

## 2020 Portuguese State Budget | Public Procurement

The Portuguese State Budget for 2020 (“SB for 2020”) approved by Law no. 2/2020, came into force on 1 April 2020. As has been the case in the last years, the SB for 2020 sets a number of relevant rules applicable in public procurement.

Once again, the SB for 2020 caps the contracting authorities’ spending with the acquisition of any services at the amount paid for the same services in 2019. This cap applies to services agreements that are to be renewed in 2020 as well as to agreements that are to be entered into whenever the scope of the new agreement is similar to that of an agreement in effect in 2019 (article no. 64 of SB for 2020).

Among other exceptions, the SB for 2020 foresees the possibility of such cap being lifted by decision of the Member of the Government in charge of Public Finances, upon approval of the member of the Government in charge of the area engaged in purchasing services priced above the cap.

However, even when an authorization is issued to lift the cap, the contracting authorities remain subject to the obligation of requesting and obtaining a favourable opinion on the decision to enter into the agreement by the “Agência para a Modernização Administrativa, I. P.” (AMA, I. P.), the “Centro de Gestão da Rede Informática do Governo” (CEGER) or the “Centro de Competências Jurídicas do Estado” (JurisAPP) depending on the nature of the services within the scope of the agreement (articles no. 64/11 e no. 66).

The SB for 2020 brings a **new exception** to the capped prices rule:

- ✓ Public sector companies that submitted an Annual Plan and Budget for 2020 are not subject to such limitation (article no. 65).

This particular exception should be exercised with caution until further rules are issued regarding the practical terms on how it should be applied.

Article no. 70 of the SB for 2020 sets a new relevant measure: the possibility of applying an extraordinary price revision to agreements that refer to cleaning services and to services related to the operation of canteens. The purpose of this measure is to adjust the prices to the raised Minimum

*The prices for services agreements renewed for 2020 remains capped by the amounts paid for such services in 2019. Such cap also applies to agreement entered into in 2020 with the same scope of agreements entered into in 2019.*

*Public sector companies that submitted an Annual Plan and Budget for 2020 are not subject to the cap for the acquisition of services.*

*The SB for 2020 foresees the possibility of an extraordinary revision of the prices of*

Monthly Wage (“MMG”) which is now of EUR 635.00 further to a decision that came into effect on 1 January 2020.

As such, the **possibility to revise the prices is limited to:**

- ✓ The prices of cleaning services agreements or others that refer to the operation of canteens;
- ✓ Agreements that remain in effect for several years; and
- ✓ That were entered into before 1 January 2020 or that result from bids submitted prior to such date.

Only agreements in which the labour cost – indexed to the MMG – is considered to be the **major factor for setting the price** may be subject to this extraordinary revision, which shall be limited to the amount deemed necessary to restore the balance between the price and the services rendered.

Lastly, the SB for 2020 kept at EUR 350,000.00 the threshold above which agreements must be submitted to prior visa by the Portuguese Court of Auditors (article no. 318/1).

However, it should be noted that Law no. 1-A/2020, of 19 March is currently in effect. This Law set special measures aimed at allowing a swift response to the needs caused by the current pandemic and was approved under the State of Emergency that remains in force. Such law exempts the contracting authorities in the health, justice, and security departments (detailed in article 7 Decree-Law no. 10-A/2020, of 13 March), as well as certain urgent agreements from being subject to prior visa by the Court of Auditors. In any event, the contracting authorities shall send copies of such agreements to the Court of Auditors.

*services agreements that refer to cleaning or to services related to the operation of canteens.*

*The terms and conditions of such extraordinary revision shall be set by a joint ministerial order.*

*The threshold above which agreements must be subject to prior visa by the Court of Auditors remains at EUR 350,000.00.*

## CONTACTS

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