

SPAIN

KEY FACTS AND FIGURES

Key Facts and Figures in Spain						
Overview	Total procurement 99,600,000,000€		Procurement % GDP 10%		2013 GDP 1,049,181,000,000€	Contracting authorities 8,339
Procedures applied	Open 82%	Restricted 2%	Negotiated procedure with call 4% no call 10%		Competitive dialogue 0%	Direct award 2% Other 0%
Share of contract notices by buyer	National 15%		Regional/local 40%		Body governed by public law 16%	Other 29%
Contract type	Services 55%		Works 4%		Supplies 41%	Framework agreement 8%
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met
E-procurement adoption	E-notification Mandatory		E-access Voluntary		E-submission Mandatory	Uptake rate N/A
Perceived corruption	Corruption widespread in society			Corruption widespread in procurement		
	Businesses 97%		Individuals 63%		At national level 83%	At local/regional level 90%
TED indicators	Value of tenders 13,350,010,157€		Of total procurement 13%		# contract notices 8,706	# contract awards 9,088
Other indicators	Received single bid 19%		# days for decision 106.8		Price only criteria 24%	MEAT criteria 76%
	Won by foreign firms 1%		Related to EU funds 12%		Joint purchase 2%	Central purchasing Yes, DGRCP

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

The Spanish public procurement system is composed of one single legal framework and a wide diversity of contracting, management and oversight institutions, due largely to the country's decentralised political system. The diffusion of authority creates an opportunity for experimentation, as with the number of e-procurement platforms and purchasing bodies that have been created in recent years at national, regional and local levels, but can result in redundancies. The lack of clarity and transparency of governments is a further barrier to effectiveness.

Spain is several years into a major reform of their contracts system in order to address some of their challenges, as well as transposing the 2014 EU Directives. Substantial efforts are underway to improve the centralisation and harmonisation of the system to reduce the costs of its current dispersed nature. In addition, reforms have been implemented to strengthen the monitoring and control of public contracts to promote transparency and reduce irregularities, fraud, and corruption.

DESCRIPTION OF FEATURES

Legal features of public procurement system

The Spanish legislative framework for public procurement consists of three main laws: the Revised text of the Law on Public Sector Contracts approved by Royal Decree 3/2011 of 14 Novemberⁱ, and the Law on public procurement in the water, energy, transport and postal services sectors 31/2007 of 30 October, and the Law on Public Procurement in the defence and security sectors 24/2011 of 1 August. These three laws transpose the Public Sector Directive 2004/18/EC, the Utilities Directive 2004/17/EC, and the Defence Directive 2009/81/EC respectively. This national legislation is further developed at the regional level through either regional implementation laws or implementation guidelines. Exceptionally, the autonomous

community of Navarra has its own regional law on public procurement (Foral Law 6/2006 of 9 June).

There is no difference between selection and award procedures used for tenders above and below EU thresholds. However, time limits fixed by national legislation are narrower when the contract falls below the EU thresholdsⁱⁱ.

Simplified procedures are available for two types of contracts. Firstly, negotiated procedures can be used for contracts between EUR 18,000 and EUR 60,000 for services and supplies, and from EUR 50,000 to EUR 200,000 for public works, as long as the launching of the tenders is communicated to 3 tenderers. Secondly, so-called "minor contracts" that have a duration of less than one year and a value below EUR 18,000 for services and supplies and EUR 50,000 for public works. These contracts can be awarded directly to any supplier without publication. These simplified procedures are frequently used by some regional and local authorities, for instance, 86% of public contracts awarded in Andalusia in 2011 were minor contractsⁱⁱⁱ.

In order to standardise technical and economic requirements for public procurement procedures, Spain also makes use of a company classification system wherein enterprises can request certification as operating in one or more of 22 existing categories of business according to their field. For larger value contracts (more than EUR 200,000 for services, EUR 500,000 for public works) contracting authorities can restrict eligibility to firms with the relevant classification, even under open procedures^{iv}.

The Ministry of Finance and Public Administrations publishes through the State Consultative Board on Administrative Procurement a regularly updated list of enterprises with formal prohibition to engage with public administrations due to a lack of quality or service delivery problems detected in past contracts or solvency problems (technical or financial)^v.

Institutional system

The Ministry of Finance and Public Administrations is in charge of national public procurement policy through two main bodies. The first is the Directorate General for State Assets, which is responsible for the general regulatory framework on public procurement, setting the national strategy for e-procurement and operating the national e-procurement platform. The second, the Directorate General for Rationalisation and Centralisation of Procurement, focuses on the harmonisation and centralisation of national public procurement, operates as the central purchasing body for the State administration and State-related entities, and has developed a centralised procurement catalogue called Conecta-Centralización, directly connected to the State e-procurement platform. This catalogue is used by regional and local authorities on a case-by-case basis as most of them also have their own centralised purchase systems.

The State Consultative Board on Administrative Procurement is an autonomous body within the Ministry of Finance and Public Administrations that provides legal advice and guidance to improve the administrative, technical and financial aspects of public contracts. In addition, 15 out of the 17 regions have their own consultative boards that produce reports and recommendations to improve public procurement.

Two specific registries have been set up at the central level by the Ministries of Finance and of Public Administration. According to the public procurement law, the official registry of tenderers and contractors of the State (*ROLECE*), as per the corresponding official registries in each region, province and municipality, allows tenderers to register and to provide a set of documentation which is usually required in tender procedures so that they do not have to provide it each time they present a bid. On the other hand, the Public Contracts Registry (*RCP*), created within the State

Consultative Board on Administrative Procurement, centralises information on the awarded contracts for all contracting authorities of the country.

The main oversight bodies are the National Court of Auditors and the General State Comptrollers (IGAE), along with the General Regional Comptrollers operating in the 17 autonomous regions and 2 autonomous cities. Comptrollers at the state and regional levels are internal overseers, verifying that the institutions under their jurisdiction respect the principles of legality, economy, efficiency, and efficacy.

As independent agencies, the Courts of Auditors provide external oversight. According to Law 7/1988 of 5 April, all public sector contracts are subject to the audit and control activities of the National Court. In addition, specific monitoring and control of ESI Funds-related procurement is carried out at the regional level by the Regional Comptrollers in coordination with the Intermediate Bodies in charge of programme management. MAs at the central level only conduct quality control of the regional oversight procedures.

The Central Administrative Court of Contractual Appeals (*TACRC*) is a unique administrative court specialised in public procurement. It was created in 2010 to improve oversight of contracting authorities at all levels. In 2014, 1,117 appeals were brought before the *TACRC*, an average of 93 per month, and were decided within an average timeframe of 26 days^{vi}. The majority of sanctions imposed on contracting authorities involve the invalidation of contracts, but *TACRC* is also authorised to impose fines on the grounds of bad faith and recklessness when challenging the award. In addition, 7 autonomous communities have created their own Territorial Administrative Courts of Contractual Appeals which operate independently at the regional level and might provide different interpretations of the law.

The Ministry of Economy also funds a National Observatory of Public Procurement (*ObCP*) at the University of Zaragoza to produce independent research and analysis, and to disseminate information on the evolution of national and European procurement laws and practices.

Key issues that have a bearing on administrative capacity

Human resources: Public procurement in Spain is carried out by more than 8,000 contracting authorities at the national, regional, supra-local, and local levels, including the central administration and its agencies, public-funded bodies, universities, and healthcare services^{vii}. Despite this complex administrative and territorial structure, the administrative capacity of public authorities is generally adequate, in particular in managing EU funds^{viii}.

Structures: The National Institute of Public Administration (*INAP*) is the government's leading civil service training school in Spain. In addition, each autonomous region has created its own training school providing similar services to regional public employees. They undertake many activities involving the recruitment, training and professional improvement of public employees, as well as conducting research on public administration and public policies. At the local level, public procurement practitioners benefit from much less training and support.

Training: In terms of capacity building, numerous training seminars and e-learning courses are organised by the *INAP* and the regional training schools for public procurement practitioners and administrators. The training courses generally provide participants with practical instruments and tools focusing either on the general implementation of the legislation or on specific topics such as transparency, competition, or green, social and innovative procurement.

Systems/tools: The *INAP* and the regional training schools produce implementation guidelines and provide e-learning courses on public procurement. Many national

agencies public-funded bodies have developed their own implementation rules and instructions to support their staff in charge of public procurement. However, no standardised tender forms or documents have been developed so far to support contracting authorities and in particular non-frequent procurers operating mostly at the local level.

E-procurement

The use of e-procurement in Spain remains quite limited^{ix}. 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 mandatory and thus 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^x. Currently, authorities in Aragon, Cantabria and Madrid are working with the Ministry of Finance to integrate their platforms with the central portal to share notices and bidder registries. The Ministry of Finance and Public Administrations is currently preparing additional e-procurement integration efforts in order to concentrate the publication of tenders on a unique public procurement platform for the public sector^{xi}.

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.

Corruption

The perception of corruption is very high, with the share of Spanish survey respondents reporting that corruption personally affects their daily lives higher than in any other MS^{xii}, and almost unanimous support for the view that corruption is widespread and constitutes the second major problem of the country, after unemployment^{xiii}. This view is likely impacted by a number of high profile corruption cases in recent years that have drawn considerable public attention to the issue. As many as one thousand high-level officials have been investigated for corruption in Spain in recent years^{xiv}. The number of investigations has notably increased since the 1990s thanks to the creation of a specialised Prosecution Office for the Fight Against Corruption and Organised Crime (*FECCO*) whose autonomy and capacity have been reinforced across the years.

According to the National Observatory of Public Procurement, there is a strong link between corruption and public procurement in Spain, and many of the prominent national corruption cases are connected to procurement in some way. Corruption cases at the regional and local levels are particularly an issue, especially in the construction and waste collection sectors. Notably, alleged violations have increased recently, particularly concerning irregularities in the application of procurement rules, such as splitting of contracts and the unjustified use of urgent procedures, indicating weaknesses in the control systems of public procurement^{xv}. In late 2013, the Government acknowledged the need to address corruption as a matter of priority and has approved a Plan for Democratic Regeneration^{xvi} including 40 measures to fight corruption and improve transparency in public administrations.

More positive developments in the fight against corruption include the reinforcement of penal sanctions for public officials and the introduction of Law 19/2013 on Transparency, Access to Information and Good Governance. In particular, this law has led to the creation of a Transparency Portal that publishes, among other things, the list of all contracts awarded by the State administration with the corresponding amounts and names of contractors. Regional portals have been developed as well providing the same kinds of information.

Moreover, initiatives to modernise public administration are also under way, for example through the Law 27/2013 on Rationalisation and Sustainability of Local Administration, which aims to enhance control and to improve coordination among the national, regional and local administrations.

Europe 2020 Agenda

Environmental, innovation, and social considerations are not systematically taken into account in evaluating tenders in Spain, although they may be considered on a case-by-case basis, or as a “tie-breaker” criterion between otherwise equivalent bids^{xvii}.

The Green Public Procurement Plan^{xviii} adopted in 2008 set up national targets to increase the use of GPP up to 25% of total procedures and 100% of public purchase for specific products and services. In this context, the Ministry of Environment regularly produces tools and guidelines for the inclusion of environmental criteria in tendering processes, publishes good practices reviews on different types of contracts, organises dissemination and awareness raising events for public procurement practitioners, and monitors annually the use of GPP by the central administration. In 2011, GPP was mainly used in the fields of waste collecting and treatment, public works, energy efficiency in public buildings, IT supplies and cleaning services^{xix}. Most regions have developed their own GPP strategies and action plans, and some of them also monitor GPP. For instance, the government of the Basque Country has set up a Commission for the inclusion of environmental criteria in public procurement that publishes data annually^{xx}.

The 2011 procurement reforms included recommendations for the integration of research and development and innovation criteria in public procurement. Subsequently, several guidelines and catalogues of good practices have been published to promote the inclusion of those criteria. For instance, a Guide on Innovative Public Purchase was produced by the Ministry of Economy in 2011 as part of the State Innovation Strategy (E2i). More recently, the 2014-2020 ERDF Operational Programme on Smart Growth established a specific support in the form of grants or loans to public bodies at the national, regional and local levels to foster the use of public procurement for innovation.

The public procurement law provides a set of recommendations for the inclusion of social considerations in different steps of public procurement procedures, including evaluation of technical capacity, exclusion criteria, selection criteria, and conditions of implementation of the contract. Practical tools and guidelines have been developed regarding social objectives such as equal opportunities between men and women, lifelong learning education, labour inclusion of disabled persons and of people at risk of exclusion, and promotion of fair trade. In addition, the law allows contracting authorities to restrict the award of some contracts to social enterprises or employment centres if relevant.

Irregularities and findings of national Audit Authorities

The National Court of Auditors publishes annual findings and recommendations on the use of public procurement by state level contracting authorities. Irregularities related to public procurement are generally attributed to a lack of rigour in the preparation and awarding phases of public contracts, leading to additional delays and unexpected costs, as well as a deficient control and monitoring of the contracts implementation.

The National Court of Auditors also regularly assesses the main risk areas in public procurement at regional and local levels. It highlighted in 2012 that the most frequent irregularities found involve the breaking down of large contracts into smaller tenders to avoid public procurement requirements, the use of tailor-made criteria in favour of a specific tenderer, the lack of selection criteria and clear award decisions as well as the lack of penalties applied to high priced offers^{xxi}.

In addition, the appeals presented to the TACRC during the past years show that the types of sectors most affected by procurement problems were the infrastructure, security and social services. In 2014, half of the appeals (50%) referred to irregularities related to the awarding of the contract. Other major issues referred to the tender specifications (23%) and to the exclusion of a tenderer (21%).

Outlook

The on-going reforms of the public administration, the public procurement system, and anti-corruption policies are expected to increase efficiency and transparency in the management of public funded contracts. In particular, several measures for the further centralisation of processes are currently foreseen concerning the use of a central purchasing body for national administration and regional/local authorities, a unique register of bidders, and a common e-procurement platform for the public sector gathering information from national and regional contracting authorities. E-procurement has been recently strengthened by making e-invoicing mandatory in January 2015 for all contracting authorities. It will be also reinforced through the further development of e-submission^{xxii}.

Further integration of different levels of government are also planned, for example through conventions between national and regional public procurement boards, administrative courts of contractual appeals and between national and regional training schools of public employees to increase collaboration and to clarify the distribution of competences.

ANALYSIS

Strengths

Spain has undertaken substantial efforts to remake their procurement system in recent years, launching a number of new programs, tools, and initiatives. Notable improvements have been made thanks to the creation of a specific administrative jurisdiction of contractual appeals, and to the adequate capabilities of public authorities in particular for the management of EU funds.

The spate of recent corruption scandals has helped to put ambitious anti-corruption and transparency reforms at the top of the political agenda, creating a real opportunity for positive change.

In addition, the economic crisis and the increasing pressure on public finances have led to the launching of a structural reform of public administration aimed at reducing inefficiencies and at reinforcing simplification, transparency, and harmonisation of public procurement procedures among the different levels of government.

Weaknesses

The high number and diversity of contracting authorities in Spain has caused the multiplication of implementation rules and procedures in public procurement at the cost of clarity and transparency for procurers and tenderers^{xxiii}. The decentralised territorial and institutional structure of the country does not necessarily justify the duplication of public procurement bodies at national and regional levels, including oversight bodies, consultative boards, administrative courts, and training schools for public employees. As pointed out by the Commission for the Reform of Public Administrations (CORA)^{xi}, the redundancy of competences and procedures has to be corrected to reduce overlapping, inconsistencies in the implementation of rules within the country, and unnecessary delays and costs.

In addition, while the reforms undertaken have been positive, more remains to be done. Perception of corruption and distrust in government remain high, and continue to be a barrier to participation in procurement by both local and international suppliers. Moreover, although Spain's above average use of open procedures has advantages for transparency and despite the recent development of transparency portals publishing statistics and information on awarded contracts, there is still room for improvement. This concerns in particular the access, interoperability and user-friendliness of information on public tenders and the transparency of selection criteria.

Public procurement oversight mechanisms also need to be strengthened particularly by enhancing on-site controls of the execution of contracts. Furthermore, the current sanctions imposed to both contracting authorities and economic operators have not had a sufficient deterrent effect^{xv}.

In addition, the use of e-procurement is still largely limited to e-publication of contract notices and e-invoicing.

Recommendations

- **Coordination between regions and with the central administration:** Spain's decentralised administrative and territorial structure gives substantial autonomy to regions, which results in redundancies and overlaps between bodies dealing with public procurement. Greater coordination and cooperation between such bodies could reduce uncertainty for practitioners and improve efficiency:
 - Increase coordination between specialised courts of contractual appeals to better harmonise the interpretation of procurement law among the regions.
 - Increase coordination between, and consider mergers of consultative boards on public procurement. These innovative and promising institutions mostly operate locally and independently, leading to overlaps and possible inconsistencies between regions, creating confusion for economic operators and contracting authorities.
 - Increase coordination between public procurement oversight bodies at regional and national levels such as IGAE and regional comptrollers, in order to ensure a consistent application of the single legislative framework on public procurement across the country.

- **Control and oversight:** Public procurement oversight shows some deficiencies in reducing fraud and recurrent irregularities.
 - Increase sanctions for violations of procurement rules to have a more deterrent effect.
 - Enhance monitoring and control of the execution of contracts with on-site checks and visits to reduce cost overruns and delays.
 - Require the publication of annual procurement planning by contracting authorities to increase transparency and facilitate monitoring and oversight by regional and national comptrollers (IGAE) and citizens.
 - National ESI Funds MAs should issue clearer, more centralised instructions and guidance materials for Intermediate Bodies and regional comptrollers to promote a more harmonised interpretation of the rules. Coordination among MAs could result in even greater simplification.
- **E-procurement:** E-procurement uptake remains quite limited, due in part to the large number of disparate tools and platforms, which makes using e-procurement excessively complex and time consuming for economic operators
 - Increase interoperability between local and regional e-procurement platforms and the central e-procurement platform PLACE. The coordination established among regional platforms in Aragon, Cantabria, and Madrid and the PLACE platform could serve as a model. Consolidating e-notification services should be the first priority.
 - Enhance interoperability among the different registries of bidders at national and regional levels.
 - Promote a pro-e-procurement culture among contracting authorities through awareness raising campaign and improvement of e-procurement tools.
- **Local training and support:** While there are substantial training opportunities at the national and regional levels, local practitioners are underserved in terms of training and support.
 - Make training organised for national and regional administrations accessible to local public procurement practitioners.
 - Develop standardised tender forms and documents at national level to support contracting authorities and in particular non-frequent procurers.
 - Create a one-stop shop portal for public procurement info to facilitate contracting authorities access to official guidelines and tools.

ⁱ State Official Gazette (2011), *Real Decreto Legislativo 3/2011, de 14 de noviembre, por el que se aprueba el texto refundido de la Ley de Contratos del Sector Público* (Law on Public Sector Contracts), available at: <http://www.boe.es/buscar/act.php?id=BOE-A-2011-17887>

ⁱⁱ Public Procurement Network (2010), Authority for the Supervision of Public Contracts, The comparative survey on the national public procurement systems across the PPN.

ⁱⁱⁱ Court of Audit of Andalusia (2011), *Informes de Fiscalización de la Cuenta General, Contratación Pública y Fondos de Compensación Interterritorial ejercicios 2005 y 2011* (Audit report on public procurement and the Territorial Compensation Funds - years 2005 and 2011).

^{iv} State Consultative Board on Administrative Procurement, *Clasificación de empresas* (Company classification), available at: <http://www.minhap.gob.es/es-ES/Servicios/Contratacion/Junta%20Consultiva%20de%20Contratacion%20Administrativa/Paginas/ClasificacionDeEmpresas.aspx>

^v State Consultative Board on Administrative Procurement, *Lista de empresas en situación de prohibición para contratar* (Companies forbidden from entering into contractual agreements or classified as suspended), available at: <http://www.minhap.gob.es/es-ES/Servicios/Contratacion/Junta%20Consultiva%20de%20Contratacion%20Administrativa/Paginas/prohibicion.aspx>

^{vi} Ministry of Finance and Public Administrations (2015), 2014 Annual report of the Central administrative court of contractual appeals (TACRC).

^{vii} European Commission (2013), Annual Public Procurement Implementation Review 2013.

^{viii} European Commission (2012), Position of the Commission Services on the development of Partnership Agreement and programmes in SPAIN for the period 2014-2020.

^{ix} European Commission (2013), DG MARKT, E-procurement state of play report, available at: http://ec.europa.eu/internal_market/publicprocurement/docs/eprocurement/studies/130601_e-procurement-state-of-play_en.pdf.

- ^x IESE Business School (2013), *Contratación electrónica en el sector público español: eficiencia, ahorro, transparencia* (E-procurement in the Spanish public sector: efficiency, economy, transparency), University of Navarra, available at:
http://spain.vortal.biz/files/vortal_es/pdfs/131015_CONTRATACION_ELECTRONICA_EN_EL_SECTOR_PUBLICO_ESPANOL.pdf.
- ^{xi} Ministry of Finance and Public Administrations (2013), *Reforma de las administraciones públicas*, Comisión para la reforma de las administraciones públicas (Reform of public administrations, Commission for the reform of public administrations), available at:
http://www.seap.minhap.gob.es/es/areas/reforma_aapp.html.
- ^{xii} Flash Eurobarometer (2013), Business' attitudes towards corruption in the EU.
- ^{xiii} *Centro de Investigaciones Sociológicas* (Centre de Recherche Sociologique) (2015), Political and economic situation indicators.
- ^{xiv} European Commission (2014), DG HOME, EU Anti-Corruption Report, Annexe Spain.
- ^{xv} European Commission (2015) Commission Staff Working Document SWD(2015) 28 final, Country Report Spain 2015 Including an In-Depth Review on the prevention and correction of macroeconomic imbalances
- ^{xvi} Communication of the Council of Ministers (2013), Government promotes Plan for democratic regeneration and approves reform of Criminal Code, La Moncloa.
- ^{xvii} The Government Procurement Review (2014), Second Edition, Law Business Research Ltd.
- ^{xviii} State Official Journal (BOE) (2008), *ORDEN PRE/116/2008, de 21 de enero, por la que se publica el Acuerdo de Consejo de Ministros por el que se aprueba el Plan de Contratación Pública Verde de la Administración General del Estado y sus Organismos Públicos, y las Entidades Gestoras de la Seguridad Social* (amendment of the Green Procurement Plan of the General State Administration and its Public Bodies).
- ^{xix} Ministry of Environment (2011), *Informe general sobre el estado de la contratación pública verde* Genera (Report on the status of green procurement).
- ^{xx} Basque Government (2015), *Informe de tendencias sobre compra y contratación pública verde* (Trend Report on Green Public Procurement), Ihobe, available at:
<http://www.ihobe.eus/Paginas/Ficha.aspx?IdMenu=95390acd-6155-45cc-b339-1e2b3e4435ef&Idioma=es-ES>
- ^{xxi} National Court of Auditors (2012), Report Nº 1022 de *Fiscalización de las incidencias producidas durante el año 2012 en la ejecución de los contratos celebrados por las entidades locales de las CCAA sin órgano de control externo propio* (Irregularities arising during 2012 in the implementation of contracts concluded by local authorities of the CCAA without external control body).
- ^{xxii} National Reform Programme, 2014, available at:
http://www.mineco.gob.es/stfls/mineco/prensa/noticias/2014/Programa_Reformas_2014.pdf
- ^{xxiii} National Commission for Markets and Competition (CNMC) (2015), *Análisis de la contratación pública en España: oportunidades de mejora desde el punto de vista de la competencia* (Analysis of public procurement in Spain: opportunities for improvement in terms of competition).