



The
LEGAL
500

**COUNTRY
COMPARATIVE
GUIDES 2024**

The Legal 500 Country Comparative Guides

Angola

PUBLIC PROCUREMENT

Contributor

VdA



Ana Marta Castro

Partner | cma@vda.pt

Paulo Pinheiro

Partner | pp@vda.pt

This country-specific Q&A provides an overview of public procurement laws and regulations applicable in Angola.

For a full list of jurisdictional Q&As visit legal500.com/guides

ANGOLA

PUBLIC PROCUREMENT



*"Complex contracts" refers to contracts including: where the needs of the contracting authority cannot be met without adaptation of readily available solutions; contracts involving design or innovative solutions; where prior negotiation is required before a contract can be awarded due to particular circumstances related to the nature, the complexity or the legal or financial make-up of a contract or because of risks attaching to these circumstances; and where technical specifications cannot be determined with sufficient precision with reference to established technical standards, references or specifications.

1. Please summarise briefly any relationship between the public procurement / government contracting laws in your jurisdiction and those of any supra-national body (such as WTO GPA, EU, UNCITRAL).

Angola is not a member of the European Union (EU) or of the United Nations Commission on International Trade Law (UNCITRAL), a legal body with universal membership specialised in commercial law reform worldwide for over 50 years, focused on the modernisation and harmonisation of rules on international business.

Furthermore, Angola is also not a signatory of the World Trade Organisation Government Procurement Agreement (WTO GPA), the fundamental aim of which is to mutually open up government procurement markets amongst its parties.

Although Angola is not part of the EU, of UNCITRAL or of WTO GPA, its Public Contracts Law (PCL), approved by Law no. 41/20, of 23 December 2020, is strongly influenced by the Portuguese legal framework, and indirectly by the European Union's Public Procurement Directives. This Portuguese influence can also be felt in other Angolan legal diplomas that deal with public procurement matters.

2. What types of public procurement / government contracts are regulated in your jurisdiction and what procurement regimes apply to these types of

procurements? In addition to any central government procurement regime please address the following: regulated utilities procurement regime (e.g. water, gas, electricity, coal, oil, postal services, telecoms, ports, airports), military procurements, non-central government (local, state or prefectures) and any other relevant regime. Please provide the titles of the statutes/regulations that regulate such procurements.

The PCL applies to the procurement and performance of public works contracts, contracts for the lease or acquisition of goods, and for the acquisition of services entered into by a Public Contracting Entity (PCE).

Moreover, the PCL is applicable to:

- a) procurement of contracts to be concluded by any PCE that are not subject to any special legal regime;
- b) procurement and performance of concession contracts, including concessions for public works, public services, and the exploitation of the public domain, and also the procurement of contracts which are implemented by means of a public-private partnership;
- c) contracts entered into by defence, security and internal order entities, with the exception of those contracts which, under the terms of the law, are declared secret or whose performance must be accompanied by special measures of discretion and security, and those relating to the acquisition of arms or military and police equipment relating to the defence or

security of the Republic of Angola;

d) procurement and performance of contracts entered into by public companies and public domain companies which benefit from operational subsidies or any operations with funds from the State budget, whose estimated value is equal to or greater than 500,000,000.00 Kwanza (Kz); and

e) commercial contracts arising from financing.

One of the following types of procedures must be adopted for the procurement of contracts subject to the PCL:

a) Public Tender; b) Limited Tender by Prior Qualification; c) Limited Tender by Invitation; d) Simplified Contracting Procedure; e) Dynamic Electronic Procedure; and f) Emergency Contracting Procedure.

The PCL also establishes an exclusion regime for the following contracts, which are governed by special rules but are nevertheless subject to the general principles of the PCL and those governing administrative activity in general, unless this is contrary to the nature or purpose of such contracts:

a) contracts concluded under the rules of an international organisation of which the Republic of Angola is a member (which are governed by the applicable international law);

b) contracts which, under the terms of the law, are declared secret or whose performance must be accompanied by special measures of discretion and security, and those relating to the acquisition of arms or military and police equipment relating to the defence or security of the Republic of Angola (which are governed, inter alia, by Presidential Decree no. 289/14, of 14 October);

c) contracts for the lease or purchase of real estate (which are governed by Law no. 18/10, of 6 August);

d) contracts whose procurement or performance are regulated by special laws, with regard to the matters covered by such laws, including, among others, the oil sector, regulated by Presidential Decree no. 86/18, of 2 April, the mining sector, regulated by the Mining Code, approved by Law no. 31/11, of 23 September, the electricity sector, regulated by Law no. 14-A/96, of 31 May, and the regime of individual employment contracts in public functions;

e) contracts entered into with a contractor, supplier of goods or services provider that is itself a PCE, except when its economic activity is subject to market logic and

free competition;

f) contracts for the acquisition of financial services relating to the issue, purchase and sale or transfer of securities or other financial products, as well as services provided by the National Bank of Angola;

g) contracts relating to the acquisition of legal services for representation by a lawyer in an arbitration or conciliation held in Angola or before an international arbitration or conciliation body, or for representation by a lawyer in legal proceedings before the courts, public authorities or before international institutions;

h) contracts relating to the acquisition of legal services in preparation for any of the proceedings referred in the previous paragraph, or where there is concrete evidence and a high probability that the matter to which the legal advice relates will become the subject of such proceedings, provided that the advice is given by a lawyer.

3. Are there specified financial thresholds at which public procurement regulation applies in your jurisdiction? Does the financial threshold differ depending on the nature of procurement (i.e. for goods, works or services) and/or the sector (public, utilities, military)? Please provide all relevant current thresholds in your jurisdiction. Please also explain briefly any rules on the valuation of a contract opportunity.

Without prejudice to certain material criteria that can be invoked to justify the use of a specific public procurement procedure that will be described below, the PCL generally establishes that the choice of the public procurement procedure to be launched for the procurement of contracts covered by the PCL is made according to the estimated value of the respective contract.

The estimated value of the contract is considered the reference price, which corresponds to the maximum amount that the PCE is willing to pay in return for the performance of the contract to be concluded and is calculated based on the economic value of all the services covered by the contract at stake. It is generally understood that formal market research should be carried out for the purposes of this estimate.

The financial thresholds regarding the procurement procedure to be launched are defined in relation to the

value of the contract to be awarded.

According to the PCL, the general rule is that the Public Tender or Limited Tender by Prior Qualification procedure must be adopted, regardless of the value of the contract, with the following exceptions:

- a) the Limited Tender by Invitation can only be used for the award of contracts with an estimated value of less than 182,000,000.00 Kz;
- b) the Simplified Contracting Procedure can only be used for the award of contracts with an estimated value equal to or less than 18,000,000.00 Kz;
- c) the Dynamic Electronic Procedure can be used for the award of contracts with lower or higher estimated values, depending on the minimum period elapsing between the publication of the announcement of the procedure and of the auction. Thus:
 - i. contracts with an estimated value equal to or less than 18,000,000.00 Kz may be awarded through this procedure if the auction starts at least 4 hours after the publication of the announcement;
 - ii. contracts with an estimated value of less than 72,000,000.00 Kz may be awarded through this procedure if the auction starts at least 3 days after the publication of the announcement;
 - iii. contracts with an estimated value equal to or greater than 182,000,000.00 Kz may be awarded through this procedure if the auction starts at least 10 days after the publication of the announcement.

Notwithstanding the general rule stipulating that the choice of the public procurement procedure to be launched depends on the value of the contract to be awarded, the PCL also establishes specific material criteria that can justify the use of certain procurement procedures regardless of the value of the contract. As these material criteria constitute a derogation of the general rule stipulating that the choice of the public procurement procedure depends on the value of the contract, their application entails an increased duty of justification on the part of the PCE.

There are a number of material criteria laid down in the PCL that must be considered on a case-by-case basis. Examples include, among others, **(i)** situations in which, for reasons of technical or artistic aptitude, or relating to the protection of exclusive rights or copyright, the contract can only be signed by a single contractor, supplier or service provider, a situation in which the PCL provides for the possibility of using the Simplified

Contracting Procedure, **(ii)** situations in which, for emergency reasons, resulting from unforeseeable events not attributable to the PCE (e.g. disasters, calamities, cyber-attacks, etc.), the deadlines or formalities set forth for the other public procurement procedures cannot be proven to have been met, allowing the use of the Emergency Contracting Procedure.

4. Are procurement procedures below the value of the financial thresholds specified above subject to any regulation in your jurisdiction? If so, please summarise the position.

As mentioned above, all contracts regulated by the PCL, regardless of their value, even those whose value is below the relevant minimum threshold - which, as mentioned above, is set at 18,000,000.00 Kz - are subject to the PCL, even if they may follow a less formal and bureaucratic procedure.

Contracts with an estimated value equal to or less than 18,000,000.00 Kz can be awarded through the Simplified Contracting Procedure.

5. For the procurement of complex contracts*, how are contracts publicised? What publication, journal or other method of publicity is used for these purposes? What is the typical period from the publication of the advert that bidders have to respond to the advert for a complex contract?

There is no definition of "complex contracts" in the Angolan legal framework. In any case, depending on one's understanding of "complex contracts" there are several options that can be pursued under the PCL.

If it is understood that complex contracts are those where the needs of the contracting authority cannot be met without the adaptation of readily available solutions, such as contracts involving design or innovative solutions, where prior negotiation is required before a contract can be awarded due to particular circumstances related to the nature, complexity or legal or financial make-up of a contract or because of risks attaching to these circumstances, then the most common understanding is that the awarding of this type of contract should be preceded by a Public Tender or a Limited Tender by Prior Qualification, in both cases with the inclusion of a negotiation phase.

If, on the other hand, the complex contract at stake is a concession contract for public works or for public services, the PCL specifically states that only the Public Tender or Limited Tender by Prior Qualification can be used, regardless of the value of the contract.

Finally, with regard to contracts for services of an intellectual nature, including consultancy services, where the nature of the services provided does not allow for sufficiently precise contractual specifications to be drawn up for the qualitative attributes of the tenders needed to establish criteria and to award the most economically advantageous tender, the PCL specifically provides for the possibility of adopting the Simplified Contracting Procedure. In any case, the use of the Simplified Contracting Procedure under these circumstances must be limited and always duly justified.

With regard to the publicity required by the PCL and the minimum period to be guaranteed between the advertising of the public procurement procedure and the deadline for the tenderers' first participation in such procedure, through their submission of applications or bids, the rules are detailed below.

The Public Tender and the Limited Tender by Prior Qualification are preceded by the publication of an official announcement in the Angolan Official Gazette, which is also published in the Public Procurement Portal and in a widely circulated national newspaper. In addition to these mandatory publications, other publicity mechanisms may be used if deemed necessary by the PCE.

The first deadline for submitting tenders or applications in the Public Tender and in the Limited Tender by Prior Qualification must be set reasonably in view of the complexity of the tender or application to be submitted and, as a rule, can be set at between 20 and 120 days. This rule is only stipulated for the Public Tender, but it can be considered to apply *mutatis mutandis* to the Limited Tender by Prior Qualification.

Finally, as for the Simplified Contracting Procedure, the minimum deadline is six days after the invitation.

6. For the procurement of complex contracts, where there is an initial selection stage before invitation to tender documents are issued, what are typical grounds for the selection of bidders? If there are differences in methodology between different regulated sectors (for

example between how a utility might undertake a regulated procurement procedure and how a government department might do so), please summarise those differences.

For the procurement of complex contracts with an initial candidate selection phase prior to the submission of tenders, the general rule set forth in the PCL is that any criteria can be established as long as the minimum technical and financial capacity requirements are not discriminatory or likely to prevent, restrict or distort competition.

In order to fulfil the minimum technical capacity requirements, any documents suitable for this purpose may be required by the PCE, including the candidates' CVs, a list of works carried out, goods supplied or services rendered, including relevant references such as amounts, dates and recipients, and supported, if necessary, by statements from clients, a description of the candidates' technical equipment, a list of their human resources, a description of the processes and methods adopted by them, for example to ensure quality in the execution of the contract, or certificates issued by official or independent bodies.

In order to fulfil the minimum financial capacity requirements, the following documents and elements may be required, among others: balance sheets, profit and loss accounts, or any other documents of an accounting or financial nature that demonstrate the patrimonial, economic or financial situation of the candidates, and tax documents or bank statements that can attest, in particular, to the candidates' credit risk.

7. Does your jurisdiction mandate that certain bidders are excluded from tendering procedures (e.g. those with convictions for bribery)? If so, what are those grounds of mandatory exclusion? Are there any notable features of how this operates in your jurisdiction e.g. central registers of excluded suppliers? Does your jurisdiction specify discretionary grounds of exclusion? If so, what are those grounds of discretionary exclusion?

Article 56 of the PCL establishes the eligibility criteria for participation as a bidder in a public procurement procedure. In case of non-compliance with these eligibility criteria, candidates or bidders will be disqualified from participation and excluded from the

procedure (depending on the phase of the procedure).

Entities in the following situations may not be candidates or competitors in any public procurement procedure, or be part of any group of candidates or competitors:

- a) entities subject to boycott by any international or regional organisations to which Angola is a party, in particular the United Nations (UN), the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), the African Union (AU), the Southern African Development Community (SADC), the Central African Economic Community (CEAC) and the African Development Bank (AfDB);
- b) entities in a state of insolvency or court declared bankruptcy, in the process of liquidation, dissolution or ceasing of activity, subject to any preventive means of liquidation of assets, or in any analogous situation with the respective proceedings pending;
- c) entities convicted by final judgement of a crime that affects their professional conduct if, in the meantime, they have not been rehabilitated, in the case of natural persons, or, in the case of legal persons, whose members of their governing bodies of administration, management or supervision have been convicted of such crime and remain in full exercise of their functions until fulfilment of the sanction;
- d) entities subject to an administrative sanction for serious professional misconduct if, in the meantime, they have not been rehabilitated, in the case of natural persons, or, in the case of legal persons, whose members of their governing bodies of administration, management or supervision have been subject to such an administrative sanction and remain in full exercise of their functions until fulfilment of the sanction;
- e) entities which, in any capacity, provided direct or indirect technical advice or support in the preparation or drafting of the public procurement documents likely to distort the normal conditions of competition;
- f) entities included in the list of non-compliant organisations drawn up by the authority responsible for regulating and supervising public procurement.

In the situations mentioned in c), d) and f) above, the PCL allows bidders to demonstrate that sufficient measures have been implemented to prove their probity for the performance of the contract and to avoid exclusion. In these situations, based on the degree of severity and specific circumstances of the offence or fault committed, the contracting authority may decide not to consider the impediment as relevant.

Nevertheless, if any sanctions or prohibition to participate in tender procedures have been imposed or considered valid by a final court decision, they shall not be relieved.

8. Please describe a typical procurement procedure for a complex contract. Please summarise the rules that are applicable in such procedures. Please include a timeline that includes the key stages of the process, including an estimation for the total length of the procedure.

As mentioned above, the most commonly adopted public procurement procedures for the vast majority of contracts considered complex are the Public Tender or the Limited Tender by Prior Qualification, both with the inclusion of a negotiation phase.

The Public Tender and the Limited Tender by Prior Qualification have similar phases, with the difference that the Limited Tender by Prior Qualification includes a candidate qualification phase where their technical and financial capacity is assessed and evaluated.

The Public Tender is divided into the following main phases: announcement, submission of bids, evaluation of bids and selection of the bidders for the negotiation phase, negotiation of the bids and submission of the best and improved bids, commonly called "best and final offer" (BAFO) (this negotiation phase is optional in this procedure, but usually exists when complex contracts are at stake), evaluation of the BAFO and award, provision of a guarantee by the selected bidder and, finally, signing of the contract.

The Limited Tender by Prior Qualification is divided into the following main phases: announcement, submission of applications, evaluation of applications and selection of tenderers for the bids phase, submission of bids, evaluation of bids and selection of the bidders for the negotiation phase, negotiation of the bids and submission of BAFO (this negotiation phase is optional in this procedure, but usually exists when complex contracts are at stake), evaluation of the BAFO and award, provision of a guarantee by the selected bidder and, finally, signing of the contract.

Due to the similarity of the phases of both public procurement procedures, for ease of exposition, a table presenting the main phases of both procedures is provided below, including a specific reference to the phases or moments that are exclusively applicable to the Limited Tender by Prior Qualification, when appropriate. As can be seen from the table's deadline column, the

vast majority of deadlines are not specifically provided for in the PCL.

Phases	Deadlines established in the PCL	
Publication of an announcement in the Angolan Official Gazette, on the Public Procurement Portal and in a widely circulated national newspaper	—	
Submission of applications	The deadline for submitting applications must take into account the time needed to prepare them, depending on the technical and financial capacity requirements	Only applicable to the Limited Tender by Prior Qualification
Evaluation of applications and selection of tenderers for the bids phase	—	Only applicable to the Limited Tender by Prior Qualification
Submission of bids	The deadline for submitting bids must take into account the time needed to prepare them, depending on the nature, characteristics, volume and complexity of the services covered by the contract, and must be reasonably set at between 20 and 120 days to enable their preparation under appropriate conditions and with effective competition	
Evaluation of bids and selection of the bidders for the negotiation phase	—	
Negotiation of the bids and submission of BAFO	—	
Evaluation of BAFO and award	—	
Provision of a guarantee by the selected bidder	—	
Signing of the contract	The contract must be concluded within 15 days of acceptance of the draft contract	

Without prejudice to the specificities that may exist in each public procurement procedure, which vary on a case-by-case basis, it can be concluded that, in an optimistic scenario of fulfilment of deadlines by the

bidders and the PCE, on average, a Public Tender could vary between 195 and 350 days and a Limited Tender by Prior Qualification between 230 and 350 days.

9. If different from the approach for a complex contract, please describe how a relatively low value contract would be procured. (For these purposes, please assume the contract in question exceeds the relevant threshold for application of the procurement regime by less than 50%)

As mentioned above, under the PCL the general rule for the award of public contracts is to launch either a Public Tender or a Limited Tender by Prior Qualification, with certain exceptions for the procurement of lower-value contracts. In these cases, the Limited Tender by Invitation, the Simplified Contracting Procedure, the Dynamic Electronic Procedure, and the Emergency Contracting Procedure can be used.

The Limited Tender by Invitation and the Simplified Contracting Procedure are similar to the Public Tender, in that they both start directly with the submission of bids, but they have two major differences. The first difference is that these procedures are not open: there is no publication of an official announcement, with all participants being directly invited by the PCE. The second difference is that the deadlines are much shorter: in the Limited Tender by Invitation, the PCL foresees that the deadline for submitting bids can be only six days, and in the Simplified Contracting Procedure, the PCL does not establish any minimum deadline, which allows for a discretionary setting of the deadline.

The Emergency Contracting Procedure is a new public procurement procedure established by the PCL. It is only adopted when strictly necessary and for emergency reasons resulting from unforeseeable events not attributable to the PCE which make it impossible to comply with the deadlines and formalities set forth for the other public procurement procedures.

The Dynamic Electronic Procedure is specifically applicable to the acquisition of standardised goods and services, through an electronic catalogue that must detail the essential and indispensable technical specifications of these goods and services. Participation in this type of procedure is only open to interested parties who are duly registered or certified on the Public Procurement Portal as suppliers of the Republic of Angola. In terms of procedure, it is divided exclusively into the following three phases: publication of the announcement of the auction, auction and award of contract.

10. What is seen as current best practice in terms of the processes to be adopted over and above ensuring compliance with the relevant regime, taking into account the nature of the procurement concerned?

In addition to complying with the applicable legal rules of the public procurement regime to be followed, the common understanding regarding best practices in terms of processes is the obligation to follow the general principles deriving from the Constitution, as well as those applicable to administrative activity, such as the principles of legality, public interest, impartiality, proportionality, good faith, reliability, sustainability and accountability, as well as the principles of competition, publicity, transparency and equal treatment.

The entire Angolan legal system also encourages competition within the market, as well as the division into lots of the contracts to be awarded when the size of the contract at stake justifies this.

11. Please explain any rules which are specifically applicable to the evaluation of bids.

According to the PCL, bids are evaluated according to the award criterion stipulated in the rules of the public procurement procedure in question, which can be one of two criteria: the lowest price or the most economically advantageous tender.

The lowest price criterion, where only the price of the bids is evaluated, should be used when the goods, services or works covered by the contract can be easily standardised and when the public contracting authority has specifically described all the relevant aspects of the contract that are not subject to competition.

The award criterion based on the most economically advantageous bid considers, in terms of evaluation, all the elements submitted to competition by the procedure that are relevant to the execution of the contract, which may include, for example, the respective quality, including technical value, accessibility, design for all users, social, environmental and innovative characteristics and supply conditions, technical and after-sales services, assistance and delivery conditions, environmental or social sustainability of the contract execution, methodology, or even the number of new jobs to be created. However, this set of evaluation factors and sub-factors shall not include any factors and sub-factors that relate directly or indirectly to situations, qualities, characteristics or other factual elements relating to competitors, but rather exclusively to the bids

that will be evaluated.

The evaluation criteria to be used in a specific public procurement procedure is established and announced at the beginning of each procedure so that bidders can prepare their proposal to meet the public contracting authority's requirements. There are three major rules that must be respected when choosing the factors to be weighted when evaluating proposals.

The evaluation criteria (i) must be balanced, with a balanced combination of technical and financial aspects to be weighed up according to the characteristics of the products or services to be purchased and also according to the characteristics of the market, (ii) must use measurable factors and sub-factors, described with precision, in the sense that they must be clear, objective and quantifiable in order to guarantee the maximum objectivity of the evaluation and, finally, (iii) the criteria must also be transparent, with a clear description of the factors and sub-factors that will influence the award of the contracts, to facilitate the evaluation of the proposals by the tender evaluation committee and also allowing bidders to submit competitive proposals that meet the exact needs of the PCE.

12. Does your jurisdiction have specific rules for the treatment of bids assessed to be "abnormally low" for the purposes of a particular procurement (i.e. a low priced bid, significantly lower than any other bid or a bid whose pricing raises questions of sustainability/viability over the contract term)? If so, is there a definition of what "abnormally low" means and please can you provide a short summary of the specific rules?

According to the PCL, the PCE may define, in the rules of the procurement procedure, the situations in which the price of a given bid will be considered abnormally low, considering the percentage deviation from the average price of the tenders to be admitted.

The need to set the abnormally low price threshold, as well as the criteria used to set it, must be duly grounded and may consist, for example, of the average of the prices obtained in a preliminary market consultation, if such a consultation has taken place.

When analysing a specific bid, and if the tender evaluation committee intends to exclude that bid with the justification of an abnormally low price, the committee shall first ask the respective tenderer to

provide clarifications, in writing and within an appropriate timeframe, regarding the elements that contributed to the established price and, if the committee's understanding is confirmed, the exclusion decision shall be considered duly grounded.

When analysing the clarifications to be provided by tenderers in these situations, the PCL considers the following aspects to be relevant: the economy of the construction, manufacturing or service provision process, the technical solutions adopted or the exceptionally favourable conditions available to the tenderer for this purpose, the originality of the work, goods or services proposed, the specifications of the working conditions that the tenderer benefits from, the possibility of the tenderer obtaining State aid if legally granted, and the verification of the breakdown of the total price by means of documents proving the unit prices, namely payrolls and supplier declarations, which attest to the conformity of the prices submitted and demonstrate their economic rationality, or even that the prices presented are compliant with obligations arising from the environmental, social and labour legal framework.

13. Please describe any rights that unsuccessful bidders have that enable them to receive the reasons for their score and (where applicable in your jurisdiction) the reasons for the score of the winning bidder. Are regulated procuring bodies required to provide these reasons for their award decision before awarding the contract in question?

In all public procurement procedures, with the exception of the Simplified Contracting Procedure and the Emergency Contracting Procedure in which there is no exclusion of the bid submitted, there is always an obligation to transmit to all bidders, especially those who are unsuccessful, the preliminary result of the evaluation of their applications or bids, with the appropriate justification. This preliminary evaluation is detailed in a preliminary report that is sent to all bidders.

Following notification of the preliminary report, all bidders are guaranteed the right to a prior hearing, in writing, on the content of the preliminary report received.

Only after the deadline for prior hearings has passed can final decisions be taken. These final decisions must be taken after weighing up all comments and opinions received from the bidders during the prior hearing

period, and the reasoning for not accepting any such arguments must be clearly explained in the final report.

14. What remedies are available to unsuccessful bidders in your jurisdiction? In what circumstances (if any) might an awarded contract be terminated due to a court's determination that procurement irregularity has occurred?

As regards the remedies available to unsuccessful bidders, the Angolan legal system provides for two forms of reaction. It is possible to challenge all final decisions issued in public procurement procedures (including the qualification or non-qualification of candidates, the admission or exclusion of bids, and their evaluation) through administrative review proceedings, or through judicial review proceedings. The first (administrative claims) are addressed to the PCE (the competent body for the contracting decision), while the second (judicial appeal) are addressed to the administrative courts.

In the event of a breach of public procurement rules, the administrative courts can annul a public procurement procedure, or even a contract already signed.

15. Are public procurement law challenges common in your jurisdiction? Is there a perception that bidders that make challenges against public bodies suffer reputational harm / harm to their prospects in future procurement competitions? If so, please provide brief comment. Assuming a full hearing is necessary (but there are no appeals), how much would a typical procurement claim cost: (i) for the defendant and (ii) for the claimant?

Public procurement law challenges are not very common in Angola since competitors are reluctant to litigate against a PCE that may become their client again in the future and private entities are often afraid to suffer reputational harm after challenging decisions issued within public procurement processes, although there is no evidence that such reputational harm exists.

Administrative claims have no associated costs, apart from the costs of lawyers' fees for their assistance in preparing these claims.

However, judicial claims do have associated legal costs, in addition to the fees of the lawyers who advise each party on the judicial process. It is important to note that

these legal costs vary considerably depending on the nature of the case and the amounts at stake. Yet, as a rule, these legal costs, for both the defendant and the claimant, are not less than €200,000.00 Kz for each party.

16. Typically, assuming a dispute concerns a complex contract, how long would it take for a procurement dispute to be resolved in your jurisdiction (assuming neither party is willing to settle its case). Please summarise the key stages and typical duration for each stage.

There is a clear difference between the timings applicable to administrative claims and judicial claims.

As a rule, administrative claims are much swifter than judicial claims because the deadlines are regulated in detail by the PCL and are all noticeably short.

In fact, according to the PCL, administrative claims must be submitted within a maximum deadline of five days after the notification of the act at stake. As soon as an administrative claim is received, the PCE has five days to notify the interested parties of their right to comment in writing, also within five days, on the grounds of the claim submitted. Finally, administrative claims must be decided within five days of their submission or of the statement by the interested parties. If a final decision is not issued within the legally established deadline, the PCE's silence will be deemed as acceptance of the claim. For this reason, the PCE always takes a specific decision on administrative claims before the end of the applicable deadline.

Judicial proceedings usually take at least six months before the issue of a first instance decision, although a decision is rarely rendered in such a brief period of time, despite the fact that public procurement disputes are considered to be urgent and there are special procedural rules to ensure swift decisions.

Judicial claims shall be filed within a maximum deadline of 30 days after the bidder's notification of the relevant decision and the response of the PCE (or any other interested party) shall be submitted before the court within a maximum deadline of 10 days from notification of the judicial claim. Then, if applicable, a trial is scheduled by the judge. The law establishes that the final first instance decision shall be issued five days after the trial, although this deadline is very rarely respected.

17. What rights/remedies are given to bidders that are based outside your jurisdiction? Are foreign bidders' rights/remedies the same as those afforded to bidders based within your jurisdiction? To what extent are those rights dependent on whether the host state of the bidder is a member of a particular international organisation (i.e. GPA or EU)?

The rights and remedies given to bidders that are based outside of Angola are the same as those given to national bidders. However, for reasons related to the interest in protecting national industry and in attracting qualified foreign investment, as a rule, foreign entities may only participate in public procurement procedures for the award of public works contracts with a value equal to or greater than 500,000,000.00 Kz and in procedures for the award of contracts for the leasing or acquisition of goods or services with a value equal to or greater than 182,000,000.00 Kz.

Foreign entities can only participate in public procurement procedures with a value lower than those referred to in the previous paragraph when, due to the technical specificities of the services covered by the contract, it is reasonably foreseeable that no national natural or legal person can adequately fulfil the relevant requirements, and also in the case of design contests, unless the PCE expressly restricts participation to national entities in the specific rules of the procedure.

18. Where an overseas-based bidder has a subsidiary in your territory, what are the applicable rules which determine whether a bid from that bidder would be given guaranteed access to bid for the contract? Would such a subsidiary be afforded the same rights and remedies as a nationally owned company bidding in your jurisdiction?

As far as a subsidiary is a company owned by another company, but remaining independent from the parent company in terms of legal personality and in terms of legal, fiscal and regulatory responsibilities, a subsidiary of a foreign company incorporated in Angola is considered a national entity for all legal purposes.

To that extent, the subsidiary will have exactly the same rights of participation and challenge as any other Angolan entity whose shareholders are Angolan

nationals.

19. In your jurisdiction is there a specialist court or tribunal with responsibility for dealing with public procurement issues? In what circumstances will it have jurisdiction over a public procurement claim?

According to the Angolan legal framework, the administrative courts are competent to settle disputes related to public procurement procedures and there is a section specifically regulating disputes related to public procurement claims.

20. Are post-award contract amendments/variations to publicly procured, regulated contracts subject to regulation in your jurisdiction? Are changes to the identity of the supplier (for example through the disposal of a business unit to a new owner or a sale of assets in an insolvency situation) permitted in your jurisdiction?

According to the PCL, objective modifications to contracts are permitted in the case of an abnormal and unforeseeable change in the circumstances on which the parties based their decision to sign the contract, provided that such change is not covered by the risks inherent to the contract and that the need to maintain the obligations assumed would be contrary to good faith, or in the case of an agreement between the parties, which may not take a less solemn form than that of the formation of the contract.

Without prejudice to the above, the modification of a contract may not lead to a change in the main services covered by the contract, nor may it constitute a means of preventing, restricting, or distorting the competition guaranteed by the PCL in relation to the public procurement procedure that preceded the awarded contract.

On the other hand, unless the lasting nature of the contractual relationship and the passage of time justify it, modification is only permitted when it is objectively demonstrable that the ranking of the bids evaluated in the public procurement procedure would not have been altered if the specifications had contemplated such a modification.

Objective modifications to contracts by administrative decision or by agreement between the parties which

represent a cumulative value of more than 15 per cent of the contract price must be immediately communicated to the public body responsible for regulating and supervising public procurement, and such publicity must be maintained for six months after the termination of the contract.

As for subjective modifications to contracts, such as a modification of the identity of the private entity contracting with the PCE, these changes are permitted, except when otherwise provided for in the rules of the public procurement procedure in question or when such changes are not possible due to the nature of the contract.

Subjective modifications are, however, subject to certain rules and limitations specifically stipulated in the PCL, including the need to obtain the PCE's prior authorisation, which may depend on the submission by the new contracting party of the same qualification documents submitted by the original contracting party, and on demonstration by the new contracting party of its fulfilment of the minimum technical and financial capacity criteria established for the original co-contractor for the purposes of prior qualification, if such an assessment has been carried out.

21. How common are direct awards for complex contracts (contract awards without any prior publication or competition)? On what grounds might a procuring entity seek to make a direct award? On what grounds might such a decision be challenged?

Assuming that complex contracts include complex or highly specialised contracts as well as high value contracts, it is rare for these contracts to be awarded by direct award, which under the Angolan legal framework is formally designated as a Simplified Contracting Procedure or Emergency Contracting Procedure.

As mentioned above, the PCL specifically foresees the possibility of adopting the Simplified Contracting Procedure for the award of contracts for services of an intellectual nature, including consultancy services, where the nature of the services provided does not allow for sufficiently precise contractual specifications to be drawn up for the qualitative attributes of the tenders needed for the establishment of the evaluation criteria.

A decision to launch a Simplified Contracting Procedure for the award of a complex contract can be challenged on the grounds that the use of this public procurement procedure is inappropriate because the conditions for its

use have not been met.

22. Have your public procurement rules been sufficiently flexible and/or been adapted to respond to other events impacting the global supply chain (e.g. the war in the Ukraine)?

The PCL provides for the use of the Emergency Contracting Procedure (non-competitive procedure) regardless of the value of the contract in situations where, for emergency reasons resulting from unforeseeable events not attributable to the PCE (e.g. disasters, calamities, cyber-attacks, epidemic or pandemic outbreaks, etc.), the deadlines or formalities set forth for the other public procurement procedures

cannot be met. This specific public procurement procedure was available to be used during the COVID-19 pandemic, for instance.

As mentioned above, the PCL has some flexibility in terms of rules to enable response to unforeseen events with a global impact on the supply chain, as was the case with the war in Ukraine.

This type of situations, because of their unpredictable nature, may justify the use of the Emergency Contracting Procedure. However, due to its non-competitive nature, the use of this exceptional procedure must be fully justified and substantiated.

To date, there is insufficient data collected to assess the impact of using the Emergency Contracting Procedure, principally because it has been rarely used.

Contributors

Ana Marta Castro
Partner

cma@vda.pt



Paulo Pinheiro
Partner

pp@vda.pt

