

PUBLIC LAW

NEW PUBLIC PROCUREMENT,
PUBLIC CONTRACTS AND
RELATED OFFENSES FRAMEWORK

VdA EXPERTISE



May 2022

The new Public Procurement, Public Contracts and Related Offenses Framework (Decree-Law 22/2022, of 11 May 2022) was published on 11 May 2022 and will come into force on 1 January 2023.

The new legal framework comes about on the heels of the government ascertaining that the current fifteen years' old legal procurement and public contracts framework does not rise up to the challenges of a modern and transparent Public Administration.

The new legal framework brings together procurement, public contracts, and related offenses into a single act more or less along the lines of the current framework, but adjusting it to new realities and best practice.

The act first and foremost:

Streamlines procurement procedures, including by reducing the number of existing procurement types;

Introduces e-procurement and improves the Procurement Portal as a tool to promote efficiency, transparency and free competition;

Puts in order and gives a detailed description of each procurement stage;

Improves the planning process;

Broadens the remit of the *Comissão Nacional de Aprovisionamento* [National Procurement Commission], including in connection with the standardization of procedures and the issue of recommendations, preparation of templates and forms and processing of administrative offense proceedings.

As regards the act's scope:

The new framework applies, as a rule, to procurement procedures for the award of goods' sale or lease contracts, services agreements, and works contracts, performed by Administrative Public Sector services and entities as well as state-owned

enterprises, associations, or foundations, where expressly foreseen in the legislative act of incorporation/creation.

As regards bolstering the e-procurement, disclosure, and communications by electronic means rule:

Procurement procedures and contracts must be published on the Procurement Portal;

Procedures are conducted on and through the Procurement Portal, including submission of bids, publication of the award or non-award decision, the execution of the contract (which becomes effective upon publication of the relevant notice), or the final decisions to apply ancillary penalties during the period of their duration, all published on the Procurement Portal.

As regards procurement procedure types:

Tender: competitive and open procedure;

Request for quotation: restricted competitive procedure, where at least three entities are invited;

Direct award: restricted non-competitive procedure, where one entity is invited.



As regards the procurement procedure stages:

Procurement planning stage:

Annual procurement planning, which must take account of budget allocation, operating requirements, and any scale economies, among other.

As regards the procedure preparation stage:

Procurement project to be submitted for an expense authorization decision and tender launching decision, notably defining the procedure's value and type.

Implementation of the procurement procedure:

This stage includes launch and preliminary discussion (within tenders), or invitation (within requests of quotation and direct awards), submitting bids, reviewing and evaluating bids (other than in direct awards) and award.

In some procedures, bids can be negotiated or bidders pre-qualified.

As for the remit of the *Comissão Nacional de Aprovisionamento* [National Procurement Commission]:

The *Comissão Nacional de Aprovisionamento* is a public service specializing in processing procurement procedures. It is tasked with:

Processing and providing support in procurement procedures;

Issuing opinions and recommendations, and preparing templates and forms to standardize procedures;

Creating and maintaining stakeholder, bidder, applicant, winning bidder, and private party databases that record their eligibility and qualifications, as well as any administrative fines and ancillary penalties applied under the administrative offense framework laid down in this act;

Promoting the training of procurement-related human resources;

Processing any administrative offense proceedings.

Contacts



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