

APPROACHES REGARDING THE SIMPLIFIED PUBLIC PROCUREMENT PROCEDURE IN ROMANIA

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Abstract: Public procurement in Romania is an important part of any economy, regardless of the geographical location, political orientation or level of development. Therefore, they can be considered as a separate part, but not insignificant, of the business of a functioning market economy. Moreover, they benefit from its own law, including the global economic agreements governing commercial transactions of this type. Public Procurement is an important element of the Internal Market and a basic method of public spending and ensuring the free movement of goods, services and works by domestic and foreign companies. Through the adoption and implementation in the national legislation of the Member States of a package of Directives 2014, a new Public Procurement regime is settled. The Public Procurement Law provides two new awarding procedure. Simplified procedure – may be applied by the contracting authority for the contracts with a reduced value and the Innovation partnership. The above procedures are in addition to the procedures below which were already provided for by the prior legislation. In Romania a simplified procedure is applied for contracts /framework agreements with an estimated value below the above mentioned thresholds but with exceed RON 135,060 for supply and services contracts and RON 450,200 for works contracts. Within a simplified procedure, contract notices are published only in the Electronic System for Public Procurement.

Keywords: procurement, public, procedure, simplified, contracting authority

1. Introduction

Public procurement management includes the art and activity of leadership, the science of management techniques, the activity of organization and management, also includes the process of obtaining and combining the organization's resources for procurement by public institutions of products, works or services, having as legal basis the contract.

Law no. 98/2016 and Decision No. 395/2016 regulates the way public procurement and the entire award process are carried out, addressing issues such as: general procurement rules, economic operators, contracting entities, application

areas, award procedures and the development of the whole process. The purpose of the procedure is to establish a unitary way of carrying out the activity regarding public procurements that have as object services / products whose estimated value without VAT is lower than the thresholds provided in art. 7 paragraph (1) letter b) of Law no. 98/2016 on public procurement. This simplified procedure was developed in accordance with the provisions of art. 113 of Law no. 98/2016 on public procurement and art. 101-105 of H.G. no. 395/2016 for the approval of the Methodological Norms for the application of the provisions regarding the award of the

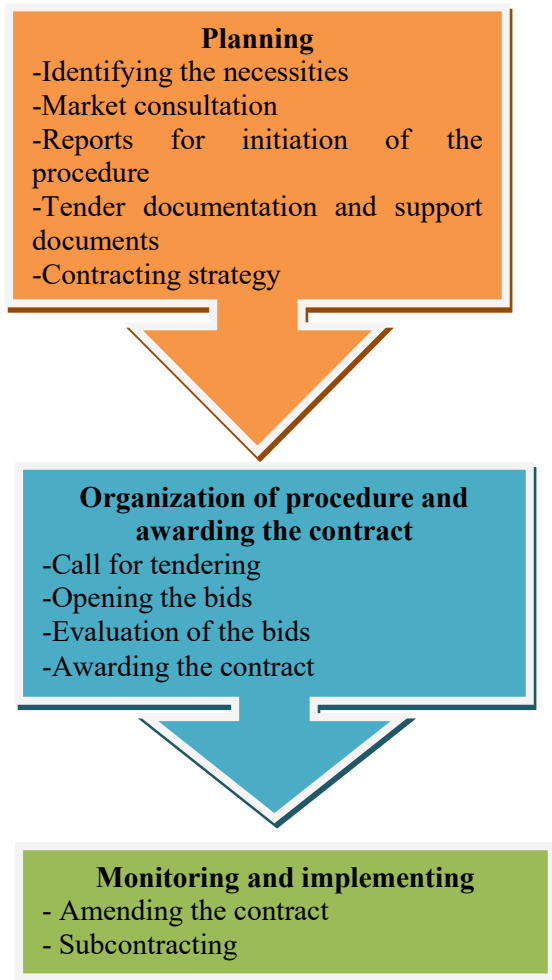
public procurement contract / framework agreement from Law no. 98/2016 on public procurement.

2. The Concept of Public Procurement Process

The purchase of works, products or services through a public procurement contract by one or more times contracting authorities from economic operators designated by them, whether or not the works, products or services are intended for realization of public interest.

In order to obtain a product, work or service after the award of a public procurement contract, the contracting authority must follow a succession of stages, which represent a public procurement process.

The public procurement process can be defined as follows:



3. Theoretical aspects of the Simplified Public Procurement Procedure

The contracting authority has the right to apply the simplified procedure under the conditions provided in art.7 par. (2). of the Law 98/2016. The simplified procedure is initiated by the publication in the SEAP of a simplified tender notice, accompanied by the related award documentation.

The simplified entry notice contains the following information:

- a) the name, address, telephone and fax numbers, e-mail address of the contracting authority;
- b) the type of contract and, if applicable, whether a framework agreement is to be concluded;
- c) the name of the products/services/works to be supplied/performed/executed and the code(s)

CPV;

- d) the estimated value;
- e) the quantity of products to be supplied, if applicable;
- f) source of financing;
- g) the deadline for receiving the offers;
- h) the address to which the offers are sent;
- i) the language or languages in which the tenders must be drawn up;
- j) the period of time in which the bidder must maintain its valid bid;
- k) the award criterion [1].

The contracting authority has the obligation to set the tendering period according to the complexity of the public procurement contract/framework agreement and the specific requirements, so that interested economic operators have an adequate and sufficient time to prepare tenders and prepare documents. qualification and selection, if required by the procurement documents.

The contracting authority may decide to carry out the simplified procedure:

- a) Either in one stage;
- b) Either in several stages that involve both the selection of candidates and the negotiation and evaluation of offers.

Any interested economic operator has the right to request clarifications regarding the award documentation, in the deadline set by the simplified notice of participation.

The contracting authority has an obligation to respond clearly and completely unambiguously by the deadline set out in the simplified contract notice.

The contracting authority has the obligation to publish in the SEAP the answer to the requests for clarifications without reveal the identity of the applicants.

The contracting authority has the right to extend the period by publishing an erroneous notice in the SEAP established according to art. 102 if the response to requests for clarification modifies the award documentation.

The contracting authority shall apply the simplified procedure by electronic means, in which case only economic operators registered in SEAP may submit a bid.

Following the completion of the simplified procedure, the contracting authority has the obligation to publish a notice in the SEAP award within 15 days from the date of conclusion of the public procurement contract/framework agreement, as well as any modification of the contract/framework.

The contracting authority may initiate the application of the award procedure only after the award documentation and supporting documents have been drawn up and approved.

The contracting authority has the obligation to send for publication in SEAP, on working days, the award documentation together with the supporting documents, namely the statement on the persons holding decision-making positions within the contracting authority, respectively those with power of representation from service providers ancillary to the acquisition, as well as their identification data and contracting strategy.

4. Documents of the Simplified Public Procurement Procedure - Planning

Considering the stages of the public procurement process mentioned above, we will list and explain what documents are elaborated but also their content within each stage. Thus, in the planning / preparation stage of a public procurement process it is initiated by identifying the needs and elaborating the necessity reports and concludes with the approval by the head of the contracting authority / centralized procurement unit of the award documentation, including supporting documents, as well as the contracting strategy for the respective procedure.

4.1 The report of necessity

The report of necessity according to H.G. 395/2016, represents an internal document issued by each department within the contracting authority, in the last quarter of the current year for the next year, which includes the needs of products, services or works identified during the year, as well as their unit / total price.

With the exception of Article 3, paragraph 1 of Law 98/2016, reports of necessity may also be prepared when the need is identified, if it is not foreseeable, or cannot be identified in the last quarter of the current year.

4.2 Annual public procurement program

The contracting authority has the obligation to elaborate the annual public procurement program, as an instrument managerial used for planning and monitoring the portfolio of procurement processes at the authority level contracting authority, for planning the resources needed to carry out the processes and for verifying how meeting the objectives of the local/regional/national development strategy, where applicable [2]. The annual public procurement program is drawn up, in its initial form, in the fourth quarter of the previous year, on the basis of the reports of necessity sent by the departments of the contracting authorities, and includes the whole public procurement contracts/framework agreements which the

contracting authority intends to award in during the following year.

When establishing the initial form of the annual public procurement program, the contracting authority has the obligation to take into account:

- a) the objective needs of products, services and works;
- b) the degree of priority of the needs provided in let. a);
- c) anticipations regarding the financing sources to be identified.

After the approval of its own budget, the contracting authority has the obligation to update its annual program of public procurement according to the approved funds.

The annual public procurement program must include at least information on:

- a) the object of the public procurement contract/framework agreement;
- b) the code of the common vocabulary of public procurement (CPV);
- c) the estimated value of the contract / framework agreement to be awarded as a result of a acquisition, expressed in lei, without VAT;
- d) source of financing;
- e) the procedure established for carrying out the acquisition process;
- f) the estimated date for initiating the procedure;
- g) the estimated date for awarding the contract;
- h) the manner of carrying out the award procedure, respectively online or offline [3].

4.3. The contracting strategy

The contracting strategy documents the decisions from the planning / preparation stage of purchase in connection with:

- a) the relationship between the object, the associated constraints and the complexity of the contract, on the one hand, and the resources available at the level of the contracting authority for carrying out the activities from the stages of the procurement process publishes, on the other hand;
- b) the chosen award procedure, as well as

the special modalities for awarding the public procurement contract associated, if applicable;

- c) the type of contract proposed and the manner of its implementation;
- d) the payment mechanisms within the contract, the allocation of risks within it, management measures a establishing the penalties for non-fulfillment or defective fulfillment of the contractual obligations;
- e) the justifications regarding the determination of the estimated value of the contract / framework agreement, as well as any other elements related to obtaining benefits for the contracting authority and / or fulfilling the objectives communicated to the level of the public administration sector in which the contracting authority operates;
- f) the justifications regarding the choice of the awarding procedure in the situations provided in art. 69 para. (2) - (5) of the Law and, where appropriate, the decision to reduce the time limits in accordance with the law, the decision not to use the division into lots, the qualification of the capacity and, where applicable, the selection criteria, the award criteria and the evaluation factors used;
- g) the objective from the local / regional / national development strategy to the achievement of which it contributes the respective contract / framework agreement, if applicable;
- h) any other elements relevant to meeting the needs of the contracting authority.

5. Documents of the Simplified Public Procurement Procedure - Organization of procedure and awarding the contract

The stage of organizing the procedure for awarding the contract/framework agreement begins with the transmission award documentation in SEAP and is completed once the procurement contract is concluded public / framework agreement.

5.1. The award documentation

The award documentation shall contain any requirements, criteria, rules and other information necessary to ensure to the

tenderer / candidate a complete, correct and explicit information on how to apply the procedure award.

The award documentation consists of the following:

- a) Single European procurement document(ESPD) and instructions to tenderers/candidates;
- b) the specifications or the descriptive document, the latter being applicable in the case of dialogue procedures competitive, negotiating or partnering for innovation;
- c) the draft contract containing the mandatory contractual clauses;
- d) forms and models of documents.

The contracting authority has the obligation to electronically generate the completed ESPD with the information requested in report with the qualification and selection criteria established by the award documentation, marking the fields in the form for which references must be submitted by economic operators, corresponding to those requirements, and to it attach in SEAP, together with the other documents of the acquisition.

The contracting authority must ensure the correlation between the information requested by the contract notice simplified participation and those marked in the DUAЕ for completion by economic operators interested parties, mentioning in the award documentation how the DUAЕ can be accessed for the purpose completion by the interested economic operators. The instructions to tenderers/candidates contain details of the formalities what needs to be done in relation to the award procedure in question, how economic operators should to structure the information to be presented in order to meet the requirements of the participation/simplified, respectively procedural details such as clarifications regarding the requested guarantees, the way in which the technical and financial proposal must be drawn up and structured, the award criterion what to be applied, as well as the procedural deadlines to be observed and the

remedies that can be used.

All of this information is the basis for SEAP's automatic ad generation simplified participation.

The specifications must contain technical specifications that represent requirements, prescriptions, technical characteristics that allow each product, service or work to be described, objectively, as follows to meet the needs of the contracting authority. The draft contract containing the mandatory contractual clauses is used as a model for economic operators to know and assume the respective clauses that will govern the future contract.

Once loaded in SEAP it becomes the final version.

The previously submitted documents will be signed extended electronic, based on a qualified certificate, issued by an accredited certification service provider and uploaded to SEAP in the specific sections available in the computer system and only by the authorities registered contractors.

Following the completion of the simplified procedure, the contracting authority has the obligation to publish a notice in the SEAP award within 15 days from the date of conclusion of the public procurement contract/framework agreement, as well as any modification of the contract/framework agreement.

6. Conclusion

With the publication of Law no. 98/2016 on public procurement, and of H.G. 395/2016 of June 2, 2016, for the approval of the Methodological Norms for the application of the provisions regarding the award of the public procurement contract / framework agreement of Law no. 98/2016 on public procurement, the public procurement framework in Romania, new procedures for awarding public procurement contracts appeared and their award was simplified. Procurement through the simplified procedure, as a method of public procurement, also covers an important segment in terms of satisfying the interests

of the contracting authorities, in a fast way, and with an efficient and effective spending of public money.

The advantages of this award procedure are many and help the contracting authority a lot in the process of awarding a contract, whether it is for supply, services or works.

The simplified procedure reduces the procurement deadlines, and most importantly respects all the principles [4] of public procurement, namely non-discrimination by achieving conditions that show competition for any kind of economic operator, regardless of its nationality, having the possibility to bid and to become a contractor.

Equal treatment aimed at applying and

establishing objective rules, requirements and criteria.

Mutual recognition by accepting any type of product, work or service as long as it does not discriminate against another economic operator.

Proportionality ie the need for a contracting authority/object of a contract/requirements.

The efficiency of the use of public funds, ie the use of the competitive system and the economic criteria for awarding the contract in order to obtain value for the money spent.

And of course taking responsibility by using criteria such as professionalism, impartiality and independence of decisions taken during this process.

References

- [1] Article 101 para. (4) of H.G. 395/2016 of June 2, 2016, for the approval of the Methodological Norms for the application of the provisions regarding the award of the public procurement contract / framework agreement of Law no. 98/2016 on public procurement.
- [2] Article 12 of H.G. 395/2016 of June 2, 2016, for the approval of the Methodological Norms for the application of the provisions regarding the award of the public procurement contract / framework agreement of Law no. 98/2016 on public procurement.
- [3] Article 12 para. (5) of H.G. 395/2016 of June 2, 2016, for the approval of the Methodological Norms for the application of the provisions regarding the award of the public procurement contract / framework agreement of Law no. 98/2016 on public procurement.
- [4] Article 2 of Law no. 98/2016 on public procurement.