

NEWSLETTER
16.07.2010

PROCEDURILE DE ACHIZITII PUBLICE

Prin Ordonanta de Urgenta nr. 76/2010, publicata in Monitorul Oficial al Romaniei (partea 1) nr. 453 la data de 2 iulie, 2010, au fost aduse modificari legislative recente regulilor ce guverneaza procedurile de achizitii publice.

Desi legislatia aplicabila procedurilor de achizitii publice a fost modificata, in repetate randuri, pe durata anului 2009, era inca necesare imbunatatiri in ceea ce priveste flexibilitatea procedurii de atribuire a contractelor de achizitii publice si, de asemenea, durata termenelor legale pentru incheierea contractelor de achizitii publice. Prin urmare, un scurt rezumat al celor mai semnificative amendamente aduse de ordonanta de urgenta mai sus mentionata si, de asemenea, fundamentele acestor modificari vor fi prezentate mai jos.

1) Valori modificate pentru contractele de servicii si lucrari publice ce fac obiectul procedurilor de achizitii publice

Pentru atribuirea unui contract de lucrari publice de catre o entitate juridica care, in conformitate cu legislatia in vigoare, nu are calitatea de autoritate contractanta, trebuie indeplinite doua conditii cumulative: (i) 50% din contractul respectiv este finantat direct de catre o autoritate contractanta si (ii) valoarea estimata a contractului este mai mare sau egala cu echivalentul in lei al sumei de 4.845.000 euro. In ceea ce priveste contractul de servicii, valoarea estimata a contractului trebuie sa depaseasca echivalentul in lei al sumei de 193.000 euro.

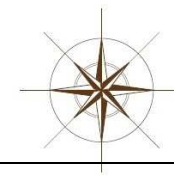
PUBLIC PROCUREMENT PROCEDURES

Recent legislative amendments governing Romanian public procurement procedures rules were implemented through the Government Emergency Ordinance no. 76/2010 published in the Official Gazette of Romania, (part 1) no. 453 dated on 2nd of July, 2010.

Even if the legislation applicable to public procurement procedures was severally amended during 2009 year, there was still necessary to be further improved both the flexibility regarding the awarding of public contracts and also the duration in respect with the legal terms for concluding such contracts. Therefore, a short summary of the most significant changes brought by the above government emergency ordinance and also the grounds on which such amendments were made will be presented herein below.

1) Amended values of works and services contracts subjects to public procurement procedures

For the award of a works contract by a legal entity which, in conformity with the legislation in force, does not have the quality of contracting authority there are two cumulative conditions to be met: (i) 50% of the respective contract is directly financed by a contracting authority and (ii) the estimated value of the contract is higher than the equivalent in Lei of Euro 4,845,000. As regards the services contract, the estimated value of the contract should exceed the equivalent in Lei of Euro 193,000.



2) Garantia de Participare

Sunt introduse limite minime in ceea ce priveste valoarea garantiei de participare si care trebuie sa fie depusa de catre toti ofertantii; valorile minime depind de valoarea estimata a contractului de achizitii publice care face obiectul procedurii de achizitii publice, iar valoarea maxima nu poate depasi 2% din valoarea estimata a contractului.

3) Publicarea obligatorie in Jurnalul Oficial al Uniunii Europene – valori ale contractului

Valoarea minima a contractului de lucrari si servicii publice care naste obligatia autoritatii contractante cu privire la publicarea in Jurnalul Oficial al Uniunii Europene a intentiei de atribuire a unui contract, ce face obiectul procedurii de achizitii publice, a fost modificata dupa cum urmeaza: (i) pentru unele companii si operatori economici asimilati autoritatilor contractante, valoarea contractului de servicii publice trebuie sa fie de minim 387.000 euro; (ii) valoarea estimata a contractului de lucrari publice trebuie sa fie de 4.845.000 euro.

4) Negocierea fara publicarea prealabila a unui anunt de participare – o noua regula referitoare la pragul de suplimentare a valorii contractului initial

Ca urmare a atribuirii unui contract de servicii/lucrari, autoritatea contractanta are dreptul de a cumpara de la contractantul initial noi servicii sau lucrari similare cu cele prevazute de contractul initial, prin aplicarea procedurii de negociere fara publicarea prealabila a unui anunt de participare in cazul in care unele conditii legale cumulative sunt indeplinite in mod corespunzator.

Deci valoarea cumulata a contractului care trebuie atribuit sau a actului aditional care trebuie incheiat pentru servicii si lucrari suplimentare nu

2) Participation Guarantee

There are introduced minimum limits regarding the value of participation guarantee and which are necessary to be submitted by all the tenderers; the minimum values depends on the estimated value of the public contract subject to the public procurement procedure and the maximum value cannot exceed 2% from the estimated value of the public contract.

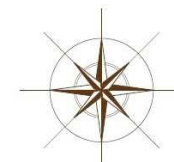
3) Mandatory publishing in the Official Journal of the European Union – contract values

The minimum value of public works and services contract which trigger the contracting authority's obligation regarding the publishing in the Official Journal of the European Union of the intention notice due to the awarding of a contract, subject to public procurement procedure, was modified as follows: (i) for some enterprises and economic operators assimilated to the contracting authorities, the value of awarded services contracts should be at a value of minimum Euro 387,000; (ii) the estimated value of the awarded works contract should be at a value of Euro 4,845,000.

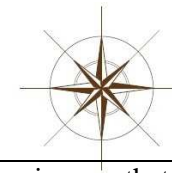
4) Negotiation without publication of a contract notice – new rule regarding threshold for supplementing the initial contract value

Following the awarding services/works contract, the contracting authority has the right to purchase from the initial contractor, new services or works similar with the works or services foreseen by the original contract, by applying the procedure of negotiation without publication of a contract notice in case some cumulative legal conditions are fulfilled accordingly.

Hence, the cumulative value of contract which shall be awarded or additional document which shall be concluded for additional works or



<p>depaseste 20% din valoarea contractului initial. Pragul de 20% reprezinta regula introdusa prin OUG nr. 76/2010 si, ca exceptie, pragul vechi de 50% din valoarea contractului initial este inca pastrat de catre legiuitor, dar va fi aplicat exclusiv pe baza unei note justificative care sa prezinte motivele care au dus la depasirea procentajului de 20%.</p>	<p>services does not exceed 20% from the initial contract value. The threshold of 20% is the rule introduced by GEO no. 76/2010 and, as an exception, the old threshold of 50% from the initial contract value is still kept by the legislator, but it will be applied solely based on a justificatory note whereby the grounds that conducted to the exceeding of the 20% percentage.</p>
<p>5) Prelungirea perioadei aferente evaluarii ofertelor</p>	<p>5) Extension of period due to the assessment of the offers</p>
<p>Cu scopul de a reduce perioada de atribuire a contractelor de achizitii publice si pentru a optimiza sistemul de achizitii publice, OUG nr. 76/2010 stipuleaza in mod expres ca, pe parcursul desfasurarii unei proceduri de achizitii publice, perioada de evaluare a ofertelor poate fi prelungita o singura data.</p>	<p>Aiming to reduce the period for the awarding of public contracts and to optimize the public procurement system, the GEO no.76/2010 expressly stipulates that, during the performance of a public procurement procedure, the period regarding the assessment of the offers can be extended only once.</p>
<p>6) Cerere de oferta – noi praguri minime cu privire la valoarea estimata a contractelor de achizitii publice</p>	<p>6) Call of papers – new minimum thresholds regarding the estimated values of public contracts</p>
<p>Autoritatea contractanta are dreptul sa aplice procedura de <i>cerere de oferte</i> numai in cazul in care valoarea estimata (fara TVA) a contractului de achizitii publice este egala cu sau mai mica decat urmatoarele praguri:</p>	<p>The contracting authority has the right to apply <i>call for papers</i> procedure solely if the estimated value (without VAT) of the public procurement contract is equal to or less than the following thresholds:</p>
<ul style="list-style-type: none">▪ Contract de furnizare – 100.000 euro;▪ Contract de servicii - 125.000 euro;▪ Contract de lucrari - 1.000.000 euro.	<ul style="list-style-type: none">▪ Supply contract – Euro 100,000;▪ Services contract – Euro 125,000;▪ Works contract – Euro 1,000,000.
<p>7) Noi termene si sanctiuni pentru solutionarea contestatiilor privind procedura de achizitii publice</p>	<p>7) New terms and sanctions for solving contestations related to public procurement procedure</p>
<p>Cea mai importanta modificare referitoare la procedura de solutionare a contestatiilor este aceea care prevede ca orice contestatie va fi solutionata la finalizarea procedurii, impreuna cu emiterea raportului procedurii de achizitii publice; mai mult decat atat, contractul va fi semnat imediat dupa ce Consiliul National pentru Solutionarea Contestatiilor sau instanta va emite decizia, dar nu inainte de expirarea termenelor stabilite dupa cum urmeaza: (i) 11 zile de la data</p>	<p>The most important change regarding solving contestations procedure is that any contestation will be solved at the termination of the procedure together with the issuance of the public procurement procedure report; moreover, the contract will be signed immediately after the National Council for Settlement the Claims or the court of justice will issue the decision, but not prior to the expiry of the waiting terms established as follows: (i) 11days as of the communication date regarding the result of</p>



comunicării rezultatului procedurii de atribuire, în cazul în care valoarea estimată este mai mare decât pragul prevăzut pentru publicarea anunțului de participare în Jurnalul Oficial al Uniunii Europene (*Note*: a se vedea punctul 3 detaliat mai sus); 6 zile de la data comunicării rezultatului procedurii de atribuire, în cazul în care valoarea estimată este mai mică sau egală cu pragul descris la punctul (i) al acestui paragraf. Trebuie specificat ca dacă autoritatea contractantă nu comunică rezultatul procedurii prin fax sau mijloace electronice, atunci termenele menționate mai sus se prelungesc cu 5 zile.

În conformitate cu cele de mai sus, în cazul în care Consiliul National pentru Soluționarea Contestărilor respinge contestația, atunci autoritatea contractantă va păstra anumite sume din garanția de participare depusă de cel care a înregistrat o asemenea contestație; suma reținută este calculată proporțional cu valoarea estimată a contractului de achiziție publică și în conformitate cu algoritmul de calcul prevăzut de lege.

the awarding procedure, in case that the estimated value of the contract is higher than the thresholds provided for the publication of the contract notice in the Official Journal of the European Union (*Note*: please see the point 3 herein above detailed); 6 days as of the communication date regarding the result of the procedure in case that the estimated value of the contract is equal to or less than the thresholds described at point (i) of this paragraph. It should be specified that if the contracting authority does not communicate the procedure result by fax or electronic means, then the above waiting terms are increased with 5 days.

In line with the above, in case the National Council for Settlement the Claims rejects the contestation, then the contracting authority will retain certain amounts from the participation guarantee submitted by the tenderer who have registered such contestation; the retained amount are calculated pro rata with the estimated value of the public contract and in conformity with the algorithm calculus as it is provided by the law.

Yours sincerely,
Almaj & Albu, attorneys at law