



PUBLIC LAW

A more flexible approach to public procurement

On 23 October 2025, Decree-Law 112/2025 was published, introducing the fifteenth amendment to the Public Contracts Code (PCC), as well as to Law 30/2021 of 21 May, which had itself already been amended on several occasions.

The change may appear limited, as it affects only Article 43(3) of the PCC, but it marks a fundamental change in approach to public works contracts. The design-build option will no longer be exceptional. Instead, it becomes a free choice within the limits of the contracting authorities' administrative discretion.

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The legislature frames this change as a response to the need to develop “mechanisms to mobilise and encourage players in the construction sector, with a view to increasing the supply of housing and consequently mitigating the imbalance between supply and demand”. This may involve the already growing option of industrialising construction. It may also involve other technological approaches that may be more easily incorporated into public works contracts when the design is produced by the competing contractor itself.

This opens up the possibility of integrating new solutions by relying on the construction sector to play a leading role, which it is best placed to do so.

Secondly, also with the aim of maximising the benefits of using the design-build model in public works contracts, the legislature has increased the thresholds for adopting the prior consultation and direct award procedures used for promoting public and controlled-cost housing projects.

The flexibility introduced by this legislative amendment, which clearly focuses on public procurement in the construction sector, also seems to signal a broader and more far-reaching reform of the of public procurement rules in general. This particular reform is to be undertaken as part of the wider “state reform” initiative, as stated in the in preamble to the new Decree-Law.

New framework for design-build contracts

Under Article 43(3) of the CCP – one of the provisions already amended by Decree-Law 112/2025 – public works contracts normally included a detailed design prepared in advance. The contractor was required to adhere to this design and its performance under the contract was defined by it (known as the construction-only model). Until now, it was only in exceptional cases that the responsibility for preparing the design of the works lay with the contractor (known as the design-build model).

The secondary and exceptional nature of the design-build model was reflected in the legal conditions previously laid down for its use. It was only permitted in in two situations:

- i) When, given the exceptional nature of the case, the contracting authority justified its decision to adopt the design-build model, and stipulated in the tender documents a requirement for the contractor to assume an obligation as to the results to be achieved regarding the use of the works to be undertaken; and
- ii) When the technical complexity of the construction process required a particularly close relationship between the contractor and the design process.

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Under the new wording of Article 43(3) of the PCC, as amended by Decree-Law 112/2025, the construction-only model is no longer the general rule for public works contracts. The design-build model ceases to be reserved for exceptional and duly justified cases. Public bodies may now adopt the design-build model in exercising their administrative discretion (that is, not strictly defined by the PPC) whenever they consider it to be best suited to achieving the public interests at stake.

To enhance the positive impact that the new design-build model is intended to have on increasing the supply of housing, Decree-Law 112/2025 also raises the thresholds for adopting the prior consultation and direct award procedures for contracts aimed at promoting public or cost-controlled housing. This increases the range of contracts that may be preceded by more streamlined procurement procedures.

Accordingly, under the new wording of Article 3(1)(b) of Law 30/2021, contracting authorities may now use the simplified prior consultation procedure when the contract value is less than €1,000,000, thus raising the previous threshold of €750,000. However, this measure will only apply until 31 December 2026.

Public bodies will also benefit from higher thresholds for direct awards, which vary according to the type of contract: €60,000 for public works contracts or public works concessions; €30,000 for leasing and acquisition of movable goods or services; and €65,000 for all other contracts. These thresholds also apply only until 31 December 2026.

As set out in Article 5 of Decree-Law 112/2025, the amendments introduced apply to the procurement procedures for public contracts launched after its entry into force. ■