



APR. 23

CAPE VERDE

PUBLIC LAW

Electronic procurement in Cape Verde is now a reality

On 18 February 2023, Decree Law 11/2023 of 17 February, which establishes the Electronic Public Procurement Platform and regulates the electronic processing of public procurement procedures, came into force in Cape Verde.

This law is intended to meet the objective of implementing an electronic public procurement system, enshrined in article 199 of the Public Procurement Code (approved by Law 88/VIII/2015 of 14 April). The law seeks to achieve *(i)* increased efficiency, accuracy and transparency in public procurement procedures, *(ii)* simplified procedures, *(iii)* increased competition by opening pre-contract procedures to economic operators based abroad, and *(iv)* the rationalisation and optimisation of public expenditure.

I. Scope of application

The use of the electronic platform will be compulsory for:

- The processing of public procurement procedures subject to:
 - i) The Public Procurement Code (PPC); and
 - ii) The Legal Framework for Administrative Contracts, when concluded by the contracting authorities listed in the PPC.
- The following participants in the National Public Procurement System: contracting authorities, control bodies, bodies responsible for carrying out the procedure, members of the jury, economic operators and persons interested in the procedure.

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Furthermore, the electronic processing of the following acts is excluded from the scope of application of this law, at least until the technical conditions are in place for this purpose:

- i) The decision to award the contract;
- ii) The authorisation of expenditure; and
- iii) The approval of the procedural documents.

In addition, the electronic processing of public procurement procedures in the fields of defence and security may be excluded for reasons of protection of the essential security interests of the State of Cape Verde, by order of the member of the Government responsible for managing the electronic platform.

II. Electronic Public Procurement Platform

The [electronic platform](#) to support the processing of public procurement procedures is now available.

The requirements to access the platform are:

- i) Payment of the platform access fee. This will not be due until 1 January 2026 and will be regulated by decree of the member of the Government responsible for finance;
- ii) Prior registration of interested parties, subject to confirmation by the Directorate-General for Patrimony and Public Procurement (DGPCP); and
- iii) Prior authentication of users through the Autentika platform.

Prior registration of interested parties, subject to confirmation by the Directorate-General for Patrimony and Public Procurement is one of the requirements to access the platform.

The electronic platform already has the following functionalities for the management of public procurement procedures and the execution of actions by users:

- Management and access to procedures and related documents;
- Sending messages through the electronic platform;
- Requests for clarification;
- Submission of applications and proposals;
- Statement within the framework of a prior hearing;
- Administrative objections;
- Submission of qualification and guarantee documents;
- Viewing of all messages and notices issued by contracting authorities.

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III. Phases of the electronic processing

The submission of documents and the notifications and communications made through the electronic platform are equivalent in all respects to the corresponding submissions made directly to the authority responsible for conducting the procedure.

The electronic processing of public procurement procedures must comply with all the requirements and conditions laid down in the PPC and other applicable legislation.

It is therefore provided that the submission of documents and the notifications and communications made through the electronic platform are equivalent in all respects to the corresponding submissions made directly to the authority responsible for conducting the procedure and sent by email, fax or registered letter with acknowledgement of receipt.

Specifically, the following stages of public procurement procedures are now carried out electronically:

- **Preparation and publication of the Annual Procurement Plan (APP)**
- **Launch and execution of the procedure**
 - i) During this phase, the documents constituting the public procurement procedure are made available on the platform on the date of publication of the corresponding notice.
 - ii) However, documents relating to clarifications, corrections by the contracting authority, decisions to extend the time limit, notices and communications in the pre-application/pre-proposal phase will be made available only to registered interested parties and participants in the procedure in question.
- **Requests for clarification and replies**
- **Submission of applications and/or proposals**

With regard to this phase, the following should be noted:

- i) The application or proposal is submitted in the area reserved for the interested party concerned and related to the procedure in progress.
- ii) The loading of the application or proposal files may be done progressively. This makes it possible to modify the documents until the moment of submission of the application or proposal.
- iii) All uploads made on the platform must be electronically signed with a qualified electronic signature¹, otherwise the application or proposal will be excluded.

¹ If the digital certificate does not allow the signatory to be directly linked to his or her position and power to sign, the interested party must submit a document in the electronic platform indicating the signatory's power of representation and signature.

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The proposals will be analysed and evaluated by electronic means made available on the electronic platform, in accordance with the award criteria and their weighting as defined in the procurement documents.

- iv) The main form and other forms to be filled in must be filled in by the interested parties in the electronic platform.
- v) The application or proposal is considered submitted when the candidate or tenderer completes the process of submitting documents on the platform.
- vi) After submission, the platform will provide an electronic receipt in the candidate's or tenderer's reserved area² and send a copy thereof by e-mail, stating the identification of the contracting authority, the procedure, the lot, if any, of the candidate or tenderer, the application or proposal, as well as the date and time of each submission.

o **Opening of applications and/or proposals**

After the closing date for the submission of applications and proposals and on the date previously announced on the platform, each member of the jury will be provided with an individual access key for opening the applications and proposals. The access key will only be made available to the jury and the applications and proposals will only be opened following a decision by the jury by means of the authentication of at least three of its members.

After the applications or proposals have been opened by the jury, the entities included in the list of candidates or tenderers may have access to the following information and documents, unless they have been declared confidential:

- i) All applications and proposals submitted;
- ii) The explanations provided in relation to them;
- iii) The qualification documents;
- iv) Procedural acts and formalities relating to the phase following the submission of applications or proposals which, by law, must be notified to all candidates or tenderers.

o **Evaluation of the proposals submitted and publication of the preliminary report**

The proposals will be analysed and evaluated by electronic means made available on the electronic platform, in accordance with the award criteria and their weighting as defined in the procurement documents.

² In addition, users may, at any time, consult, in their reserved area, the list of codes corresponding to their applications and proposals already submitted or in the process of being uploaded.

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Once the analysis and evaluation of the proposals has been completed, the jury will draw up a preliminary report (proposing the admission, conditional admission or exclusion of the proposals), which will be communicated to the participants by electronic means, so that they can express their views in a prior hearing.

- **Final report**

- **Administrative objections**

Any administrative appeals submitted must be sent electronically, through the platform, to the Dispute Resolution Commission.

- **Notification of the award**

The notification of the award will be made through the electronic platform, by the contracting authority, to the successful tenderer and to the other tenderers, by means of electronic messages with receipt.

- **Drawing up the contract**

At all stages of the electronic procedure, the procedural documents will prevail, in the case of divergence, over the indications contained on the platform.

Any administrative appeals submitted must be sent electronically, through the platform, to the Dispute Resolution Commission.

IV. Administrative offences

This law also establishes a system of administrative offences and provides a list of offences. These offences can be committed by interested parties, by representatives of the authorities responsible for conducting the procedure or by employees of the Public Administration and the security auditor. The offences include, by way of example, processing outside the electronic platform of public procurement procedures included in the scope of application of the law under analysis and the introduction of false data into the platform.

V. Transitional arrangements

Finally, a period of one year from the date of publication of this law is set for implementation of the electronic platform. During the implementation period, the electronic processing of public procurement procedures will coexist with paper-based procedures. ■