **€5,186,000**.

The same applies to the lease and supply of goods contracts and services contracts. However, in this case, if the announcement is not published in the OJEU, the contract value cannot exceed **€207,000**.

In addition, if the awarding entity is the State and, once again, the notice is not published in the OJEU, the contract value cannot exceed **€134,000**.

Urgent public tender

This procedure allows the awarding authority to lease and to purchase, as a matter of urgency, commonly used goods or services, the adoption of which depends on two issues:

- the award criteria must be the **lowest price**; and
- the contract value is inferior to **€207,000**, except if the awarding authority is the State, in which case the contract value cannot exceed **€134,000**.

Direct award

For public works contracts, the direct award procedure may be chosen if the contract value is inferior to **€150,000**.

For the supply and lease of goods, as well as service contracts, the contract value must be inferior to **€75,000**.

As for other types of contracts – excluding concession of public works and services and company incorporation contracts – the direct award procedure can only be chosen if the contract value is inferior to **€100,000**.

Nevertheless, in some cases, a direct award may be adopted irrespective of the contract value, namely when:

- No competitor has presented any proposal, or all proposals have been rejected in a previous open or restricted tender, as long as the specifications and the minimum technical requirements are not substantially altered.

- In cases of urgency, where the deadlines regarding other procedures cannot be met due to unforeseeable events, provided that the circumstances are not attributable to the awarding entity.
- For technical or artistic reasons, or due to the protection of exclusive rights, the contract can only be granted to a determined entity.

Please note that the awarding entities referred to in Article 7 of the PCC are only subject to the procedures of the PCC for what concerns the following contracts:

- Regarding public works, contracts equal to or above **€5,186,000**.
- Regarding leasing or supply of goods, contracts equal to or above **€414,000**.
- Regarding acquisition of services, contracts equal to or above **€414,000**.
- Regarding public works and public service concessions, all contracts.



Every two years the European Commission shall revise the abovementioned lowest thresholds amounts.

4.3 Available types of award procedures

The PCC provides for the following main award procedures: (i) open tender; (ii) restricted tender (by previous qualification); (iii) direct award; (iv) negotiation procedure; and (v) competitive dialogue.

(i) **Open tender:** this procedure starts with a publication of a notice. Any interested party may submit a bid which shall be assessed pursuant to the award criteria established in the tender documents. In this regard, the Jury shall prepare a report, subject to comments by the bidders, which shall constitute the grounds for the awarding of the successful tenderer by the awarding entity. In certain cases, an urgent open tender may take place.

(ii) **Restricted tender (by previous qualification):** contrary to the open tender, not all interested parties may submit a bid. Applications are presented, and only the parties that are considered as qualified candidates, pursuant to certain technical and financial requirements, are invited to submit bids.

(iii) **Direct award:** a procedure whereby the awarding entity invites one or more potential bidders to present their bids.

(iv) **Negotiation procedure:** similar to the restricted tender; however, the bids are negotiated between the bidders and the awarding entity.

(v) **Competitive dialogue:** a procedure whereby the awarding entity discusses the technical means, as well as the inherent legal and financial structure of the contract. It includes the following phases: submission of the applications together with the qualification of the candidates; the presentation of the solutions and dialogue with the qualified candidates; and presentation and analysis of the proposals together with the award of the contract.

A negotiation procedure may be adopted for the following contracts:

- Public works contracts, lease or supply of goods and service contracts, when all the bids have been excluded on the basis of Article 70, paragraph 2 in a previous open or restricted tender whose notice was published in the OJEU or in a competitive dialogue procedure, provided that the specifications are not substantially altered.
- Contracts whose nature does not allow prior overall maximum price-fixing.
- Public works contracts whose object concerns investigation, experimentation or development, as long as its performance is not designed to ensure financial viability or refund investigation, experimentation, or development costs.

- Acquisition of services contracts, namely intellectual or financial services set forth in category 6 of Annex II A of Directive 2004/18/CE, when the nature of such services does not allow the establishment of clear and precise contractual specifications.
- Contracts in which open or restricted tender without notice in the OJEU may be adopted.

The competitive dialogue is chosen in particularly complex contracts, where the adoption of an open or restricted tender is impossible.

4.4 Who are eligible to participate?

- Individuals;
- Legal persons;
- Association of the Persons in any combination.

4.5 Tenders Publication (where/how)

E-procurement in Portugal diverges from EU peers in that the system rests exclusively on privately run platforms, which compete against each other to offer e-procurement services to contracting authorities. These private operators are authorised by the government and linked to the central BASE portal (<http://www.base.gov.pt>), which acts as single point of contact for economic operators.

The central BASE portal has the role of centralising and recording information about the procurement procedures carried out via different e-platforms and performance of contracts.

This central portal allows economic operators can search tender notifications in one location, and be linked through to the individual platforms to access tender documents and submit a bid. The information that is collected and provided to candidates and bidders by BASE consists of the calls for tenders, application, receipt and evaluation of tenders, as well as performance of contracts. Documentation is published on the entire tendering procedure, which aims to make this information available to all interested parties.

There are seven private portals that are connected to the BASE platform. Vortal processed 28% of the electronic contracts, Construlink 27%, Saphety Level-Trusted Services 21%, ANO Informatics System & Services 16% Acin icloud solutions 6%, Infosistema sistemas de informação 1%, and central E-informação e comércio Electronico S.A. 1%.

e-Procurement platforms in Portugal

Table 2 - e-procurement platforms in Portugal

National Portals	
Central national portal BASE	BASE
Portuguese Electronic Official Journal	DRE
Other certificated platforms	
Academia de Informática, Lda.	acinGov
ano - Sistemas de Informática e Serviços, Lda.	anoGov
Miroma – Serviços e Gestão de Participações, Lda.	ComprasPT
Saphety Level - Trusted Services, S.A.	saphetygov
Vortal, Comércio Electrónico Consultadoria e Multimédia, S.A.	VortalGOV

4.6 Time limit for receipt of tenders

Minimum timescales to present applications or bids are established by the PCC. The awarding entity may broaden the timescales in the procedure documents.

Open tender: if the notice is not subject to publication in the OJEU, the minimum time limit to submit bids is **9 days**, unless the proceeding concerns the formation of public works contracts, in which case the time limit is **20 days**. If the works are clearly simple, the 20 days' time limit can be reduced in **11 days**. If the notice is subject to publication in the OJEU, the minimum time limit is **47 days**. If the notice is sent electronically to publication, the timescale can be reduced by seven days. In the cases of urgent open tender, the time limit is 24 hours on weekdays.

Restricted tender: if the notice of the tender is not subject to publication, the time limit for presenting either the applications or the proposals is **9 days**, unless the proceeding concerns the formation of public works contracts. If the notice needs to be published in the OJEU, the time limit to present applications is **37 days**, except if a concession of public works is involved. These time limits can be reduced by seven days if the notice is sent electronically to publication.

The time limit to submit bids is **35 days** after the invitation is sent.

Direct award: no minimum timescale.

Negotiation procedure: the minimum time limit for presenting the applications is **37 days**. The time limit for the presentation of the early versions of the proposals is that of the presentation of the proposals in the restricted tender.

Competitive dialogue: the timescale for the presentation of the applications is the same as the restricted tender. As for the presentation of the solutions, no minimum timescale is defined in the PCC. The minimum timescale to present bids is **40 days**.

4.7 How to submit the tender

4.7.1 What are the specific elements that a proposal for the tender must include

Typically, tenderers are asked to include at least:

- an application;
- documents proving the compliance of the tenderer with the procurement requirements;
- technical offer;
- financial offer.

4.7.2 Where you submit the tender

Before EU directive 24/2014

The contracting authority used to choose the platform they want to host their tenders, and tenderers must comply, often forcing them to create accounts and profiles for several services to be able to compete for contracts.

After EU directive 24/2014

Under the new system, both contracting authorities and bidders will be able to submit their documentation to the platform of their choice with the BASE portal acting as a go-between, or broker, to connect them.

4.8 What are the key phases after submitting the bid

In order to present a bid in an electronic procurement procedure, the bidder must:

1. Verify by the tender documents which electronic platform will be used by the contracting authority in the procedure at hand;
2. Register in the relevant electronic platform and obtain an authentication certificate (“certificado de autenticação”) issued by relevant electronic platform;
3. Obtain an electronic qualified signature certificate (“certificado de assinatura digital qualificada”) and time stamps (“selos temporais”) from certified entities.

After the awarding is granted, several steps must take place before the contract is signed:

1. the habilitation phase takes place (whereby the awarded bidder evidences before the contracting authority, through the presentation of documents, that it has no legal impediments for the signature of the contract and that it fulfils the professional and legal requirements, pursuant to the law, to execute the contract);
2. the bond is presented by the awarded bidder to the contracting authority;
3. any commitments regarding third parties’ obligations must be confirmed;
4. the draft of the contract is sent to the awarded bidder for acceptance;
5. the awarded bidder is notified of date and place where the contract shall be signed.

4.9 Contract award criteria & Bids' evaluation

There are two possible award criteria:

- The most economically advantageous tender.
- Lowest price.

The most economically advantageous tender criterion involves a mandatory evaluation model, whereby only the factors subject to competition are reflected. The factors and sub-factors may not regard aspects, qualities, characteristics or other elements of facts regarding the bidders themselves. The model shall have a clear explanation of all the factors and sub-factors relating to the execution of the contract subject to competition, the weight of each factor and sub-factor, the scoring scale of each elementary factor or sub-factor, as well as a mathematical expression or description of the ordered set of attributes that enable the granting of partial scores. In this criterion, factors other than price are always taken into account.

The lowest-price criterion may only be adopted when price is the single item subjected to competition, and the specifications rule all other aspects of the contract.

4.10 Objections

A supplier who is convinced that by the contracting authority procedure related to the award of a sub-contracting or above-limit public contract may occur the detriment, a reasoned objection to the contracting authority against the procedure can be raised. In this regard, the PCC sets out the following instructions:

- The awarding draft contract and proposed adjustments are to be considered accepted by the successful tenderer when there is an expressed acceptance or in case of absence of objections, within 5 days after the concerned notification, or within 2 days in case of direct adjustment or prior consultation.
- Within 10 days from the receipt of the objections, the entity which approved the draft contract should notify the successful tenderer about its decision. The awarding of the contract must be held within 30 days from the decision regarding the objection.

Submitting an objection: what for

1. Documents integrating the contract: the objections concerning the draft contract can be based on the projection of contradicting obligations, the rejection of the proposed amendments, or because those obligations do not belong to the documents integrating the contract, such as: (i) the supply of errors and omissions of the tender documents identified by the competitors (ii) clarifications and rectifications concerning tender documents (iii) tender documents (iv) the awarding bid (v) clarifications regarding the awarding bid presented by the successful tenderer
2. List of competitors: the Panel, the day following the deadline for the submission of offers, publishes the list of competitors in the electronic platform used by the awarding entity.
3. A competitor, which is not included in the abovementioned list, can submit an objection within 3 days from the publishing of the list. This implies to present the prove of the prompt submission of the offer by the competitor.
4. In case the objection is accepted by the Panel, but does not match the requirements of the competitor, the Panel sets a new deadline for the submission of the offer, with the necessary amendments. In this case, the negotiation of the propositions cannot begin: (i) Before the notification of the decision of rejection or of the expiry of the concerned deadline (ii) Before the new deadline set by the Panel, in case the objection is accepted.

5. List of candidates and consultation of the offers: the Panel, the day following the deadline for the submission of offers, publishes the list of competitors in the electronic platform used by the awarding entity.
A competitor, which is not included in the abovementioned list, can submit an objection within 3 days from the publishing of the list. This implies to present the prove of the prompt submission of the offer by the competitor.
6. Restoration of the financial balance for the rise in costs in carrying out the work: in case of major difficulty in carrying out the work, with consequent rise in costs, the successful tenderer has the right to restoration of the financial balance. Such right to restore the financial balance expires after 30 days from the event that implies the rise of costs or from the moment the successful tenderer is aware thereof.
7. The successful tenderer must submit the objection through an application explaining the reasons of the fact and of the right to restoration; and presenting the documents or other means of evidence considered appropriate.
The main contractor evaluates and takes a decision on the objection within 30 days, such period can be extended in case of supplementary investigations.
8. Responsibility of complementary works: the main contractor is responsible for the payment of complementary works to be carried out by the successful tenderer.
9. The successful tenderer shall, within 60 days from the total or first partial consignment, complain on existing errors or omissions in the tender documents, except for those errors detectable only during the execution of the works, under penalty of being responsible of paying half of the price of complementary works supplying the errors and omissions.
10. Refusal of execution of complementary works: in case complementary works are of different nature from those envisaged in the contract, or in case complementary works are of the same nature but to be executed in different conditions, the successful tenderer is not obliged to carry out them.
11. The successful tenderer can submit the objection within 10 days from the receipt of the order of execution of complementary works presented by the main contractor.
12. The main contractor shall evaluate the objection within 10 days from the receipt of the objection.
13. Notification of final account: once the final account is elaborated, it should be submitted to the successful tenderer within 15 days. During this period, the successful tenderer may sign the final account or submit a justified objection.
14. The main contractor shall communicate the final decision on the objection within 30 days from its receipt. In case the successful tenderer does not sign nor submit an objection within the abovementioned period of 15 days, the final account is considered as accepted.

For further details see Art 101 / 102 / 104 / 138 / 177 / 201 / 270 / 271 / 345 / 354 / 372 / 378 / 396 / 401 / 405 of Portuguese Public Contracts Code.

5 Key points when you are submitting a tender in Portugal

Here are ten of the most important things to remember when responding to a tender in Portugal:

- 01 Make sure that you are an eligible candidate – check the requirements and the bidder's profile
- 02 What are the technical and other specifications and requirements of the public contract? Ensure that your bid focuses on the requirements set out in the specification and meets the selection and evaluation criteria and that your experience is adequately documented.
- 03 What are the qualifications and specifications that the bidder must have? Can you respond to them?
- 04 Make sure you respond to the special requirements e.g. ISO certifications and that you can provide all of the requested documentation for those.
- 05 Read carefully the terms and conditions and in particular the exclusion, selection and award criteria.
- 06 Mark the time limits for submission of the offer. Examine all the application forms thoroughly and make sure you collect all the required supporting documents on time.
- 07 It is recommended to read the contract notice carefully along with the terms and conditions and in case you need any clarifications contact the contracting authority on time.
- 08 Pay special attention to the issuance of letters of guarantee and complete the declaration documents in order to comply with the standards set out in the contract notice.
- 09 Beware of tax clearance certificates and social security certificates if applicable.
- 10 Ensure that you attach all the necessary compulsory documents.

5.1 Relevant information for foreign companies

Foreign companies are not required to set up branches or subsidiaries or otherwise enter into any commercial agreements with local partners in order to participate in Public Procurement Processes. Notwithstanding, after the awarding takes place, it may be required, for the execution of certain contracts, that the contractor establishes some type of representation in Portugal (such requirements will result from the tender documents or from the law. In that regard, where public works or services concessions are involved, the PPC establishes, when the contract is silent in that aspect, that the concessionaire should maintain its headquarters in Portugal).

Pursuant to the PPC, it is possible for a group of undertakings to participate in a public procurement proceeding without any legal form of association. The obligation to associate only arises if the proceeding is awarded to such group of undertakings (the tender documents shall specify the type of association to be implemented, which, usually, is one of the following forms: (i) company; (ii) consortium or (iii) “ACE” (complementary company group). Nevertheless it is possible for the group of undertakings to associate themselves in a pre-bid phase, usually, in the form of a consortium or “ACE” (complementary company group).

Pursuant to article 81 of PPC (habilitation phase), there is some documentation that the contractor does not need to present before the contracting authority when the same contractor is national from a State of the European Economic Area or the World Trade Organization.

The best sources of information for public procurement notifications are:

- *Portuguese Electronic Official Journal (Diário da República Eletrónico)*: www.dre.pt.
- *BASE* – the Portuguese public procurement portal. It publishes information on all contracts signed under the Public Contracts Code: www.base.gov.pt.

6 New legislation – Starting 1st January 2018

6.1 What is going to change

The Legislative Decree no. 111-B/2017 was published on the 31st of August, which modifies for the ninth time the Portuguese Public Contracts Code through the Legislative Decree no. 18/2008, of the 29th of January.

This Decree modifies the Public Contracts Code and introduces in Portuguese legislation European directives:

- 2014/23/UE regarding the awarding of concession contracts
- 2014/24/UE regarding public contracts
- 2014/55/UE regarding electronic invoicing in public contracts

The aim of the Law Decree is to:

- Simplify, de-bureaucratize and loosen procedures for forming public contracts
- Increase the efficiency of public expenses
- Facilitate the access to public contracts

In this concern the following aspects should be highlighted, **starting from the 1st January 2017**.

- The contract system between public entities is enlarged for embracing more forms of cooperation between public entities
- A partnership for innovation is established, a new procedure for buying innovating products or services
- The awarding of contracts in lots is promoted, in order to stimulate the participation of SMEs
- The most economically advantageous tender criterion becomes the official criterion for awarding procedures
 - The basis of this criterion is either the price or the costs and the quality/price ratio
 - However, it is still possible to award a contract through the lowest price criterion, whenever this reveals to be the most adequate criterion
- The rule used for establishing the criterion of abnormally low price is modified. In order to evaluate whether the price is abnormally low, the price should be compared with the average price of other proposals. It is provided the possibility of using other criteria, considered adequate in the concrete case.
 - For this reason, the abnormally low price is not indexed to a basic price for comparison.
- All parts of the procedure must be at disposal free of charge in the electronic platform of public contracts, starting from the date when the announcement was published.
- Simplified rules are created for contracts with a value higher than 750.000 euros for healthcare services, social services and other services related to these administrative services in social area; educational and collective areas, social and personal healthcare services, including services performed by trade unions, political organisations, youth organisations and other associative organisations; by administrative religious organisations and public administrations performing services for the international community.
- The electronic invoicing is introduced in public contracts
- The notions of “trabalho a mais” (additional work) and “trabalhos de suprimento de erros e omissões” “supply contracts for errors and omissions” are substituted by works and complementary services.

6.2 Measures of simplification, de-bureaucratization and flexibility

1. Minimum deadlines for submitting a bid and applications in procedures with a lower value than European thresholds are shortened, in other words those which must not be published in the Official Journal of European Union.
2. The value of the deposit becomes, at maximum, equal to 5% of the contract's value. Rules are hence established in order to gradually decrease the use of the deposit.
3. It is now possible to correct errors of a bid which did not undertake any essential formality, without excluding the bid. The objective is to avoid disproportioned exclusions which might harm public interest.
4. Small public works until 5.000 euros can be contracted by direct simplified adjustment.
5. The works involving contracts with a value until 300.000 euro can now be contracted through the process of urgent public tender.
6. New rules are created for transmitting moveable goods by public entities. The transmission of property or use can be definitive or temporary, including for example lease and loan.
7. These rules are meant to allow the transmission of those goods public services do not need to other services.
8. The deadlines for direct adjustment and prior consultation become shorter.

6.3 Measures of transparency and good public management

Starting from January 2018, the entities must informally consult the market before opening a call for tender. This is called preliminary consultation.

The prior consultation acquires a new form. Three suppliers must be consulted. This form limits the use of direct adjustment.

A special foundation becomes necessary for contracts with a value higher than 5.000.000 euros, which must be based on a cost-benefits assessment.

The manager of contracts is created. The latter must permanently accompany the execution of the contract and ensure the quality of works performing public tasks.

The timing of the submission of a bid stops to be a criterion for judging tiebreakers. In other words, it is not possible any more to prefer the bid that was submitted first.

7 What Tenderio offers

TENDERIO project is funded by the COSME program of the European Union (Grant Agreement No 739966) and aims to increase SMEs' participation in public procurement in EU through the development and the implementation of innovative activities that will inform, educate and support European SMEs to access international tenders.

TENDERIO helps SMEs to overcome the barriers that inhibit their participation in cross-border procurement, i.e. the language, the bureaucracy, the difficulties in finding local partners and the lack of knowledge about local tender procedures, by providing the following tools and services:

- a tender search engine which allows access to 1.500 new tenders in Europe every day;
- a benchmarking model on public procurement;
- national training sessions;
- business-to-procurers days and matchmaking opportunities;
- tailored coaching and mentoring services;
- e-conference and webinars on “how to win a tender abroad”.

Other services include a helpdesk, through which companies can access valuable information about specific tenders, country guides on public procurement, regular workshops, and an innovative “bidding laboratory” where guidance on developing successful bids is delivered.

TENDERIO also identifies possible partners and recommends expert consultancies to help you write bids and translate materials into the appropriate language for each offer.

Registration to Tenderio is free and is performed through the project's official website: www.tenderio.com

8 References

EU Public Contract Database

<http://contractawards.eu/#!buyerCountry=Portugal&year=2015> Public procurement – a study on administrative capacity in the EU

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http://www.base.gov.pt/mediaRep/inci/files/base_docs/CCPTextoconsolidadojan2016.pdf

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Public Procurement Portugal - Morais Leitão, Galvão Teles, Soares da Silva&Assoc

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