

PUBLIC
LAW

DECREE-LAW
278/2009,
OF OCTOBER 2ND

AMENDMENT TO THE PUBLIC PROCUREMENT CODE

Decree-Law 278/2009, published on October 2nd, has amended the Public Procurement Code (PPC) and it is applicable to all procedures for the formation of public contracts initiated after 7th October 2009 (date of entry into force).

The preamble of this Law gives special emphasis to the need of adapting those procedures where higher education or scientific research and technological development institutions are concerned. Notwithstanding that, the “Monitoring Committee of the PPC” took this legislative opportunity mainly to introduce changes to the PPC with the view to clarify certain rules and correct some inconsistencies.

In general, it is interesting to keep in mind the following changes:

- The exclusion, as awarding entity, of any **public foundation**, established under the new higher education law regime, and of any **scientific and technological private association**, dispelling by this way any doubts that might exist on the application of the PPC regarding the latter (*chq.* article 2);
- The **admission** to public procurement procedures of any entity in the status of insolvency, liquidation, dissolution, cessation of activity or any other similar situation if the entity is covered by an **insolvency plan**, under the applicable legislation (*chq.* point a) of article 55);
- The possibility, in a **direct awarding** procedure, to invite entities which have performed works or provided services to the contracting authority free of charge, in the current year or two preceding financial years, to present a bid, if the works or services were rendered under the **Patronage Regime** (*chq.* paragraph 5 of article 113);

Admission to public procurement procedures of entities in the status of insolvency, liquidation, dissolution, cessation of activity or any other similar situation if covered by an insolvency plan.

- The recognition of a **preliminary hearing right**, when the non-submission of the qualification documents determines the **forfeiture of the award** (*chq.* paragraph 2 of article 86, point j) of paragraph 1 of article 115, point g) of article 132 and point g) of article 164).

In what concerns public works, we would like to highlight the following:

Exemption granted to bidders of the obligation to submit an execution project together with the proposal.

- The **exemption** granted to bidders of the obligation to submit an **execution project** together with the proposal, replacing it with a **previous study** on the project, leaving for the awarded bidder the responsibility to prepare the necessary execution project (*chq.* point c) of paragraph 2 of article 57);
- The clarification that, in any agreement with different guarantee periods and, consequently, with several provisory and permanent partial work receptions, the **partial release of the bond** provided by the co-contracting party is promoted in the proportion to the value of each set of elements that compose the works (*chq.* paragraph 7 of article 295);
- The **possibility granted to the contractor to adjust the work plan included in the contract** to the final implementation plan made by the owner of the works, if the construction deadlines have been extended, if errors and omissions have been claimed during the construction phase or if there is additional work (*chq.* paragraph 3 of article 361);

Possibility granted to the contractor to adjust the work plan included in the contract to the final implementation plan.

- The **additional works limit of 25% of the contractual price**, already applied to works affected by natural constraints with special characteristics of unpredictability, is now also applicable to the **rehabilitation or restoration works for real estate** (*chq.* paragraph 3 of article 370).

With the clear purpose of facilitating and expediting proceedings, we should finally mention the following solutions:

- The preference for the submission of qualification documents through the **electronic platform** used by the contracting authority. The delivery via e-mail or other means of written and electronic transmission of data is now only allowed when the electronic platform is unavailable (*chq.* paragraph 1 of article 83);
- If a certain qualification document is not issued, it is now possible for the awarded bidder to submit, in lieu of such document, a **solemn statement under oath** made before a judicial or administrative authority, a notary or a qualified professional, (*chq.* article 83-A).

Contact
Fernanda Matoso | fmatoso@mlgts.pt

MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA

ASSOCIADOS
SOCIEDADE DE
ADVOGADOS

www.mlgts.pt

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

MEMBER
LEX MUNDI
THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS

Partnership in Brazil
Mattos Filho, Veiga Filho,
Marrey Jr. e Quiroga