



JAN. 21

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NEWS

New Public Procurement Law

A new Angolan Public Procurement Law (“PPL”) has been approved recently. Law 41/20 of 23 December revokes Law 9/16 of 16 June and will enter into force on 22 January 2021. The new law will apply to all public procurement procedures beginning after that date and to the performance of subsequent contracts.

The new PPL does not exactly represent a revolution in Angolan public procurement, but rather an evolution in line with the objective of simplifying the Angolan system and making it more flexible. These are the most important changes:

1. Scope of application

- Extending the objective scope of the PPL to cover the following:
 - i) Administrative concession contracts, including concessions for public works, public services and operation of the public domain, and the formation of contracts whose implementation is carried out through a public-private partnerships;
 - ii) Commercial contracts arising from financing.
- Extension of the subjective scope of the LCP to cover contracts entered into by:
 - i) State companies and companies in the public domain that benefit from operational subsidies or any operations carried out with funds from the General State Budget, whose estimated value is Akz (AOA) 500 million or more;
 - ii) Bodies governed by public law (private or state legal entities pursuing the public interest without an industrial or commercial character, controlled or financed by the State from the General State Budget).

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- Revision of what procurement is not covered, to now include:
 - i) Contracts entered into by State companies and companies in the public domain that do not benefit from operational subsidies or funds from the State Budget, except for administrative concession contracts, assignments of contractual positions or assignments of the right to operate public service assets;
 - ii) Contracts to provide legal services relating to preparation and/or representation in arbitrations held in Angola, or before an international arbitration or conciliation body;
 - iii) Contracts to provide legal services relating to preparation and/or representation in legal proceedings before public authorities or international institutions

2. Introduction of two new procedures: (i) Dynamic Electronic Procedure; (ii) Emergency Procurement Procedure

- The Dynamic Electronic Procedure is carried out on an electronic platform. It is intended for the acquisition of standardised goods and services using an electronic catalogue. Any interested party is allowed to participate, provided they are properly registered or certified on the Public Procurement Website.
- Emergency Procurement is a particularly informal and quick procurement procedure. It can only be used to deal with unforeseeable situations not attributable to the contracting authority (classified as “emergencies”).

The PPL classifies the following de facto situations as emergencies:

- i) Disasters
- ii) Calamities
- iii) Ravine-related disasters
- iv) Cyber attacks
- v) Collapses
- vi) Floods
- vii) Endemic, epidemic or pandemic outbreaks
- viii) Storms
- ix) Landslides

3. Choice of public procurement procedure

- The estimated values of the contracts have been updated for the purpose of choosing the type of procedure:
 - i) Restricted invitation to tender: contract with a value of Akz (AOA) 182 million or below;
 - ii) Simplified Procurement: contract with a value of Akz (AOA) 18 million or below;
 - iii) Dynamic Electronic Procedure: contracts of any value.

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- In the case of concession agreements, it is necessary to hold an open tender or a tender restricted by prior qualification.
- Finally, the new PPL allows an electronic auction sub-phase in the open, restricted and simplified procedures.

4. Evaluation of tenders

The following are examples of the objective factors that can be assessed when choosing the most economically advantageous tender:

- Quality, including technical value, accessibility, design for all users, social, environmental and innovative characteristics, and supply conditions;
- After-sales service and technical assistance, delivery or execution conditions and the time to provide the assistance;
- Environmental or social sustainability of the way the contract is carried out, for example as regards transport time, availability of the product or service, in particular in the case of perishable products, and the designation of origin or geographical indication, in the case of certified products;
- The number of new jobs to be created by the end of the contract.

5. Security

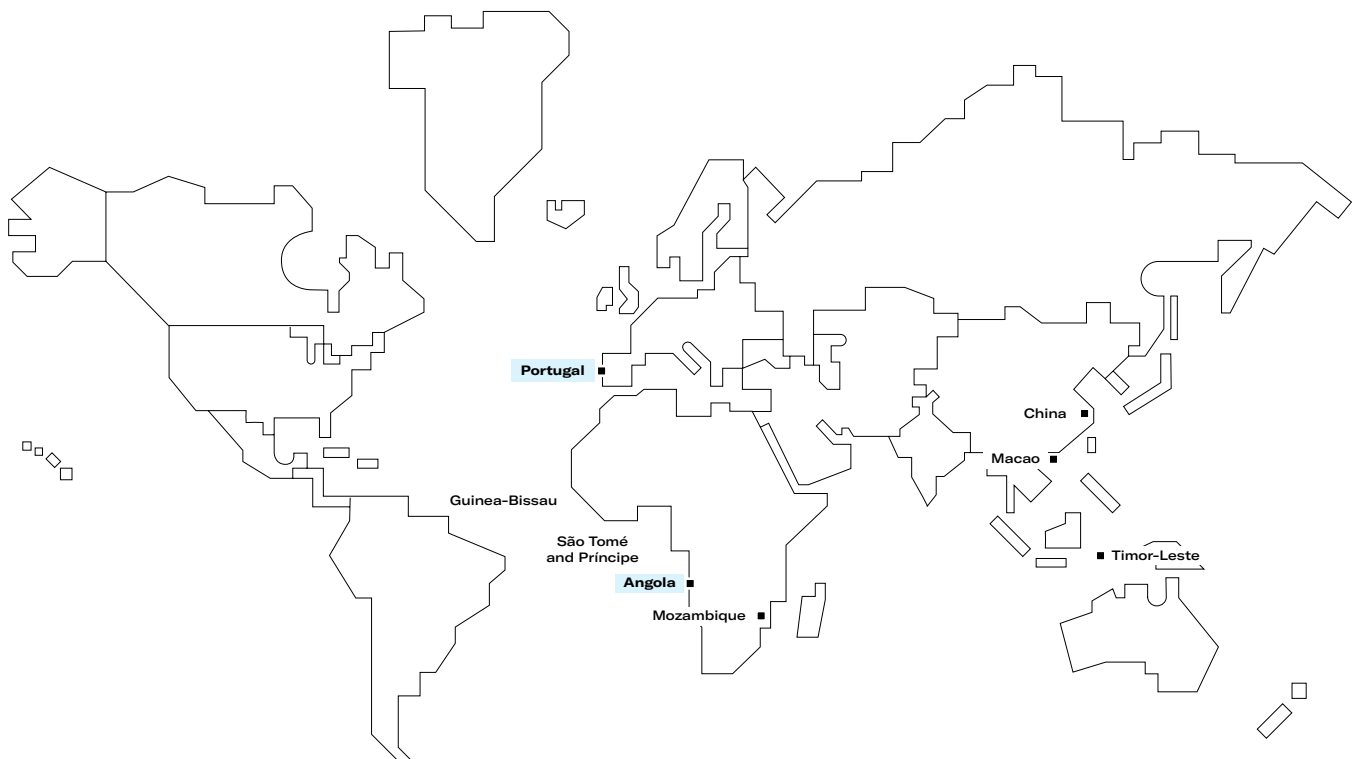
- Under the current PPL, the provisional security is abolished and provision is only made, when required, for the security previously known as the “final security”. The security is compulsory for contracts of Akz (AOA) 182 million or more.
- The amount of the security is fixed at a minimum of 5% and a maximum of 15% of the contract price. If the contracting authority does not set the value of the security, it must correspond to 5% of the contract price.

6. Other changes

- The contract does not have to be in writing in the following cases:
 - i) Contract for leasing or purchase of movable goods and for the purchase of services, when its price does not exceed Akz (AOA) 18 million;
 - ii) Public Works Contract, when the price does not exceed Akz (AOA) 36 million.

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- Creation of rules on penalties.
- Possibility of awarding contracts without proof of regularisation of the tax situation with the Angolan State in the case of micro, small or medium enterprises.
- Possibility of a company being removed from the List of Non-compliant Companies by the body responsible for the regulation and supervision of public procurement. This can only happen if the company in question returns the amounts or the provision of all the services whose non-compliance led to its inclusion on the list.
- The power to authorise expenditure inherent to forming and performing contracts is determined by a normative act of the President of the Republic, except in the cases of other sovereign bodies, local authorities and independent administrative entities, whose powers will be defined in the applicable Organic Laws or Statutes.
- The Electronic Public Procurement system makes it possible to process procedures on electronic platforms. ■



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