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Public eTendering in the European Union

Trust in eVolution

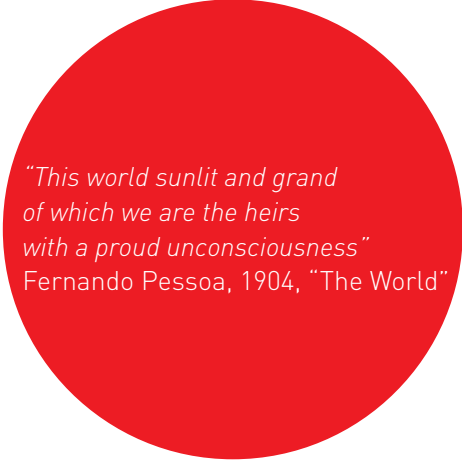


EXECUTIVE SUMMARY

1. Public procurement accounts in EU for more than 16% of its GDP i.e. 1.500 billion euros. Previous analysis confirm that ePublic procurement is part of the core of new EU policies and can play a key strategic role in improving the performance of supply chain for authorities governed by public law and to implement the principles of equality, transparency and free movement declared by the Treaty of Lisbon.
2. ePublic Procurement allows rethinking such process, using full tested information and communication technologies, achieving economies above 20%.
3. ePublic Procurement includes several stages and their level of implementation is not homogeneous between member States.
4. The stage with a higher impact on the improvement of public markets, on cross border public procurement and on the implementation of the principles of the Treaty of Lisbon is eTendering.
5. Public eTendering is pursued by many economic operators and public authorities, but the most clear example of compulsory adoption is Portugal.
6. Thus, the case of Portugal deserves special attention and a recent survey shows successful results in terms of accessibility, speed and cost. This innovation is promoting the development of a new cluster of technology firms. This experience can be used as a case-study for new steps to be taken in EU policies.

The development of ePublic Procurement, giving special attention to eTendering, can be a key contribution to the European Digital Market as it has a value at near 20% of EU GDP, and because the public sector plays a strategic role in setting up standards and practices as well as fostering the development of clusters of technology firms. The development of cross-border public procurement is also essential to the implementation of the principles of equal treatment and transparency of the Treaty of Lisbon, so the adoption of ePublic Procurement should be pursued by all contracting authorities governed by Public Law, particularly for all open, restricted or negotiated procedures concerning contracts subject to Directives 2004/17/CE and 2004/18/CE.

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*"This world sunlit and grand
of which we are the heirs
with a proud unconsciousness"*
Fernando Pessoa, 1904, "The World"

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1

PUBLIC PROCUREMENT AND THE CONTRACTUALIZATION STATE

Public procurement accounts in the EU for more than 16% of the EU GDP (See the European Commission, 2008), i.e. 1.500 billion euros (www.peppol.eu) and it is responsible for an extensive political debate about the role of government to promote sustainable development and to guarantee equity and transparency of processes and decisions.

This debate is becoming more important due to the adoption of the paradigm of the Contractualization State, according to important authors (Vincent-Jones, 2006), so that the State can focus on its core mission and allow civil society and economic operators to handle other activities under public contracts and with higher levels of effectiveness and efficiency.

Therefore, the public budget allocated to procurement contracts is growing and the procedures adopted to award such contracts become quite critical to achieve national and European objectives.

Nowadays, the deep financial, economic and budgetary crisis experienced by most member States is responsible for additional restrictions and any public expense due to a public contract is under scrutiny. Thus:

Improving public procurement is a priority goal on the agenda in order to control deficits and to increase economic development in the European Union according to the Single Market paradigm.

2

HOW TO IMPROVE PUBLIC PROCUREMENT IN THE EU: LESSONS FROM THE PRIVATE SECTOR

Better management of supply chains has been a major objective of most private organizations (see, e.g., Aberdeen, Group, 2009) as the cost of purchases tends to be higher than 40% (Mentzer, 2001).

Better management implies the reduction of cost and time (quite often, higher than 20%) but also increased quality and sustainability with lower risks of shortage and rejection due to defects.

Purchasing is different from procurement, as procurement has a broader meaning (Chaffey, 2007): procurement refers to all activities involved with obtaining items, services or works from the suppliers, including purchasing as well as the processes of sourcing, selection and contracting, inbound logistics such as transportation, imports and warehousing or internal changes, such as new fittings and training before supplies are used.

Thus, most organizations are pursuing strategies to improve procurement processes and a first wave of innovations was achieved using the old EDI technologies.

Nowadays, eBusiness allows rethinking such processes to achieve quite high results (Kalakota and Robinson, 2004).

For example, in Portugal, a first generation of pilot-projects from the public sector coordinated by UMIC (2004-2007) is achieving economic benefits above 20% despite the adoption of the old legal framework (Ricou, 2007).

This means that for a public institution (eg. an hospital) with a running budget of 1.000M€, an economy of more than 70 M€ can be achieved by improved procurement practices and for an European member State with more than 16% of GNP allocated to public acquisitions (works, supplies and services), as it is often the case, a reduction of more than 3% of public expenditure is feasible without reduction of outputs, implying an equal reduction of the public deficit.

Major goals for the public procurement processes include:

A – Provisional information about future supply needs and their appropriate aggregation

B – More open access for economic operators to purchasing procedures

C – Increased competition between economic operators and broader adoption of negotiation stages to secure better bids and achieve more responses

D – More transparent awarding procedures to improve supply markets and improved review practices

E – Reduction of cost and time in the procurement process

F – Full adoption of eBusiness tools to improve transparency, wider access and avoid paper bureaucracy in the execution of the contract

G – Improved evaluation of the execution of supply contracts in terms of Key Performance Indicators – KPIs- (Charron, 2006).

Improving public procurement is also essential to handle important principles of the Treaty of Lisbon, namely of free movement, equal treatment and non-discrimination, as well as transparency, which correspond to goals B, C and D, respectively.

This means that:

Public procurement and higher responsive, competitive and transparent processes are responsible for higher quality, effective and efficient solutions of supply chains in the private sector, offering important lessons for public markets to achieve better supply value and to respect the principles of the Treaty of Lisbon.

3

EU POLICIES AND PUBLIC PROCUREMENT

Fortunately, the improvement of Public Procurement is quite a central issue of key EU policies:

A – The important Directives 2004/17/CE and 2004/18/CE of March 31st 2004 (European Parliament and Council, 2004) and the Directive 2007/66/CE on review rights establish a balanced spectrum of guidelines about public contracting, improving previous directives and incorporating the legal doctrine stemming from the European Court of Justice.

Directive 2004/18/CE (and also 2004/17/CE) incorporate principles from the private sector such as predictable information about future contracts (“prior information notices”, Article 35), stable multiannual acquisitions (“Framework agreements”, Article 32), reverse auctions (“electronic auctions”, Article 54), dynamic requests for proposals (“Dynamic Acquisition Systems”, Article 33), qualification of candidates (simple or complex, Section 2 of chapter VII), interactive definition of the contract objective, (“competitive dialogue”, Article 29) and a multi-criteria approach to evaluate tenders to achieve “the most economically advantageous tender” publicizing sufficient information about the process of evaluation at the time of proposal preparation (“contract award criteria”, Article 53).

B – Directives 1999/93/CE of 13 Dec. 1999 about electronic signatures, 2000/31/CE of 8 June 00 about eBusiness and 2009/136/EC of 25 Nov 2009 about universal service user’s rights relating to electronic communications networks and services, provide key guidelines to implement ePublic procurement processes and specifically eTendering.

C - Informal Meetings of the Council of Ministers of the European Union, such as the Manchester Declaration (2005) established that *“By 2010 all public administrations across Europe will have the capability of carrying out 100% of their procurement electronically, where legally permissible, thus creating a fairer and more transparent market for all companies independent of a company’s size or location within the single market. By 2010 at least 50% of public procurement above the EU public procurement threshold will be handled electronically”*.

Also, the Malmo Declaration (2009) and the Granada Declaration on the Common Digital Market (2010) set up objectives and goals for innovation and change, substituting paperwork with digital tools, networks and processes, with the general aim of implementing cross-border Government with easy business and transparent communication links and services.

D – eGovernment programs such as IDABC (IDABC, 2010) – European eGovernment Services to Public Administration, Businesses and Citizens and PEPPOL – Pan-European Public Procurement Online – foster strategic developments to implement cross border eProcurement. The vision of the PEPPOL project is that any company and in particular SMEs in the EU can communicate electronically with any European governmental institution for the entire procurement process (PEPPOL).

E – Other policies supporting innovation (see, namely, Commission of the European Communities, 2009 and Commission of the European Communities, 2008) emphasize the need to ensure easy e-access and innovative processes concerning any opportunity offered by public markets.

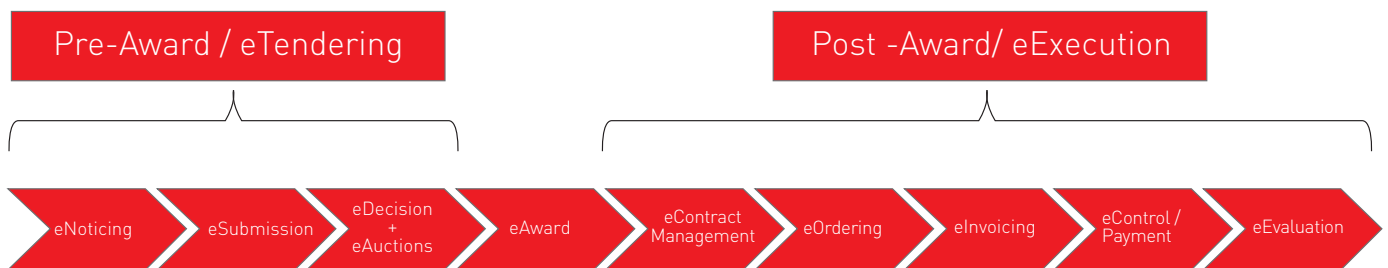
All these contributions stemming from EU policies on single market, eGovernment and public markets ensure a consistent policy and legal framework helping to revamp cross border e-public procurement in the EU, using the lessons obtained from the private sector and fulfilling the principles of the Treaty of Lisbon.

4

ePUBLIC PROCUREMENT AND eTENDERING

The concept of ePublic Procurement includes multiple stages that should be clearly defined and which are presented in Fig.1.

The ePublic Procurement Process



Source: Adapted from "The 2009 EU eGovernment Procurement Benchmark Report"

Fig1

The full implementation of ePublic procurement implies all these stages and their level of development is not homogeneous (See Nguyen and Coscia, 2010). Several remarks should be made:

eNoticing: All member States have already achieved a rate higher than 80% and 45% of member States have reached more than 98% of eNoticing, according to the EC Publication Office (See, Reis and Hardy, 2010). However, there is a significant number of contracts without notice due to their lower value despite interesting experiences such as that pursued in UK (www.supply2.gov.uk).

eSubmission requires high availability of services and it can be helped by more advanced tools such as those oriented to compile personalized profiles. There is clearly quite a long way to go to complete availability for these activities, which are the core of the eTendering process (Commission of the European Communities, 2009, "The 2009 EU eGovernment Performance Benchmark Report").

eDecision is a crucial stage as it includes the process of analysing the tenders with three objectives:

- a) Checking if each tender complies with all attributes imposed by the procurement documents and rejecting it if not;
- b) Evaluating the descriptors of the criteria under competition to estimate their scores for each accepted tender;
- c) Estimating the overall score for each tender in terms of the scores and weights of the evaluation criteria and ranking the tenders in terms of the so-called "most economically advantageous tender (MEAT) "to obtain the best value for money.

The adoption of an electronic platform can help very much to perform these activities effectively and efficiently because:

- a) All tenders can be easily compared by each attribute and criterion through electronic matching of documents avoiding cumbersome paper-based handling;
 - b) Any queries can be immediately sent to each tenderer through the electronic platform and their answers collected avoiding mail delays;
 - c) Decision support tools to estimate scores and rankings can be directly applied to elicited information;
 - d) Preliminaries rankings and reports can be prepared through collaborative work supported by the electronic platform;
 - e) Negotiations, final decisions and notices can be automatically produced and shared through the electronic platform.
 - f) eAuctions can be a powerful tool to increase competitiveness.
- eTendering includes all these Pre-Award activities.

However, the major advantage may be increasing transparency and legitimacy to the whole evaluation and decision process reducing claims, reviews and litigation.

The Post-Award phase includes all the activities necessary to execute the contract and to control its execution. In this phase, eBusiness brings the most of compliance and productivity and the main activities are eContract, eManagement, eOrdering, eInvoicing and ePayment.

eInvoicing is generally adopted in several member States such as Denmark and hardly adopted in southern Europe.

The state of the art of eTendering was recently reviewed during recent workshops (See Nguyen and Coscia, 2010) showing strong disparities between member States.

- In France, eTendering has been compulsory since the 1st of January, 2005, for formal procedures (Dec. 2001-210) and since 1st of January, 2010 also for adapted procedures with a contract value above 90,000 € (Dec 2008-1334) according to (Fan, 2010).
- In Portugal, the compulsory adoption of eTendering for public contracts was identified for any contract awarded through any open, negotiated or restricted contract;
- In Austria, eTendering is compulsory for public contracts awarded at the federal level (Nguyen and Coscia, 2010).

Other developments include the national Swedish initiative to launch pre-award eProcurement until January of 2013 (Fjelkegard, 2010) supported by a public budget of about 1M€/year and the solution adopted by the Welsh Assembly Government (Baker, 2010) based on the National Procurement Portal and including two components:

- Sell2Wales (www.sell2wales.co.uk) - a notification service that links registered suppliers to opportunities matching their profile and allows suppliers to review details of procurement organisations and engage in basic RFQ processes.
- Buy4Wales - (www.buy4wales.co.uk) a sophisticated 'back office' procurement tool that procurers use to create and manage notices, search for suppliers, locate best practice resources and conduct RFQ Request for Quotes.

A major issue is understanding how important is the contribution of each stage of ePublic procurement to pursue the goals presented, in Chapter 2.

Auftrag.at, the Austrian eTendering platform has launched a survey to measure the progress of eTendering in Europe in the last year (<http://www.epractice.eu/en/workshops/vienna2010>) and five countries have participated: Sweden, Spain, Switzerland, France and Portugal

The following encouraging results were obtained:

- 58% of all specifications for tenders are downloaded directly from the platform
- The number of procedures with electronic submission has increased in all countries (75%)
- 74% of the solutions already use online-options for supporting the tender submission
- Acceptance of eTendering solutions highly increased in every country (90%)
- 67% of the solutions operating have requiring qualified electronic signature

Following the advice of several experts, the following matrix of impacts included in Fig 2 is proposed.

The impact matrix

Level of Impact of eProcurement Stages on key goals <small>(0 → No impacts; 10 → extremely high positive impact)</small>	Anticipation and Integration Needs (A)	Wider access to notices (B)	More cross-border competition (C)	More transparent awarding (D)	Less paperwork along project execution (E)	Better evaluation -KPI- (F)	Total Impact
eTendering	5	10	10	10	5	5	45
eAward	-	-	5	10	5	5	25
eExecution	-	-	-	-	10	15	15
eEvaluation	-	-	-	-	10	10	10

Fig2

In short, ePublic Procurement includes multiple stages and their adoption level is quite heterogeneous between member States. eTendering is the stage with the highest impact factor to achieve improvement goals as well as the implementation of the principles of the Treaty of Lisbon. Portugal is the most clear example of compulsory adoption of eTendering (since the 1st of November, 2009) justifying a specific analysis presented in the next section.

5

REQUIREMENTS FOR ETENDERING

Substituting the old process of tendering based on tones of paper, mail deliveries and formal sessions to open envelopes and to stamp documents for hours and days through a tendering system, only using electronic documents and communication processes based on portals and telecommunication networks, is a giant step towards the knowledge society, which requires a vast and complex process of change. Vast, because it requires the participation of the State, public contracting authorities, economic operators and wide range of technological enablers. Complex, because it requires new skills and the redesign of procurement processes.

The success of this process of change requires key conditions which are present in most innovation processes:

A - Adequate legislation and enforcement guidelines.

Public procurement is subject to EU directives as well as to national laws, and it is under extensive scrutiny (Inspections, audits, public debates, etc). Therefore, all legal frameworks should clearly define the steps and rules of eTendering.

B - Motivation and training of leaders and of major actors.

Motivation implies clarifying advantages of eTendering, not just at a national and European perspective but also for the objectives of the leaders of each organization (Nohria and Khurana, 2010).

Leadership and training are essential conditions to develop the new required skills.

The project eVA (European Vortal Academy) is an example of a good practice, by offering these services to more 1000 leaders and technical staff (see eVA in www.epractice.com).

C-Regulation by the State

The implementation of eTendering implies new processes but also new services such as the access to electronic platforms, time-stamping of documents, handling eDocuments, using electronic signatures, enforcing and checking safety procedures, marketing innovation, web design, etc. (Norries and West, 2001).

Therefore the State should regulate these activities (Stiglitz, 2010) through appropriate agencies in terms of:

- Imposing conditions and carrying out audits to accredit these new players.
Platforms should be compliant with the ISO 27001 standard, towards information security throughout the entire business cycle.
- To monitor and to evaluate the standards implemented by each player.

Failure of the regulation activity can have impacts which jeopardize the procurement processes of high value contracts, thereby generating huge losses.

D-Technological enablers

eTendering requires a vast array of technological enablers to provide the required services. The access service to an electronic platform is particularly sensitive to any fault occurring during operations of the handling, treatment or sharing of information (Du et al, 2005) and each provider can enrich its services through innovative additional services such as eCatalogues, financial opportunities, legal advice, etc. (Richardson, 2010).

Thus, promoting the development of a market of electronic platforms will improve the quality and the level of competition fostering innovation and the reduction of costs in favour of eTendering.

The alternative option of developing a public platform does not generate these key benefits and it undermines the regulating role of the State because there is a clear conflict of interest between regulating and, for the same activities, being regulated. This argument is confirmed by multiple cases from very different economies, such as Sweden, England, Portugal or several states of the United States (California, Florida, etc).

For additional information, read "The issue of private market platforms vs. "a national platform": National Procurement Assistance and Development (Sweden)
<http://www.epractice.eu/en/cases/npad>

"One of the main critical components of a successful implementation of electronic support for the procurement process is the issue of how to balance the existence of a strong private market of eProcurement platforms/systems and the desire to have an increased control and supervision over the general development of eProcurement in Sweden. For eInvoicing and eOrdering, this issue has been partially solved by placing demands on system suppliers in framework agreements (on eInvoicing/eOrdering platforms/systems), which are mandatory for public authorities but not for municipalities, county councils or regions. It remains to be seen whether this is a suitable approach for this third step, but the key to success here is clearly to find a solution which allows for continued development and competition between private market platform suppliers, while still retaining the possibility to influence national development, placing demands on interoperability and accessibility, thus creating a sense of "a national eProcurement platform".

6

PORTUGUESE PUBLIC PROCUREMENT AND eTENDERING

6.1 The New Legal Framework

A new legal framework for public procurement was approved in Portugal on 2008 (Tavares, 2008) to overcome previous shortcomings, to transpose the Directives 2004/17/CE and 2004/18/CE and to become part of a global strategy to make Portugal one of the most advanced European States on Information Society (Dec-Lei 18/2008).

Previous laws were too fragmented, requiring a heavy bureaucratic load to any tenderer and following rules which were too rigid for the execution of contracts.

Therefore, the proposal for a new code was inspired by quite different objectives such as:

- Full adoption of web based eBusiness.
For instance, submitting tenders online and the possibility for the supplier to compile personalized profiles, or the presence of online screening tools to pre-qualify suppliers for certain calls for tenders
- Broad flexibility of procedures to award contracts including new options such as reverse auctions, dynamic acquisitions systems, framework agreements, etc.
- Availability of the full specification of the multi-criteria model to evaluate tenders to any tenderer before having to present its tender. (See Graça and Tavares, 2010).
- Reinforcement of review rights
For instance, introducing the grace period of 11 days between awarding and contracting phases.

Since 2009, this new legal framework (Decree 18/2008 and additional legal documents) is implemented and since 1st of November, 2009 all public competitive (open, restricted or negotiated) procedures to award a public contract have to be conducted through eTendering.

This means that, for the first time, eTendering is compulsory in order to award any public works, supply or services contract, which increase transparency and accessibility.

6.2. *The new market of eTendering platforms*

Obviously, this new legal framework is responsible for new challenges inducing deep processes of change on contracting authorities governed by public law, on suppliers and on key enablers such as IT operators offering electronic platform services to implement eTendering.

After a long discussion and an evaluation of the quality of the services already offered by firms on eTendering, the Government decided to open a regulated market for electronic platforms rather than setting up its own platform.

Actually, these services should follow strict regulations and as such, operators must be certified by CEGER (Centro de Gestão da Rede Informática do Governo – Management Services of the Government Information Network). Currently eight firms can offer these services. Each of these operators is striving for innovation and excellence of services according to its specific history, potential, mission and strategy. Some were created as marketplaces for important sectors (e.g. construction), others are based on ICT consultancy and another is a spin-off of the largest Portuguese industrial services group. They adopt aggressive competitive models, but they also understand the high value of cooperation becoming an excellent example of the new management paradigm of “co-opetition” (Nalebuff, 1991), which they use to create interoperability.

Furthermore, the full adoption of eTendering is also requiring new innovative services to be provided along the contracting cycle, namely:

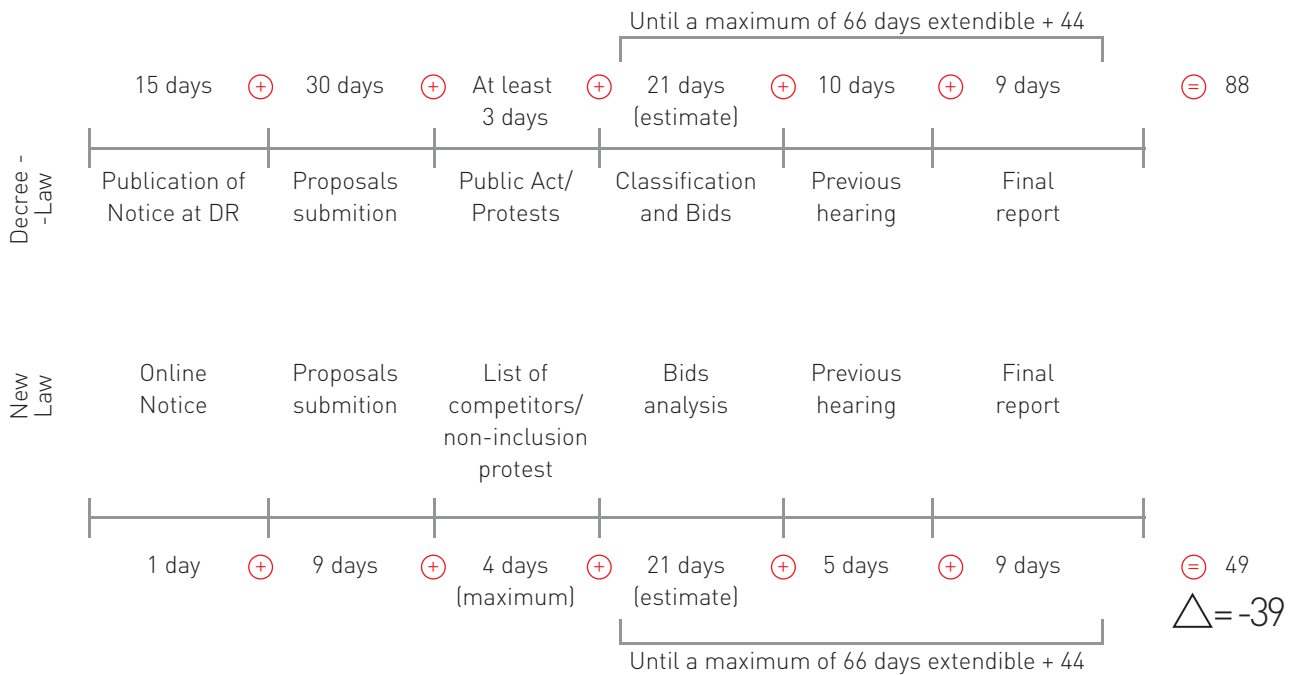
- a) Development of collaborative platforms to support design and evaluation activities (Costa and Tavares, 2009);
- b) Computerized multi-criteria models to implement the criteria of the “most economically advantageous tender”.

A specific forum was set up (APMEP, See Tavares, 2010) to discuss and make contributions to improve public markets embracing individual experts, public authorities, economic operations and electronic services providers.

6.3 Impacts of eTendering in Portugal

The portuguese government invited Deloitte to forecast the impact of the new procurement processes, following the new legal framework (DL 18/2008) and other documents . The main conclusions were:

→ Significantly reduce time for the open procedures, from 88 to 39 days (fig3.)



Source: 2008, Deloitte "Impacts of the Introduction of the Public Contract Law"

Fig3: Reduce time of open procedures.

→ Regarding administrative costs (time, overhead, paper, etc), Deloitte estimates an annual savings of €28 million per year.

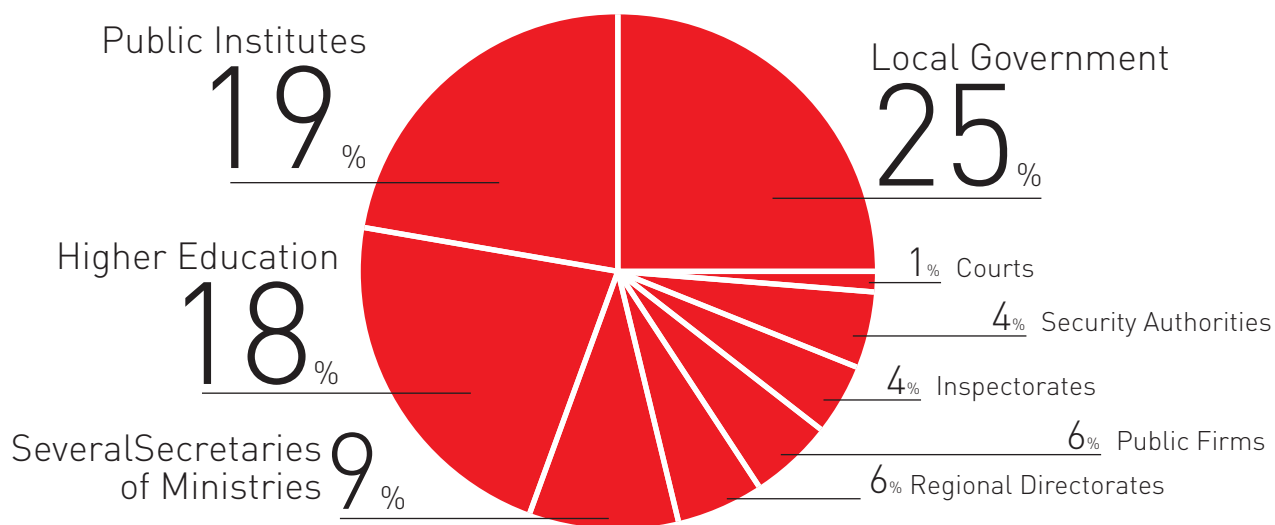
	Unitary current cost	Unitary savings through process simplification	Estimate savings
Invitation	174€	-60%	-21.942.204€
Previous request (2 competitors)	1.890€	-4%	-448.481€
Previous request (3 to 4 competitors)	2.074€	-5%	-626.007€
Previous request (more than 5 competitors)	3.335€	-5%	-579.169€
Negotiation without Notice Publication	7.085€	-6%	-114.086€
Negotiation with Notice Publication	7.434€	-5%	-53.760€
Limited Tender without Applications presentation	4.358€	-7%	-936.097€
Limited Tender with pre-qualification	6.060€	-6%	-88.396€
Open Procedure	11.443€	-5%	-3.476.530€
Total			-28.304.730€

Fig4: Administrative costs reduction in open procedures

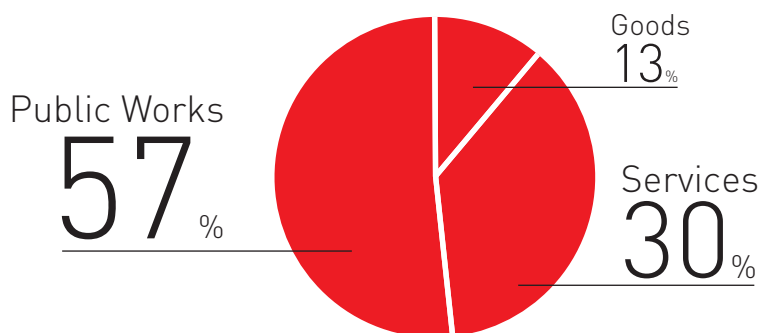
From August 2009 to April 2010, 32,301 eTenders were successfully submitted through the two leading electronic platforms. From more than 12,400 suppliers and aiming to get a contract form and of almost 2.000 different contracting authorities. The average number of electronic proposals per procedure is 3.4.

Last year, OPET (Observatório de Prospectiva da Engenharia e da Tecnologia – The Portuguese Observatory of Technology and Engineering, OPET, 2010), chaired by the author was invited by InCI (Instituto da Construção e do Imobiliário – Institute of Construction and Real Estate) to conduct a survey about this ambitious and fascinating process of change. Major results were presented during the 3rd National Conference on eTendering organized by OPET and APMEP – Associação Portuguesa dos Mercados Públicos (Portuguese Association of Public Markets, www.apmep.pt) on the 25th of November, 2009, which received more than 900 participants.

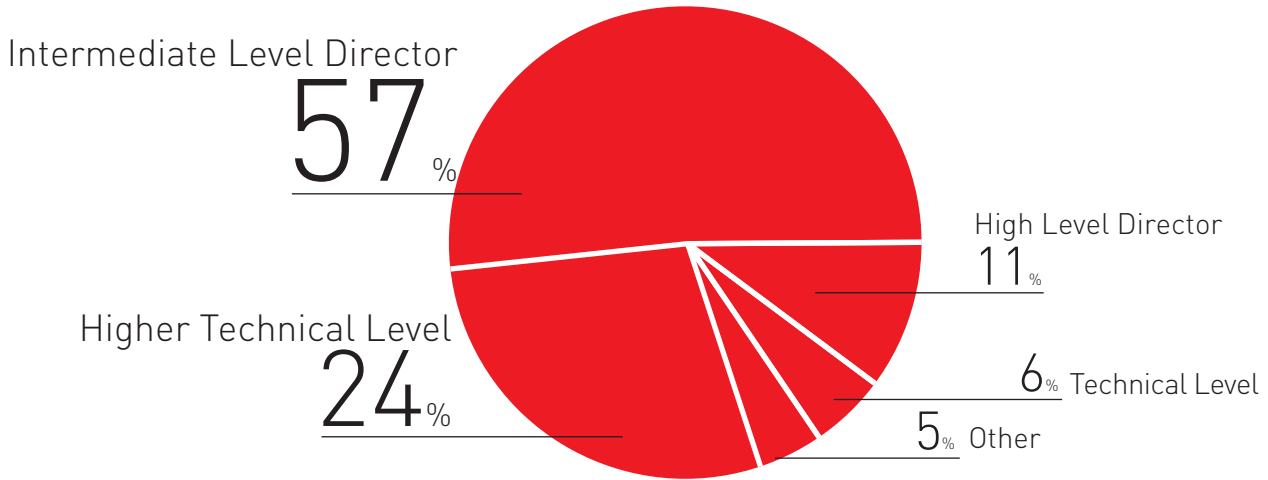
A sample of 700 bodies governed by public law was generated, covering a diverse array of institutions:



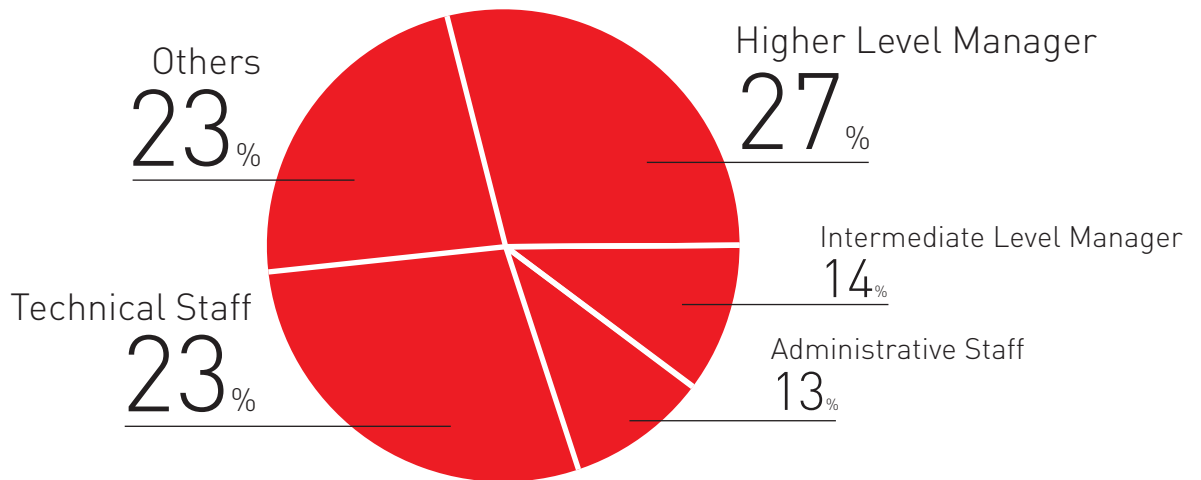
A list of 70 random suppliers (public works, goods and services) was generated:



More than 30% of the questionnaires were answered and the strategic importance assigned to this process of change is clearly confirmed by the high professional level of those who responded:



Role of those who responded (Supplier)



About 1/3 of contracting authorities were already using eProcurement including eTendering in 2009 even before the compulsory deadline of the 1st of November 2009.

The results about the impact of eProcurement are quite clear:

A – Increase of Transparency (Public authorities and suppliers):

Reduction: 8%

Increase: 92%

B – Public Authorities expressing opinion about changes:

On duration of processes

Reduction: 62%

Increase: 38%

On cost of processes

Reduction: 79%

Increase: 21%

C – Suppliers expressing opinion about changes:

On duration of processes

Reduction: 50%

Increase: 50%

On cost of processes

Reduction: 69%

Increase: 31%

6.4 A case study

The Portuguese Ministry of Justice

The Portuguese Ministry of Justice is a government ministry in Portugal. Since 2008, all public sector employers in Portugal (local authorities and government administration) have had to tender for contracts exclusively by electronic means on eTendering platforms.

The Portuguese Ministry of Justice Procurement Directorate identified the need to increase transparency and cost effectiveness for all contracting processes.

The directorate had to meet ambitious savings targets through strategic procurement and improve efficiency through restructuring and process review.

The solution was to adopt an eTendering platform and anticipate legal requirements by starting the eTendering process early.

Vortal was selected for its authentication, authorization, encryption, identification with digital certificates, traceability and non-repudiation capacity. This enables the highest level of information confidentiality and security.

To satisfy the tendering requirements, Vortal developed a robust electronic platform, vortalGOV, built on a service-oriented architecture for high productivity, performance and scalability.

The company maintains a core system architecture using the latest technology to provide electronic services.

Using this platform, the Directorate could input tender documents, clarifications, messages and notifications to market operators, making bids electronically using Web-based technologies alone.

Market operators simply need an Internet browser to receive automatic notification of a tender for goods or services, according to business type. When accessing the tender, they can download the procedures, ask for clarification and send proposals.

7

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