

procurement - legal changes published in November and December 2016

Government Decision no. 866/2016 amending and supplementing the Methodological Norms for applying the provisions relating to the award of sectoral / framework agreement of Law. 99/2016 on sector procurement and amending and supplementing the Methodological Norms for the application of provisions concerning the award of public procurement contracts / framework agreements of Law. 98/2016 on public procurement was published in the Official Gazette of Romania, Part I no. 972 of December 5, 2016.

The relevant changes to the rules for implementing relevant provisions of Law no. 99/2016 on sector procurement include the introduction of a new threshold for verification of compliance with applicable law on sector procurement by ANAP of tender documentation afferent to sector contracts / framework agreements, this being Lei 4,445,400 for service sector contracts concerning social and other specific services. In addition, it establishes that the awarding of contracts whose estimated value is less than the equivalent in Lei of EUR 25,000,000, the value of the bid bond may not exceed 1% of the estimated value of the contract / framework agreement to be awarded. It also introduces a new case in which the bid is deemed unacceptable, i.e. when in its response, the bidder does not clarify any inconsistencies regarding fulfilment of the formal conditions of the bid bond (including the amount and the validity) or the bidder did not submit proof of establishing the tender bond by the deadline for submission of bids.

Also, the Decision amends the Methodological Norms of Law no. 98/2016 on public procurement, to include a new assessment threshold by NAPA of the for compliance with public procurement law applicable to the tender documentation, i.e. Lei 3,334,050 for public procurement contracts / framework agreements for services regarding social and other specific services. Also, these norms also state that in case of award of contracts whose estimated value is less than the equivalent in RON of EUR 25,000,000, the value of the bid bond may not exceed 1% of the estimated value of the contract / framework agreement to be awarded. It is also relevant the repeal of the provision that in any case, proof of bid bond establishment must be submitted in original no later than the deadline for submission of bids.

Order of the National Agency for Public Procurement and the National Commission for Prognosis no. 842/175/2016 approving the methodology for calculating the updating rate to be used when awarding public procurement contracts was published in the Official Gazette of Romania, Part I no. 1022 of December 19, 2016.

The Order establishes the discount rate used for calculating the costs during the life cycle of acquisition in the procedures for awarding public contracts / framework agreements which have the award criterion "the lowest cost" / "the best quality-cost ratio".

According to the Methodological Norms for the application of provisions concerning the award of public procurement contracts / framework agreements, the contracting authority sets, depending upon the nature of the public procurement contract / framework agreement, the calculation method associated to cost items that are considered relevant if that procurement award criterion is "lowest cost" / "best quality-cost ratio". For equivalence of costs recorded at different moments in the lifecycle under analysis, in order to sum them up economically, the contracting authority uses an update rate, which is determined by a specific formula provided by the Order.

The Order also establishes the fact that the indicators influencing the discount rate are recalibrated annually, in order to change the evolution levels, in response to changes in economic conditions, investor expectations and economic policies. The indicators can also be changed during the year if the internal or external economic status changes substantially.

Government Emergency Ordinance no. 80/2016 for the establishment of measures in the field of central public administration to prorogue the deadline stipulated in art. 136 of Law no. 304/2004 regarding the judicial organization and for amending and supplementing certain acts was published in Official Gazette of Romania, Part I, no. 939 of November 22, 2016.

This Ordinance inserts par. (4) in art. 235 of Law no. 98/2016 on public procurement, which states that a joint order of the Minister of European funds, the Minister of Finance and the National Agency for Public Procurement shall established general and specific contractual conditions for certain categories of public contracts relating to publicly funded investment objectives. Also, the entry into force of this Order will repeal Government Decision no. 1.405/2010 approving the use of contractual arrangements of the International Federation of Consulting Engineers in Construction (FIDIC) for investment objectives of the national transport infrastructure, financed by public funds.

For additional details on this material, please do not hesitate to contact us.

Voicu & Filipescu SCA

31 General Ernest Brosteanu Street

010527, Bucharest, Romania

Tel: +40 21 314-02-00

Fax: +40 21 314-02-90

E-mail: office@vf.ro

Web: www.vf.ro

