

COVID-19 | Public Procurement Regime

Ricardo Campos

Partner, Administrative and Regulatory Area, Gómez-Acebo & Pombo, Portugal

Inês Teixeira da Silva

Lawyer, Administrative and Regulatory Area, Gómez-Acebo & Pombo, Portugal

Given the international public health emergency declared and in response to the epidemiological situation caused by the virus SARS-CoV2, temporary and exceptional measures have been adopted for the Portuguese territory, notably those laid down in the Decree-Law no. 10-A/2020, of 13 March ("Decree-Law").

In respect to public contracts related to the «(...) prevention, contention and mitigation measures and treatment of the epidemiological infection by SARS-CoV2 and the disease COVID-19, as well as the restoration of the current situation.» entered into with entities in the corporate public sector and the administrative public sector, as well as, with the necessary adaptations, to local authorities, the following exceptional procurement rules have been adopted:

(1) Direct award: for the conclusion of public works contracts, lease or purchase contracts for movable assets and purchase of services, public entities may follow a direct award procedure - provided there are imperative urgency reasons and those assets and / or services are extremely necessary – hiring the private contractor of their choice.

(2) Simplified direct award: for the conclusion of contracts to purchase or lease movable property and purchase of services up to a cap of EUR 20,000.00, public entities may follow the simplified direct award procedure, which allows for a simplified non-written agreement, not requiring to be published, being immediately and fully effective upon the award.

(3) Temporary elimination of restrictions in the choice of invited entities: public entities may issue invitations and award contracts to entities that had been hired under direct award procedures or had participated in prior consultations procedures in 2020, 2019 and 2018.

(4) Prior consultation procedure exemption: public entities are exempted from adopting the prior consultation of three entities.

(5) Communication obligations: public entities are under the obligation to (i) communicate the awards made under the exceptional rules to the members of the Government responsible for the area of finance and the respective sectorial area and (ii) publicize them in the public procurement website, ensuring compliance with the principles of advertising and transparency. Local authorities, only have the obligation to advertise on the public procurement website.

(6) Date of effects: all contracts concluded under the exceptional regime, even those that are not required to be written, shall produce their effects upon the respective award.

(7) Advance payments: exceptional permission to make advance payments, without complying with the formalities provided for in the law. This rule was designed to prevent the liquidity difficulties that private contractors may be experiencing and that prevent them from immediately performing their obligations under the relevant contracts.

(8) Affiliated entities of the National Public Procurement System: these entities are allowed to purchase goods or services outside the existing framework agreements and to which they were obliged to, without the need to obtain prior authorization.

(9) Supervision: the above contracts are exempt from prior approval by the Court of Auditors; notwithstanding this, public entities are required to notify the Court of Auditors that the contract has been entered into within a period of 30 days of its completion. These contracts are not exempt from concomitant and successive supervision.

The exceptional measures shall remain in force until the Portuguese Government determines the end of the exceptional situation.