



## LEGAL ALERT

28 November 2023

### Ecological criteria applicable to public procurement

The recent Resolution of the Council of Ministers no. 132/2023, of October 25, in development of the general objectives of the National Strategy for Green Public Procurement 2030 (ECO360) and, among others, Article 1-A of the Public Procurement Code, aims to define the criteria and general principles governing green public procurement, which will come into force from the second quarter of 2024 onwards and will apply to direct and indirect state administration entities, including publicly owned companies.

#### General principles applicable to ecological matters

The Resolution states that, regardless of the subject of the contract - and including atypical contracts - public procurement procedures will be subject to the following general principles applicable to the contracting authority:

- ✓ When drawing up public contracts, the ecological sustainability of services must be considered;
- ✓ In the preparation of the procedure documents, the preferential adoption, as an award criterion, of the multi-factor modality and, where appropriate, the inclusion of environmental sustainability factors in the services provided;
- ✓ In the identification of the aspects of the execution of the contract and technical specifications, the preferential establishment of minimum standards of

environmental sustainability of the services, certified by systems of recognized reliability.

#### Specific ecological criteria

Specific ecological criteria are also defined for various categories of contracts, which (i) make mandatory, recommended, voluntary or possible the use of certain award criteria, (ii) define the weighting to be given to certain factors and sub-factors of the award criteria and (iii) develop aspects of the execution of the contract and technical specifications.

For example, the Resolution establishes the obligation for public works contracts to give a minimum percentage weighting to the factor of “using reused or recycled materials” and, with regard to their execution, the mandatory use of construction materials with the lowest possible environmental impact and the incorporation of waste prevention, reuse, recycling and collection solutions based on the principles of circular economy, in addition to various other specifications related to energy and environmental self-sufficiency.

The following contracts are also covered by this Resolution:

- ✓ Clothing purchase contracts;
- ✓ Purchase contracts for wood and cork and public works contracts using wood and cork;
- ✓ Electricity purchase contracts, including for public electricity stations for electric mobility;

- ✓ Contracts for the acquisition of energy certification, energy auditing and design services and for the acquisition and installation of photovoltaic systems for self-consumption;
- ✓ Vehicle purchase contracts and operational vehicle rental contracts;
- ✓ Contracts for the purchase of photocopying and printing paper;
- ✓ Contracts for the purchase of furniture;
- ✓ Contracts for the purchase of cleaning services;
- ✓ Contracts for the purchase of cooked meal services;
- ✓ Contracts for the purchase of travel and accommodation agency services;
- ✓ Contracts for the purchase of maintenance services for heating, ventilation and air conditioning systems;

- ✓ Contracts for the purchase of maintenance services for lift systems and escalators;
- ✓ Contracts for the purchase of outsourced copying and printing services and the purchase of copying and printing equipment;
- ✓ Contracts for the purchase or lease of IT equipment;
- ✓ Contracts for the purchase of food products, catering and vending services.

Overall, the point is to make it mandatory for public entities to positively value circularity, sustainability, the use of renewable energies and the efficient management of resources and waste, in an action plan that must be comprehended in the administrative activity and contained, in particular, in the Roadmap for Carbon Neutrality 2050<sup>1</sup>, in the National Energy and Climate Plan<sup>2</sup>, in the National Waste Management Plan<sup>3</sup> and in the Strategic Plans for Urban<sup>4</sup> and Non-Urban Waste<sup>5</sup>.

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<sup>1</sup> Resolução do Conselho de Ministros n.º 107/2019, de 1 de julho.

<sup>2</sup> Resolução do Conselho de Ministros n.º 53/2020, de 10 de julho.

<sup>3</sup> Resolução do Conselho de Ministros n.º 31/2023, de 24 de março.

<sup>4</sup> Resolução do Conselho de Ministros n.º 30/2023, de 24 de março.

<sup>5</sup> Resolução do Conselho de Ministros n.º 127/2023, de 18 de outubro.

For more information on this subject, please contact:



**Rita Ferreira dos Santos**

Partner | Energy and Infrastructure, Public Procurement and Public Law

[ritasantos@ctsu.pt](mailto:ritasantos@ctsu.pt)



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