

## public procurement - legal changes published in June 2017

**Order of the Ministry of Transport no. 600/2017 for the amendment of Annex no. 1 to the Order of the Minister of Transport and Infrastructure no. 146/2011 regarding the approval of the special contractual terms of the contracts for equipment and constructions, including design, and contracts for construction of buildings and engineering works designed by the beneficiary of the International Federation of Construction Consultants Engineers (FIDIC), for investment objectives in the field of transport infrastructure of national interest, financed by public funds** was published in the Official Gazette of Romania, Part I, no. 436 of 13 June 2017.

The Order amends Annex no. 1 to the Order of the Minister of Transport and Infrastructure no. 146/2011, regulating the special conditions of contract for equipment and constructions, including design, containing provisions on: (i) priority of contractual documents; (ii) the assignment of the public procurement contract, (iii) the use of the Contractor's documents by the Beneficiary, (iv) the performance guarantee, (v) the manner of preparing the reports on the progress of the works, (vi) the way of managing the traffic, (vii) the employment of the personnel and the workforce, (viii) the Beneficiary's right to terminate the contract unilaterally, (ix) the Contractor's right to suspend the works, (x) the consequences of force majeure, etc.

**Order of the National Agency for Public Procurement no. 141/2017 regarding the approval of the Selection Methodology and the interaction of the contracting authorities / entities with the National Agency for Public Procurement regarding the intention to modify the public procurement contracts / framework agreements, and the sectoral contracts / framework agreements, under the conditions provided in art. 221 par. (1) let. c) of Law no. 98/2016 and art. 238 of Law no. 99/2016** was published in the Official Gazette of Romania, Part I, no. 492 of 28 June 2017.

The order approves the selection methodology and the interaction of the contracting authorities / entities with the National Agency for Public Procurement (NAPP) regarding the intention to modify the public procurement contracts / framework agreements, and the sectoral contracts / framework agreements if the following cumulative conditions established by art. 221 par. (1) let. c) of Law no. 98/2016 are met: (i) the amendment became necessary following circumstances which a diligent contracting authority could not have foreseen; (ii) the change does not affect the general nature of the contract; (iii) the price increase does not exceed 50% of the value of the public procurement contract / initial framework agreement.

If the contracting authorities / entities intend to implement the provisions of Art. 221 par. (1) let. c) of Law no. 98/2016, they have the obligation to notify NAPP by any means of communication 5 working days before the start date of the stages of the amendment of the public procurement contract / framework agreement, or the sectoral contract / framework agreement.

The information which the contracting authority / entity should include in the notification to NAPP regarding the amendment of the public procurement contract / framework agreement, or the sectoral contract / framework agreement is, in addition to the general information identifying the contracting authority / entity, the contractor and the public procurement contract: (i) the value of additional documents relating to the original contract (if any); (ii) the amount of the contractual change to be made (expressed in nominal value and percentage of the original contract); and (iii) a description of the unforeseeable circumstances that led to the need to initiate the change in question and the arguments of the contracting authority / entity that justify compliance with the legal provision, in accordance with the provisions of Art. 221 par. (1) let. c) of Law no. 98/2016.

Verification of notices submitted by contracting authorities / entities will be done on a selective basis, based on criteria such as: the source of financing of the public procurement contract / framework agreement, or sectoral contract/framework agreement to be concluded; The type of contract to be concluded; The estimated value of the change to the public procurement contract / framework agreement, or the sectoral contract /framework agreement to be changed; The history of the contracting authority / entity in the field of public procurement, by reference to the number of non-compliances resulting from ex-ante control over the last 3 years concluded, from the NAPP records.

The contracting authority / entity has the obligation to notify NAPA about the completion of the stages of the public procurement contract / framework agreement or sectoral contract on the first working day after the conditions governing the implementation of the contractual amendment have been formalized, a copy of the addendum to the original contract, within 3 working days after its conclusion, and the decision to cancel the request for modification of the public procurement contract / framework agreement, or sectoral contract within one working day of its adoption.