



## public procurement - legal changes published in April 2022

**Government Emergency Ordinance no. 54/2022 supplementing Law no. 99/2016 on sectoral procurement was published in the Official Gazette, Part I no. 393 of April 21, 2022, in force from the same date.**

Following the entry into force of G.E.O no. 54/2022, Law no. 99/2016 is amended, by the introduction of **article 117<sup>1</sup>** allowing contracting entities to apply the negotiation procedure without prior invitation also to the competitive tendering procedure for the award of sectoral contracts concerning the execution of the remaining work to be performed for the construction and development of electricity generation capacities, only if it represents less than 40% of the physical stage of the investment objective.

In addition, **article 180** is supplemented by the insertion of **para. (6<sup>1</sup>)**, allowing contracting entities in the case referred to **article 117<sup>1</sup>**, not to exclude from the award procedure economic operators who have seriously or repeatedly breached their main obligations under a public procurement contract, a sectoral contract or a concession contract previously concluded.

**Emergency Government Ordinance no. 47/2022 on the adjustment of the prices of public procurement contracts/sectoral contracts/concession contracts/framework agreements was published in the Official Gazette, Part I no. 377 of April 15, 2022, in force from the same date.**

G.E.O no. 47/2022 was adopted in addition to G.E.O no. 15/2021, thus extending the scope of public procurement contracts/sectoral/concession/framework agreements under which price adjustment may be applied.

Thus, the provisions of G.E.O no. 47/2022 referring to price adjustment shall apply to:

- Contracts/framework agreements of works in progress at the date of entry into force of G.E.O 47/2022.
- Contracts/framework agreements for products in progress on the date of entry into force of G.E.O 47/2022, with a **firm price** and having as object:
  - endowments/technological and functional equipment/machines required for commissioning and/or equipping and specific fitting of the objectives/investment projects/maintenance and current repair works/capital repairs, complying with the intended function, or strictly necessary for the execution of works in connection with one of the activities provided for in **Annex no. 1** to Law no. 98/2016, Law no. 99/2016 and Law no. 100/2016;
  - the purchase of technological and functional equipment and/or machinery identified above as well as the purchase of products for performing maintenance/repair/administration/operation work on roads of national, county or local interest, while the purchase is performed by awarding a separate contract.
- Contracts/framework agreements of services in progress at the date of entry into force of G.E.O no. 47/2022, having as their object feasibility studies and/or technical projects, which contain revision clauses or in which a firm price is provided.
- Contracts/framework agreements for works/products/services for transport infrastructure design of national interest in progress, irrespective of the period of performance/supply/provision and which:



- have provided for price revision clauses, but for which application is foreseen after a certain period has passed from the date of conclusion of the contracts/framework agreements and/or the fulfillment of certain conditions for their application;
- have provided for price review/ adjustments clauses, other than those provided for in G.E.O no. 15/2021, determined in relation to the inflation rate or other indices, the application of which leads, on the date of entry into force of this Emergency Ordinance, exclusively for the remainder to be performed, to a price adjustment amount lower than that resulting from the application of the provisions of G.E.O no. 47/2022, for the price difference up to the adjustment amount determined as a result of the application of this Emergency Ordinance.

The provisions of the G.E.O in discussion shall not apply to:

- public procurement/sectoral contracts/concession contracts/framework agreements relating to projects financed by non-reimbursable external funds;
- award procedures relating to projects financed by non-reimbursable external funds in progress on the date of entry into force of the Emergency Ordinance;
- projects financed by the NATO Security Investment Program, for which the price adjustments are made after approval by the NATO structures, as provided for in Article 3 para. (2) of Law no. 294/2007 on the implementation in Romania of projects financed by the NATO Security Investment Program, as subsequently amended and supplemented.

The determined adjustments shall be made exclusively for the remainder to be performed/provided/delivered at the date of entry into force of G.E.O no. 47/2022, and until the completion of the objectives/projects of the targeted investments.

Contractors are required to send within 45 days from the date of entry into force of G.E.O no. 47/2022 an address to the contracting entities to initiate legal proceedings for price adjustment, under penalty of losing the rights granted by this G.E.O. Requests may be issued and submitted electronically. The contracting entities shall, in turn, be required to carry out price adjustments by concluding additional acts within 45 days of expiry of the deadline for submission of the request for adjustment of the contract price.

If the award procedure is ongoing and no price revision clauses are included in the tender documentation, and:

- I. the award procedure is at a stage *prior* to the deadline for submission of bids, then:
  - contracting entities are required to take the necessary steps to amend the tender documentation by **including the adjustment clause**;
- II. the award procedure is at a stage *subsequent* to the stage at which the offers are submitted, then:
  - after completion of the procedures or direct procurements, contracts shall be concluded in accordance with the tender documentation or the documents relating to direct procurement; thereafter, the contractor shall be required to submit the request for adjustment to the contracting entity within 15 days of the conclusion of the contract, but no later than the date of issue of the contract performance order, under the sanction of losing the right. The addendum shall be concluded within 10 days of submission of the request.

The additional sums required to adjust contract prices will be charged to the state budget.

**Price adjustments shall not be considered as substantial amendments to the contract/framework agreement. Therefore, they do not require the launch of a new award procedure, as an additional act to the existing contract is sufficient.**