

# Public Procurement 2020

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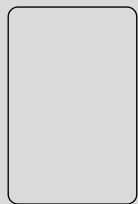
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Contributing editor

**Totis Kotsonis**

Pinsent Masons

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Lexology Getting The Deal Through is delighted to publish the sixteenth edition of *Public Procurement*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Greece, Israel, Mexico, Nigeria and Romania.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Totis Kotsonis of Pinsent Masons, for his continued assistance with this volume.



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# Angola

Ana Marta Castro and Raul Mota Cerveira

VdA

## LEGISLATIVE FRAMEWORK

### Relevant legislation

1 | What is the relevant legislation regulating the award of public contracts?

The Public Contracts Law (PCL) – approved by Law 9/16 of 16 June 2016, which repealed earlier legislation, in particular Law 20/10 of 7 September 2010 – is considered to be the key legislation regulating the award of public contracts. The PCL is complemented by Presidential Decree 199/16 of 26 September 2016, which sets out the regime applicable to both the public procurement procedures and the execution of framework agreements and, in particular, by Presidential Decree 201/16 of 27 September 2016, which establishes the standard draft contracts relating to public works, public supply and public services.

Also relevant is Presidential Decree 202/17 of 6 September 2017, which establishes the legal framework for the access and use of the National E-Procurement System.

Moreover, a reference must be made to the Public-Private Partnerships Law, approved by Law 11/19 of 14 May 2019, which sets forth the regime applicable to the state's intervention and participation in tender procedures, the award, the execution and the oversight of public-private partnerships. Law 11/19 repealed Law 2/11 of 14 January 2011.

Finally, reference must be made to Decree Law 16-A/95 of 15 December, as amended, which approved the Administrative Procedure and Administrative Activity Code. This Law was partially repealed by the PCL, but it is still relevant as it is subsidiarily applicable to the public tender procedures.

### Sector-specific legislation

2 | Is there any sector-specific procurement legislation supplementing the general regime?

Owing to the strategic and operational role of petroleum activities in Angola, there is a special regime that regulates access to petroleum activities: the Petroleum Activities Law, approved by Law 10/04 of 12 November 2004.

### International legislation

3 | In which respect does the relevant legislation supplement the EU procurement directives or the GPA?

Angola is not a European Union member or a signatory to the World Trade Organization's Agreement on Government Procurement (GPA), the fundamental aim of which is to mutually open government procurement markets between its parties.

Although Angola is not part of the GPA, the Portuguese legal framework has a major influence not only on the PCL, but also on other

relevant legislation regarding the award of public contracts, and for that reason the PCL's framework closely follows that of the EU's procurement directives.

### Proposed amendments

4 | Are there proposals to amend the legislation?

As the PCL, which was approved by Law 9/16 of 16 June 2016, is a recent piece of legislation, at this stage, no new amendments are expected.

## APPLICABILITY OF PROCUREMENT LAW

### Contracting authorities

5 | Which, or what kinds of, entities are subject to procurement regulation?

Under the Public Contracts Law (PCL), 'contracting authorities' are traditional public sector entities such as central and local authorities. The entities considered to be in this group include:

- the President of the Republic;
- the central and local administrative bodies;
- the National Assembly;
- the courts;
- the Attorney General's Office;
- the independent administrative authorities;
- Angola's representation offices abroad;
- municipalities;
- public institutes;
- public funds;
- public associations;
- public companies; and
- publicly held companies.

### Contract value

6 | Are contracts under a certain value outside the scope of procurement regulation? What are these threshold values?

The PCL is not applicable to public contracts entered into by public companies and publicly held companies pertaining to (1) public works, public works concessions and public services concessions that fall below the 500 million Angolan kwanzas threshold and to (2) leases, acquisitions of goods and acquisitions of services that fall below the 182 million Angolan kwanzas threshold. All other public contracts concluded with contracting authorities fall within the scope of the PCL. The type of procedure differs depending on the estimated value of the contract at stake. Nevertheless, the award of certain contracts may be exempted from complying with procurement law in some situations (for instance, when imperative grounds of urgency so require) and contracts with a value falling below the 5 million Angolan kwanzas threshold can

be awarded through a direct award (ie, a non-competitive procedure), although its terms are also regulated by the PCL.

### Amendment of concluded contracts

7 | Does the legislation permit the amendment of a concluded contract without a new contract award procedure?

Amendments to concluded contracts are permitted without a new procurement procedure on public interest grounds, and if the conditions under which the parties entered into the previous agreement changed in an abnormal and unpredictable way leading to a serious increase in the risks initially assumed by the original contractor.

Amendments can be introduced by a unilateral decision of the contracting authority based on public interest grounds, by an agreement entered into between both parties or by a judicial or arbitral decision.

The amendments introduced cannot alter the overall nature of the contract and cannot affect the competition that formed the basis of the procurement procedure. This means, for instance, that the changes to be introduced cannot alter the order in which the bids were previously evaluated.

8 | Has case law clarified the extent to which it is permissible to amend a concluded contract without a new contract award procedure?

No, there has been no case law clarifying the extent to which it is permissible to amend a concluded contract without a new contract award procedure.

### Privatisation

9 | In what circumstances do privatisations require the carrying out of a contract award procedure?

Under the Angolan legal framework, privatisation processes do not fall within the scope of the PCL and are regulated by specific legislation, namely by Law 10/19 of 14 May 2019.

The Angolan Privatisation Law applies to the disposal of shares held by public entities and prescribes that privatisation processes must be held via a public tender. Exceptionally, in some limited cases, the Angolan Privatisation Law also foresees that a privatisation process may be held through a limited tender with specific pre-qualified bidders or via a direct award.

### Public-private partnership

10 | In which circumstances does the setting up of a public-private partnership (PPP) require the carrying out of a contract award procedure?

In accordance with the Public-Private Partnerships Law, approved by Law 11/19 of 14 May 2019, the setting up of a PPP is regulated by the applicable tender procedure in accordance with the terms set out in the PCL.

## ADVERTISEMENT AND SELECTION

### Publications

11 | In which publications are calls for the expression of interest in regulated contract awards advertised?

Regulated procurement contracts must be advertised in the National Gazette, on the Public Procurement Portal and in a major newspaper.

### Participation criteria

12 | Are there any limits on the ability of contracting authorities to determine the basis on which to assess whether an interested party is qualified to participate in a contract award procedure?

Apart from being prevented from accepting contracting entities that fall within any of the exclusion grounds foreseen in the Public Contracts Law (PCL), contracting authorities may only assess whether private contracting entities are qualified to participate in a tender procedure if such authorities launch a limited tender with prior qualification, a restricted procedure or a simplified procurement procedure.

In a public tender, it is not possible to evaluate the technical and financial qualifications of bidders.

In a limited tender with prior qualification, the evaluation of bidders' qualifications is made during the first phase of this procedure, in which bidders submit their applications. The qualitative criteria set out by the contracting authority to evaluate bidders' capacities must refer to bidders' economic and financial standing and their technical and professional abilities. Those qualitative criteria must be related and proportionate to the subject matter of the contract.

In respect of the other public procurement procedures referred to above (ie, the restricted procedure and the simplified procurement procedure), there are no specific phases in which the qualification of bidders formally takes place, since the selection of the bidders invited to participate is discretionary and is made prior to the launch of the such procedures.

13 | Is it possible to limit the number of bidders that can participate in a contract award procedure?

Following the assessment of the bidders and their compliance with the qualitative selection criteria, a limitation on the number of bidders may occur.

In accordance with the PCL, if bidders demonstrate they comply with all the minimum qualitative selection criteria established, they will be invited to the second stage of the tender in which they will be invited to submit a bid.

### Regaining status following exclusion

14 | How can a bidder that could be excluded from a contract award procedure because of past irregularities regain the status of a suitable and reliable bidder?

The concept of 'self-cleaning' has not been formally established in the legal framework prescribed by the PCL. However, if the rehabilitation of a bidder has occurred, the bidder will not be excluded.

There is a list compiled and advertised on the Public Procurement Portal ([www.contratacao publica.minfin.gov.ao/PortalSNCP](http://www.contratacao publica.minfin.gov.ao/PortalSNCP)) identifying economic operators deemed as having not complied with their contractual obligations in previous contracts. These economic operators are kept on the list for at least three years.

## THE PROCUREMENT PROCEDURES

### Fundamental principles

15 | Does the relevant legislation require compliance with certain fundamental principles when designing and carrying out a contract award procedure?

Yes. The Public Contracts Law (PCL) states that the fundamental principles for tender procedures include the principles of pursuit of the public interest, justice, equal treatment, competition, impartiality,

transparency, probity, economy, efficiency, effectiveness and of respect for public heritage.

### Independence and impartiality

16 | Does the relevant legislation or case law require that a contracting authority is independent and impartial?

Yes. Articles 3 and 8 of the PCL establish the principles of independence and impartiality as far as contracting authorities are concerned. In particular, article 8 prescribes an extensive set of rules applicable to public officials responsible for the public procurement procedures and specifically stipulates that they shall act impartially and in accordance with the public interest, and prevent conflicts of interests, respect confidentiality rules and follow all rules and regulations regarding the conduct and the legal impediments of public officials.

Additionally, the PCL contains different mechanisms that aim to ensure impartiality. In certain situations, members of contracting authorities are prohibited from interfering in the decisions taken in a given public procurement procedure when, for example, they have a direct or indirect personal interest in the outcome of the procedure. In other cases, and under specific situations, members of contracting authorities may decide not to participate in certain procedures, with the purpose of not raising any doubts regarding the impartiality of the decisions to be taken.

Most public procurement procedures are accompanied by an Evaluation Committee that holds a wide range of powers to ensure compliance with all legal requirements throughout the procedure.

### Conflicts of interest

17 | Does the legislation address expressly the issue of conflicts of interest?

Article 8 of the PCL prescribes an extensive set of rules applicable to public officials responsible for the public procurement procedures and specifically stipulates that they shall act impartially and in accordance with the public interest, and prevent conflicts of interests, respect confidentiality rules and follow all rules and regulations regarding the conduct and the legal impediments of public officials.

### Bidder involvement in preparation

18 | Are there any restrictions on the ability of a bidder to be involved in the preparation of a contract award procedure?

The involvement of a bidder in the preparation of a tender procedure may be grounds for a decision of exclusion. However, this exclusion decision is only issued when such intervention is considered to have conferred advantages to the bidder and prejudiced competition.

### Procedure

19 | Which procurement procedure is primarily used for the award of regulated contracts?

The prevailing type of procurement procedure used is the public tender.

### Separate bids in one procedure

20 | Can related bidders submit separate bids in the same procurement procedure?

The PCL has a specific provision under which economic operators participating in a procurement procedure as a consortium are not entitled to participate in the same procedure individually or as members of other consortia. Violations of this rule lead to the exclusion of both bidders.

There is no specific provision that states that related bidders (as is the case of different companies within a same group, for example) must

submit separate bids in the context of the same procedure. Nonetheless, in most cases, this situation would probably lead to the exclusion of both bidders. In fact, if certain companies belong to the same economic group, it would be very hard for them to demonstrate that they are independent and that they are not distorting competition, which constitutes another ground for exclusion.

The situation of a subcontracting party participating as a subcontracting party in more than one bid in the same procedure could also lead to the exclusion of all the bids in which the subcontracting party participated, as that would probably lead to the conclusion that competition was distorted. Nevertheless, such a situation would entail a lesser degree of risk when compared to the case of related bidders submitting separate bids in the same procedure.

### Negotiations with bidders

21 | Is the use of procedures involving negotiations with bidders subject to any special conditions?

The inclusion of a negotiation phase is possible in all public procurement procedures outlined in the PCL, depending on the discretion of the contracting authority at stake.

There are two main methodologies for selecting bidders to the negotiation phase: (1) all bidders that have previously submitted valid bids are invited; and (2) bidders whose bids are classified in the first-ranked positions are invited.

The maximum number of bidders that may be invited to the negotiation phase has to be previously stated in the tender documents.

22 | If the legislation provides for more than one procedure that permits negotiations with bidders, which one is used more regularly in practice and why?

Not applicable.

### Framework agreements

23 | What are the requirements for the conclusion of a framework agreement?

Both the PCL and Presidential Decree 199/16 of 23 September 2016 regulate the regime applicable to framework agreements, which allow public contracting entities to set the terms and conditions applicable to contracts that will be entered into with one or more contracting entities or suppliers for a given period of time.

The PCL allows for two different types of framework agreements: (1) a single supplier agreement; or (2) a several suppliers agreement.

A framework agreement usually follows a public tender or a limited tender with prior qualification, since those procurement procedures do not have any thresholds. On the contrary, if a framework agreement is awarded through a direct award procedure, the global value of the contracts to be executed under the framework agreement cannot exceed the respective threshold.

24 | Is it possible to conclude a framework agreement with several suppliers?

A framework agreement may be entered into with several suppliers. The awarding of contracts under such agreements is preceded by an invitation sent to the previous selected suppliers (ie, the future contracting parties of the framework agreement) to submit a proposal regarding the specific aspects of the contract, and that will be evaluated.

In contrast, if a framework agreement is concluded with a single supplier, contracts based on that framework agreement will be awarded within the limits of the terms laid down in that same framework

agreement. Those terms must also have been sufficiently specified in the procurement procedure that preceded the award of the framework agreement.

### Changing members of a bidding consortium

**25** | Is it possible to change the members of a bidding consortium during the course of a contract award procedure?

The general rule is for changes in a consortium not to be allowed during a procurement procedure, since the PCL expressly stipulates that all the members of a consortium, and only those members, may sign the contract. Nonetheless, it would be difficult not to accept a change to the composition of a certain consortium in the case of a merger or spin-off of a given member, since, conversely, such a change would necessarily have to be accepted if there were only one bidder in the procedure.

### Participation of small and medium-sized enterprises

**26** | Are there specific rules that seek to encourage the participation of small and medium-sized enterprises in contract award procedures?

The PCL has no specific rule or mechanism that furthers the participation of small and medium-sized enterprises (SMEs) as far as procurement procedures are concerned. However, the PCL prescribes specific rules in order to preferentially assign contracts to national economic operators as well as to prioritise national production. The PCL grants a certain number of advantages to national SMEs.

In terms of division of a contract into lots, there is a specific provision that states that the relevant threshold to be taken into account for the selection of the applicable procurement procedure shall be the total sum of all the estimated amounts associated with each lot.

There is no rule or case law that limits the number of lots single bidders can be awarded.

### Variant tenders

**27** | What are the requirements for the admissibility of variant tenders? Are bidders free to decide whether to submit a variant tender or is this subject to the contracting authority expressly permitting it in the tender documentation?

The PCL defines variant bids as those bids that propose alternate conditions in respect of one or more contractual clauses included in the tender specifications. Variant bids are only admitted when specific provisions in the procedure documents expressly authorise their submission.

Moreover, bidders must submit a standard bid that is based on the requirements laid out in the tender specifications.

**28** | Is a contracting authority obliged to consider any variant tenders that might have been submitted?

When admitted by specific provisions in the procedure documents expressly authorising its submission, the contracting authority must consider a variant bid. However, the exclusion of the standard bid implies the exclusion of any variant bids submitted by the same bidder.

### Tender specifications

**29** | What are the consequences if a tender does not comply with the tender specifications?

Any violation of the tender specifications that are not subject to competition and evaluation leads to the exclusion of the respective bid.

### Award criteria

**30** | Does the relevant legislation specify the criteria that must be used for the evaluation of submitted tenders?

The two award criteria provided for in the PCL – the lowest price and the most economically advantageous tender – must be disclosed in advance.

Regarding the most economically advantageous tender, if there is a connection to the subject matter of the public contract in question, various factors can be taken into consideration, such as:

- quality;
- price;
- technical characteristics;
- aesthetic and functional characteristics;
- environmental characteristics and impact on public health;
- running costs;
- cost-effectiveness;
- after-sales service and technical assistance;
- delivery date; and
- delivery period or period of completion.

### Abnormally low tenders

**31** | Does the relevant legislation specify what constitutes an 'abnormally low' tender?

What specifically constitutes an 'abnormally low' bid is under the discretion of the Evaluation Committee or another contracting authority. The Committee or other authority can require a bidder to submit a justification for its low bid.

**32** | Does the relevant legislation specify how to deal with abnormally low tenders?

If contracting authorities have stipulated the estimated price for the contract in the tender specifications and the bidder intends to submit an offer with a price that may be considered as 'abnormally low', the bidder must submit a declaration setting out the grounds for the submission of such a price. Otherwise, the Evaluation Committee may ask the bidder for an explanation. Failure to present an explanation or to objectively justify the submission of an abnormally low-priced bid constitute grounds for exclusion.

The explanations may refer to several factors, such as:

- the economics of the manufacturing process;
- the technical solutions chosen or any exceptionally favourable conditions available to the bidder;
- the originality of the works;
- the supplies or services proposed by the bidder;
- the specific conditions of work that the bidder benefits from; and
- the possibility of the bidder obtaining state aid.

## REVIEW PROCEEDINGS

### Competent review bodies

**33** | Which bodies are competent to review alleged breaches of procurement legislation? Is it possible to appeal against a review body's decisions?

The Public Contracts Law (PCL) repealed most of the regulation regarding appeals against review decisions prescribed in the Administrative Procedure and Administrative Activity Code.

According to the PCL, it is possible to challenge all decisions issued in the context of public procurement procedures either through administrative review proceedings, which are regulated by the contracting authorities, or through judicial review proceedings, under the jurisdiction of administrative courts.



Regarding this type of decision, the Cabinet of Public Procurement is charged with supporting the executive branch in defining and implementing policies and practices on public procurement, judging administrative proceedings during reviews of procurement decisions and controlling the legality of these procedures.

Administrative review proceedings in this context may not be refused on any grounds by the relevant administrative bodies.

**34** | Do the powers of competent review bodies to grant a remedy for a breach of procurement legislation differ?

The powers differ regarding the nature of the competent body since the decision resulting from an administrative review proceeding may be subject to judicial review.

### Time frame and admissibility requirements

**35** | How long do administrative or judicial review procedures generally take?

Review proceedings for procurement decisions are characterised by a pressing urgency aimed at avoiding excessive delays in the procurement procedure. In this sense, the review request should be brought within five business days of the decision that is being challenged. Furthermore, if the review concerns an award or qualification decision, the contracting authority must first invite other bidders to submit their views and only thereafter issue a final decision, within five business days of the deadline established for the other bidders to submit their views.

Judicial reviews can be initiated before the contract is formally signed and after its termination. Usually, it takes no less than six months to obtain a first-instance decision.

Judicial proceedings regarding pre-contractual litigation must be filed within 60 days of the relevant decision being issued and the bidder being notified.

**36** | What are the admissibility requirements for an application to review a contracting authority decision?

All procurement decisions, as well as signed contracts, are justiciable. Any unsuccessful bidder can submit an application for the review of a decision or contract, provided the bidder demonstrates that it has been directly affected by an infringement and that it will obtain an advantage with the review decision being sought, based either on the legality or on the merits of the decision in question.

**37** | What are the time limits within which applications for the review of contracting authority decisions must be made?

The review request should be brought within five business days of the decision that is being challenged. Furthermore, if the review concerns an award or qualification decision, the contracting authority must first, within five days of the application, invite other bidders to submit their views and only thereafter issue a final decision, within five business days of the deadline established for the other bidders to submit their views.

### Suspensive effect

**38** | Does an application for the review of a contracting authority decision have an automatic suspensive effect on the contract award procedure?

According to the PCL, the administrative procedure for reviewing procurement decisions does not automatically suspend the continuation of the procurement procedure. However, while there is no review decision on the case or while the legal deadline for such a decision has not

yet expired, the contracting authorities cannot, depending on the stage of the procedure, qualify bidders, initiate the negotiation phase, award the contract or sign the contract.

**39** | Approximately what percentage of applications for the lifting of an automatic suspension are successful in a typical year?

Not applicable.

### Notification of unsuccessful bidders

**40** | Is the contracting authority required to notify unsuccessful bidders of its intention to conclude the contract with the successful bidder and, if so, when does that obligation arise?

All bidders are notified of the award decision. The successful bidder is notified first and, as soon as the successful bidder pays the bond, the other bidders are notified. In public procurement procedures in which no bond is due, all bidders are notified of the award decision at the same time.

### Access to procurement file

**41** | Is it possible for an applicant seeking the review of a contracting authority's decision to have access to that authority's procurement file?

Throughout the public procurement procedure, all bidders have access to all the documents submitted by the parties and issued by the jury and by the contracting authority, except documents that bidders request to be classified.

### Challenges to contracting authority decisions

**42** | How customary is it for contracting authority decisions to be challenged?

Review applications are often filed, especially in those cases where the value of the contract is high or it has significant strategic relevance.

### Violations of procurement law

**43** | If a violation of procurement law is established in review proceedings, can this lead to the award of damages?

Yes, disadvantaged bidders can claim for damages.

**44** | Is it possible for a concluded contract to be set aside following successful review proceedings?

A concluded contract may be cancelled or terminated following a review application of an unsuccessful bidder. Nonetheless, these situations are not very common.

### Legal protection

**45** | Is legal protection afforded to parties interested in a contract that might have been awarded without an advertised contract award procedure?

Legal protection is still available in these situations.

### Typical costs

**46** | What are the typical costs involved in making an application for the review of a contracting authority decision?

The typical costs of making an application for the review of a procurement decision rise to approximately 25 per cent of the value of the



contract, but in the absence or impossibility of such a determination, costs are established in accordance with the subsidiary rules stipulated in civil proceedings.

## UPDATE AND TRENDS

### Emerging trends

- 47 | Are there any emerging trends or hot topics in public procurement regulation in your country? In particular, has the scope of applicability of public procurement law been broadened into areas not covered before (eg, sale of land) or, on the contrary, been restricted?

No updates at this time.

### Coronavirus

- 48 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

A state of emergency was originally declared by Presidential Decree 81/2020 of 25 March 2020. This was extended by Presidential Decrees 97/20 of 9 April 2020 and 120/20 of 24 April 2020 and subsequently renewed by Presidential Decree 128/20 of 8 May 2020. This means the state of emergency was extended for an additional 15 days, starting from 00.00 on 11 May 2020 and ending at 23.59 on 25 May 2020 (article 1 of the Presidential Decree 128/20).

A state of emergency must only last 90 days, without prejudice to any renewal for one or more identical periods if the cause determining it subsists.

The state of emergency legal framework is laid down in articles 57, 58, 119(p), 125.3, 161(h) and 204 of the Constitution of the Angolan Republic and in Law 17/91 of 11 May 1991.

The state of emergency ended on 25 May 2020. From then on, the state of public calamity became effective, enacted by the President of the Republic through Presidential Decree 142/20 of 25 May. The state of calamity may be in force for as long as the situation on which it was based persists or there are significant changes certified by the competent authorities of the state. The situation of public calamity is provided for by the Law of Civil Protection, enacted by Law 28/03 of 7 November and recently amended by Law 14/20 of 22 May.

Covid-19 could have the same consequences on the relations between private persons and the relations between citizens and the public administration, including the following (subject to a case-by-case assessment):

- Parties can be released from any obligations arising from administrative contracts, particularly deadlines, based on a force majeure event. This is, however, subject to the specific provisions of the contract and predicated on the party that claims force majeure, demonstrating, on the one hand, that there is a causal link between the illness and its inability to meet the relevant deadline and, on the other hand, that it is unable to take fully or even partially effective alternative measures. This is, of course, without prejudice to the counterparty's duty to inform.
- Parties can claim an unusual or unforeseeable change of circumstances as a reason to amend the contract or restore the financial balance (or both).
- Parties can claim a 'justifiable reason' to be excused for their failure to meet any public administration deadlines, or otherwise to request an extension of those deadlines.



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In addition, Presidential Decrees Nos. 82/20, 97/20, 120/20 and 128/20 suspended all legal deadlines and statutes of limitations as long as the exceptional situation lasts. Similarly, these decrees provide that official documents that have expired, notably ID cards, driving licences, motor vehicle booklets, motor vehicle titles, passports and residency permits, shall remain valid and that licences, permits or other administrative documents shall remain valid irrespective of their expiry date.

As a result of covid-19, contracting public entities will be able to adopt streamlined and simplified acquisition procedures. The urgent acquisition of goods and services necessary to control and tackle the pandemic is subject to an exceptional regime, whose terms and conditions will be determined by the head of the ministerial department responsible in charge of public finance (article 30 of the Presidential Decree No. 128/20).

Article 30 of the Presidential Decree No. 128/20 establishes that essential goods and services, such as medication, hospital material, biosafety material and other essential material, may also be acquired through a simplified procedure, whose terms will be determined by the head of the ministerial department in charge of public finance.

Further, article 5 of Executive Decree No. 153/20 provided that the deadlines relating to all ongoing public procurement procedures would be considered suspended, with effect from 27 March 2020, for the duration of the state of emergency.

A bidder may be released from a bid submitted owing to the disruption caused by covid-19, provided that it is duly justified (the bidder must not have been required to be aware of the disruption at the time of preparation of the bid and the disruption must demonstrably render performance impossible or excessively burdensome).

Through Instruction No. 03/GMF/2020, the Ministry of Finance determined that the declaration of the state of emergency as a result of the pandemic is a case of force majeure, thus causing the temporary suspension of obligations in the performance of contracts without guarantee funding.

Article 26 of Presidential Decree 142/20 authorised that public works considered to be strategic and of high priority could be resumed from 26 May onwards and other public and private works could be resumed from 8 June 2020.

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