

JULY 8, 2010

Government Emergency Ordinance no. 76/2010 on the amendments to Government Emergency Ordinance no. 34/2006 regarding the award of public procurement contracts, public works concession contracts and services concession contracts

Significant changes

Government Emergency Ordinance no. 76/2010 (**GEO no. 76/2010**) brings significant changes with a view to discourage the tenderers from filing complaints with the National Council for Solving Complaints (the **Council**) and also to reduce the timing until the signing of the public contracts.

Specifically, in case the Council dismisses the claim filed by the contestor, the contracting authority shall retain a part of the participation guarantee, the exact amount to be retained depending on the estimated value of the contract.

Attention! The retained amount is reimbursed if the complaint against the dismissal decision issued by the Council is admitted by the competent court.

Secondly, the appeal filed against the decision of the first tier court does not have anymore suspensory effect, the contracting authorities being entitled to sign the public contracts after the judgment is rendered by the Council, or respectively by the first tier court.

Other changes

Increased transparency

The transparency of the public procurement procedures has been increased, becoming mandatory to publish also the invitations, and not only the prior information, contract and award notices.

Determination of the part of the participation guarantee which shall be retained by the contracting authorities

	Contract estimated value (in RON)	Retained amount
	63,000 to 420,000	1%
	420,001 to 4,200,200	4,200 + 0.1% of the amount exceeding 420,001
	4,200,201 to 42,000,000	7,980 + 0,01% of the amount exceeding 4,200,001
	42,000,001 to	11,760 + 0.001% of

420,000,000	the amount exceeding 42,000,001
420,000,001 to 4,200,000,000	15,540 + 0.0001% of the amount exceeding 42,000,000,001
more than 4,200,000,001	19,320 + 0.00001% of the amount exceeding 4,200,000,001

Acquisition of additional works or services

Contracting authorities may award public contracts for additional works or services not included in the original contract by the negotiated procedure without prior publication of a contract notice, but the aggregate value of the additional works or services may not exceed 20% of the amount of the original contract.

Attention! This threshold may be increased to 50% of the amount of the original contract based on a grounded notice.

Claim proceedings

GEO no. 76/2010 clarifies the fact that the Council is not allowed to decide the award of a public procurement contract to a certain economic operator.

In case claims against the procedure were lodged both with the Council and with courts of law, the courts of law are compelled to joint the two claims.

According to GEO no. 76/2010:

- (a) the claims regarding the acts issued by the contracting authorities before signing the public contract, as well as those regarding indemnification requests for losses occurred during the award procedures fall under the jurisdiction of the administrative and tax dispute chamber of the tribunal; while
- (b) the claims regarding the performance of the public contracts, their voidance, annulment and termination fall under the jurisdiction of the administrative and tax dispute chamber of the tribunal.

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