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and (2) two procedures by private initiative (Article 153, paragraphs 16–21 of Public Procurement Code).

1. With respect to procedures by public initiative, it will be possible to adopt, alternatively, one of the following:
   1.1 Single public tendering procedure (paragraphs 1–14) based on a feasibility study made by the Public Administration ("PA") in order to find a promoter interested to develop the projects indicated in the PA's programmatic lists of public works, in which the relevant PA identifies its needs and priorities in terms of public projects to be realized in the following three years and each year. Upon public tender procedure, the PA establishes a ranking of the submitted bids and elects the first bidder in ranking as promoter.
   In the single public tendering procedure no pre-emption right is allowed to the promoter.
   The PA approves the preliminary project of the promoter and, following such approval, a concession agreement is executed. In the event the elected promoter is requested to modify the project and the same promoter refuses to do so, the PA will exclude the bidder and will address to the other bidders, according to their ranking, in order to grant the concession.
   1.2 Double public tendering procedure (paragraph 15), according to which the first procedure is aimed to appoint the promoter and approve its preliminary project.
   The second procedure is aimed to grant the concession based upon the promoter's preliminary project, and the promoter is entitled to exercise the pre-emption right, at the same conditions of the winning bidder, within 45 days.
2. With respect to procedures by private initiative, a distinction is made according to the fact that the project falls, or does not fall, into the PA's programmatic lists of public works.
   2.1 For projects falling into the PA's annual programmatic lists of public works (paragraph 16) and for which the PA has not published any call for tender in the 6 months following the approval of the programmatic instruments by the PA, any interested party is allowed to submit bids to the PA for obtaining a concession.
   After the submission of the aforesaid bids in relation to a specific public work (even in case only one bid is submitted) the relevant PA publishes a notice indicating the criteria according to which the same PA will evaluate the bids and allowing the bidders to modify their bids, in order to select the bid qualified as of public interest and to appoint the promoter.
   If the preliminary project attached to the winning bid needs to be modified, the PA carries on a competitive dialogue, based upon the preliminary project and the bid qualified as of public interest.
   If the preliminary project attached to the winning bid does not need to be modified, the PA can (i) carry on a tendering procedure for directly granting a concession based upon the preliminary project, where the same promoter shall be invited, or (ii) carry on the double tendering procedure described under point 1.2 above based upon the preliminary project, where the same promoter shall be invited.
   No pre-emption right is granted to the promoter in case the preliminary project needs to be modified.
   2.2 For projects not falling into the programmatic instruments of the PA (paragraph 19), any interested party is allowed to submit to the PA, at any time, bids consisting of feasibility studies for the realization and management of projects to be granted in concession.
   In this case, upon examining the bids within 6 months from their receipt, the PA can qualify the projects as of public interest, insert the same projects in the programmatic instruments of the PA and start the tendering procedure according to the modalities described under point 2.1 above.

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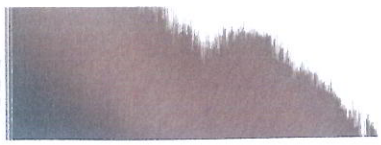
Portugal

PPPs in the Portuguese Health Sector

In the middle of 2002, strictly speaking on the 20th August 2002, the Decree-Law nº 185/2002 got published and was to establish the grounds for several PPPs in the health sector in Portugal.



In the next year the first project was launched – the Loures Hospital (EUR 1.340.452 million). Three more projects were to follow: in 2004, the Cascais (EUR 781.413 million) and Braga (EUR 2.339.375 million) hospitals and the Vila Franca de Xira Hospital in 2005 (EUR 1.096.227 million).

All those projects were part of the first PPP program in the health sector and are now, finally, being awarded. In fact, this program had several setbacks (the minor one being the elections in early 2005 when a new Government came to power) due to its unique characteristics. Despite all the difficulties, a second health program was prepared. It comprises 6 more PPP projects to be launched until the end of 2010: the hospitals of Algarve, Lisbon, Évora, Vila do Conde/Póvoa do Varzim, Vila Nova de Gaia/ Espinho and Seixal.

Contrary to the international experiences, namely the British one, the first health program comprised not only the building of the equipment (the hospital itself), but also the delivery of clinical services. The private sector would not only design, build, finance and operate the facilities (on a traditional DBFO basis), but also be responsible for the delivery of the public service itself, based on a concession contract.

This means that for those projects almost all the risks were transferred to the private sector: the financial risk, the construction and maintenance risk but also the availability and quality of the service.

Although perfectly conform to the philosophy of the PPP political environment, this program, as one can easily imagine, was rather complicated both for the private and the public sectors. Yet, it should be underlined that Portugal already had experience on the concession of clinical services as since 1995 one of the largest hospitals in Lisbon is managed by a private health operator.

Considering the past experience, there were several difficulties to overcome; the first was to combine the delivery of two different outputs by two different SPVs, but chosen on the same tender. On the other hand, the two SPVs had different terms and schemes of remuneration, but for mandatory reason had to have the same shareholders. In fact, the SPV created for the construction and maintenance of the facilities had a 30 years' contract and the SPV created for the management of the public service had a 10 years' contract, extendable for two more ten years' periods, depending on the evaluation made by the granter.

All these difficulties – that even resulted in the annulment of the first tender for the Loures Hospital (because the Jury stated that they could not objectively evaluate the tenders) – but also the election of a new government in 2005, led to a complete change of the philosophy behind the second health program.

In fact, although one can not yet totally evaluate the first health program (because, as mentioned above, the first projects were just now being awarded), the two first projects of the second health program (the Lisbon and Algarve Hospitals that should be awarded until the end of the current year) do not comprise the concession of the clinical services, but only a DBFO scheme for the facilities. Also the two new projects to be launched during 2009 or 2010 (the Hospitals of Vila do Conde/Póvoa do Varzim and Vila Nova de Gaia/Espinho) are not expected to include the clinical service.

Needless to say that it is still very soon to have a comprehensive idea whether PPP projects in the health sector should include the clinical services. On the one hand, it is true that a large percentage of public spending[1] in the health sector concerns clinical services and, therefore, only PPP projects with the delivery of that public service would enhance large public savings. On the other hand, it should be stressed that the clinical services are a special kind of public services and therefore can not probably depend alone on the market.

As Portugal has developed projects including both models, this might lead to the possibility of doing a case study in the next years.

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1 In Portugal it ranges from 60 % to 70 % of the total amount of spending in the health sector, according to Pedro Silva, Fundamentos e Modelos nas Parecerias Público Privadas na Saúde, Almedina 2009.