

# Temporary Suspension of Certain Provisions relating to Public Procurement Regulations

**ganado**  
*advocates*

# The Regulations Generally

- general rule: a contractor **may not** claim any increase in price of commodities to be used in public contracts, unless expressly provided for in the procurement document.
- exception: due to the Russian/Ukrainian conflict, a new temporary legal notice was introduced to cater for the increase in prices of works, supplies and services.
- Legal Notice 601.03 allows contractors under public contracts which were contracted but not yet delivered or executed before the war, to claim compensation for any such increases.

# The Three Cumulative Conditions for Claiming Compensation (Regulation 3(1) of S.L. 601.13)

1. The public contract must have been signed on or before 30 September 2022;
2. The public contract must have still been in force on 30 September 2022; and
3. The subject-matter of the contract is recognised as one which is subject to a price increase in accordance with the policies issued by the Department of Contracts.

No requests for compensation may be accepted where supplies, works or services were already rendered or delivered prior to 24 February 2022. The Regulations are set to expire on 31 July 2023.

# DOC Policy on Works Contracts

***A contractor is deemed eligible to benefit from the Compensation Scheme Policy if:***

1. The works cover the period between 15 March 2022 up to 31 July 2023;
2. If the contract value exceeds EUR 10,000;
3. If claims are submitted within the timeframe established by the contracting authority (hereinafter referred to as '**Local Council**'). Should the contractor fail to submit his claim within the stipulated time frame, it shall be assumed that the contractor has no claims to present.

# DOC Policy on Works Contracts (cont.)

## Steps by Local Council

1. The Local Council must undertake the necessary verifications to ensure that the Compensation Request is “fair and reasonable” and that the compensation is being requested solely with respect to the actual commodity price;
  - “fair and reasonable” means that value for money is still being achieved; for example, a better value for money cannot be achieved through the re-issue of a competitive call.
  - “actual commodity price” means that related components such as profit, logistics, freight and similar elements are excluded.
2. If positive verifications ensue, Local Council may then proceed with submitting the relevant Compensation Request to the Department of Contracts.

# DOC Policy on Works Contracts

The adjacent table sets out the maximum compensation thresholds which contractors are entitled to claim vis-à-vis the respective works categories listed.

Construction Works Category	Percentage Increase
Construction	10%
Road Pavement and Pipe Works	19%
Structural Steelwork	17%
Finishes (Internal and External)	11%
Glazed External Apertures	21%
Electrical and Plumbing	13%
HVAC	10%
Lifts	9%

# DOC Policy on Works Contracts (cont.)

- ***If a contractor is interested in claiming compensation based on the above, such contractor must:***
  - Complete the template Request for Compensation; and
  - Present such template to the Local Council, together with a detailed bill of quantities for each construction works category.
- Moreover, the **Project Supervisor/Manager on behalf of the Local Council** must further sign and endorse a declaration attesting to the validity of the contractor's claim, and further submit the same to the Department of Contracts.
- The Local Council has discretion to further request submission of additional supporting documents.

# DOC Policy on Contracts Involving Supplies

- ***A contractor is deemed eligible to benefit from the Compensation Scheme Policy if:***
  - The supplies cover the period between 15 March 2022 up to 31 July 2023;
  - If the contract value exceeds EUR 10,000; and
  - If claims are submitted within the timeframe established by the Local Council. Should the contractor fail to submit its claim within the stipulated timeframe, it shall be assumed that the contractor has no claims to present.

Compensation to be granted in terms of supplies is decided on a case-by-case basis, depending largely on the **justifications provided by the contractors** and the **endorsements provided by the Local Council**.



# DOC Policy on Contracts Involving Supplies (cont.)

## Steps by Contractor

1. Complete the Compensation Request template and submit it to the respective Local Council together with the following ***list of supporting documents***:
  - a. detailed justification for a compensation request;
  - b. financial analysis i.e. background information on how the economy in question was affected by the Ukrainian strife and the subsequent inflation, and how this in turn affected the public contract;
  - c. cost implication of the quantified compensation of each relevant commodity item, including applicable calculations and the arithmetic breakdown;
  - d. justification that attributes the price increase of each commodity item, which were unforeseeable;
  - e. original invoice of the commodity item; and
  - f. independent price index of each commodity item against which percentage is being compared.
2. The Head of the Local Council must attest to the validity and accuracy of the claims presented by the contractor through a signed and endorsed declaration.
3. The Local Council has discretion to further request submission of additional supporting documents.

# Compensation Scheme Policy Procedure

