



## public procurement - legal changes published in July 2022

**Law no. 256/2022 for amending and supplementing Law no. 98/2016 on public procurement, for amending Law no. 99/2016 on sectoral procurement, for amending Law no. 100/2016 on works and services concessions, and for amending article 25 para. (1) of Government Emergency Ordinance no. 66/2011 on preventing, finding and punishing irregularities occurred in the acquisition and use of European funds and/or related national public funds**, was published in the Official Gazette, Part I No. 744 of July 25, 2022, in force as of July 28, 2022.

The main amendments to Law no. 98/2016 on public procurement concerned the following:

- In relation to the Chapter on Definitions, the amendments aimed to replace the term "*constructions*" by the term "*works*", to define the terms "*public procurement contract on works*" and "*long-term contract*" and to introduce two new definitions for the terms "*investment objective*" and "*public investment*".
- In relation to the Chapter on the method of calculation of the estimated value of the acquisition, the provisions of **article 9 of Law no. 98/2016** have been amended providing for **4 considerations** in relation to which the Contracting Authority may choose the award procedure in the case of public procurement contracts for works or services whose object is aimed at achieving new public investment objectives or intervention works on existing ones, each of them having as a reference point the **estimated value of the contract** by reference to **(i)** the value of the services for the preparation of the feasibility study; **(ii)** the value of the technical design and assistance services provided by the designer for each individual investment objective added to the value of the works relating to the investment objective; **(iii)** the value of the technical design and assistance services provided by the designer for each individual investment objective separated from the estimated value of the contract for the execution of the works relating to the investment objective; **(iv)** the value of each service such as project verification, expertise, energy audit, environmental impact assessment, fire scenario, consultancy, technical assistance and others.
- In relation to the provisions relating to the Framework Agreement concluded with several economic operators, in cases where the Framework Agreement is executed with the resumption of competition or with the partial resumption of competition between the participating economic operators, the new amendments concerning **article 119 letter d) of Law no. 98/2016** provide that, if any of the economic operators who signed the Framework Agreement fails to respond to the request to submit a tender, the Contracting Authority has the right to continue the procedure with the other tenderers and award each contract to the tenderer submitting the most advantageous tender, determined by applying the award criteria and the evaluation factors mentioned in the award documentation drawn up under the Framework Agreement.
- In relation to the provisions relating to the DUAE which provide for the right of the Contracting Authority to request candidates/tenderers to submit all or part of the supporting documents as evidence of the information contained in the DUAE, at any time during the course of an award procedure, if this is necessary to ensure the proper conduct of the procedure, they are amended accordingly, so that under the new rules, **the required documents shall be submitted by candidates/tenderers, under penalty of exclusion, within a maximum of 5 working days following the receipt of the request from the Contracting Authority, with the possibility of an extension of a maximum of 5 working days at the motivated request of the candidate/tenderer concerned.**



- As for the provisions relating to Subcontracting and the method by which the Contracting Authority makes payments corresponding to the part(s) of the contract performed by the subcontractors proposed in the tender, the amending provisions supplement the previous form of the text excerpt, thus, according to the new regulation, payment shall be made at the request of the subcontractor in accordance with a **contractual schedule agreed by the parties**.

