

On July 5th, 2010, The National Authority for Regulating and Monitoring Public Procurement organized a press conference on the recent changes to legislation on public procurement adopted by the Government, held by Mrs. Cristina Trăilă, President of N.A.R.M.P.P

Government has adopted in the last meeting a series of legislative changes on public procurement. G.E.O. 76/2010 published in Official Gazette n 453, is amending G.E.O. no. 34/2006 regarding the award of public procurement contracts, public works concession contracts and services concession contracts. The new normative brings additional clarity and speeds up public procurement procedures and it is an outcome of the consultations initiated by N.A.R.M.P.P. with all stakeholders and with European Commission representatives.

Among the new rules are included:

- N.A.R.M.P.P. will verify all the participation invitations sent by the contracting authority for the request for tenders, and within 3 days will valid or reject the participation invitation. So far, N.A.R.M.P.P. only validates the contract notices for procedures with value above the threshold of the request for tenders. This measure was necessary, in order to apply the principle of prevention for the request for tender procedure.
- The new government emergency ordinance correlates the thresholds with the European Regulation EC nr.1177/2009.
- There were introduced new provisions in the case of awarding media publicity contracts, the threshold for direct purchase is 15,000 euros, in accordance with all other contracts.
- A new regulation regarding the conflict of interests. Art. 69 states that the tenderer/candidate/associated tenderer/subcontractor which has as members within its board of administration/managing or supervisory body and/or which has as stakeholders or associates, persons who are spouse, relative or in-law up to the forth degree inclusively, or which are under commercial relations, as defined by art. 69 a) with the persons holding decision making positions within the contracting authority, shall be excluded from the awarding procedure.
- Regarding the similar experience criteria applied to the economic operators, the new government emergency ordinance introduces the concept of good execution and carrying out successfully the previous contracts.
- The new provisions define the notion of “unusually low price” and how the contracting authority may avoid such techniques.
- The aggregate value of contracts to be awarded and addenda to be concluded for additional or supplementary works and /or services can not exceed 20% of the original contract. Only in cases duly justified and when the *main budget manager* is assuming responsibility may approve to increase the percentage up to 50% of the original contract, the basic condition is that the contract shall be award to the same operator declared winner by the evaluation commission.
- An absolute novelty refers to the complaints procedure. The new provision allows the conclusion of the contract immediately after the National Council for Solving

Complaints or the first court has rendered a decision. In addition, it sets shorter time limits for solving the complaints by the National Council for Solving Complaints.

- As a measure to reduce the excessive number of complaints, has been introduced the retention of a fixed amount from the guarantee participation by the contracting authority, if his complaint is rejected on the merits.
- By the date of entering in force of the present law, the complaints solved in first instance by the National Council for Solving Complaints or by a district court with jurisdiction over the contracting authority (the court with jurisdiction over the headquarters of the contracting authority), shall apply its provisions