

## public procurement - legislative retrospective

Emergency Ordinance no. 76/2010 for the amendment and the supplementing of Government Emergency Ordinance no. 34/2006 regarding the **awarding of the public procurement contracts, the public works concession contracts and the services concession contracts**.

Official Gazette no. 453 of July 2, 2010 published Emergency Ordinance no. 76/2010, for the amendment and the supplementing of Government Emergency Ordinance no. 34/2006 on the awarding of public procurement contracts, public works concession contracts and services concession contracts ("GEO 76/2010").

The main amendments brought by GEO 76/2010 refer to the provisions which regulate the public procurement contracts in the event that the awarding of the contract is challenged under the law, the annulment of the tender and the "penalizing" of the losing objecting parties at the National Council for the Solving of Contestations (CNSC).

The new provision allows the contracting authorities to conclude the public procurement contract after the solving of the contestation by the CNSC or the summons in the court of first instance, by the competent court. Thus, after the lapsing of the waiting period of 11 or 6 days, respectively, depending upon the value of the public procurement contract, from the date of transmission of the communication regarding the outcome of the procedure's implementation, in compliance with the decision of the CNSC or of the court of law, the contracting authority may conclude the public procurement contract with the winner of the procedure, and the enforcement of the contract shall not be prevented from the exercise of a complaint against the decision of the CNSC or a second appeal against the decision of the court of first instance.

The legislator also made an amendment of the normative act which shall allow the contracting authority to annul, at its own discretion, a public procurement procedure, if pursuant to a contestation/legal action, the CNSC or the court of law should decide to eliminate certain technical, economic or financial specifications from the participation announcement/invitation, the award documentation or other documents issued with respect to the awarding procedure.

Also, according to the new regulations, the right of access to the CNSC in view of solving a contestation is free of charge only in the event that a grounded contestation was filed within the legal term, which contestation is admitted by the CNSC. Otherwise, if the CNSC should dismiss the contestation, the contracting authority shall mandatorily withhold, from the objecting party's participation guarantee, a cash amount established depending upon the contract's value, beginning from 1% of the contract's value, for the contracts the value of which is up to RON 420,000 and culminating with over RON 20,000 for the contracts the value of which exceeds RON 4,200,000,001.

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