

Public Procurement Newsflash

May 2016

The President of Romania has promulgated the legislative package on public procurement

According to the information posted on the Chamber of Deputies' Internet page, on Friday, 19 May 2016, the President of Romania promulgated the laws making up the legislative package on public procurement.

The legislative package on public procurement consists of the following:

- Law no. 98/2016 on public procurement, promulgated under Decree 514/2016;
- Utilities Procurement Law no. 99/2016, promulgated under Decree 515/2016;
- Law no. 100/2016 on concessions of works and concessions of services promulgated under Decree 516/2016;
- Law no. 101/2016 on remedies and means of appeal in the award of public procurement contracts, utilities contracts and concession contracts and on the organization and operation of the National Council for Solving Complaints, promulgated under Decree 517/2016.

The legislative package on public procurement will come into effect within three days after the publication of the laws in the Official Journal of Romania, Part I. Once the legislative package on public procurement comes into effect, the regulations currently governing public procurement matters will be repealed (including Government Emergency Ordinance no. 34/2006 on the award of public procurement contracts, public works concession contracts and services concession contracts), as well as any other contrary provisions contained in any other legislation.

The National Public Procurement Agency ("ANAP") will prepare norms for the application of Law no. 98/2016 on public procurement, which will then be submitted for approval by the Government within 30 days after the publication of the Law in the Official Journey of

Președintele României a promulgat pachetul legislativ privind achizițiile publice

Conform informațiilor disponibile pe pagina de internet a Camerei Deputaților, Președintele României a promulgat vineri, 19.05.2016, legile ce compun pachetul legislativ privind achizițiile publice.

Pachetul legislativ privind achizițiile publice este compus din:

- Legea nr. 98/2016 privind achizițiile publice promulgată prin Decretul nr. 514/2016;
- Legea nr. 99/2016 privind achizițiile sectoriale promulgată prin Decretul nr. 515/2016;
- Legea nr. 100/2016 privind concesiunile de lucrări și concesiunile de servicii promulgată prin Decretul nr. 516/2016;
- Legea nr. 101/2016 privind remedierea și căile de atac în materie de atribuire a contractelor de achiziție publică, a contractelor sectoriale și a contractelor de concesiune și pentru organizarea și funcționarea Consiliului Național de Soluționare a Contestațiilor promulgată prin Decretul nr. 517/2016.

Pachetul legislativ privind achizițiile publice va intra în vigoare în termen de trei zile de la data publicării legilor în Monitorul Oficial al României, Partea I. La momentul intrării în vigoare a pachetului legislativ privind achizițiile publice vor fi abrogate reglementările care guvernează în prezent domeniul achizițiilor publice (inclusiv Ordonanța de Urgență a Guvernului nr. 34/2006 privind atribuirea contractelor de achiziție publică, a contractelor de concesiune de lucrări publice și a contractelor de concesiune de servicii), precum și orice alte prevederi contrare cuprinse în orice alte acte normative.

Agenția Națională pentru Achiziții Publice („ANAP”) va elabora norme metodologice de aplicare a Legii nr. 98/2016 privind achizițiile publice pe care le supune apoi spre adoptare Guvernului în termen de 30 de zile

Romania.

The norms for the application of Utilities Procurement Law no. 99/2016 and Law no. 100/2016 on concessions of works and concessions of services will be developed by ANAP within 60 days after the publication of these laws in the Official Journal of Romania.

Thus, although the laws making up the legislative package on public procurement shall be applicable from their entry into force, they will be fully operational only after the application norms have come into effect.

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The main amendments brought by the legislative package are aimed at:

- obtaining a better value-for-money ratio through a new bids assessment approach;
- increasing the transparency in the award of public procurement contracts and at introducing the mandatory use of electronic means of communication in public procurement;
- simplifying the award of public procurement contracts through the introduction of the European Single Procurement Document (ESPD);
- expressly and restrictively regulating the instances when a public procurement contract may be amended without the need to reinitiate the procurement process and at defining the concept of material contract amendment;
- expressly regulating the contracting authority's possibility to organize consultations with independent experts, public authorities and/or business entities, prior to launching a public procurement project.

de la data publicării Legii în Monitorul Oficial al României.

Normele metodologice de aplicare a Legii nr. 99/2016 privind achizițiile sectoriale și cele de aplicare a Legii nr. 100/2016 privind concesiunile de lucrări și concesiunile de servicii vor fi elaborate de ANAP în termen de 60 de zile de la publicarea respectivelor legi în Monitorul Oficial al României.

Astfel, cu toate că legile ce compun pachetul legislativ privind achizițiile publice se vor aplica de la intrarea lor în vigoare, acestea vor fi pe deplin operaționale doar din momentul intrării în vigoare a normelor metodologice de aplicare.

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Principalele modificări aduse de pachetul legislativ privind achizițiile publice vizează următoarele:

- obținerea unui mai bun raport calitate-preț prin introducerea unei noi abordări în ceea ce privește modalitatea de evaluare a ofertelor;
- creșterea transparenței procesului de atribuire a contractelor de achiziție publică și introducerea obligației de utilizare a mijloacelor electronice în realizarea achizițiilor publice;
- simplificarea procesului de atribuire a contractelor de achiziție publică prin introducerea Documentului unic de achiziție european (D.E.A.U.);
- reglementarea expresă și limitativă a cazurilor în care este permisă modificarea contractului de achiziție publică fără a fi nevoie de re-ofertare și de asemenea definirea conceptului de modificare substanțială a contractului;
- reglementarea expresă a posibilității autorității contractante de a organiza consultări cu piața, anterior realizării unei achiziții, cu posibilitatea invitării la consultări a expertilor independenți, a autorităților publice și/sau a operatorilor economici.

Public Procurement Center of Excellence



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Advisory services offered to CONTRACTING AUTHORITIES:	Advisory services offered to BIDDERS:
<ul style="list-style-type: none"> Drafting legal opinions on the interpretation and implementation of national and EU public procurement legislation. Tender evaluation assistance (part of the Evaluation Commission) as outsourced expert on behalf of the contracting authority. Preparation/drafting of tender documentation for national/EU award procedures. Drafting, revision, negotiation, implementation and monitoring of public procurement agreements, as well as of public project management agreements for the concession of public works, services and PPPs. Audit of (public) procurement procedures organized/financed by public authorities and other financing bodies (e.g. Ministries, the World Bank, EBRD, etc.). Design of public procurement policies & procedures. Structuring and implementation of PPP/concession projects in line with the applicable legal provisions (including risk analysis and quantification, sensitivity analysis, substantiation studies for concession decisions (Value for Money), financial modelling). Analysis of the statistical / accounting classification of assets related to PPP/concession projects in the light of Eurostat rules. Assistance with commercial and financial closing of PPP/concession projects. 	<ul style="list-style-type: none"> Preparation/drafting of tender documentation for participation in award procedures (including consortium or joint venture agreements, subcontracting agreements as well as firm commitments of support). Assistance in identifying inconsistencies and/or errors in the award documentation and/or the procurement procedure; formulating relevant requests for clarifications. Legal assistance in filing complaints in accordance with public procurement and PPP legislation. Revision and negotiation of public procurement or PPP agreements, project management agreements or contracts for the concession of public works and services. Drafting legal opinions on the interpretation and implementation of national and EU public procurement legislation. Coordination with tax authorities. Contract management.
INFRASTRUCTURE advisory services : <ul style="list-style-type: none"> Infrastructure tenders and contracts. FIDIC, PPP, Concession contracts. Project management. Project financing. Legal and financial assistance in the management of public procurement / public works and services concession / public goods concession projects. Assistance in the preparation of feasibility studies. Assistance in the preparation of substantiation studies in relation to concession decisions, risk analysis and quantification, sensitivity analysis, Value for Money, financial modelling. Analysis of the statistical / accounting classification of assets related to PPP/concession projects in the light of Eurostat rules. Assistance with commercial and financial closure of PPP/concession contracts. Major Projects Advisory services (MPA). 	Other services: <ul style="list-style-type: none"> Litigation assistance in connection with public procurement or public-private partnership issues and contracts. Specialized (accredited) courses on EU/national procedures/regulatory framework in public procurement issues offered to both private and state entities (the Public Procurement Expert Course, accredited by ANC).