

public procurement - legal changes published in May 2017

Law no. 80/2017 for the approval of the Government Emergency Ordinance no. 80/2016 for the adoption of certain measures in the field of central public administration, for the prorogation of the term stipulated at Art. 136 of Law no. 304/2004 on judicial organization and for the amendment and supplementing of certain normative acts was published in the Official Gazette of Romania, Part I, no. 313 of May 2, 2017.

This law amends, amongst others, the provisions of Law no. 98/2016 on public procurement. Thus, the general and specific contractual conditions for certain categories of public procurement contracts afferent to investments objectives financed out of public funds shall no longer be established by order issued jointly by the minister of European funds, the minister of public finance and the president of the National Agency for Public Procurement (as stipulated by Art. 235, para. (4) of Law no. 98/2016), but by Government decision.

On the date when the above mentioned Government decision enters into force, there shall be repealed the Government Decision no. 1405/2010 for the approval of the use of certain contractual conditions of the International Federation of Consulting Engineers (FIDIC) for investments objectives in transport infrastructure of national interest, financed out of public funds, published in the Official Gazette of Romania, Part I, no. 51 and 51bis of January 20, 2011.

Order no. 121/2017 issued by the National Agency for Public Procurement on the provision of methodological counseling was published in the Official Gazette of Romania, Part I, no. 399 of May 26, 2017.

The normative act establishes the framework by which there are achieved the interpretations given by the General Directorate for Regulation, Methodological Coordination and Operational Support (in Romanian DGRCMSO) within the National Agency for Public Procurement for the contracting authorities/entities and/or legal entities which are not contracting authorities, and which are under the obligation to put into practice the legal provisions in the governing areas and which are subject matter to: (i) Law no. 98/2016 on public procurement, as further amended and supplemented; (ii) Law no. 99/2016 on sectorial procurement; (iii) Law no. 100/2016 on works concessions and services concessions; (iv) Law no. 101/2016 on remedies and means of appeals in the field of awarding public procurement contracts, sectorial procurement, works concession contracts and services concession contracts, as well as for the organizing and functioning of the National Council for Solving Complaints.

Thus, said interpretations are achieved by means of:

- a) their publication, within 7 working days, in the specific section of the "Precedents library/Frequently asked questions" on the National Agency for Public Procurement website and in the online tool accessible at the link www.achizitiipublice.gov.ro, by collecting and summarizing the aspects indicated to the National Agency for Public Procurement, as well as the answers/opinions from the current activity and categorizing such by topics of interest;
- b) *ex officio* issuance of notices/guidelines regarding good practices and/or other horizontal aspects which might have a significant impact on said regulation areas and the publication thereof in the online tool mentioned at letter a) above;
- c) providing answers to contracting authorities/entities and/or legal entities which are not contracting authorities or other legal entities, in case such answer is not already included in the online tool mentioned at letter a) above, and also by including such answer in the online tool.

The answers issued by DGRCMO to the requests for methodological counseling sent to the National Agency for Public Procurement shall be achieved as follows:

- in the case of the requests of generally applicable nature by reporting such against the typology of a certain case, state of facts/legal status and/or a certain context met in practice for which a correspondent exists according to the provisions of letter a) above, then the answer shall include a referral to the interpretation/interpretations included in the topics of interest available in the online tools;
- in the case of the requests which are not covered by letter a) above or which, although they are covered by such situation they also include additional particular elements which exceed those covered by the topics of interest available in the specific sections of the online tools mentioned at letter a) above, then the response is compared against the described situation and, once such is issued, it shall be included in the afferent specific section.

Moreover, the documentation/acts which are issued by other public institutions, authorities or other specialized bodies and the form and contents of which are similar to those issued by the National Agency for Public Procurement under this order or by which the application is imposed of a rule which exceeds the legal obligations created by legislative provisions in the regulation fields covered by the contracting authorities/entities and/or legal entities which are not contracting authorities do not represent interpretations of the public procurement/sectorial procurement or concessions related legislation.

Also, it is stipulated that in the sense of the provisions of the Order under discussion, the provisions of Law no. 98/2016, as further amended and supplemented, are not applicable to the legal entities which are not contracting authorities and which are not included in one of the situations explicitly stipulated at Art. 6 of Law no. 98/2016 in connection with the award of public procurement contracts.

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

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