

NORMATIVE ACT
No. 10, dated 18.5.2022

**FOR FINANCIAL PRICE COMPENSATION FOR SOME CONSTRUCTION
MATERIALS, ACCORDING TO THE DEFINITIONS IN PUBLIC WORK
CONTRACTS, AS A CONSEQUENCE OF THE SPECIAL SITUATION
ESTABLISHED IN THE MARKET DURING 2022**

In support of Article 101 of the Constitution, with the proposal of the Minister of Finance and Economy and the Minister of Infrastructure and Energy, the Council of Ministers

DECIDE:

Article 1
Object

The purpose of this normative act is to determine the rules and criteria for the financial compensation of the price of iron, cement, bitumen, plastic pipes, aluminum, copper and zinc in public contracts for work that meet the criteria of Article 2 of this normative act. In accordance with the provisions of the legislation in force for public procurement and within the reconstruction process, because of the special situation created in the market during 2022.

Article 2
Scope of application

1. This normative act applies to public contracts for work, financed with funds from the state budget, of central and local government units, certain implementing units within the reconstruction process or of other public entities that are in the process to be connected before the entry into force of this normative act or in the process of implementation since January 1, 2020 and which are affected by the increase in the price of iron, cement, bitumen and plastic pipes, for work performed after the entry into force of this normative act.

2. This normative act applies to public contracts for work, financed with funds of companies with state capital at least 51% or with foreign financing, which are covered by funds of companies with state capital, which are in the process of being related before the entry into force of this normative act or in the process of implementation since January 1, 2020 and which are affected by the increase in the price of iron, cement, bitumen, aluminum, copper and zinc, for work performed after the entry into force of this act normative.

Article 3
Definitions

For the purpose of this normative act, the following terms have the following meaning:

- a) "Contracting authority" is the authority that concludes a public contract for works financed from the budget of the units defined in Article 2 of this normative act, as well as the responsible authority according to the legislation in force, within the reconstruction process;
- b) "Public work contract" has the same meaning as that used in the public procurement legislation;

c) “Additional contract” means the contract between the contracting authority and the economic operator, according to the procedure defined in this normative act, when the compensation is approved.

Article 4

The Special situation

According to this normative act, a special situation is any circumstance that results in an emergency situation. This normative act defines a special situation as any instance in which an emergency situation results from a significant increase in the market price of materials like iron, cement, bitumen, plastic pipes, aluminum, copper, and zinc when compared to the prices at the time the public contract for the work was finalized.

Article 5

Criteria and documentation for the benefit of compensation

1. Upon the announcement of the special situation, according to this normative act, economic operators, engaged in public contracts for work with funds from the state budget, of central and local government units, certain implementing units within the reconstruction process or of other public entities or companies with at least 51% state capital, submit to the contracting authority the request for compensation, according to annex no. 1, only for the part of the cost related to the increase in the price of construction materials, defined in Article 2 of this normative act.

2. The contracting authorities examine the request according to point 1, of this article, within 30 (thirty) days. In case of rejection of the request, the economic operator has the right to appeal the decision to the competent court.

3. The additional contract is drawn up based on the price increase in relation to the value of these materials in the public contract for work. This additional contract must be within the limit defined in Article 6 of this normative act.

4. The contracting authorities present the approved contract additions to the line ministries/central institutions, the State Reconstruction Commission for the contracts within the reconstruction process, the governing boards, the municipal councils or the supervisory councils of the public companies, which foresee the relevant resources for their coverage.

5. The compensation of the funds provided for in the additional contract is made by the contracting authority after verifying the state of the completed works and the invoice for the purchase of construction materials, defined in Article 2 of this normative act, according to the provisions of the contract.

6. In order to avoid abuses, state structures and contracting authorities can also carry out on-site verifications, in case of finding inaccuracies in the documentation submitted by the companies. In order to carry out the verifications, the contracting authorities can also get experts according to the relevant fields.

7. After the verification, according to point 5, of this article, the payment for the compensation is made according to the legislation in force.

8. In case of termination of the special situation, the unused fund from the additional contract remains in the budget of the contracting authority.

Article 6

Compensation measures of the additional contract

1. The compensation of each of the economic operators who fulfill the criteria of this normative act, according to the determinations made in Article 2 of this normative act, is made in the amount from 5% to 30% of the value occupied by the materials of iron, bitumen, cement, plastic pipes,

aluminum, copper and zinc in the respective public contracts. In any case, the value of the compensation does not exceed the amount from 5% to 30% of the value of the mentioned materials.

2. According to the laws governing public procurement and the reconstruction process, the addition of the contract in accordance with the compensation of the materials pursuant to section 1 of this article will not be regarded as an extension to the contract.

3. In the event that the economic operator does not agree with the set compensation value by the contracting authority, the contract between the parties is terminated and a new procurement procedure is reopened for the realization of unfinished works. In addition, the measure of exclusion from the procedures of benefiting from public contracts for a period of 3 years by the Public Procurement Agency is taken against the economic operator.

Article 7

Duration and implementation

1. The provisions of this normative act are applied for as long as the period of the situation created in the market lasts.

2. The entry into force of this normative act is also considered a declaration of a special situation.

3. The conclusion of the special situation is determined by the decision of the Council of Ministers, with the proposal of the minister responsible for finance and the minister responsible for infrastructure.

Article 8

Transitional provision

1. For public contracts for work, which will be concluded after the entry into force of this normative act, the contracting authorities must refer to the market prices for materials of iron, cement, bitumen, plastic pipes and in the case of companies with state capital at least 51%, including aluminum, copper and zinc.

In particular, for the reconstruction process, the contracting authorities, for the materials defined in this normative act, must refer to the market prices.

2. Delays in the implementation of public contracts, for which the effects of this normative act extend, as well as delays in the implementation of contracts within the framework of the reconstruction process, which are in the process of implementation from January 1, 2020, will not be considered as a violation of contractual conditions and no penalties will be applied to economic operators.

Article 9

Entry into force

This normative act enters into force immediately and is published in the Official Gazette.

Prime Minister

Edi Rama

ANNEX NO. 1

Application

Name of economic operator _____

NIPT: _____

Object of the contract/project _____

Request for compensation _____

***Attached to this request:**

- Estimated value of works for 2022;
- The estimated value for the use of construction materials according to the provisions of articles 2 and 6 of this normative act for the year 2022;
- The value requested for compensation provided for in the additional contract;
- Other explanations.