
GENERAL ASPECTS OF THE ALTERNATIVE PUBLIC PROCUREMENT REGIME (RDC)

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In 2011, the Brazilian Government created the Alternative Public Procurement Regime, also called RDC, with the purpose of fostering and easing the projects related to the FIFA World Cup in 2014 and the Olympic Games and Paralympics in 2016, in Rio de Janeiro.

According to the Federal Government, RDC consists of a new public procurement regime, which aims at making the acquisition process more efficient, supporting the exchange of experiences and technology and encouraging technological innovation, without sacrificing the transparency and the regulation of the acquisition process by supervisory authorities.

RDC was initially created by the provisional Presidential Decree No 527/2011. However, such a Decree was later converted into the Law No 12.462/2011, which broadened the scope of RDC and is still in force.

Nowadays, RDC has its applicability restricted to contracts related to the Olympic Games and Paralympics in 2016, the FIFA World Cup in

2014, the works and services related to the State airports whose distance to the cities hosting the World Cup does not exceed 350 km, the projects related to Brazil Growth Acceleration Program - PAC, the works and engineering services under the Unified Health System - SUS, the works and engineering services within the public school systems.

It is important to stress that the use of RDC is not mandatory. Rather, RDC is always optional, and its adoption over other forms of public procurement must be described in the Invitation to the procurement process.

The Brazilian Public Procurement Act, Law No 8.666/1993, as a general rule, is not applied to RDC. As determined by Law No 12.462/2011, once RDC is chosen, the rules of the Public Procurement Act are disregarded for the acquisition process, except when expressly provided for in the Act, such as the cases of exemption and waiver of Public Procurement and the rules applicable to the Contract between the government and the bidder.

Law No 12.462/2011 brings a number of innovations regarding the hiring procedure in the RDC compared to other forms of Public Procurement described in the Public Procurement Act. The most relevant and controversial of them refers to the implementation of an integrated model of procurement, in order to ensure less costly and time-consuming Procurement procedures.

The integrated model of procurement is typically adopted in EPC - Turnkey Agreements. Unlike in other procurement forms listed in the Public Procurement Act, in which the government is required to prepare the basic project of the works, with a detailed list of materials and works that are going to be used throughout the project, in the integrated Procurement model the Government only presents a draft of the project to the bidders. All other works to be performed in the project, ranging from the drafting of basic and detailed projects to the performance tests, are done by the bidder, who is obliged deliver the project within the agreed parameters. The remuneration of the contractor, in this case, is variable, linked to its performance. There is also the possibility of bonuses for goals.

Another feature brought by the Law No 12.462/2011 on RDC, relates to the fact that the government is entitled to keep the budget under confidentiality until the contract is awarded.

Even in this case, the Government must provide all necessary information for the bidding process. With this measure, the Government seeks to avoid collusion and other practices that could harm the competition.

RDC acquisition process resembles the Brazilian auction process, provided by the Public Procurement Act. As in the auctions, there is an inversion in the phases of the procurement process. In this case, the qualification phase is held after the opening of proposals, so that only the documents related to the winner of the bidding are reviewed. In order to ease the recruitment, the Government is allowed to create a record with the permanent pre-qualification of companies interested in participating in future procurement processes. Bidding in the context of RDC is preferably done by electronic means.

Unlike in the forms of procurement provided in the legislation, in the RDC there is only one single appeal phase, which takes place immediately after the award of the contract. At the appeal stage, the government analyses the appeals related to the offers and qualification.

Given its increasing use, the RDC is likely to be applied to all other areas involving public procurement in the future, supplanting other forms of public procurement under the Brazilian legislation. Thus, it is highly advisable that companies which are hired or plan to be hired by

the Public Administration understand all of the nuances of this regime, in order to get adapted to an increasingly likely scenario in which the procurement processes will all be held through RDC in Brazil.

Almeida Advogados has a team in the Corporate Law branch, with extensive expertise in the area of contracts, placing itself at the disposal for any further clarifications.