

The legislative package for public procurement

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In brief

The legislative package for public procurement was published in the Official Gazette on May 23, 2016 and it repeals the Government Emergency Ordinance no. 34/2006 :

- ✚ **Law no. 98/2016** on public procurement;
- ✚ **Law no.99/2016** on sectorial procurement;
- ✚ **Law no.100/2016** on work concessions and services concessions;
- ✚ **Law no. 101/2016** on remedies and appeals concerning the award of public procurement contracts , the sector contracts, works concession contracts and service concession contracts , and on the establishment and functioning of the Nation Council of Appeals Settlement.

Also, recent, the first implementing rules were published:

- ❖ *Detailed rules implementing the provisions relating to award sectoral / framework agreement of Law No.99 / 2016 on the procurement sector;*
- ❖ *Detailed rules implementing the provisions on awarding public procurement contract / framework agreement of Law No.98 / 2016 on public procurement;*

In detail

The main changes

1. The introduction of the unique European procurement document provided electronically and using the standard format established by the European Commission (D.E.A.U.), consisting of the affidavit of the economic operator with

respect to the qualifying criteria and selection.

2. New four award criteria, namely "**lowest price**", "**lowest cost**", "**best-value**" or "**best value for cost**", depending on the particulars of each contract.

3. Expressly regulating where it is allowed to change the public contract without a new award procedure.

4. Establishment of centralized purchasing units.

5. The direct procurement thresholds are set in LEI, the contracting authority has the right to directly purchase products or services where the estimated value of the acquisition, net of VAT, is less than **LEI 132 519** or constructions, where the estimated value acquisition,

net of VAT, is less than LEI **441 730**.

6. The provision of the possibility of the contracting authority to perform market consultations for the acquisition, and to inform operators about acquisition plans and requirements contemplated in connection therewith.

7. Introduction of the innovation partnership, applicable for the development and subsequent acquisition of products, services or works which are not existing on the market

8. Changing the thresholds award procedure:

- **LEI 23 227 215** for public contracts / framework agreements for works;
- **LEI 600 129** for public contracts / framework agreements for products and services;
- **LEI 3 334 050** for public contracts / framework agreement which have as their object social services and other specific services provided in Annex. 2.

9. A new definition of the conflict of interest - defined as any situation where staff members of the contracting authority or of a service provider purchasing or acting on behalf of the contracting authority, involved in conducting the tender procedure or which may influence or have directly or indirectly, a financial interest, economic or other personal interest that could be perceived to compromise their impartiality or independence in the context of the award procedure.

10. Introducing the possibility of classifying some information - the contracting authority has the obligation not to disclose information submitted by the operators indicated by them as confidential, including technical or trade secrets and confidential elements of tenders.

11. Introducing the prior notification as a mandatory pre-procedure, that under, the penalty of rejection of the appeal as inadmissible, which can be invoked by default, before addressing the Council or the competent court, the person who is aggrieved shall notify the contracting authority of its request of remediation, in whole or in part, to the alleged violation of legislation on public procurement or concessions within: **5/10 days**, depending on the estimated value of the procurement / concession.

12. Regulating the appeal procedures in a separate law.

Amongst the changes, we mention:

- Alternative jurisdiction in solving the appeal (C.N.S.C or the administrative court).
- Establishment of specialized panels on public procurement in the judicial courts.
- The introduction of prior notification as a mandatory pre-procedure, under penalty of rejection the appeal as inadmissible.
- The modification of the deadlines for lodging the appeal.

- A maximum period of 45 days in which C.N.S.C is obliged to resolve the complaints against decisions.
- The establishment, in advance, of a bail in judicial proceedings, for the suspension of the award procedure and / or execution of the contract.

Let's talk

For a more detailed discussion of the impact that these provisions can play in your specific case, you can contact the following persons:



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