

PUBLIC
LAW

SEVENTH AMENDMENT TO THE PORTUGUESE PUBLIC PROCUREMENT CODE

On August 11th, Decree-Law number 149/2012 came into force, which amended, for the seventh time, the Public Procurement Code, approved by Decree-Law number 18/2008, January, 29th.

In general, this new diploma, whose goals are to adjust the public procurement legal framework to the EU Procurement Directives and to comply with the obligations set forth in the Memorandum of Understanding agreed between the Portuguese Government and the International Monetary Fund, the European Central Bank and the European Commission, alters the Public Procurement Code on the following matters:

1. Scope

Some **exemptions to procurement rules that benefited several entities are eliminated**. Those entities were *i)* higher education public institutions, created under the form of foundations; *ii)* hospitals which adopted the form of public corporation; *iii)* private associations that primarily carry out scientific and technological purposes and *iv)* State laboratories.

2. Direct award procedure

The **thresholds for direct award procedure are modified by this new diploma, as they become the same whoever the awarding entity may be**: the thresholds foreseen for “bodies governed by public law” are reduced to the amounts previously set for public entities in the strict sense (in what concerns public works contract, the threshold is now € 150.000 for all awarding entities; and with respect to public supply contracts and public service contracts the threshold is € 75.000).

On the other hand, the possibility of direct award for the acquisition of software development computer systems and for equipment’s technical assistance and maintenance contracts is eliminated.

3. Legal regime for errors and omissions and additional works/services

The first major change in this matter is the **“overturn” of percentages under which the contractor is allowed to correct errors and omissions or carry out additional works/services**: the rule is that the correction of errors and omissions can only be determined whenever the sum of the prices for those works with the prices of previous works of the same nature do not exceed **5%** of the contractual price (instead of the former 50%);

Extension of the scope of application

as to additional works/services, the law establishes that no such work or services can be rendered whenever its price, including those of previous additional works/services, exceeds **40%** of the contractual price (and not 5%, as previously foreseen).

The legal regime for errors and omissions was significantly altered, namely in what concerns their concept. At the same time, the deadline for awarding entities to issue opinion on the errors and omissions' list made by the bidders is extended (as well as clarified).

4. Miscellaneous

Of all the other amendments made to the Public Procurement Code by Decree-Law number 149/2012, we highlight the following:

- i) In accordance with European law, the rule under which an undertaking is forbidden to become a bidder or a candidate in a tender procedure that has, directly or indirectly, provided any support or assistance in the preparation of the tender documents is amended by stating that the prohibition is only applicable whenever the support or assistance grants such undertaking an advantage that may jeopardize normal competition conditions;
- ii) It now becomes mandatory the publicity, in terms that are to be defined by Ordinance, of all elements regarding the formation and execution of public contracts, since its beginning to the end of its execution;
- iii) Annexes I, II, IV and V to the Public Procurement Code are altered.

Lastly, **this Decree-Law is solely applicable to the procedures for the formation of public contracts from August 11th, 2012 and to the execution of the contracts awarded by procedures initiated after that date.**

Alteration of the thresholds for direct award procedure

Contact
Fernanda Matoso | fmatoso@mlgts.pt



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ASSOCIADOS
SOCIEDADE DE
ADVOGADOS

LISBON

Rua Castilho, 165
1070-050 Lisbon
Telephone: (+351) 213 817 400
Fax: (+351) 213 817 499
mlgtslisboa@mlgts.pt

OPORTO

Av. da Boavista, 3265 - 5.2
Edifício Oceanvs – 4100-137 Oporto
Telephone: (+351) 226 166 950
Fax: (+351) 226 163 810
mlgtsporto@mlgts.pt

MADEIRA

Avenida Arriaga, Edifício Marina Club, 73, 2º
Sala 212 – 9000-060 Funchal
Telephone: (+351) 291 200 040
Fax: (+351) 291 200 049
mlgtsmadeira@mlgts.pt

São Paulo, Brazil (in association)
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& Quiroga Advogados

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