



PUBLIC PROCUREMENT and SMES

BASIC GUIDE FOR CONTRACTING AUTHORITIES

PURPOSE OF THIS GUIDE

Increase the participation of SMEs in public procurement, through a set of recommendations to public sector entities.

FACILITATING SME ACCESS TO PUBLIC PROCUREMENT IS A LEGAL OBLIGATION

- The public procurement Directives (2014/23; 2014/24; 2014/25), and subsequently the national laws (Law 9/2017 on Public Sector Contracts in Spain -LCSP-; RDL 3/2020), establishes a SOCIALLY EFFICIENT CONTRACT, which is based on two pillars: INTEGRITY and STRATEGY.
- Strategic public procurement involves the incorporation of social and environmental criteria into all contracts in a cross-cutting and mandatory manner, promoting business innovation and the participation of SMEs.
- The public procurement Directives oblige all contracting authorities to facilitate SMEs access to their public contracts and promote their participation (whereas 1 D. 2014/23; W. 2 and 78 Directive 2014/24; w. 4 D. 2014/25). (arts. 1.3, 28.2 Spanish LCSP)
- Each contracting body should establish its own strategy to promote contracting with SMEs, with specific objectives for participation and the award of contracts, taking appropriate measures suitable to this end. The commitment and leadership of those in charge of the contracting authorities, accompanied by a system of evaluation of the achievements obtained, is essential (every three years Member States shall submit to the Commission a monitoring report covering information on the level of SME participation in public procurement -art. 83.3 D. 2014/24-).

WHY PUBLIC AUTHORITIES HAVE TO MAKE IT EASIER FOR SMES TO BID FOR PUBLIC CONTRACTS

- ✓ SMEs constitute more than 99% of UE (and Spanish) companies and generate 72% of business employment, but only manage around 40% of public procurement, which is far below the percentage of added value they generate, 62.2%. An increase in contracting with SMEs will

have a multiplier effect on the promotion of employment, growth and innovation (w. 124 Directive 2014/24).

- ✓ SMEs are key to promoting socially responsible growth, through the generation of more employment, being more linked to the territory and adapting more easily to innovations and socio-regulatory changes.
- ✓ SMEs usually offer tighter prices, as they have more austere structures, with less overhead and profit margins, and allow a simpler and more direct relationship with public contract authorities.
- ✓ Greater participation of SMEs will generate more intense competition for public contracts, which will provide the public sector with higher quality goods and services at a more advantageous price. On the other hand, this greater competition caused by a greater number of bidders will allow SMEs to develop their growth and innovation potential, with a positive and multiplier effect on our economy.

MEASURES OF DIRECTIVE 2014/24 AND SPANISH LCSP TO FACILITATE THE PARTICIPATION OF SMEs

- Splitting all contracts into lots as a general rule (art. 46 D. 2014/24).
- Reduction of the economic, financial and technical capacity requirements, applicable to each individual lot (art. 58 D. 2014/24) (with express provisions for start-up companies in the Spanish LCSP, arts. 88.2, 89.1.h and 90.4).
- Reduction of administrative and economic burdens for SMEs in order to facilitate their participation in public tenders by:
 - o The use of the standardized responsible declaration through the EUROPEAN SINGLE PROCUREMENT DOCUMENT (ESPD), which makes it easier to prove the personality, capacity, solvency and non-concurrence of prohibitions to contract with the public sector (art. 59 D. 2014/24).
 - o Official lists of authorised economic operators and certification by public or private law bodies (art. 64 D. 2014/24) (In Spain Official Registry of Tenderers and Classified Companies in the Public Sector (ROLECE), to accredit the conditions of aptitude of the entrepreneurs -art. 337 LCSP-, with compulsory registration to participate in the simplified open procedure -art. 159 LCSP-).
 - o Reliance on the capacities of other entities (art. 63 D. 2014/24)
 - o Exclusion of the provisional guarantee as a general rule (art. 106 Spanish LCSP) and the possibility of establishing the definitive guarantee by retaining of the price in all standard contracts (art. 108 Spanish LCSP).
- Stricter rules of payment periods (art. 216 Spanish LCSP) and the possibility of direct payments to subcontractors (art. 71.3 and 7 D. 2014/24; DA 51 Spanish LCSP) are foreseen in the tender documents.

ADDITIONAL MEASURES THAT CAN BE ADOPTED BY CONTRACTING AUTHORITIES

- Training and information for SMEs: publish an annual contracting plan (art. 28 Spanish LCSP) so that SMEs are informed about tenders in advance and have sufficient time to prepare their bids. Develop training programmes on public procurement for SME associations (e.g. on the use of the electronic tendering system used).
- Splitting into lots. Extreme the general rule of splitting contracts into lots, being very strict in the admission of justifications for not doing so, allowing it only in cases of real impossibility of execution and / or coordination. The size of the lots must allow, due to their proportional solvency requirements, the concurrence of SMEs. This splitting into lots must be extreme in mixed contracts, which in turn must be used restrictively (art. 34.2 Spanish LCSP).
- Capacity and solvency requirements: the specifications must be precise, quantified and proportionate to the subject and amount of each lot. For their accreditation, simple documents to be submitted by the bidders and easy to analyse by the contracting tables must be requested.
- SMEs, in particular, should be invited to participate in the procedures without prior publication.
- Restrictive use of centralised purchasing activities and central purchasing bodies in sectors where no SMEs are approved, provided that small and medium-sized enterprises operate efficiently in that sector within the scope of the contracting authorities.
- The deadline for submitting offers must be established according to the complexity of the contract, seeking to raise the minimum legal deadlines as a general rule.
- Award criteria: Preferably, use simple mathematical criteria, limiting those of technical weighting for new contracts in which a complete definition of the scope of the benefits is not possible without the offers. In any case, they should be clearly formulated, specifying WHAT is valued and HOW, trying to avoid criteria that require the elaboration of extensive and / or complex documents.
- Check contractors' payment to subcontractors and suppliers.

MORE INFORMATION

- https://ec.europa.eu/growth/smes_en
- In Spain:
 - <https://plataformapyme.es/es-es/Crecimiento/Paginas/ContratacionPublica.aspx>
 - <https://www.valladolid.es/es/ayuntamiento/normativa/instruccion-1-2018-impulsar-contratacion-socialmente-eficie>