



### CHANGES TO THE CODE OF PUBLIC CONTRACTS AND THE CODE OF PROCEDURE IN ADMINISTRATIVE COURTS

The Portuguese Parliament sent for promulgation a new version of the law that provides for special public procurement measures and amendments to the Public Contracts Code (CCP) and the Code of Procedure in Administrative Courts (CPTA).

To respond to the concerns raised by the President of the Republic, and within the scope of special public procurement measures, the new version of the diploma now provides that contracts whose value does not require prior inspection, must be sent to the Court of Auditors within 10 days after the your celebration. With regard to the composition of the new independent monitoring and inspection commission, it is now expected that it will consist of three members appointed by the Parliament, one by the Prevention and Corruption Council and one by the IMPIC, with the members' incompatibilities being reinforced.

The new version of the diploma has already been promulgated by the President of the Republic, pending its publication now. We outline below the news that will be introduced:

#### 1. SPECIAL MEASURES FOR PUBLIC PROCUREMENT

For the conclusion of contracts for the execution of projects financed or co-financed by European funds, contracting entities may:

- a) Initiate procedures for [public tenders](#) or [restricted tenders by simplified prior qualification](#), when the value of the contract is below the amounts of the European thresholds for the purpose of mandatory advertising in the Official Journal of the European Union, as the case may be;
- b) Initiate and process [simplified prior consultation](#) procedures, with an invitation to at least five entities, when the value of the contract is simultaneously below the amounts of the European thresholds for the purpose of mandatory advertising in the Official Journal of the European Union, as the case may be, and less than EUR 750,000.00;
- c) Initiate [simplified direct settlement](#) procedures, when the contract value is equal to or less than EUR 15,000.00;
- d) Reduce the deadline for submitting proposals and candidacies in public tenders and restricted tenders by prior qualification, with no need for justification.

These possibilities also apply, until 31 December 2022, to the conclusion of contracts that have as their object:

- ◆ The promotion of public housing or controlled costs or the invention of properties whose ownership and management has been transferred to the municipalities, within the scope of the process of decentralizing competences.
- ◆ The purchase of computer equipment, the acquisition, renewal, extension or maintenance of licenses or software services, the purchase of computing or cloud storage services, the purchase of consultancy or advisory services and the execution of public works associated with processes digital transformation.
- ◆ The leasing or acquisition of movable property, as well as public works contracts for the construction, renovation or rehabilitation of properties in the health sector, in the continuous and integrated care units, and in social support in the context of the elderly, disability, childhood and youth.
- ◆ The promotion of interventions that are considered integrated within the scope of the Economic and Social Stabilization Program, approved in annex to the Resolution of the Council of Ministers no. 41/2020, of 6 June, or in the Recovery and Resilience Plan.

## 2. MAIN CHANGES TO THE CODE OF PUBLIC CONTRACTS

We highlight below some of the main changes to the Code of the Public Contracts provided for in the version sent for promulgation:

- a) Contracting entities must ensure, in the formation and execution of public contracts, that economic operators, including contractors, respect the applicable rules in force in terms of **preventing and combating corruption**.
- b) In the procedures for the formation of works contracts or public works concessions, the bidder's proposal must now also include a **financial schedule**, when the specifications are integrated by an execution project, containing a summary of the global values corresponding to the periodicity defined for the payments.
- c) The extension of the deadline set for the submission of proposals, following corrections or clarifications on the parts of the procedure, in the case of procedures with an announcement published in the Official Journal of the European Union, may not be less than 6 days, or 4 days, in situations reasoned urgency.
- d) It is now explicitly stated that even in the absence of an abnormally low price definition in the procedure, **the price or cost of a proposal can be considered abnormally low**, due to a duly substantiated decision by the competent body for the decision to contract, namely because it proves to be sufficient for the fulfillment of legal obligations in environmental, social and labor matters or to cover the costs inherent to the performance of the contract.

- e) The possibility of a draw is now accepted as the last solution under the desempate criteria.
- f) **In cases where the value of the contract determines its subjection to prior inspection by the Court of Accounts, the body responsible for the decision to hire must ask the contractor to submit a plan for the prevention of corruption and related infractions**, unless he is a person individual, or a micro, small or medium-sized company duly certified.
- g) The contractor no longer has to present certain qualification documents such as the certificate of criminal record and certificates referring to the tax and contributory situation, if it is registered in the **National Portal of Suppliers of the State**.
- h) **The contract must be made in writing through the elaboration of a clause in electronic format with the affixing of electronic signatures**. It can only be on paper in the cases where an electronic platform has not been used for processing the procedure.
- i) Regarding the **simplified direct agreement**, it is now expected that this procedure will also become be exempted from the appointment of the contract manager and the electronic billing regime.
- j) **The maximum term of the contracts concluded under the simplified direct agreement** is now increased to three years. It is recalled that until now the contracts could not have lasted more than one year.

### 3. MAIN CHANGES TO THE CODE OF PROCEDURE IN ADMINISTRATIVE COURTS

The following changes stand out:

- a) The **pre-contractual litigation procedures**, after having been distributed, are now sent to the judge to issue a preliminary order within 48 hours.
- a) The time limit for the author to respond to the request for **lifting the suspensive effect of the action** is reduced from seven to five days, followed, without further articulation and within a maximum period of seven days after carrying out the absolutely essential instructional steps, the decision of the incident by the judge ●