

Public Procurement 2020

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Pinsent Masons

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.

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.

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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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Mozambique

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VdA

LEGISLATIVE FRAMEWORK

Relevant legislation

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

The law on the procedures for the award of public works contracts, supply of goods contracts and provision of services contracts (the Regulation on the Award of Public Contracts (RPC)), approved by Decree 5/2016 of 8 March, is considered the key legislation regulating the award of public contracts. It sets out the rules for the award of public works contracts, supply of goods contracts and provision of services contracts in Mozambique. The RPC is also applicable to the award of public lease contracts, consulting services contracts and granting of concessions.

Furthermore, Law 15/2011 of 10 August and Decree 16/2012 of 4 June establish, respectively, the legal framework for public-private partnerships (PPPs) and the applicable rules to procurement processes, implementation and monitoring of PPPs.

Sector-specific legislation

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

Depending on the sectors, there are different public procurement laws supplementing the general regime.

Law 21/97 of 1 October, establishes the use of public tender for the award of concessions in the electricity sector, and Decree 31/96 of 16 July provides for a special legal framework applicable to the award of toll roads and bridge concessions. Decree 38/97 of 4 November allows for the inclusion of specific contractual clauses whenever toll roads and bridge concessions imply the involvement and intervention of other states and governments.

Ministerial Order 14/2019 of 22 January has come into force, approving administrative procedures and complementary guidelines regarding the implementation of tenders according to segments for the award of supply of goods contracts and provision of services contracts.

International legislation

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

Mozambique is not a European Union member. However, Mozambique has been a member of the World Trade Organization since 26 August 1995, but is not a signatory of its Agreement on Government Procurement, the fundamental aim of which is to mutually open government procurement markets among its parties.

Nevertheless, the Portuguese legal framework has a major influence on the RPC, as well as on the other relevant legislation regarding

the award of public contracts and, for that reason, the RPC follows a framework similar to that of the European Union.

Proposed amendments

4 | Are there proposals to amend the legislation?

The RPC was approved in 2016 in order to ensure greater transparency and the effective implementation of public procurement procedures. To our knowledge, no proposals to change the legislation are envisaged.

APPLICABILITY OF PROCUREMENT LAW

Contracting authorities

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

Article 2 of the Regulation on the Award of Public Contracts (RPC) stipulates that contracting authorities are:

- the Mozambican state and services of the direct and indirect administration, including embassies and missions abroad;
- municipalities and other public legal entities; and
- public companies and companies where the government has a shareholding.

The RPC is not applicable to contracts entered into between state organisms and institutes. However, the official formal drafts of public contracts are still applicable.

Contract value

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

The RPC provides for three distinct legal regimes:

- the general regime;
- the special regime; and
- the exceptional regime.

The general regime is applicable to the award of all public works contracts, supply of goods contracts and provision of services contracts that do not fall within the special regime or the exceptional regime. In the general regime, contracts are awarded by means of a public tender, a procedure in which any interested party may participate, provided it complies with the requirements established in the tender documents.

The special regime is applicable to the award of contracts in the following situations: contracts arising from any international treaty, or any other type of international agreement, and signed between Mozambique and any other state or international organisation, whenever its conclusion requires the adoption of a specific legal regime; and contracts concluded in the scope of public financed projects with

resources originating from an official foreign cooperation agency or a multilateral financial body, whenever the adoption of a specific regime is a condition of the respective agreement or contract.

The specific rules to be applied in procurement procedures launched under the special regime must be previously approved by the Minister of Finance and must be stated in the contract notice and in the tender documents.

Finally, there is the exceptional regime, applicable to the award of contracts that, for reasons relating to the public interest, cannot fall within the general or special regimes. In this exceptional regime, contracting authorities can select any of the following pre-contractual procedures:

- tender with prior qualification;
- limited tender;
- tender with two stages;
- tender according to segments;
- small-scale tender;
- tender according to quotes; and
- direct award.

All procurement procedures foreseen under the exceptional regime have specific rules, but are regulated on a subsidiary basis in accordance with the public tender rules.

Regarding to thresholds, article 69 of the RPC establishes that a limited tender may be launched whenever the estimated value for public work contracts and supply of goods contracts or provision of services contracts does not exceed, respectively, 5 million meticaïs or 3.5 million meticaïs.

The tender according to quotes has a threshold equivalent to 10 per cent of the threshold applicable to the limited tender, meaning that this specific procedure may be applicable whenever the estimated value for public work contracts, and for supply of goods contracts or provision of services contracts does not exceed, respectively, 500,000 meticaïs or 350,000 meticaïs.

Lastly, the small-scale tender, exclusively available for the award of contracts to individual people and micro or small companies has a threshold equivalent to 15 per cent of the threshold applicable to the limited tender, meaning that this specific procedure may be applicable whenever the estimated value for public work contracts, supply of goods contracts or provision of services contracts does not exceed, respectively, 750,000 meticaïs or 525,000 meticaïs.

Amendment of concluded contracts

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

It is possible to amend concluded contracts, provided the amendments have the appropriate grounds.

Public contracts may exclusively be amended whenever there is the need to alter:

- the ongoing project or its specifications to improve its adequacy to the contract's main object;
- the value of the contract, owing to the increase or decrease of the quantities required for the contract's main object and aim;
- the implementation scheme of the public works or the provision of services or the supply of goods, owing to the unenforceability of the original contracting terms; or
- the payment conditions, owing to supervening circumstances.

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 application of the legislation in relation to amendments to concluded contracts.

Privatisation

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

Under the Mozambican legal framework, privatisation processes do not fall within the scope of the RPC and are regulated by specific legislation – Law 15/91 of 3 August, amended by the Resolution 11/92 of 5 October – which provides for the general principles, criteria, methods and procedures applicable to privatisation processes.

The general rule is for privatisation processes to be held through a public tender or a public offering. Nonetheless, privatisation processes can also be held through a limited procedure or a direct sale if certain specific conditions are fulfilled.

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?

Law 15/2011 of 10 August and Decree 16/2012 of 4 June govern the procedure and awarding of PPPs.

The main issues surrounding PPPs are financial impact and risk-sharing between public and private parties.

Law 15/2011 of 10 August establishes the guidelines of the awarding process, implementation and monitoring of the three modalities of involvement of the private sector in the promotion of development: PPPs, large-scale projects (LSPs) and business concessions (BCs).

Decree 16/2012 of 4 June defines in greater detail the rules laid down in the aforementioned law and establishes the procedures applicable to the contracting implementation and monitoring of PPPs, LSPs and BCs, namely referring to:

- the powers of the sectoral and financial supervisor, the regulatory authority and the implementing entity;
- the precontractual stages of the projects;
- the types of public contracting procedures;
- the financial guarantees and incentives to investment;
- the contracts and respective revisions or amendments;
- the execution of contracts, redemption, causes of termination, among other thing;
- the prevention and mitigation of risks in PPP; and
- the sharing of benefits.

In accordance with Law 15/2011 of 10 August, the setting up of a PPP usually follows the public tender regime and the RPC is applicable on a subsidiary basis.

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 and in other media.

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?

All interested parties, from Mozambique or abroad, are eligible to participate in a tender procedure, provided the parties comply with the tender's obligations relating to the payment of taxes and can demonstrate their legal, economic/financial and technical qualifications. Articles 23, 24, 25 and 26 of the Regulation on the Award of Public Contracts (RPC) establish how bidders may demonstrate they meet those requirements. The public procurement legislation does not allow for a shortlisting of bidders in the general regime.

However, contracting authorities may assess whether an interested party shall be qualified to submit a bid in a tender procedure whenever they launch a tender with prior qualification.

In the first phase of the tender with prior qualification, bidders are invited to submit the documents that demonstrate their compliance with the technical and financial qualification requirements referred to above.

Subsequently, qualified bidders are short-listed and invited to participate in the second phase of the procedure and to submit a bid. In this phase, the procurement process follows the public tender rules.

Finally, in the specific tender launched for the award of consulting services contracts, contracting authorities may select a minimum of three and a maximum of six consultants to participate in the competitive selection procedure.

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

The number of bidders that can participate in a tender procedure can be limited in a tender with prior qualification and in a specific tender launched for the award of consulting services contracts. Alternatively, when a contracting authority launches a direct award for a specific contract, the authority will select the bidders that will participate in the procedure.

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' is not established under the Mozambican legal framework.

Economic operators that fall within any of the exclusion situations foreseen in the RPC must wait for the lifting of the respective sanctions; they cannot participate in tender procedures until then.

The RPC expressly provides a list of situations on which bidders are restrained to participate in procurement procedures, such as:

- a private person convicted of an offence concerning his professional conduct, as long as the penalty lasts;
- a private person punished for serious misconduct regarding professional matters, as long as the sanction lasts;
- a private or legal person sanctioned by any body or institution of the Mozambican state, with the prohibition to participate in procedures, due to the practice of unlawful acts in a procurement procedure, as long as the sanction lasts;
- a private person who controls, directly or indirectly, legal persons within the situations mentioned in the previous bullet;
- a representative of the contracting authority responsible for the decision to be rendered;
- a legal person controlled, directly or indirectly, by a person within the situation referred in the previous bullet;

- a private or legal person who has defrauded the Mozambican state or who has been involved in fraudulent enterprises bankruptcies; and
- a private or legal person whose capital has a proven illegal provenance.

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 Regulation on the Award of Public Contracts (RPC) states that the fundamental principles for tender procedures are the principles of legality, purpose, reasonableness, proportionality, pursuit of public interests, transparency, publicity, equal treatment, competition, impartiality, good faith, stability, motivation, responsibility, sound financial management and celerity, among other applicable public law principles.

Independence and impartiality

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

Yes. The relevant legislation demands that contracting authorities defend public interests throughout the procurement procedure. In addition, contracting authorities must provide equal conditions to all interested parties, treating all bidders according to the same criteria and ensuring that the most advantageous tender is carefully selected by providing equal opportunity to interested parties and fair competition among tenderers.

Also, the evaluation team (the jury), which is composed of at least three members, must act in accordance with the principles of independence, impartiality and exemption.

The RPC also provides rules regarding the selection of contracting authorities' representatives, to prevent conflicts of interest, such as the following:

- if the representative has an interest in the contract, for him or herself or as the representative or manager of someone else's businesses;
- if the representative's spouse, or a member of his or her family or a person with whom the representative lives, has an interest in the contract;
- if the representative, or any of the people referred to in the previous point, is a shareholder of a company that is interested in the contract; and
- if the representative owns a bond of any nature with the bidder or has maintained a bond in any matter related to the procurement procedure or its object.

In the above-mentioned situations, the contracting authority's representative is forced to declare and argue its impediment, excuse or suspicion, under the Operating Rules of Public Administration Services. The impediments also apply to the jury, as its members are equally restrained from taking a position in that body in any of the above situations.

Conflicts of interest

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

The RPC provides rules regarding the selection of contracting authorities' representatives to prevent conflicts of interest, establishing that an impediment exists when:

- the representative has an interest in the contract, for him or herself or as the representative or manager of someone else's businesses;
 - the representative's spouse, or a member of his or her family or a person with whom the representative lives, has an interest in the contract;
 - the representative, or any of the people referred to in the previous point, is a shareholder of a company that is interested in the contract; and
 - the representative owns a bond of any nature with the bidder or has maintained a bond in any matter related to the procurement procedure or its object.
- the nomination of the representative member of the consortium before the contracting authority, with powers to assume obligations and to receive notifications on behalf of all the consortium members; and
 - the assumption of joint and several liability of the members of the consortium for all its obligations and acts.

Negotiations with bidders

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

The only procedure that may involve negotiations between contracting authorities and bidders is the procedure for awarding consulting services contracts. The establishment of a negotiation phase is not mandatory and takes place before the award of the contract to the selected bidder. Nonetheless, only the first ranked bidder is invited to participate in the negotiation phase. Negotiations cover discussions on the terms of reference, methodology, personnel, expenses and contractual conditions. All negotiations must be noted in minutes and signed by both parties.

If negotiations are not satisfactory, the contracting authority may terminate the negotiations and invite the following ranked bidder to negotiate.

- 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?

The only procedure that may involve negotiations between contracting authorities and bidders is the procedure for awarding consulting services contracts.

Framework agreements

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

There are no specific rules regarding the conclusion of framework agreements.

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

There are no specific rules regarding the conclusion of framework agreements.

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 RPC states that consortia must be composed of the same entities in the course of a procurement procedure. However, it would be difficult not to accept a change in the members in a merger or a spin-off of one of the members of the consortium.

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?

Yes. The RPC establishes that only individuals and small and medium-sized enterprises (SMEs) are allowed to participate in small-scale tenders and limited tenders.

The RPC does not have any specific provision that regulates the division of contracts into lots.

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, directly or indirectly, in the preparation of a tender procedure constitutes an immediate ground for exclusion.

Procedure

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

The prevailing type of procurement procedure used by contracting authorities is the public tender, which is the procedure to be followed under the general regime.

The public tender procedure is divided into the following phases:

- preparation and launching;
- submission of bids and qualification documents;
- evaluation of bids and qualification documents;
- evaluation, classification and recommendations of the jury;
- announcement of the ranked tenderers;
- award, cancellation or invalidation;
- notification to tenderers;
- complaints and appeals, if applicable; and
- contract's signature.

The direct award procedure is only applicable when contracting by using any other procurement procedure is unfeasible or inconvenient, and when very specific circumstances defined in the RPC, such as in situations of extreme urgency, occur.

The direct award procedure involves the following phases:

- solicitation of proposals;
- receipt of proposals;
- acceptance of proposals;
- verification of the qualification's adequacy to fulfil the procedure object;
- award, cancellation or invalidation; and
- contract's signature.

Separate bids in one procedure

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

No. Bidders may participate in procurement procedures as a consortium or association, but individual members of a consortium or association cannot bid separately, or as part of another consortium or association, in the same tender.

For purposes of participation in tenders, the documents constituting a consortium must state:

- the name and qualification of each member of the consortium and the indication of the participation of each one;

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 RPC provides for the submission of variant bids. In procurement procedures in which the submission of variants bids is admitted, the tender documents and the evaluation criteria must be adapted for that purpose.

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

In procurement procedures in which the submission of variants bids is admitted, the contracting authority must consider the variant bid and may demand any clarifications, details or drawings that it considers necessary. In any case, the bidder is responsible for the variant bid presented.

Tender specifications

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

Bidders are not allowed to change the tender specifications. The RPC establishes that bids that do not comply with the tender specifications, or that contain unenforceable or abusive conditions, shall be disqualified.

Award criteria

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

According to the RPC, the award of public works contracts, supply of goods contracts and provision of services contracts shall be decided based on the lowest price criterion. Exceptionally, whenever a decision based on the lowest-price criterion is not viable, the RPC allows the contracting authority to use a combined criterion, under which the evaluation of bids is based on the technical evaluation of the bid submitted and on the price offered, provided that the decision to choose this combined criterion results from a well-founded assessment.

Decisions based on the lowest price criterion must always ensure that the selected bid has the necessary level of quality to pursue the public interest goals, in accordance with the tender documents.

In the event of a tie arising from the adoption of the lowest-price criterion, the final selection is determined by a sweepstake during a public session.

With regard to the award of public work concessions or services concessions, the RPC stipulates that the contracting authorities may evaluate proposals based, individually or jointly, on the following criteria:

- the highest price offered for the concession;
- the lowest tariff or price to be charged to users;
- the best quality of services or goods available to the public;
- the best service and clients' satisfaction; and
- the bidder holding a valid certificate with the stamp 'Orgulho Moçambicano. Made in Mozambique'.

Abnormally low tenders

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

The RPC does not contain any specific provision regarding abnormally low bids.

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

The RPC does not contain any specific provision regarding abnormally low bids.

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?

According to the Mozambican legal framework, it is possible to challenge qualification and disqualification decisions, as well as award decisions through administrative review proceedings.

Complaints must be filed within five business days of the notification of the challenged decision. This administrative review proceeding is assessed by the contracting authorities, which must decide whether to accept or reject the complaint within 10 business days of receipt. The filing of a complaint does not require the payment of any fees.

Until the final day to file a complaint, all tenderers have free access to the tender's administrative documents.

Furthermore, it is also possible to challenge the above-referred decisions through a hierarchical appeal. The hierarchical appeal must be filed within three business days of the notification of the challenged decision. The hierarchical appeal is assessed by the minister supervising the contracting authority, the provincial governor or the district administrator. Regardless of the entity at stake, a decision whether to accept or reject the hierarchical appeal must be taken within 30 business days of the filing date.

Filing a hierarchical appeal requires the payment of a fee. The tenderer must submit a guarantee that does not exceed 0.25 per cent of the estimated contract's value (up to a maximum of 125,000 meticaís), which may be financially updated by the Minister of Finance. This guarantee is reimbursed if the appeal is accepted; otherwise, it reverts to the state.

Finally, the decision rendered under the hierarchical appeal may be judicially reviewed in accordance with the procedures regulated under Law 7/2014 of 28 February.

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

The Regulation on the Award of Public Contracts (RPC) sets out the different administrative and judicial review and appeal levels. The administrative review decision may be challenged through a hierarchical appeal. The hierarchical appeal may be judicially challenged in accordance with the procedures regulated under Law 7/2014 of 28 February.

Time frame and admissibility requirements

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

Complaints must be filed within five business days of the notification of the challenged decision. This administrative review proceeding is assessed by the contracting authority after the jury has forwarded it, together with its opinion, within five business days. The contracting authority must decide whether to accept or reject the complaint within 10 business days of receipt. This decision can be challenged through a hierarchical appeal. The hierarchical appeal must be filed within three business days of the notification of the challenged decision. The hierarchical appeal is assessed by the minister supervising the

contracting authority, the provincial governor or the district administrator. Regardless of the entity at stake, a decision on whether to accept or reject the hierarchical appeal must be taken within 30 business days of the filing date.

In relation to judicial proceedings, there are no provisions that require judges to render decisions within a determined time frame.

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

All procurement procedure decisions may be challenged through complaints and appeals. According to the RPC, it is possible to challenge qualification and disqualification decisions, as well as award decisions.

A hierarchical appeal can be filed on the following grounds:

- a violation of the RPC;
- a violation of the tender rules; or
- a breach of procedure, including for lack of or inadequate reasoning, which affects the legality of contracting authorities' decisions.

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

A hierarchical appeal must be filed within three business days of the notification of the challenged decision. The hierarchical appeal is assessed by the minister supervising the contracting authority, the provincial governor or the district administrator. Regardless of the entity at stake, a decision on whether to accept or reject the hierarchical appeal must be taken within 30 business days of the filing date.

Suspensive effect

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

Yes. Both mechanisms of complaint and hierarchical appeal suspend the tender's course. All tenderers are notified of the suspension.

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

The RPC does not provide for the possibility to lift an automatic suspension.

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 simultaneously notified of the award decision.

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?

All documents related to the procurement procedure can be publicly accessible and analysed, free of charge, from the date of publication of the tender announcement until 60 days after the procurement procedure's conclusion.

Challenges to contracting authority decisions

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

Although there are cases of disadvantaged bidders filing review applications, especially when the value of the contract is high or it has significant strategic relevance, most disadvantaged bidders abstain from this practice.

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, those situations are not very common.

In cases where judicial decisions determine the cancellation of an executed contract, contracting authorities usually appeal such decisions, and when final and non-appealable decisions are finally issued, contracts are almost completed.

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?

Filing a complaint does not require the payment of any fees. Nevertheless, the filing of a hierarchical appeal requires the tenderer to provide a guarantee as security, the amount of which cannot exceed 0.25 per cent of the contract's estimated value, up to a limit of 125,000 meticaís.

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 first declared through Presidential Decree 11/2020 of 30 March 2020, which was ratified by Law 1/2020 of 31 March

2020 and implemented by the government through Decree 12/2020 of 2 April 2020 (Decree 12/2020). By means of Presidential Decree 12/2020 of 29 April 2020, ratified by Law 4/2020 of 30 April 2020, it was extended for an additional 30 days, beginning at 00.00 on 1 May and ending at 23.59 on 30 May 2020. It was then extended for a second time by means of Presidential Decree 14/2020 of 28 May 2020 (as ratified by Law 6/2020 of 29 May 2020).

A state of emergency can only last 30 days, without prejudice to any renewal for one or more identical periods if the cause determining it subsist. A state of emergency cannot be renewed more than three times. The state of emergency legal framework is laid down in article 282 et seq of the Constitution of the Republic of Mozambique.

The consequences of covid-19 on relations between private individuals may also, with certain adaptations, be extrapolated to the relationship between individuals and the public administration, notably the following (subject to a case-by-case analysis):

- 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.

Decree 12/2020 also prohibits the issuance of official documents, including IDs and visas, during the state of emergency.

In addition, pursuant to article 34 of Decree 12/2020, as amended, the acquisition of goods and services urgently required to control and combat the pandemic shall be subject to an exceptional regime, whose terms are to be defined.

With due justification, the crisis caused by covid-19 could be grounds to release a bidder from a bid submitted. The disruption caused by the crisis must be such that the bidder was not required to be aware of it at the time of preparation of the bid and must demonstrably render performance impossible or excessively burdensome.



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