

## public procurement - legal changes published in January 2021

**Instruction of the National Agency for Public Procurement no. 1/2021 on amending the public procurement contract/ sectoral procurement contract/ framework agreement** was published in the Official Gazette, Part I, no. 56 of January 19, 2021, entering into force on the same date.

The National Public Procurement Agency considered it was necessary to issue a new Instruction to provide the market with more clarity, predictability, rigor and, above all, more examples of contractual amendments, within the limits of existing national and European legislation.

Through the Instruction:

- the provisions contained in three instructions previously issued on the matter of contractual amendments (no. 3/2017, no. 2/2018 and no. 1/2019, these being repealed) are summarized in the form of a single instruction;
- **specific examples** are presented for each type of contractual amendment, so as to ensure a unitary approach and avoid blockages in the performance of contracts;
- the **register of contractual amendments** is introduced at the level of the contracting authorities/ entities, thus ensuring the implementation of new legislative provisions, respectively the publication in SEAP of all the contractual amendments during a public/ sectoral procurement/ framework agreement;
- **the way of formalizing the contractual amendments** is clarified, being established rules regarding the use of the various ways of recording the amendments of the contract (with or without concluding an addendum);
- the regime of **non-substantial amendments regardless of value** is clarified, as in the case of replacing the subcontractor/ introducing a new subcontractor, the situation of extending the duration of contracts/ duration of the award procedure [according to para. (1) letter e) of art. 221 of Law no. 98/2016], by highlighting the circumstances that may fall within the provisions of this article;
- the possibility of adjusting the price is introduced even in the situation where there are contractual provisions that establish that the **price is firm**, the Instruction addressing the conditions under which the price of the contract can be adjusted;
- new provisions are introduced regarding the possibility to cover the increases generated by the increase of the minimum gross salary, including the incidental labour for the personnel involved - both in **direct and indirect expenses** - subject agreed with the point of view of the external public auditors of the Court of Auditors involved in control actions;
- are exemplified the most common cases of contractual amendments (the category of those with low value, such as: the need to implement optimizations related to the object of the contract; supplementation of products/ services/ works; adaptation of the technical project to the reality on the ground; introduction of new products/ services/ similar works);

- **new examples of review clauses** are introduced for various situations and clear rules for choosing the indices used in the adjustment formulas;
- a **detailed example of the calculation of the revised price** of the contract is given in case several types of contractual amendments take place, and the contract provides an adjustment formula;
- a **checklist** is provided (Annex 1) to support the contracting authorities/ entities to identify the circumstances related to a certain type of non-substantial amendment, but also the threats that may compromise the initiation of the amendment process;
- a special section on amending contracts/ framework agreements awarded on the basis of the G.E.O. no. 34/2006 is introduced.