

Municipal concessions for low-voltage Distribution System Operators – principles and timeline

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Contexto

Resolution of the Council of Ministers no. 27/2024, published on the 27th of February, 2024, is the final Governmental legal action in the run-up for the public tenders for assignment of the municipal low-voltage power distribution system operator concessions.

In the Portuguese power system, low-voltage distribution systems are municipal concessions, a considerable number of which having already expired. As such, when reviewing the power sector legislation, the Government included a provision under which these municipal concessions are extended as long as necessary for the new concessionaire to be in control.

Through this Resolution of the Council of Ministers, the Portuguese Government decided the timeline and sequence of legal acts to be pursued in such a way that allows one or more public tenders to run concurrently and in a coordinated fashion, for the award and assignment of these municipal concessions.

The following are the key milestones applicable to the low-voltage municipal concessions in Continental Portugal:

1. Up to the 31st of July, 2024, ERSE

(the independent power sector regulator) must deliver to municipalities (and other entities with authority on the matter, whenever relevant) all documentation pertaining to the asset base of the low-voltage distribution concessions;

2. Up to the 31st of October, 2024,

municipalities (and other entities with authority on the matter, whenever relevant) shall sign an agreement for the joint tendering of their concessions; Those municipalities which decide not to engage in this agreement must, whenever launching their individual public tenders, substantiate their decisions with technical and economic studies.

3. Up to the 31st of March, 2025,

all municipalities (and other entities with authority on the matter, whenever relevant which engaged in the above mentioned agreement shall obtain all authorizations and take any legal actions necessary for the tendering of these concessions;

4. No later than the 30th of July, 2025, the public tender process shall be started.

The tender documents for these proceedings have already been approved through Order no. 397/2023 (link to official gazette, in Portuguese). The public tender shall have prior qualification.

Technical qualification criteria are summarized below:

- (a) At least five years of experience in power distribution system operation, including low-voltage systems, with a client base no smaller than two-thirds of the concession area;
- (b) Adequate technical and human means and resources;
- (c) Organization and technical structures adequate to the duties of the low-voltage distribution system operator;
- (d) Environmental management measures as per ISO 14001 or, alternatively, under the Community Eco-management and Audit Scheme (EMAS).

These criteria shall be deemed to be verified in joint applications both when a member of the group individually fulfills the criteria, or whenever the members demonstrate their joint fulfilment.

Financial capacity criteria, which must be certified by independent auditor, are summarized below:

(a) Availability of financial assets no lesser than the certified liquid asset value of the asset base of the concession added of the average investment amount for the last three years in the concession area;

(b) Financial autonomy (the division of own capital by the sum of own capital added of liabilities) greater than 0,2^[1];

(c) Financial debt structure (the division of medium and long-term debt by total debt) greater than 0,5^[2].

Only prequalified candidates shall be invited to apply. Winning application shall be selected through the most economically advantageous proposal criteria, through a multifactor model which is described under the tender documents.

Whenever the winner is a group of entities, they must create a limited liability corporation (Sociedade Anónima) SPV, which shall act as concession holder. Regardless of the existence of the SPV, all members of the winning group shall be direct, joint and severally liable for a number of obligations towards the municipalities themselves, namely the full compliance with the Concession Contract.

For further information, do not hesitate to contact Abreu Advogado's Energy and Natural Resources team.

[1] Whenever application is submitted by a grouping of candidates, financial autonomy is calculated through the sum of said division divided by the share capital of each of the group members.

[2] Whenever application is submitted by a grouping of candidates, financial debt structure is calculated through the sum of said division divided by the share capital of each of the group members.

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