



Improving SME's access to public procurement

# Guide to country specific elements on public procurement: Spain



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## TENDERIO

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## List of Acronyms

Acronym	Title
EU	European Union
GDP	Gross Domestic Product
GPA	Government Procurement Agreement
MEAT	Most Economically Advantageous Tender
PPL	Law on Public Procurement
SME	Small and Medium – sized Enterprise
TRLCSP	Texto Refundido de la Ley de Contratos del Sector Público (Consolidated Text on the Law on Public Contracts)

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](http://www.tenderio.com)



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## Executive Summary

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

In Spain, public procurement mirrors the de-centralised political system and is governed by a variety of institutions at national and regional level. While the legal system is applicable nation-wide, policy making and actual expenditure is largely carried out at sub-central level.

The Directorate General of Rationalisation and Procurement Centralisation (DGRCC) serves as central purchasing body and promotes efficiency in central government spending with the possibility for regions and municipalities to adhere to the system.

Spain's multi-level governance in procurement has implications on strategic public procurement, too. In fact, national/regional/local authorities have often developed their own approaches, particularly in the field of GPP (Green Public Procurement) and SRPP (Socially Responsible Public Procurement).

The new EU Procurement Directives (2014 Concession Contracts Directive, 2014 Public Contract Directive and 2014 Utilities Contracts Directive) are being transposed into Spanish law via two pieces of draft legislation – the draft of the new PPL and the draft of the new Law on Public Procurement in the water, energy, transport and postal services sectors – both of which were adopted by the former government on 17 April 2015. However, due to Spain's 2015 political and institutional crisis, it has failed to comply with the implementation of the EU Procurement Directives within the EU's imposed deadline (18 April 2016).

Consequently, apart from Spain's potential liability for breaching EU law, it should be noted that some provisions of the new EU Procurement Directives are directly applicable without the need for any intervention from the Spanish Parliament.

It was precisely for this reason that, on 15 March 2016, the government's Contracts Advisory Board issued a recommendation addressed to all Spanish contracting authorities on the potential direct effect of the EU Procurement Directives. In addition, on 1 March 2016 the Administrative Tribunals of Contractual Appeals approved guidance on the applicability of the EU Procurement Directives after the deadline for compliance.

Despite this, until the Spanish legislation implementing the EU Procurement Directives is approved, the above-mentioned legislation remains in force and must be construed in accordance with the provisions of the EU Procurement Directives.

As such, it is important to highlight that, even though the transposition of the EU Procurement Directives is still pending, the current PPL establishes a framework that already includes some of the regulations and administrative provisions necessary to comply with the EU Procurement Directives. Furthermore, the current PPL was amended in 2015 to include certain provisions of the EU Procurement Directives.

The Spanish economy expanded by 3.2 % in 2016, well above the euro area average. On its third year of expansion, GDP growth has continued to outpace the euro area average, and the level of output has almost reached its pre-crisis level. Growth has continued to surprise on the upside in recent quarters, and GDP expanded by 3.2% in 2016, the same rate as in 2015. Growth is projected to have been driven by private consumption and investment, but the external sector is expected to have had a positive contribution to growth in 2016 for the first year since the recovery started.

As favourable tailwinds gradually subside, growth is expected to decelerate but remain robust. Real GDP growth is projected at 2.3 % in 2017 and 2.1 % in 2018, mainly driven by domestic demand.

## 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 Spanish public contracts and wishes to know more about the public procurement procedures in Spain.

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 Spain. In particular, it provides an overview of the public procurement framework in Spain along with a summary of key data regarding the Spanish 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 Spanish public contracts by companies located in another EU Member State.

Chapter four, briefly comments on the national procedures of public procurement in Spain. 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 Spanish public contracts.

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

## 2 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 etc<sup>1</sup>.

### **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 2015<sup>2</sup>.



The estimated value of tenders published in the Tenders Electronic Daily<sup>3</sup> (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.

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

<sup>2</sup> DG GROW G4, 2016. *Public Procurement Indicators 2015*.

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

### **European SMEs' participation in cross-border 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.

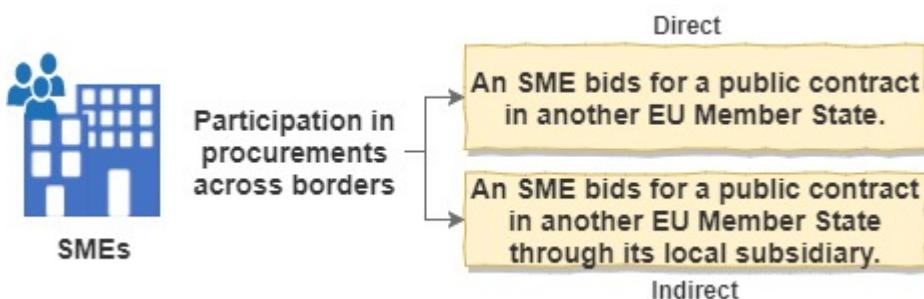


Figure 1 - How European SMEs can participate in cross border public procurements

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%)<sup>4</sup>.



The share of European SMEs in indirect cross-border procurement is estimated at 3% both in terms of number and value of awards<sup>5</sup>.

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

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

### ***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 2):



*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 (3):

Encourage contracting authorities to divide contracts into smaller parts (lots) allowing the participation of small companies.	Limit the required turnover to participate in a tender procedure as for giving the opportunity to small enterprises with limited financial capacity to bid for contracts.	Exploit the full benefits of the Digital Single Market and reduce the bureaucracy through the compulsory use of e-Procurement.
Simplify the rules for contracting authorities for better value for money.	 A graphic of a red and white bullseye target with a blue dart hitting the center.	Decrease the documentation requirements for procurement procedures.
Introduce new types of selection procedures that will enable more choice, easier access and better results.	Prevent corruption.	

*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 Spain

### 3.1 Current legal framework

In the field of government procurement in Spain, the following provisions apply:

- Royal Legislative Decree 3/2011, of 14 November, approving the Consolidated Version of the Public Procurement Act (*Texto Refundido de la Ley de Contratos del Sector Público* or TRLCSP), providing general rules on public procurement;
- Royal Decree 1098/2001, of 12 October, approving General Regulations on the Public Procurement Act (implementing TRLCSP);
- Royal Decree 817/2009, of 8 May, partly implementing Public Procurement Act 30/2007, of 30 October, regulating certain matters related to the classification of contractor companies, the Official Register of Bidders and Classified Companies held by the State, procurement panels and communications to the Official Register of Contracts;
- Royal Decree 814/2015, of 11 September, approving the Regulations governing special procedures to review decisions in contractual and organisational matters, Central Administrative Court for Contractual Appeals.

It must be kept in mind that some Spanish autonomous regions ("Comunidades Autónomas") have approved their own rules in public procurement matters, implementing basic state laws.

#### ***Other areas of national laws relevant to public procurement***

Without being exhaustive, the following can be mentioned:

- Act 19/2013, of 9 December, on Transparency, Access to Public Information and Good Governance: all public sector entities are obliged to publish information on their contracts and arrangements;
- Act 20/2013, of 9 December, to Guarantee Market Unity: forbidding certain practices restrictive of the free movement of goods and services, affecting public procurement, and also imposing duties to report public procurement information;
- Act 14/2013, of 27 September, to back up entrepreneurs and their internationalisation: containing certain measures to promote public procurement with enterprises.

#### ***Relation to supra-national regimes, such as EU rules and other international agreements***

Spain, as a European Union Member State, is subject to EU Law in public procurement matters and, particularly, to both the principles set out in the EU Treaties and the secondary EU Law in force, currently EU Directives 2014/23, 2014/24 and 2014/25. By virtue of the principles of primary and direct applicability of EU Law, European Union rules in public procurement matters will prevail over domestic law.

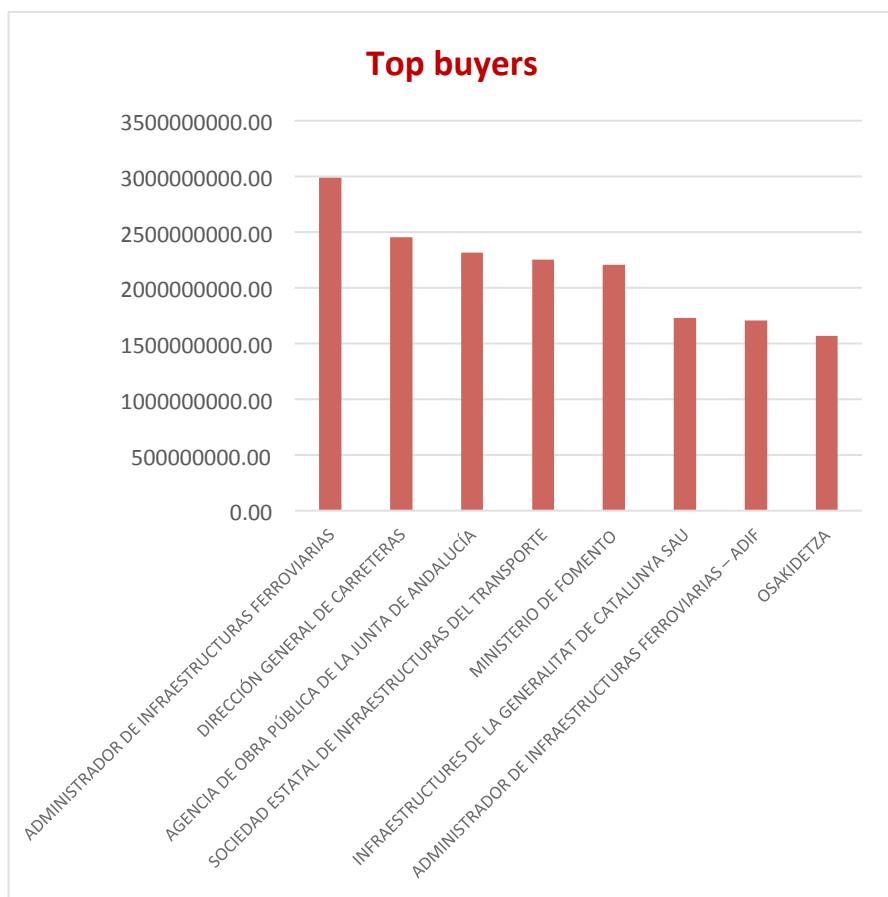
It should be noted that the deadline for implementing the above said Directives into Spanish Law has already expired (April 18, 2016), which is the reason why they may directly apply in Spain until a new act is passed by the Spanish Parliament.

### **Special rules in relation to procurement for specific areas**

- Act 31/2007, of 30 October, on procurement procedures in the water, energy, transportation and postal services sectors;
- Act 24/2011, of 1 August, on public procurement in defence and security matters;
- Act 8/1972, of 10 May, on the construction, conservation and exploitation of motorways under a concession.

## **3.2 General overview**

In the scheme below, about the top buyers in Spain, there is the list of the top 8. These buyers are from infrastructures, both rail and roads. It is important to mention that are buyers both from the central government and from autonomous regions.



*Figure 4 - Top buyers*

The graphics below show the top sellers in Spain during the period of 2013, together with the share of contract notice by buyer, the procedures applied (check “4. National Procedures on public procurement” to know about these type of procedures) and contract type.

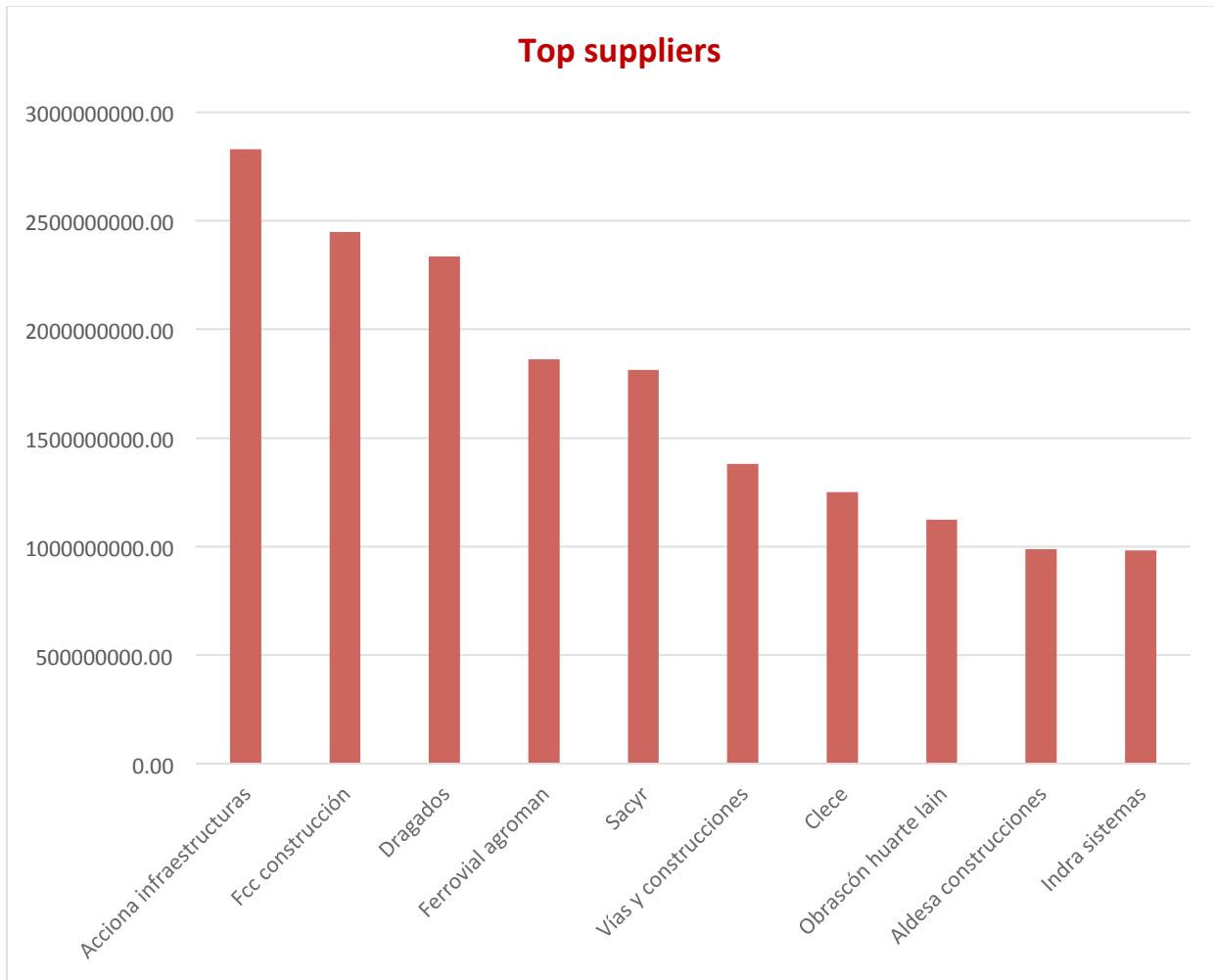
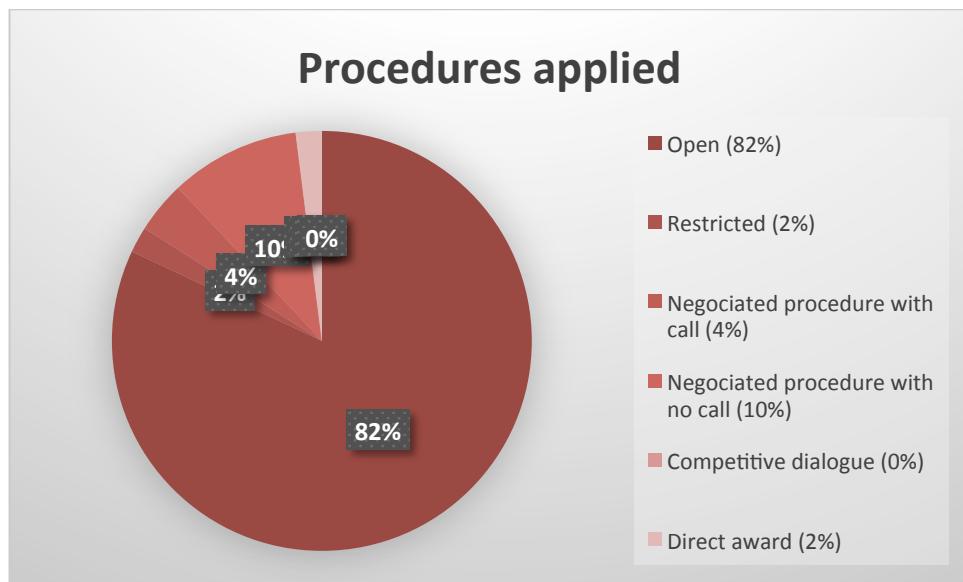


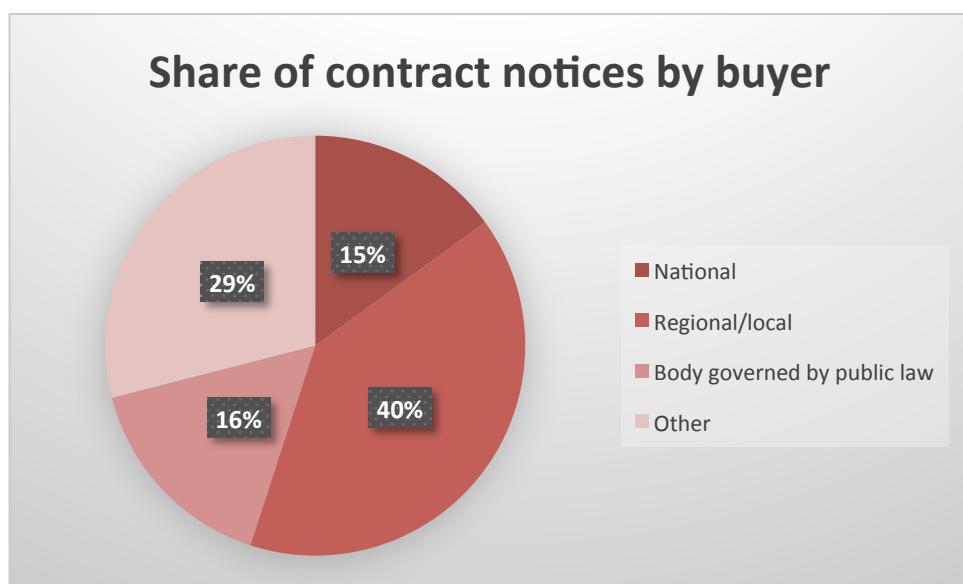
Figure 5 - Top suppliers

Open procedures are the most prominent in Spain, paving the way for SMEs to Spanish public procurement market.



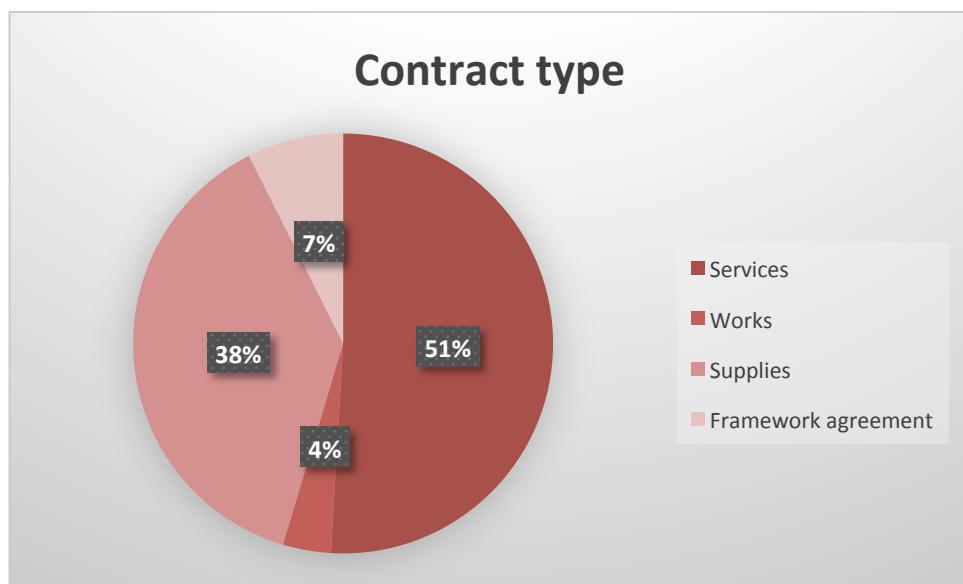
*Figure 6 - Procedures applied*

The share of contract notices by buyer reflects Spanish decentralized public management, with 40% of share by regional and local authorities.



*Figure 7 - Share of contract notices by buyer*

Services cover more than half of the entire Spanish 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
<b>Other indicators</b>	19%	106.8	24%	76%	1%	12%	2%

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

### 3.3 Most popular areas of Public procurement (2009-2017)

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

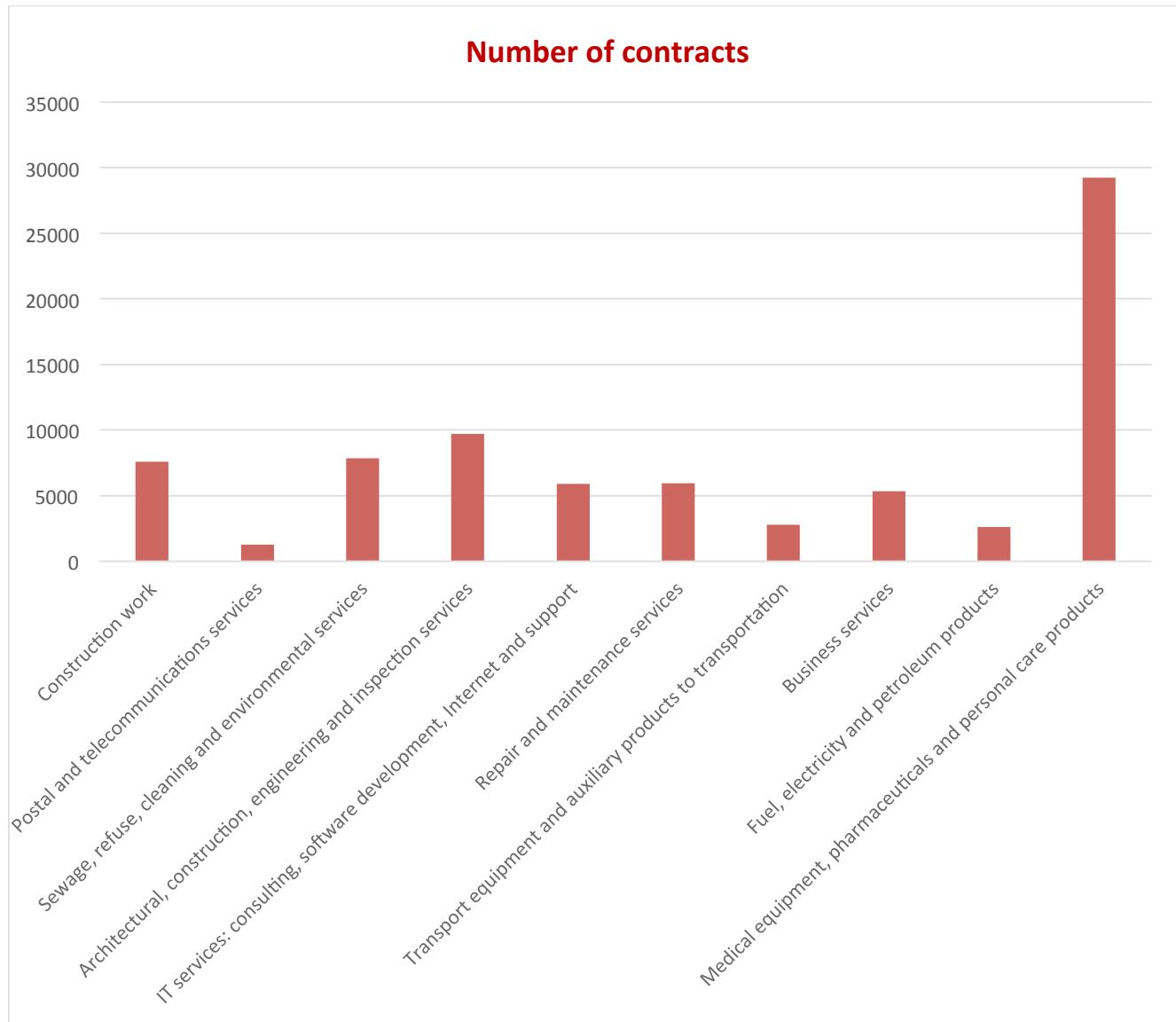
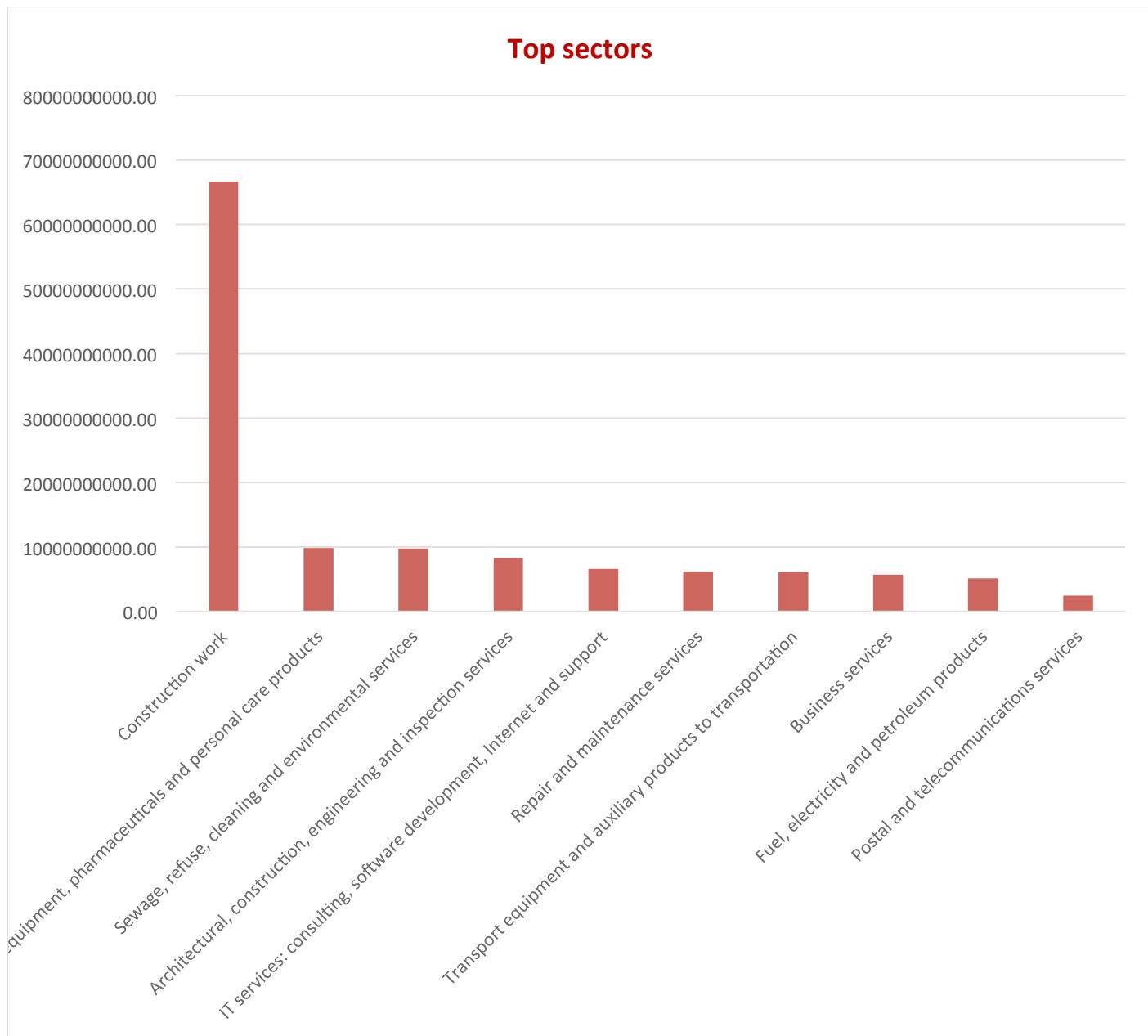


Figure 9 - Number of contracts

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*

### 3.4 Tenders in Spain 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 ca 251 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 were 34 offers below 100k Euros, 60 offers in a value between 101k and 300K euros, 34 offers between 301k and 500K euros, 36 between 501k and 1mil euros, 68 between 1 mil and 10mil euros, 16 between 10mil and 50mil and finally 3 with a value above 50mil. This totalise the 251 offers for the period.

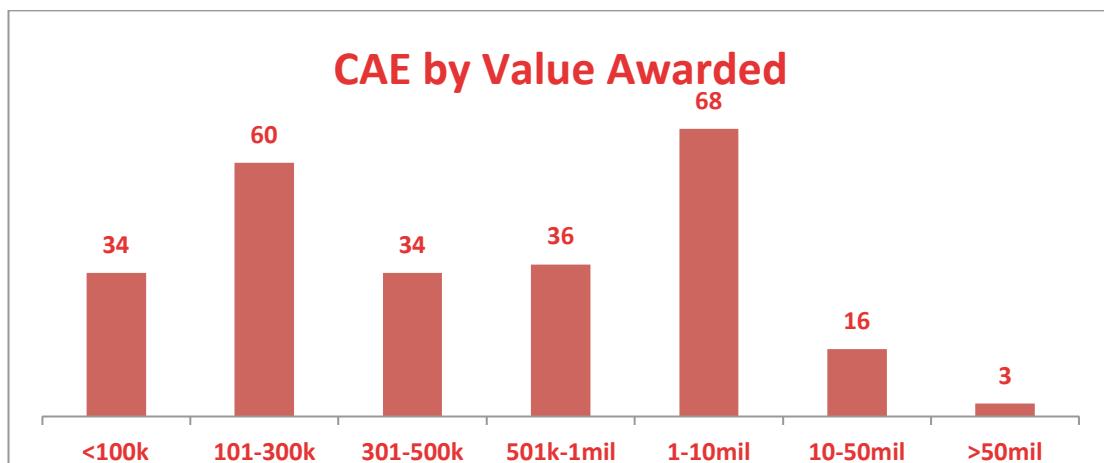


Figure 11 - CAE by value awarded

From 2012 a stable increase of awarded contract published by EU institutions and agencies has been recorded.

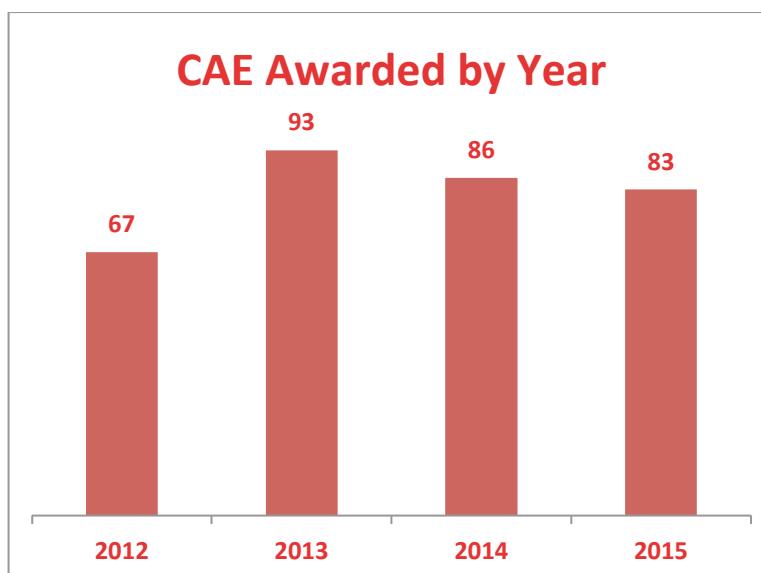
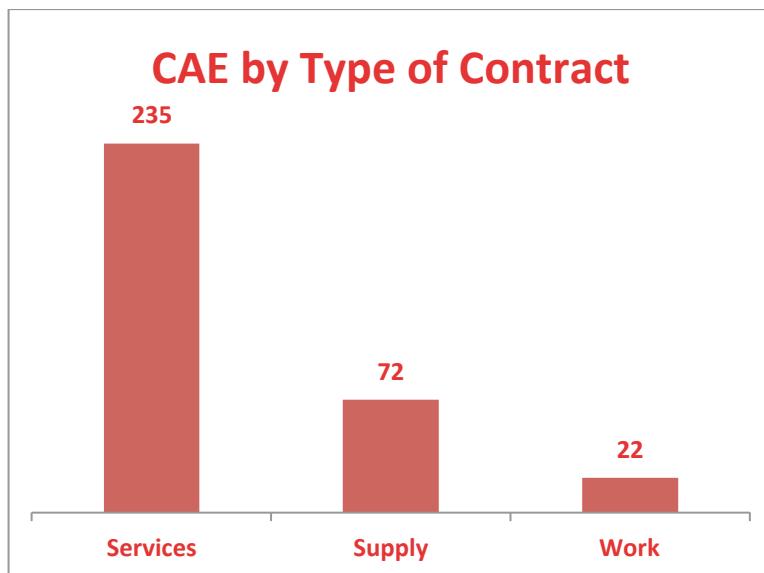


Figure 12 - CAE awarded by year

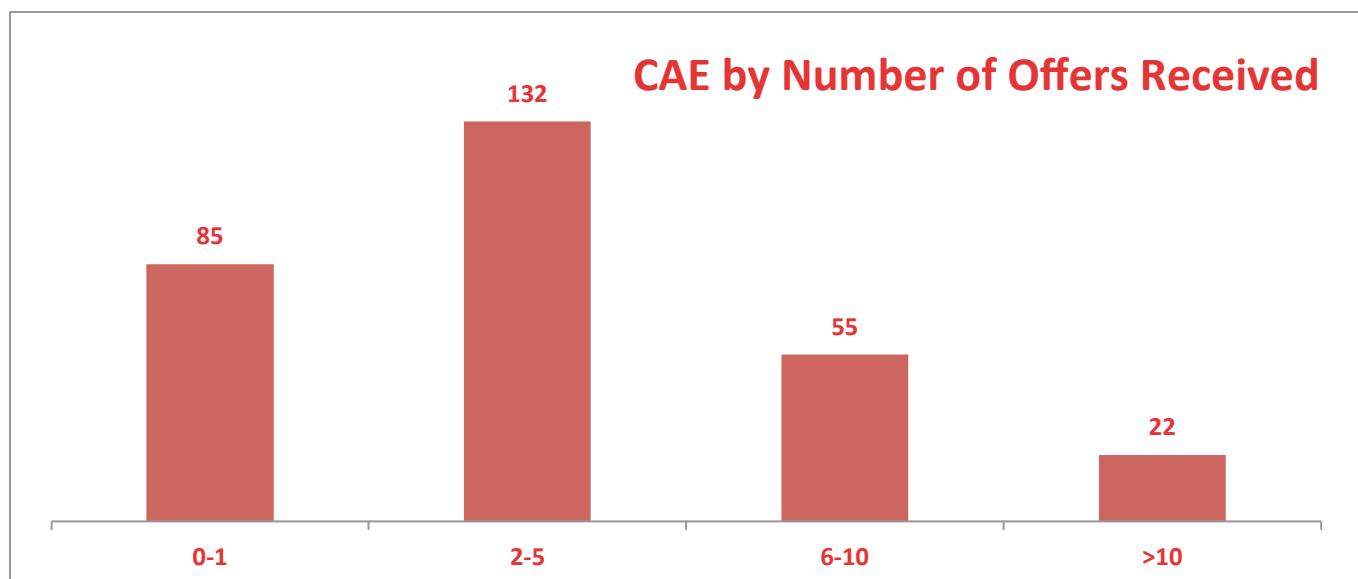
As for Spanish awarding entities, services are the prominent type of contracts published by EU institutions and agencies.



*Figure 13 - CAE by type of contract*

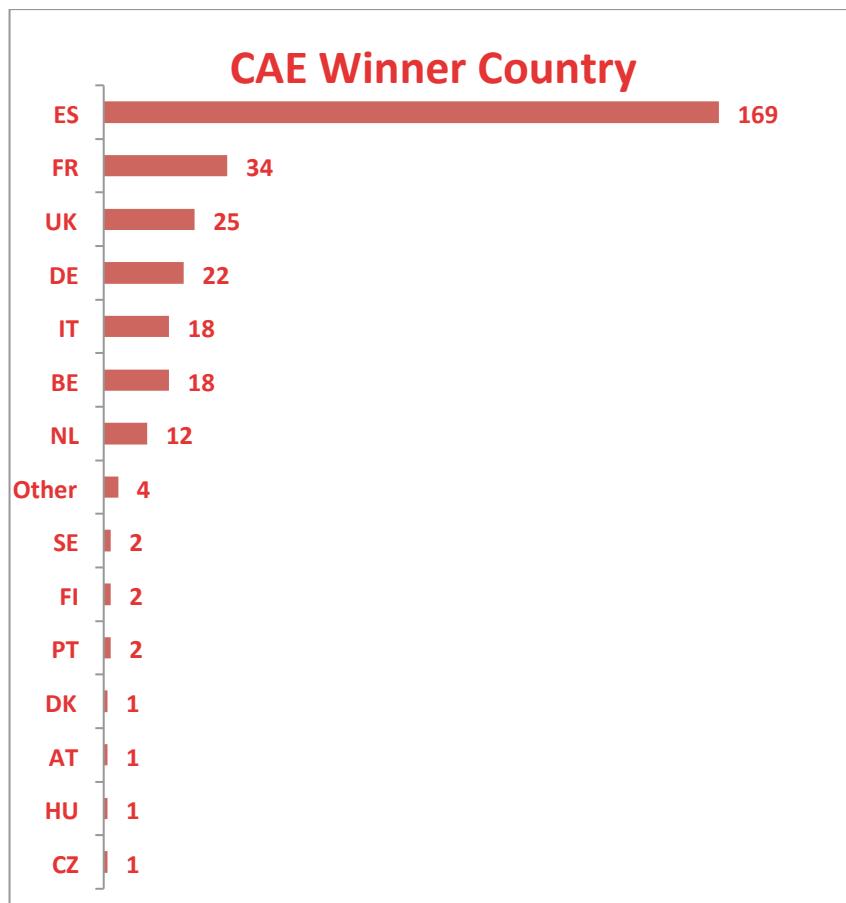
The graphic below gives a general idea on the level of competition in Spain for tenders published by EU institutions and agencies. As you see, there were 85 tenders receiving 1 or none bids, while much more receiving between 2 and 5 bids.

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.



*Figure 14 - CAE by number of offers received*

The first six foreign winner countries are, in decreasing order: France, UK, Germany, Italy, Belgium and the Netherlands. As you see from the graphic below, Spain is absolutely the most prominent country.



*Figure 15 - CAE winner country*

## 4 National Procedures on public procurement

### 4.1 Public Entities implementing public procurements

Any private undertaking participated or controlled by less than 50 per cent by any entity of the public sector is not subject to the legislation on public procurement.

Likewise, public bodies that are either engaged in any profit-making activity of goods manufacture or services provision or that are mostly financed by incomes received as consideration for the provision of goods or services shall not be subject to the legislation on public procurement. In any event, please note that in practice, these institutions are very scarce.

#### Public entities covered by the law as purchasers

The following public entities are covered:

- General State Administration;

- Spanish autonomous regions;
- Local bodies;
- Social Security management entities and common services;
- Autonomous bodies;
- Public universities;
- Business public entities;
- Other public law entities;
- Joint ventures of public entities

### **Private entities covered by the law as purchasers**

The following private entities are covered:

- Corporations, of which the majority stake is public or which are controlled by public sector entities;
- Foundations, of which the majority stake is public or which are controlled by public sector entities;
- Associations of public sector entities;
- Private concessionaire companies, with respect to certain works contracts awarded to third parties;
- Other private entities directly awarding certain contracts for works and subsidised services, covering more than 50% of their value, to public sector entities

## **4.2 Thresholds**

EU Directives establish certain economic thresholds in order to determine in which way contracts are subject to its provisions.

Accordingly, state regulations (in this case, the TRLCSP) distinguish between contracts subject to harmonised regulations, such as contracts that are directly subject to the application of European Directives, and contracts for a lower amount which are only connected to the regulations fixed by national legislation.

Examples (not exhaustive) are provided below:

*Table 2 - Thresholds*

Type of contract	Value of threshold
<b>Contracts for works and the concession of public works</b>	Equal or greater than <b>5,225,000 euros</b>
<b>Services concession contracts</b>	Equal or greater than <b>5,225,000 euros</b>
<b>Supply contracts and certain services contracts</b>	Equal or greater than <b>209,000 euros (135,000 euros if awarded by the General State Administration, its autonomous bodies or Social Security management entities and common services)</b>
<b>Subsidised works contracts</b>	Equal or greater than <b>5,225,000 euros (209,000 euros for works-related services)</b>



Every two years the European Commission shall revise the lowest thresholds amounts presented in  
**Error! Reference source not found.2.**

## 4.3 Available types of award procedures

There are various types of award procedures foreseen in the TRLCSP:

- **Open:** any interested enterprise may apply;
- **Restricted:** any interested enterprise may request its participation, but proposals may only be made by enterprises which, following such prior request and based on their solvency, are selected by the procurement body;
- **Negotiated:** only possible in the exceptional cases contemplated in the TRLCSP, where the award is made to a bidder duly selected by the procurement body, after consulting several candidates and negotiating the terms of the contract with one or more of these;
- **Competitive dialogue:** only used for particularly complex contracts, where the procurement body leads a dialogue with the candidates selected, following their application, in order to discuss one or several solutions that are able to cover their needs and on which the elected candidates may base their bid.
- **Minor contracts:** in an estimated amount that is less than 50,000 euros, for works contracts, or 18,000 euros for all other contracts. They may be directly awarded to any enterprise enjoying full legal capacity and the necessary professional qualifications to provide the service.

The choice of one type of procedure or another will depend on the estimated value or nature of the contract.

## 4.4 Who are eligible to participate?

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

## 4.5 Tenders Publication (where/how)

The use of e-procurement in Spain remains quite limited. The one area in which utilisation is more advanced is e-publication of contract notices through individual procurement profiles for each administration, which was made mandatory for all contracting authorities as part of the 2011 reforms.

E-submission of bids is not usually offered by contracting authorities. Just 9% of enterprises submitted electronic tenders in 2011 compared to an EU average of 13%. Qualified national digital signatures (DNI-e) are currently being assigned to Spanish enterprises for use in e-submission, but are not available to foreign suppliers.

The State Public Procurement Platform (PLACE) hosts a central registry for contracting authorities to post tenders launched in the country, and which automatically sends that information to the State Official Journal (BOE) and to the OJEU.

However, usage of the platform is limited due in part to the fact that several public agencies and regional authorities operate their own competing procurement platforms often via private IT providers.

Because contracting authorities are not required to report e-procurement data, monitoring is necessarily limited. Ministry of Finance and Public Administrations reporting is limited to data on the activities of the national e-procurement platform only.

### e-Platforms available



- **Supranational level:** <http://ted.europa.eu/TED/main/HomePage.do>,
- **National level:** <https://contrataciondelestado.es>,
- **Sub-national level:** each autonomous region has its own procurement portal indicated in section 4.7.2
- **Entity level** (Ministry level): <https://contrataciondelestado.es/wps/portal/plataforma>.

### e-Certis



Tool for mapping of certificates issued as evidences in public procurement procedures across the EU where the data are verified and updated by national ministries in charge.  
<http://ec.europa.eu/growth/ecertis>.

## 4.6 Time limit for receipt of tenders

*Table 3 - Time limit for receipt of tenders*

Type of contract	Time limit	Notes
Contracts <b>subject to harmonised regulation</b>	<b>52 days</b>	The time limit for presenting offers is counted from the date of sending the announcement of the contract to the European Commission
Contracts <b>not subject to harmonised regulation</b>	<b>26 days</b>	The time limit for presenting offers is counted from the publication of the tender announcement in the corresponding gazette for public works offers and concession of public works.
<b>Remaining contracts</b>	<b>15 days</b>	These limits may be extended in any case at the discretion of the contracting body.

## 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

As mentioned in section 4.5. e-submission is not as developed as in the EU average and thus not usually offered by contracting authorities.

Therefore, it is highly recommended to analyse in detail tender documents in order to know well in advance whether it is foreseen or not e-submission.

In case it is, the e-tendering platform to be used is indicated as well in tender documents.

Below are listed official portals and databases where to find relevant tender notices.

*Table 4 - Portals and databases*

<b>Official National Bulletin</b>	<a href="http://www.boe.es/">http://www.boe.es/</a>
<b>Individual autonomous bulletins</b>	<a href="http://www.boe.es/legislacion/enlaces/boletines_autonomicos.php">http://www.boe.es/legislacion/enlaces/boletines_autonomicos.php</a>
<b>Official portals</b>	
<b>National portal</b>	
<a href="https://contrataciondelestado.es/wps/portal/licitaciones">https://contrataciondelestado.es/wps/portal/licitaciones</a>	
<b>Portal of Cataluña</b>	
<a href="https://contractaciopublica.gencat.cat/ecofin_pscp/AppJava/es_ES/search.pscp?reqCode=start">https://contractaciopublica.gencat.cat/ecofin_pscp/AppJava/es_ES/search.pscp?reqCode=start</a>	
<b>Portal of La Rioja</b>	
<a href="http://www.larioja.org/contratacion-publica/es">http://www.larioja.org/contratacion-publica/es</a>	
<b>Portal of Canarias</b>	
<a href="http://www.gobiernodecanarias.org/perfildecontratante/apipublica/licitaciones.html?fasesProcLicitacionPublico=PLAZO_ABIERTO">http://www.gobiernodecanarias.org/perfildecontratante/apipublica/licitaciones.html?fasesProcLicitacionPublico=PLAZO_ABIERTO</a>	
<b>Portal of Illes Balears</b>	
<a href="http://www.plataformadecontractacio.caib.es/LicitacionesTerminoAbierto.jsp?idi=es">http://www.plataformadecontractacio.caib.es/LicitacionesTerminoAbierto.jsp?idi=es</a>	
<b>Portal of Galicia</b>	
<a href="https://www.contratosdegalicia.gal/portada.jsp">https://www.contratosdegalicia.gal/portada.jsp</a>	
<b>Portal of Vasco Goverment</b>	

http://www.contratacion.euskadi.eus/w32-home/es
<b>Portal of Principado de Asturias</b>
<a href="https://sede.asturias.es/portal/site/Asturias/menuitem.a9e91620b6cbf682aea8c810100000f7/?vgnextoid=d03773da84471110VgnVCM1000000100007fRCRD&amp;vgnextchannel=9224dbe25a232110VgnVCM100000b0030a0aRCRD&amp;i18n.http.lang=es">https://sede.asturias.es/portal/site/Asturias/menuitem.a9e91620b6cbf682aea8c810100000f7/?vgnextoid=d03773da84471110VgnVCM1000000100007fRCRD&amp;vgnextchannel=9224dbe25a232110VgnVCM100000b0030a0aRCRD&amp;i18n.http.lang=es</a>
<b>Portal of Castilla y León</b>
<a href="http://www.contratacion.jcyl.es/web/jcyl/ContratacionAdministrativa/es/Plantilla100Detalle/1284152328311/_/1284157209954/Estructura?plantillaObligatoria=PlantillaComponenteListado">http://www.contratacion.jcyl.es/web/jcyl/ContratacionAdministrativa/es/Plantilla100Detalle/1284152328311/_/1284157209954/Estructura?plantillaObligatoria=PlantillaComponenteListado</a>
<b>Portal of Comunidad de Madrid</b>
<a href="http://www.madrid.org/cs/Satellite?cid=1224915242285&amp;language=es&amp;pagename=PortalContratacion%2FPage%2FPCON_buscadorAvanzado">http://www.madrid.org/cs/Satellite?cid=1224915242285&amp;language=es&amp;pagename=PortalContratacion%2FPage%2FPCON_buscadorAvanzado</a>

## 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 issued by relevant electronic platform;
3. Obtain an electronic qualified signature certificate and time stamps 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 Objections/ Remedies

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.

Spanish legislation has created a new specialised body, the Central Administrative Court for Procurement Remedies, for the resolution of special reviews for procurement procedures that are filed against contracts or procurement records within the scope of general state administration. The TRLCSP states that autonomous regions may create a similar independent body of an administrative nature for the resolution of appeals that are filed against contracts, within the scope of the respective autonomous region's authority. To date, the majority of



autonomous regions have created these specialised administrative tribunals.

*Table 5 - Objections/ Remedies*

<b>Special review for procurement</b>	15 working days	It must be announced in advance before the contracting authority. The deadline starts from the following day after notification of the action that is being appealed against.
<b>Question of nullity</b>	30 working days	The deadline starts from the publication of the contract's allocation, or from notification to the tenderers affected of the reasons for rejection of their application or proposal.
<b>Ordinary administrative appeals</b>	1 month from notification	It must be presented within a month from notification of the action appealed against.
<b>Other cases</b>	6 months	It may be presented in any case before six months after the contract has been formalised.

Once the contract has been formalised and for a maximum period of six months, the interested parties may present the question of nullity regulated in Articles 37, 38, and 39 of the TRLCSP, as long as one of the conditions specifically set out for this has been met.

The period during which **the special review for procurement procedures** will be resolved **cannot be established in advance**, and the duration of the processing of this will depend on the complexity of the matter on those affected. It will also depend on whether it is necessary to open a probationary period or not. However, the law sets out very short processing periods:

- 5 days to resolve continuation of the suspension;
- 5 days to present allegations;
- 10 days for probation.

## 5 Key points when submitting a tender in Spain

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

- 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 suppliers can participate in bids in the same way as national suppliers under equal conditions and as long as they meet the contracting entities' requirements regarding capacity or soundness.

Foreign individuals or legal persons from countries outside the EU must prove their capacity through a report from the Spanish permanent diplomatic mission or the Spanish consular section of the country where the contractor has his or her legal domicile. This must be accompanied by a certificate of reciprocity on public procurement from the corresponding Spanish permanent diplomatic mission, unless the contractor is from a country that is party to the GPA and the contract is subject to harmonised regulation. As a special rule, for public works, the contractor is required to have a branch in Spain and to be registered with the business registry, as well as to mandate proxies or representatives in Spain.

When the contractor is from a Member State, a registration indicating capability in the relevant registry under the state of establishment's legislation, or an affidavit or certificate in the forms established in the PPL regulations, will suffice.

## 6 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](http://www.tenderio.com)

## 7 References

Public procurement – a study on administrative capacity in the EU

[http://ec.europa.eu/regional\\_policy/en/newsroom/news/2016/04/14-04-2016-public-procurement-a-study-on-administrative-capacity-in-the-eu](http://ec.europa.eu/regional_policy/en/newsroom/news/2016/04/14-04-2016-public-procurement-a-study-on-administrative-capacity-in-the-eu)

EU Public Contracts Database

<http://contractawards.eu/#!buyerCountry=Spain>

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Spain In-Depth Country Report

[http://www.conr.es/sites/default/files/archivos/ES%20Country%20Report\\_v3-0.pdf](http://www.conr.es/sites/default/files/archivos/ES%20Country%20Report_v3-0.pdf)

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TED (Tenders Electronic Daily)

<http://ted.europa.eu/TED/main/HomePage.do>

Breve reseña al procedimiento regulador de los regímenes especiales de revisión en materia contractual

<http://www.obcp.es/index.php/mod.noticias/mem.detalle/id.859/relcategoria.1062/chk.80e7fa6e24f2229491467908048f9edc>

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