

Special public procurement rules and amendment to the Public Contracts Code

Portugal has just enacted Law no. 30/2021, of 21 May, (“Law 30/2021”) which approves special public procurement measures, amends the Public Contracts Code (“PCC”), amends the Process Code in the Administrative Courts, and the rules applicable to the creation, organization, and operation of central purchasing bodies.

This Law is intended to facilitate the procedures for awarding contracts for the execution of the Recovery and Resilience Plan (“RRP”) recently presented by the Government to the European Commission.

Special public procurement measures

One of the features of Law 30/2021 is the new simplified pre-contractual procedures, which are different from the standard awarding procedures foreseen in the PCC. These simplified procedures may be used when the contract to be awarded:

- i. Is to be financed or co-financed by European funds;
- ii. Is for public housing or decentralization (until December 31, 2022);
- iii. Pertains to Information and knowledge technologies (until 31 December 2022);
- iv. Is a Health and social support sector contract (until 31 December 2022);
- v. Is executed as part of the RRP;
- vi. Refers to Integrated Management System for Rural Fires;
- vii. Refers to food stuff.

The simplified public tender and the simplified limited tender may be adopted for procedures below the EU public procurement thresholds. The simplified prior consultation with invitation to five economic operators may be adopted when the contract is simultaneously below the EU thresholds and EUR 750,000.00 and the simplified direct agreement when the contract is worth less than or equal to EUR 15,000.00.

The measures for simplification of such procedures basically consists of:

- i.** Reduction of the deadline for applications and proposals (in public and limited tenders);
- ii.** Waiver of the need to justify the option of not awarding lots and setting the maximum price;
- iii.** Possibility of awarding to companies with contributory or unregulated tax status, provided that this situation results from a temporary impossibility of liquidity and does not amount to more than EUR 25,000, with a mandatory deduction of the amount of the debt;
- iv.** The timeframe for prior hearing of interested parties is set at 3 working days, in the case of a simplified prior consultation and at 5 working days, in the case of open and limited public tenders;
- v.** The contractor may be exempt from depositing the bond due to financial difficulty of the economic operator, provided that an insurance for the execution of the contract or declaration of joint liability is presented, issued by at least two insurance companies or banking institutions and a retention of 10% on the price is applied;
- vi.** Deadlines for presentation, response, and decision on administrative challenges are reduced to 3 working days.

In addition to the special measures, a wide range of amendments to the PCC was also approved, regarding the following issues:

- i.** Preference for the local economy;
- ii.** Possibility of awarding bids priced above the maximum price allowed;
- iii.** Mandatory exam to all abnormally low prices offered;
- iv.** Mono-factor and multi-factor award criteria;
- v.** Possibility of submitting qualification documents in the foreign language;
- vi.** Digital execution of the Contract;
- vii.** Limitation of the economic operators that may be invited to direct agreements and prior consultations;
- viii.** Mandatory publication of all Contract's amendments in the official platform.

Law No. 30/2021 enters into force on June 21, 2021, but the new provisions only apply to procedures triggered from such date onwards, as well as to contracts resulting from such procedures.

However, the provisions that regulate the amendments to Contracts apply to all contracts that are already in effect, provided that the fact determining the amendment occurs after June 21, 2021.

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