

Country Report

Portugal

Exceptional and Temporary Price Review in Public Contracts

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The current increase in materials prices, among other costs, has prompted the Portuguese Government to put in place measures to shield public contracts from the direct impact thereof, without jeopardising investments in public projects.

By way of Decree-Law No 36/2022 of 20 May 2022, the Portuguese Government approved an exceptional and temporary price review regime in response to a sharp spike in the costs of raw materials, labour, and support equipment, principally driven by COVID-19 constraints, the energy crisis, and the war in Ukraine. This regime was created to address the negative effects of sudden price hikes in public contracts, especially in public works contracts.

In order to mitigate such effects, Decree-Law No 36/2022 takes a series of targeted measures for price revision in public works contracts, in order to reconcile the procedural speed required to protect public interest and transparency in public spending. Notably:

i) First and foremost, the exceptional price revision depends on the initiative of the contractor. The contractor may therefore request of the contracting authority the exceptional price review until the provisional acceptance of the works, provided that a given material, type of labour, or support equipment: i) represents at least 3% of the contract price and ii) the year-on-year rate of variation in the respective cost is equal to or greater than 20%.

Once the request is submitted by the contractor and the conditions for triggering a price review are met, the contracting authority cannot merely refuse it, given that the aim is ultimately the adjustment of the contractual price.

ii) This regime also allows an extension of the works deadline whenever there is a delay in complying with the work plan due to the contractor's inability to obtain the materials necessary to that end, provided that the reasons are demonstrably not attributable to the contractor.

iii) Furthermore, it foresees the possibility of contracting entities making exceptional awards of bids above the maximum buying-in price, even if this possibility is not provided for in the tender program.

If a dispute between parties arises in connection with this legal regime, such dispute must be settled in administrative courts or else through arbitration proceedings.

Decree-Law No 36/2022 is in force until 31 December 2022.

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