

DECREE-LAW No. 15/2016 of June 8

First amendment to Decree-Law no. 11/2013, of August 7th, which approved the Procurement Scheme of the PDID

The Integrated Municipal Development Plan (PDIM), whose legal framework was approved by Decree-Law no. 4/2012, of February 15 and modified by Decree-Law no. 36/2015, of September 16, aims to accelerate the infrastructure process of the most peripheral and remote territories of our country, thus contributing to the development of the private sector of the economy in those territories, employment creation and improvement of the quality of life of the populations.

With the enactment of Decree-Law no. 6/2015 of March 11, the Ministry of Strategic Planning and Investment was entrusted with the competence "to ensure the coordination and implementation of the Integrated District Development Planning, in coordination with the relevant entities".

However, given that this department does not have decentralized services and considering the fact that the Municipal Administrations are services of the Ministry of State Administration, coordination mechanisms were introduced through Decree-Law No. 36/2015 of September 16 for the annual programming of the PDIM. It is these coordination mechanisms that should also be incorporated in the legal procurement regime, approved by decree-law no. 11/2013, of August 7, although provisionally, given the importance it bears on the implementation process of the program.

Through the amendments now approved to the legal procurement regime for the PDIM, it is established that the regulation of the legal procurement regime is required by joint regulatory intervention of the Ministers of State Administration and of Planning and Strategic Investment and, it opens up the possibility of direct award of public works contracts whose execution has already begun but has not yet been completed for reasons other than the responsibility of the contractor who initiated the works.

The proposed amendments will also eliminate the provision in Article 23 (2) (d), given that its practical application has merited controversy, since it may conflict with the constitutional guarantee of presumption of innocence. Therefore, the objectives which the currently revoked provision aims to safeguard must be ensured at the stage of pre-qualification of the companies which may submit a tender.

Thus,

The Government decrees, pursuant to sub-paragraph o) of paragraph 1, of article 115, of the Constitution of the Republic, to enforce as law the following

Article 1

Scope

The present decree-law amends Decree-Law no. 11/2013, of August 7.

Article 2

Amendments

Articles 5, 6, 10, 11, 12, 15, 16, 18, 30 and 40 of Decree-Law No. 11/2013, of August 7, shall now read as follows:

«Article 5

Procurement modalities

1. [...].
2. [...]:
 - a) [...];
 - b) [...];
 - c) [...];
 - d) [...];
 - e) When it is necessary to celebrate new public works contract to finish works whose contract has already been terminated in accordance with Article 39 with due legal consequences, in particular, with respect to the execution of compliance guarantees, withholding of payments or other forms of protecting public interest in the contractual resolution.

Article 6

Procurement Phases

1. [...]:
 - a) [...];
 - b) [...];
 - c) [...];
 - d) [...];
 - e) [...];
 - f) [...];
 - g) [...];
2. The phases of the procurement process are regulated by a joint ministerial decree of the Ministers of State Administration and Planning and Strategic Investment.

Article 10

District Procurement Committee (CAD)

1. [...].
2. [...].
3. [...].
4. The organization and internal functioning of the CAD is regulated by a joint ministerial decree of the Ministers of State Administration and Strategic Planning and Investment

Article 11

Confidentiality

1. Until the opening of tenders, all participants involved in the procurement process are required to maintain secrecy and ensure the confidentiality of all elements of the process.
2. [...].

Article 12

Impediments

1. The impediment applies to tendering companies whose partners or legal representatives are:
 - a) [...];
 - b) [...];
 - c) [...];
 - d) [...];
 - e) [...].
2. [...].

Article 15

Documents proving qualification

1. [...]:
 - a) [...];
 - b) [...];
 - c) [...];
 - d) [...];
 - e) [...];
 - f) [...];
 - g) [...];
 - h) [...];
 - i) [...].
2. [...].
3. [...]:
 - a) [...];
 - b) [...];
 - c) [...].
4. The process for analysing and evaluating the documents referred to in the preceding paragraphs is regulated by a joint ministerial decree of the Ministers of State Administration and Planning and Strategic Investment.

Article 16

Causes for disqualification and impediments

1. [...]:
 - a) [...];
 - b) [...];
 - c) [...];
 - d) [...];
 - e) [...];
 - f) [...];
 - g) [...];
 - h) [...];
 - i) Partners or legal representatives of the company that is in a situation of impediment in accordance with Article 12.
2. [...].

Article 18

Tender documents

1. [...];
 - a) [...];
 - b) [...];
 - c) [...];
 - d) [...];
 - e) [...];
 - f) [...].
2. The CDD coordinator approves the district procurement plan and the tender documents after verification and confirmation of their compliance by the Technical Project Review Committee technicians.

Article 30

Guarantee of contract execution

1. [...].
2. [...].
3. The Ministers of State Administration and of Planning and Strategic Investment shall establish and regulate, through a joint ministerial decree, a database for the application of the provisions of paragraph 2.

Article 40

Regulations

1. The phases of procurement procedures provided for in this Decree-Law are regulated by a joint Ministerial Decree of the Ministers of State Administration and of Strategic Planning and Investment.
2. The Ministers of State Administration and of Strategic Planning and Investment shall, by means of a joint ministerial decree, approve the models of forms supporting the procurement procedures.»

Article 3

Revocation

Sub-paragraph d) of paragraph 2 of Article 23 of Decree-Law no. 11/2013, of August 7, is hereby revoked.

Article 4

Remissions

1. Legal and regulatory remissions:
 - a) To the Integrated District Development Planning or the PDID shall be considered, respectively, as referring to the Integrated Municipal Development Planning or the PDIM;
 - b) To the District Investment Plan or PID shall be considered, respectively, as referring to the Municipal Investment Plan or the PIM;
 - c) To the District Procurement Plan or PAD shall be considered, respectively, as referring to the Municipal Supply Plan or to the PAM;
 - d) To the District Development Committee or the CDD shall be considered, respectively, as referring to the Municipal Development Committee or to the CDM;

- e) The Coordinator of the District Development Committee or Coordinator of the CDD shall be considered, respectively, as referring to the Coordinator of the Municipal Development Committee and Coordinator of the CDM;
 - f) To the District Procurement Commission or CAD shall be considered, respectively, as referring to the Municipal Procurement Commission or CAM;
 - g) To the Sub-District Development Committee or CDSB shall be considered, respectively, as referring to the Development Committee of the Administrative Post or to the CDPA;
 - h) To the district pre-qualification are considered as referring to the municipal pre-qualification;
 - i) To the planning of the district supply are considered as referring to the planning of the municipal supply;
 - j) To the district public tender are considered as referring to the municipal public tender;
 - k) To Districts are considered as referring to municipalities;
 - l) To Sub-districts are considered as referring to administrative posts.
2. As of the entry into force of the Statute of Municipal Administrations, Municipal Authorities and the Inter-ministerial Technical Group for Administrative Decentralization, the references contained in the legal regime for the procurement of the Integrated District Development Planning:
- a) To the District Administrations or District Administrations are considered to be referring to the Municipal Administrations and to the Municipal Authorities;
 - b) To the District Administrators or District Administrators are considered to be referring to the Municipal Administrators and the Presidents of the Municipal Authorities;
 - c) To the District Secretaries are considered to be referring to the Municipal Secretaries;
 - d) To the Administrations of Sub-district are considered to be referring to the Administrations of the Administrative Posts;
 - e) To the Sub-district Administrators are considered to be referring to the Administrators of the Administrative Posts;
 - f) To the District Development Commissions or to the CDD are considered, respectively, as referring to the Municipal Coordination Councils;
 - g) To the Coordinators of the District Development Commissions or to the Coordinators of the DDCs are considered to be referring to the Presidents of the Municipal Authorities or to the Municipal Administrators, as the case may be;
 - h) To the District Procurement Commissions or CAD are considered to be referring to the Municipal Procurement Services;
 - i) To the Sub-district Development Committees are considered to be referring to the Administrative Post Assemblies;
 - j) To the Verification, Evaluation and Supervision Teams or EVAS are considered, according to the competences established for them, as referring to the Municipal Integrated Planning and Development Services and to the Municipal Procurement Services.

Article 5 **Publication**

Decree-Law no. 11/2013 of August 7 is hereby republished in annex, with the current version, as an integral part of this legal diploma.

Article 6.º

Entry into Force

This decree-law shall come into force on the day following its date of publication

Approved by the Council of Ministers on March 15, 2016.

The Prime Minister

Dr. Rui Maria de Araújo

The Minister of State Administration

Dionísio Babo Soares

Enacted on 2. 6. 2016

For publication

The President of the Republic

Taur Matan Ruak