

## public procurement - legal changes published in January 2017

**National Agency for Public Procurement Instruction no. 1/2017 issued for application of Art. 179 let. g) and art. 187 par. (8) let. a) of Law no. 98/2016 on public procurement, and art. 192 let. g) and art. 209 par. (8) of Law no. 99/2016 on sector procurement** was published in the Official Gazette of Romania, Part I, no. 32 of January 11, 2017.

The Instruction took into account the need for guidance on how requirements can be established and used regarding education, training and/or qualifications of personnel, either in the process of qualification and selection of economic operators participating in award procedures for public procurement contracts/sectoral procurement, or as part of implementing the contract/framework agreement to be awarded/concluded, in the latter case there is the possibility of formulating evaluation factors associated with the organization, qualification and/or experience of experts who will actually perform the activities covered by the contract.

The Instruction's purpose is to establish the wording, in a tender documentation, of the qualification and selection criteria related to the management staff of the bidder/candidate and/or requirements on the proposed personnel in the bid in order to achieve the object of the contract. The instruction brings clarifications on the personnel referenced by the terms "*permanent staff, especially management, of the economic operator*" and "*personnel which will actually carry out the activities covered by the contract to be awarded*" mentioned in art. 32 of the Norms for the application of provisions concerning the award of public procurement contracts/framework agreements of Law. 98/2016, and art. 38 of the Methodological Norms for applying the provisions relating to award of sectoral/framework agreements of Law. 99/2016, accompanied by examples.

The Instruction also includes references to how one can formulate criteria for qualification and selection of the personnel with the role of representing the organization, such as the number of years that may be imposed as a minimum requirement, both in terms of field of studies or, where appropriate, the specialization required and the specific experience that can be requested and how these are calculated.

There are also presented situations in which the qualification, professional experience and/or the organization of key personnel, as appropriate, should be used as evaluation factors within the awarding criterion price-quality/cost-quality, namely:

- in case of contracts that concern the provision of intellectual performance involving a high complexity or including intellectual activities that result in the identification, design and development of the technical solution that underpins the implementation of those contracts;
- the situation of contracts referred to in art. 32 par. (6) GD no. 395/2016 and art. 38 par. (6) GD no. 394/2016, respectively service contracts of the nature/type of consultancy/technical assistance, development of research studies, design, supervision and others alike afferent to projects/investment objectives of high complexity.

It is important to note that, when determining the evaluation factors on qualification, professional experience and/or the organization of key personnel, the contracting authority must ensure that the evaluation factors are associated to one / several extensions of the mandatory minimum requirement/requirements established by the tender book, the benefit sought being in line with higher values of the levels of qualifications and/or professional experience presented by key experts, subject to the evaluation factors, in relation to the minimum level which must be met for the technical proposal to be declared compliant.

In the Annex attached to the Instruction there are examples of evaluation factors which can be used, including the calculation method and how the contracting authorities/entities may require bidders to supplement the bid, so that it contains all the objectives taken into account for the score. All examples and notes from the Instruction are not limitative in the practice in the field, and are intended for guidance.

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February 2017

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