SEP. 26

INFORMATIVE NOTE

PUBLIC LAW

New revision of the Public Procurement Code (PPC)

Revision of the PPC

The revision enters into force on 1 October 2026.

Decree-Law 177/2026, which introduces the latest revision of the Public Procurement Code (PPC), approved by Decree-Law 18/2008 of 29 January, was published in the Portuguese Official Gazette on 4 September 2026. The date on which it comes into force is particularly important in practical terms, as the new rules will apply to procedures beginning from that date. However, transitional rules will also apply. Accordingly, the amendments cover contract award procedures started after the revision comes into force, as well as the resulting contracts. However, the rules on objective modification of contracts and alternative dispute resolution will also apply to procedures in progress and to contracts being performed on the date the revision comes into force. Additionally, Ministerial Order 372/2017 of 14 December, which sets out the rules and procedures for submitting qualification documents, will remain in force temporarily until a new ministerial order replaces it. Articles 2 to 16 of Law 30/2021 of 21 May, which approved the special public procurement measures, are repealed, and the relevant simplified procedures are now incorporated into the PPC.

The new rules apply to all contracting procedures that begin on or after 1 October, as well as to any contracts resulting from these procedures.

Summary of the key points of the revision

Contract award:

- A principle of digital procurement is established for the first time. It requires contracting authorities to use digital systems, including artificial intelligence (AI) tools, at various stages of the award and performance of contracts.

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- The thresholds for using direct award and prior consultation procedures have been increased. Higher thresholds for these procedures promote simpler and faster procurement, as well as reducing procedural costs. However, this makes calculating the estimated contract value and ensuring compliance with the rules on contract aggregation and splitting more demanding.

- The term "contract value" has been replaced with "estimated contract value". Special calculation rules have also been added for works and services concession contracts.

- Special prior consultation procedure has been introduced for awarding contracts with an estimated value below both the EU thresholds and €2,000,000. At least five entities must be invited, and special rules determine which entities can be invited.

- Rules for simplifying the public tender procedure have also been introduced for contracts with an estimated value below the EU thresholds.

- Any economic operator can now submit an unsolicited proposal to provide goods, works or services under a public contract, which may result in a competitive procedure being launched. However, submitting an unsolicited proposal does not convert a private proposal into a direct award or confer any preferential rights.

- Certain procedures may be reserved for startups recognised under the law, for contracts relating to the lease or purchase of products or the purchase of services, provided that the estimated value of such contracts are below the EU thresholds and there is no certain cross-border interest.

- Before launching the procurement procedure, contracting authorities may request or accept the free and temporary provision of information systems and technologies for technical evaluation. Appropriate safeguards must be put in place to protect competition and equal treatment.

- The simplified direct award procedure may be used for measures needed to reconstruct and rehabilitate affected areas and to provide support to individuals and legal entities in emergency situations. The possibility of using direct award on grounds of extreme urgency is also clarified.

- Article 70 consolidates the rules on the grounds for excluding tenders.

Contract performance:

- The revision clarifies the difference between amending a contract and rectifying an imbalance caused by extraordinary circumstances affecting the contract. The two mechanisms are treated separately, and it is clarified that compensation may be agreed between the parties in the event of an abnormal and unforeseeable change in circumstances not attributable to them.

- The rules on concessions reinforce the obligation to transfer significant and effective operating risk to the concessionaire for public works or services. They also set out the relevant criteria used to assess this transfer.

- Regarding dispute resolution, arbitration can no longer be imposed as a condition of participation. Conciliation committees have been reintroduced as a quick means of preventing and resolving disputes.

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The use of digital and AI tools is subject to safeguards concerning transparency and explainability, security, the protection of personal data and trade secrets, human oversight and input, and interoperability with State's aggregation platforms.

Main changes in detail

The stated aims of the revision are to promote planning, simplify public procurement, clarify legal regimes and modernise technology. The revision covers the various stages of the public procurement cycle, from the decision to procure through to contract performance and dispute resolution. It also covers the types of procedure, their selection and conduct, tender evaluation and tenderer qualification. In line with the aims of simplifying and speeding up procurement, the revision introduces innovative solutions and significant changes to the rules. In other cases, where the impact is more limited, it reorganises, consolidates and clarifies the rules.

New framework of principles and the incorporation of AI into public procurement

The new Articles 1-A and 1-B separate two sets of rules that were previously combined. Article 1-A now makes the awarding and performance of contracts subject to the general principles that govern administrative activity under the Constitution, the European Union Treaties and the Code of Administrative Procedure. Article 1-B separately sets out and develops the principles specifically associated with public procurement.

The new Article 1-C introduces an innovative digital public procurement framework. It stipulates that contracting authorities must use digital systems, including artificial intelligence systems, when planning, preparing and conducting procedures, and when performing contracts, to maximise efficiency. Digitalisation is therefore no longer merely an operational feature of electronic platforms. Instead, it becomes an overarching principle for the entire contractual cycle, from identifying the need through to monitoring contract performance and the performance of the contractor.

However, the use of digital and AI tools is subject to safeguards concerning transparency and explainability, security, the protection of personal data and trade secrets, human oversight and input, and interoperability with government aggregation platforms. In practice, the relevant authorities must be able to explain how and when a system has been used, verify the results produced by the system, and maintain an auditable record of the decision-making process. While technology can support analysis and management, it does not absolve members of competent bodies of their responsibilities or exempt them from complying with data protection rules and substantive and procedural requirements.

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New thresholds for direct award and prior consultation procedures

The specific changes to the substantive criteria for using direct award and prior consultation procedures are primarily intended to clarify the rules. Alongside these, the most significant changes introduced by this revision are the increases in the value thresholds for using these procedures.

For public works contracts, direct award can now be used for contracts with an estimated value below €150,000 (compared to €30,000 previously), and prior consultation for values below €1,000,000 (compared to €150,000 previously). For contracts relating to the lease or purchase of products, as well as for service contracts, the direct award threshold has increased from €20,000 to €75,000. The prior consultation threshold has increased from €75,000 to €130,000. For public works or services concessions, direct award or prior consultation may now be used for contracts with a term of less than one year provided that the estimated contract value is below €1,000,000 (previously €75,000).

For all other contracts, the direct award threshold increases from €50,000 to €75,000 and the prior consultation threshold from €100,000 to €130,000.

This increase is particularly significant for public works contracts. The new threshold may cover small to medium-sized projects, which will therefore be subject to simpler procedures with lower associated procedural costs.

These procedures, which are based on value, are closely linked to the new concept of “estimated contract value”.

From “contract value” to “estimated contract value”

Article 17 now focuses on the “estimated contract value”. This is the estimated price that the contracting authority and third parties will pay, plus any consideration and benefits arising directly from performance that may constitute payment for the contractor’s obligations. This is calculated using objective economic criteria such as market prices, preliminary market consultations, or the average costs of previous procedures. This change replaces the previous concept of “contract value”, which was linked to the maximum economic benefit that the contractor could obtain. It brings the terminology closer to the calculation method used under European Union law.

Specific changes have been made to the previous special rules for calculating the value of public works contracts, framework agreements, dynamic purchasing systems and innovation partnerships. It also introduces special rules for works and services concession contracts (Article 17-A). The new Article 17-B sets out rules to prevent the artificial division of contracts, applying aggregation and planning rules when calculating the estimated contract value. The estimated value therefore becomes a planning tool and a means of preventing distortion of the rules.

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Special prior consultation

Articles 127-A to 127-C introduce a special prior consultation procedure to the PPC. This procedure was previously associated with the special public procurement measures. It involves the direct invitation of at least five entities and can be used when the estimated value of the contract is below both the applicable EU thresholds and €2,000,000. The scope includes projects financed or co-financed by EU funds, public or controlled-cost housing, properties transferred to municipalities, digital transformation, health, long-term care and social support. It also covers measures considered a priority or strategic for regional or national development.

For contracts with an estimated value below the European thresholds, the contracting authority may waive or include rules and formalities to simplify, streamline or speed up the procedure.

The requirement of five entities rather than the three required for the general prior consultation procedure is intended to balance the speed of a direct invitation with a broader competitive base.

Compared with the rules already applicable to other procedures, the new framework includes additional measures intended to prevent the same operators from repeatedly receiving invitations without limit.

More flexible public tenders below the EU thresholds

For contracts with an estimated value below the EU thresholds, contracting authorities may use a more flexible public tender procedure under Articles 161-A et seq. Subject to the principles of public procurement, the authority may introduce or disapply rules and formalities where this would simplify the procedure, make it more efficient or faster. The rules allow the authority to set minimum technical or financial capacity requirements separately or in combination, verify these with the tenders, adopt a phased evaluation process, use an electronic auction and open a negotiation phase. For example, the revision introduces new circumstances in which the requirement to provide a performance bond may be waived. It also permits the period for the prior hearing on the preliminary report to be reduced to three days, as well as the time allowed for administrative challenges.

Unsolicited proposals and procurement reserved for innovation

Article 35-B allows any economic operator to submit an unsolicited proposal to provide works, goods or services under public contracts. This must include a technical study that defines the subject matter, identifies the public interest and sets out the essential implementation conditions, including the legal, economic, and financial aspects. The contracting authority then has 90 days to assess the proposal's legality, desirability and feasibility. If it decides to proceed, it may use the study when preparing the procurement documents, but it must make the original version available to future candidates or tenderers.

These rules aim to encourage innovation without granting the originator of the initiative an automatic advantage. If the originator participates and their bid is neither excluded nor successful, they are entitled to reimbursement of the documented costs incurred in preparing the study.

The revision also allows certain procedures to be reserved for startups recognised under Law 21/2023 of 25 May. This applies to contracts for the lease or purchase of movable property, or the purchase of services, below the EU thresholds and with no certain cross-border interest, under Article 54-A(1)(d).

Trial periods when preparing procedures to procure information systems and technologies

The new Article 35-C introduces specific rules regarding trial periods when preparing procedures for the purchase or subscription of information systems and technologies. A contracting authority may arrange for, or accept, the free and temporary provision of these systems for the purposes of technical, functional, interoperability and security evaluation, and to assess whether they fulfil the underlying public needs. In this context, economic operators who provide such systems free of charge and on a temporary basis are not prevented from being invited to tender.

Trial periods must be publicised on the public contracts portal, and the notice must include the information required by Article 35-C.

The provision of information technology systems for testing purposes must not involve any direct or indirect payment to the economic operator. The procurement of the tested system must be preceded by the legally applicable pre-contractual procedure.

The decision to test only one economic operator's system must be based on the fact that testing other solutions is impossible or unsuitable. The contracting authority must state the reasons for this decision. The contracting authority must also take measures to prevent distortion of competition. One such measure is the requirement to document the entire testing process. Additionally, information necessary to ensure equal treatment between the system provider and other economic operators must be disclosed in subsequent procedures.

Procurement in emergency situations

Article 24(12) and (13) provide that the conditions for direct award on grounds of extreme urgency are deemed to be met for contracts relating to works, leases, and the purchase of goods or services needed to reconstruct and rehabilitate affected areas or to support individuals and legal persons following a state of siege, a state of emergency, or a disaster situation. This ground may only be invoked during the year after the declaration in question ends, creating a defined period for the post-emergency response.

These rules operate alongside the new Article 129-A, which sets out the rules applicable to procurement in exceptional situations. It permits a simplified direct award procedure for the same purposes up to a value of €500,000 for works contracts and €100,000 for goods and services. This procedure can be used for one year after the declaration ends. It is important to note that the need for speed does not remove the requirement to demonstrate the link between the procurement and the exceptional event. Nor does it remove the formalisation and publication requirements applicable to contracts above the simplified direct award thresholds. Therefore, the final framework for exceptional situations is therefore intended to prevent an urgent response from becoming a permanent derogation from the rules on competition and transparency.

Consolidation of the exclusion rules

This revision also amends the rules on the exclusion of tenders in Article 70. This provision consolidates grounds for exclusion arising from breaches of various rules throughout the PPC. These cover both general rules and those reflecting the specific features of the different procedures.

Contract performance: contract modification and change in circumstances

The revision clearly distinguishes between the objective modification of the contract, which is governed by Article 312, and an abnormal and unforeseeable change in circumstances, which is governed by Articles 314-A and 314-B. Modification may be based, among other grounds, on (i) clear contractual clauses; (ii) the need for additional works, services or goods; (iii) needs that a diligent contracting authority could not have foreseen; (iv) a value below the EU thresholds and 10% of the initial contract price (or 15% for public works contracts); or (v) non-substantial changes. In all cases, this is subject to the limits set out in Article 313 and must not alter the overall nature of the contract or distort competition.

The new structure of the above-referenced mechanisms deals with changes in circumstances attributable to a decision of the public contracting party taken outside the exercise of its contractual powers in Article 314-B. Essentially, it retains the previous rule that the contractor is entitled to restoration of the financial balance of the contract.

Article 314-A governs a change in circumstances not attributable to the public contracting party and requires an abnormal and unforeseeable event that makes performance of the contract on the originally agreed terms seriously onerous and that is not covered by the risks inherent in the contract. This gives rise to financial compensation based on equitable criteria. The legislation now expressly provides that this compensation may be determined by agreement between the parties, or by a court or arbitral decision.

The new Article 407-A explicitly states that the concession agreement must include provisions for the significant and effective transfer of risk relating to the operation of public works or services to the concessionaire. Therefore, the aim is to prevent this type of contract from being used to provide guaranteed remuneration.

Concessions: operating risk and employment liability

The new Article 407-A sets out the key economic aspects of a concession. It expressly states that a concession contract must entail the transfer of significant and effective operating risk to the concessionaire, relating to either demand or supply, or both. Under that provision, the concessionaire is deemed to have assumed the operating risk if, under normal operating conditions, there is no guarantee that the investments and operating costs will be recovered, and if the concessionaire is genuinely exposed to market uncertainties. This brings the PPC closer to the approach set out in Directive 2014/23/EU, reflecting the same fundamental principle that was already established in the PPP Law (Decree-Law 111/2012 of 23 May). Therefore, the aim is to prevent this contractual model from being used to provide guaranteed remuneration without transferring significant risk from the grantor to the concessionaire.

Alternative dispute resolution

Regarding dispute resolution, Article 464-B states that arbitration and other alternative methods are permitted by law. However, the new model is entirely voluntary. If the contracting authority wishes to provide for arbitration, it must specify the arbitration centre and the procedural rules, and state that candidates or tenderers must accept arbitration. Refusal to do so may not result in their exclusion. Technical conciliation committees reintroduce a consensual and faster process for preventing or resolving contractual disputes. The limitation and expiry periods are suspended as provided by law.

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SUMMARY

CONTRACT AWARD

CHANGE	DESCRIPTION	LEGAL BASIS
Digital procurement and AI	Requirement to use digital systems, including artificial intelligence, at all stages of the contractual cycle.	Articles 1-A to 1-C
Thresholds – Direct award based on value	Works: < €30,000 < €150,000 Concessions (< 1 year): < €75,000 < 1,000,000 Goods/services: < €20,000 < €75,000 Others: < €50,000 < €75,000	Article 19 et seq.
Thresholds – Prior consultation based on value	Works: < €150,000 → < €1,000,000 Concessions (< 1 year): < €75,000 → < 1,000,000 Goods/services: < €75,000 → < €130,000 Others: < €100,000 → < €130,000	Article 19 et seq.
Estimated contract value	Replacement of "contract value" with "estimated contract value", based on objective economic criteria, with specific calculation rules for each type of contract. New rules against artificial contract division.	Articles 17 to 17-B
Special prior consultation	New type of procedure involving invitations to at least five entities, for contracts below the EU thresholds and below €2,000,000.	Articles 127 et seq.
More flexible public tender procedure	For public tenders with an estimated value below the EU thresholds, the possibility of disapplying formalities, adopting phased evaluation, an electronic auction, a negotiation phase, waiver of the performance bond and shorter time limits.	Article 161 et seq.
Unsolicited proposals	Economic operators may propose works, goods or services under public contracts by submitting a technical study. No direct award or preferential right.	Article 35-B
Procurement reserved for startups	Procedures may be reserved for recognised startups for movable property or services below the EU thresholds and with no certain cross-border interest.	Article 54-A(1)(d).
IT trial period	Free and temporary provision of IT systems for technical evaluation before the procedure, with mandatory publication and measures to prevent distortion of competition.	Article 35-C
Emergency procurement	Direct award on grounds of extreme urgency in a state of siege, emergency or disaster, for up to one year after the declaration ends. Simplified direct award: up to €500,000 (works) and €100,000 (goods/services).	Articles 24 and 129-A
Exclusion of tenders	Consolidation of grounds for exclusion.	Article 70

CONTRACT PERFORMANCE AND DISPUTE RESOLUTION

CHANGE	DESCRIPTION	LEGAL BASIS
Modification v change in circumstances	Separate treatment of objective modification of the contract and abnormal and unforeseeable changes in circumstances.	Articles 312, 314-A, 314-B
Concessions – Operating risk	Requirement for a significant and effective transfer of operating risk to the concessionaire.	Article 407-A
Voluntary arbitration	Arbitration can no longer be imposed as a condition of participation. Technical conciliation committees are reintroduced as a quick means of resolving disputes.	Article 464-B to 464-G

Practical impact and preliminary recommendations

For contracting authorities

Contracting authorities should start by reviewing their internal procurement cycle. In particular, they should consider the identification of public needs, estimated values, choice of procedure and reasons for that choice, definition of quality criteria, and monitoring of performance under the new rules. The review should cover internal regulations, delegations of powers, templates for notices and invitations, tender and contract specifications, and evaluation models. It is also important to map current contracts and procedures already in progress to determine whether the new rules on objective modification and alternative dispute resolution already apply to them.

For economic operators

The revision changes both the range of opportunities available to economic operators and the level of preparation required. The new thresholds may lead to an increase in the use of prior consultation and direct award procedures. However, participating in procurement procedures will still depend on submitting the necessary documentation and meeting shorter deadlines, quality criteria, and environmental, employment, and social requirements.

Economic operators should also consider the following: (i) any special prior consultation procedures that may be launched; (ii) the possibility of submitting unsolicited proposals; (iii) access to contracts reserved on the basis of their status; and (iv) the free and temporary provision of technology solutions for technical evaluation and assessment of their suitability for public needs before procedures to procure information systems and technologies are launched. They should also consider the implications of digital procurement and the use of artificial intelligence in public procurement. ■

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