

PUBLIC
LAW

THE NEW PUBLIC PROCUREMENT THRESHOLD VALUES

With the entry into force on 1 January 2010 of the new **Commission Regulation (EC) No. 1177/2009** of 30 November 2009¹, amending Directive 2004/18/EC, the thresholds for the application of open procedures for the award of public sector contracts have changed and will now be lower. This Regulation is directly applicable in all EU Members States and, consequently, also in Portugal.

Thresholds for the award of public sector contracts will be lower

Thereby, entities subject to the Portuguese Public Procurement Code (PPC) approved by Decree-Law no. 18/2008 of 29 January have now a lower degree of freedom in the choice of simplified bidding procedure (as by direct agreement).

Lower degree of freedom in the choice of simplified bidding procedure

Indeed, below certain thresholds, contracts can be awarded by simplified bidding procedure, be subject to less stringent conditions when it comes to deadlines and may waive the advance notice in the Official Journal of the European Union.

The Portuguese Public Procurement Code (PPC), implementing Directive 2004/18/CE, has several national thresholds values in reference to the amounts set up in Article 7 of that Directive, in particular with regard to public supply and service contracts (article 20 of PPC) and public works contracts (article 19 of PPC).

Further to the amendments brought by the Regulation, the new maximum thresholds values will be lower:

- **EUR 193,000** (when before was EUR 206,000) for the award of **public supply and service contracts** when:
 - Entered into by direct agreement and by the contracting bodies that are listed in article 2, paragraph 2 of the PPC and by the Portuguese National Bank - *under article 20, paragraph 1a) of the PPC*;

¹Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:314:0064:0065:EN:PDF>

- Entered into by an *openly advertised tendering*, without the announcement in the EU Official Journal, and if these contracts are awarded by a non-governmental body or, although awarded by a governmental body, if they relate to certain types of contracts (defense, broadcasting services, I&D, etc) - *under article 20, paragraph 1b) and 3 of the PPC*;
- **EUR 125,000** (when before was EUR 133,000) for the award of **public supply and service contracts** when entered into by an *openly advertised tendering*, without the announcement in the EU Official Journal, and if these contracts are awarded by governmental bodies - *under article 20, paragraph 2, of the PPC*;
 - **EUR 4,845,000** (when before was EUR 5,150,000) for the award of **public works contracts** when entered into by an *openly advertised tendering*, without the announcement in the EU Official Journal - *under article 19, paragraph 1b) of the PPC*.²

*Directive 2004/17/CE and
Directive 2009/81/CE
have also been amended*

The relevant thresholds for the application of Directive 2004/17/EC, a specific legal instrument that covers public procurement contracts in the field of water, energy, transport and postal services, and of Directive 2009/81/EC, for contracts in the fields of defence and security, have also been amended by Regulation 1177/2009.

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²All this thresholds values are exclusive of value added tax [VAT].

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