

THE ARCHITECTURE OF THE PUBLIC PROCUREMENT SYSTEM IN ROMANIA

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Abstract: Nowadays, the field of public procurement has evolved both in terms of the conceptual approach and in terms of the design of a reliable and effective public procurement system. All public institutions or public bodies belonging to the European space are struggling to cope with the budgetary constraints imposed by the reduction of oversized public spending and the increasing public pressure, in order to make public procurement more transparent in the sense of using public money. On the other hand, experts in the field of public procurement are facing another problem, namely the emergence of new technologies that are constantly developing and generate difficulties related to the qualitative choice of products, works or services, new challenges in the development and conclusion of commercial agreements, and especially difficulties in observing the environmental norms. From the perspective of the contracting authority, they are increasingly basing their activities on the online environment for public procurement, using this field in order to reach the economic objectives. The public procurement system has the general meaning of principles and rules in relation to the purchase of products, services or works based on special contracts, i.e. public procurement contracts, completed by a community. As the public body is represented by the state through its institutions, it can be stated that this system administers, manages and controls all public institutions in relation to the way of spending public money through the contracts concluded between the state and economic agents.

Keywords: public procurement, contracting authorities, public institutions, functions, information system

1. Introduction

Generally, the system, is defined as „an assembly of elements (principles, rules, forces, etc.) dependent on each other and forming an organized whole, which places order in a field of theoretical thinking, regulates the classification of the material in a domain of science of nature or makes a practical activity work according to the purpose pursued” [1] or „an assembly of elements (material or ideal) with certain common features that form an organized whole” [2].

From the two definitions, it can be concluded that the system consists of

principles, rules or forces that are mutually conditioned, functioning as a unitary whole for the purpose of providing the theoretical and practical solutions for a given domain. The specific relationships that are established between the component elements of the system contribute to the achievement of the purpose for which this system was designed, namely the need of the community for public goods, services or works. Within the system, the component elements interact, condition, strengthen or annihilate each other.

Acquisitions are defined as „a form of trade that consists of the purchase of

products (agri-food) or materials (by way of special contracts); acquisition” [3] and the public is defined as „belonging to a community of people; belonging to a human community” [3].

From the definitions presented above, it can be concluded that the phrase „public procurement system” represents an assembly of principles and rules regarding the purchase of products, services or works based on special contracts, i.e. public procurement contracts, concluded by a community.

Since the public body is represented by the state through its institutions, it can be concluded that this system administers, manages and controls all public institutions in relation to the way public money is spent through the contracts concluded between the state and economic agents. This assertion is also supported by the following definitions issued by the old state authority, the National Authority for the Regulation and Monitoring of Public Procurement, hereafter referred to as ANRMAP, namely that „the public procurement system represents all the rules and actions regarding the use of public funds and in which the application is launched by the contracting authorities meets the offer proposed by the economic operators” [4] and „the public procurement system represents the set of rules, principles, institutions and actions regarding the public money is spent in the interest of the

community and in which the request launched by a contracting authority matches the offer of an economic operator” [5].

2. The architecture of the public procurement system

The structure and design of the system includes its projection and organization with the help of its component elements, as well as the study of the connections between these components. In essence, the public procurement system is designed and regulated by the government and is influenced by its economic, cultural, legal, political and social aspects.

The public procurement system has two components:

- The institutional component
- The legislative component

2.1. The institutional component of the public procurement system in Romania

The institutional component of the public procurement system comprises all the specific institutions that contribute to the regulation and supervision of the way in which public procurement contracts are awarded to economic operators. The establishment of these institutions conditioned Romania’s accession to the European Union with the continued involvement of the existing institutions, at the date of Romania’s accession, in the management of specific aspects related to public procurement.

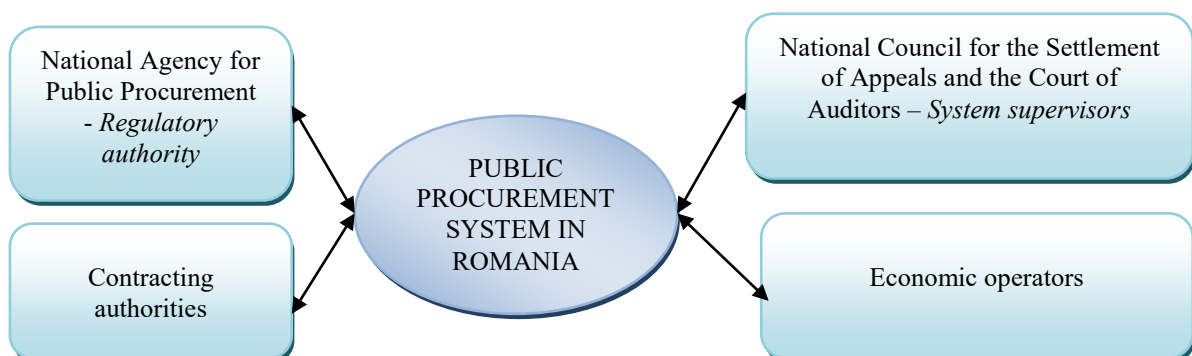


Figure 1: The institutional composition of the public procurement system in Romania

➤ The regulating authority

The National Agency for Public Procurement, hereinafter referred to as ANAP, „was established as a public institution with legal personality, a specialized body of the central public administration, subordinated to the General Secretariat of the Government, by taking over the duties, activity, positions and personnel of the National Authority for the Regulation and Monitoring of Public Procurement, hereinafter referred to as ANRMAP, from the Unit for the Coordination and Verification of Public Procurement within the Ministry of Public Finance, hereinafter referred to as UCVAP, and from the Public Procurement Verification departments within the regional general directions of public finances” [6]. The functions that ANAP performs are:

- „the strategy function - this helps ensure the elaboration and implementation of the *National strategy in the field of public procurement*, and also of the action plans, in accordance with the obligations assumed by the Government of Romania and by the European Union;
- the regulatory function - which ensures the elaboration, promotion, and implementation of the policy in the field of public procurement;
- establishing and implementing the system of verification and control of the unitary application of the legal provisions and procedures in the field of public procurement. by the contracting authorities;
- monitoring the efficient functioning of the public procurement system;
- ex ante controlling the process of awarding public procurement framework contracts / agreements, sector framework contracts / agreements and works concession and service concession contracts and, respectively, their modifications;
- ensuring the operational support for the contracting authorities, through the implementation of dedicated tools for dissemination, including by means of

information technology, of good practices related to the process of public procurement” [7].

➤ System supervisors

The collaborative information system for performance environment of public procurement, hereinafter referred to as SICAP, is a computer system used both by the economic operators - the offer - and by the contracting authorities representing the demand for products, works or services. This system is available through the Internet and is used to facilitate the application of the award procedures by electronic means, for the purpose of posting the following types of announcements at national level: notices of intent, participation announcements or invitations, award announcements and announcements errata. The SICAP operator is the Agency for the Digitization of Romania, hereinafter referred to as AADR. AADR “is a specialized public institution of central public administration, with legal personality, subordinated to the Ministry of Communication and Information Society” [9] and has the role of using information systems of public utility that ensure electronic governance:

- „the e-government system (S.E.N.), available at www.e-guvernare.ro;
- the Electronic Public Procurement System (S.E.A.P.), available at www.e-licitatie.ro;
- the information system for the electronic attribution of the international road freight transport authorizations and for the electronic attribution of the national routes from the transport programs through the regular county and inter-county services (S.A.E.T.), available at www.autorizatiiauto.ro;
- the National Electronic Online Payment System for taxes (S.N.E.P.), available at www.ghiseul.ro;
- the Electronic Single Contact Point (P.C.U.e) available at <http://www.edirect.e-guvernare.ro>”[15].

The Romanian Court of Auditors „exercises control over the way of formation, administration and use of the financial resources of the state and of the public sector”[12]. The function exercised by the Court of External Auditors “is carried out by external public audit procedures provided in its own audit standards, elaborated in accordance with generally accepted international audit standards” [13].

➤ **Contracting authorities**

The contracting authorities are represented by:

a) „central or local public authorities and institutions, as well as structures in their composition, delegated with the capacity of credit officer and that have competences in the field of public procurement” [14];

b) public law bodies;

- are set up to meet needs of general interest, without commercial or industrial character;

- have legal personality;

- „are mostly financed by central or local public authorities and institutions or by other public law bodies or are subordinated, under the authority or in the coordination or control of central or local public authorities and institutions or of another public law body, where more than half of the members of the board of directors / management or supervisory body are appointed by the central or local public authorities and institutions or by another public law body”[14].

c) associations formed by one or more contracting authorities - any association between public institutions, public law bodies or combinations thereof.

➤ **Economic operators**

An economic operator represents „any product supplier, service provider or work performer - natural / legal person, public or private law, or group of such persons with activity in a field that legally offers products, services and / or execution of works on the market” [10].

2.2. The legislative institutional component of the public procurement

system in Romania

In order to eliminate the discriminatory practices in Member States, the unitary regulation of public procurement at the European Union level was chosen, and the specific legal instrument chosen to achieve this objective was the Directive. It provides a regulatory framework that allows Member States to standardize their public markets, taking into account the existing national legal particularities. At the same time, due to the unifying nature of the Directive, they are obliged to harmonize their national legislation with Community objectives.

Starting with 2014, packages of normative acts have been adopted for the purpose of modernization and harmonization of the field of public procurement in the European Union area. The following were approved: Directive 2014/23 / EU of the European Parliament and of the Council - *regarding the award of concession contracts*, Directive 2014/24 / EU - *regarding public procurement* and Directive 2014/25 / EU of the European Parliament and of the Council - *on procurement carried out by entities operating in the water, energy, transport and postal services sectors*. In accordance with Art. 288 of the T.F.U.E. [11], the directives are binding for each Member State of the European Union, leaving the competence regarding the form and the means of implementation to the national authorities. The deadline was April 18, 2016, by which the Member States were compelled to ensure the application of the laws, regulations and administrative provisions necessary for this purpose. From this perspective, Romania has developed and implemented a package of normative acts, starting with the national strategy in the field of public procurement, approved by the Government Decision no. 901 / 2015 - *on the National strategy in the field of public procurement* and continuing with the transposition of the European directives in the field of public procurement in four primary normative acts: Law no. 98/2016 - *regarding public procurement*, Law no.

99/2016 - *regarding sector acquisitions*; Law no. 100 / 2016 - *regarding the concessions of works and the concessions of services*, Law no. 101 / 2016 - *on the remedial actions regarding the award of public procurement contracts, sector contracts and works and services concession contracts, as well as the organization and functioning of the National Council for the Settlement of Appeals* and three secondary normative acts representing methodological norms for the application of laws in the field of public procurement: Government Decision no. 394/2016 - for the approval of the Methodological norms for the application of the provisions regarding the award of the sector contract / framework agreement according to Law no. 99/2016 on sector acquisitions, Government Decision no. 395/2016 - on approving the methodological norms for the application of the provisions regarding the award of the public procurement contract / framework agreement according to Law no. 98/2016 regarding public procurement, and Government Decision no. 867/2016 - for the approval of the methodological norms for the application of the provisions regarding the awarding of works and services concession contracts according to Law no. 100/2016 on works and service contract concessions. Today, these have been modified and supplemented by complex normative acts issued by the government, the parliament or the president of the ANAP.

3. Conclusions

On the one hand, the relations between the institutional components established by the enforced normative acts specific to the field of public procurement are trade, support, supervision and achievement of justice. Thus:

- the trade relationship refers to the fact that the request of the contracting authorities meets the offer of economic operators through SICAP;

- the support relationship refers to the fact that the ANAP is the regulating authority, while the contracting authorities and economic operators apply these regulations;

- the supervision relation refers to the fact that the system supervisors observe the correct application of the regulations in the field;

- the relation of achieving justice refers to the fact that the economic operators affected in a legitimate right can address the court to resolve the disputes.

On the other hand, the legislative component provides the public procurement system with clarity, coherence, integrity and flexibility. Therefore:

- clarity requires careful drafting of primary sources to ensure that the basic principles are clear, but does not prevent the use of more efficient procedures or new technology;

- coherence can be achieved when the provisions on public procurement that contain different sources are well coordinated (i.e. there is no overlap or conflict, there is hierarchy of sources), and when the new provisions are incorporated promptly and the outdated provisions are repealed;

- integrity implies that all the relevant aspects of the procurement process are addressed (there are no shortcomings in the regulatory framework that might allow a „personal” interpretation or „distortion” of the process aspects);

- flexibility requires that the primary sources establish only principles, basic characteristics of the system, a presentation of the procurement methods and the conditions of use. Depending on local conditions, multiple levels of regulatory authority can coexist, including agency-issued codes or rules that regulate agency-specific issues. Lower level sources should provide practical guidance to practitioners in carrying out their work and should be easily updated.

Based on this brief analysis, it can be stated that the public procurement system in

Romania is today a consolidated system in which the institutional component is based

on the legislative component and all taken together ensure its effective functioning.

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