

SPAIN APPROVES A NEW PUBLIC PROCUREMENT LAW

On Thursday 19 October, Spanish Congress approved a new Public Procurement Law, although it is still pending publication in Spain's Official State Journal (BOE). This law transposes European public procurement directives into Spanish legislation, in particular Directive 2014/24/EU of the European Parliament and of the Council, of 26 February 2014, on public procurement and repealing Directive 2004/18/EC; as well as Directive 2014/23/EU of the European Parliament and of the Council, of 26 February 2014, on the award of concession contracts.

The LCSP will **enter into effect when four months have elapsed from its publication in the BOE**, except for aspects related to public procurement governance, which will become effective on the day following publication in the BOE.

According to the first transitional provision of the new LCSP, processes started and contracts awarded before the new law enters into effect will be governed by the former law.

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1 | Subjective scope. The subjective scope of the LCSP is extended to include political parties, trade unions, business and professional organisations, as well as foundations and associations linked to any of the above.

2 | Contract types

- The public sector contractual forms are reorganised, doing away with public service management contracts and public-private partnership contracts.
- It also defines two new contract forms: works concession contracts and services concession contracts, the defining element

of which is that operational risk is passed to the concessionaire.

3 | Procedure simplification. The award procedure is simplified by creating a new open, streamlined process; it also does away with unpublicised negotiated award processes.

4 | Contract modification. Restrictions are placed on the modification of public sector contracts, and contracts can now be terminated in the event of modifications exceeding 20% of the original price (excluding VAT) that have not been foreseen in the terms and conditions.

5 | Boosting innovation. A new process is included for awarding public sector contracts called "innovation partnership" with the aim of

encouraging R&D within the scope of public sector contracts.

6 | Free competition. The protection afforded free competition in a public procurement context is bolstered by conferring powers on the award board to escalate sound evidence of tender collusion to Spain's Market and Competition Commission (CNMC) or competent regional authority.

7 | SMEs. Incentives are offered to SMEs – by inverting the general rule of dividing contracts into lots – with the aim of encouraging their involvement in public tender processes.

8 | Access to the special challenge. Parties can now access the special challenge

procedure for amounts lower than the EU's harmonised contractual amount, and also applies to a material context (eg, modifications of contract and public authorities reclaiming concessions).

9 | Contract performance by public entities. The requirements for public entities to be awarded public contracts have been made stricter.

10 | Transparency. Transparency and efficiency in public procurement processes are enhanced by means of preliminary market consultations.

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