
CHAMBERS GLOBAL PRACTICE GUIDES

Public Procurement 2025

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Romania: Law & Practice

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ROMANIA

Law and Practice

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Authors



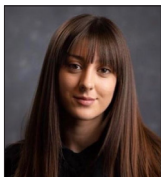
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1. Overview

1.1 Public Procurement Legislation

The Romanian public procurement legal framework is heavily influenced by EU legislation, specifically EU Directive 24/2014 on Public Procurement and EU Directive 25/2014 on Sectoral Procurement, which aim to harmonise procurement procedures across EU member states and promote competition, transparency and equal treatment.

The key primary Romanian public procurement legislation includes:

- Law No 98/2016 on Public Procurement;
- Law No 99/2016 on Sectoral Procurement; and
- Law No 101/2016 on Remedies in Public Procurement, Sectoral Contracts and Concessions, as well as the organisation and functioning of the National Council for Solving Complaints (the “*Consiliul Național de Soluționare a Contestațiilor*” or CNSC).

In addition to these primary laws, other legal provisions have to be taken into account due to the Romanian legal system. Public procurement typically involves public funds, so foreign participants must comply with Law No 500/2002 on Public Finances and Law No 273/2006 on Local Public Finances. The provisions of Law No 101/2016 are supplemented by the Law on Administrative Procedure, Law No 554/2004 and the Romanian Civil Procedure Code, Law No 134/2010.

The Romanian public procurement system is further shaped by secondary legislation, which establishes procedural rules for the awarding of contracts:

- G.D. No 394/2016 for the approval of methodological norms for the application of the provisions regarding the award of sectoral contracts/framework agreements of Law No 99/2016 on Sectoral Procurement; and
- G.D. No 395/2016 for the approval of methodological norms for the application of the provisions regarding the award of public procurement contracts/framework agreements of Law No 98/2016 on Public Procurement.

Tertiary public procurement legislation in Romania takes the form of guidelines issued by the National Public Procurement Agency (the “*Agenția Națională pentru Achiziții Publice*” or ANAP) and provides practical guidance on the implementation of public procurement rules to contracting authorities and economic operators in complying with the law.

Although case law is not formally recognised as a source of law in Romania, it plays an important role in the interpretation and application of public procurement legislation. In particular:

- CJEU rulings are binding in all EU member states, including Romania and provide authoritative guidance on the interpretation of EU law;
- Decisions of the Romanian High Court of Cassation and Justice, concerning appeals in the interest of the law and preliminary rulings, provide important interpretations that influence public procurement practices; and
- the Romanian Constitutional Court also contributes by ruling on constitutional challenges to public procurement-related regulation.

In conclusion, public procurement legislation in Romania is governed by: primary legislation (Law No 98/2016, Law No 99/2016 and Law No 101/2016) which transpose EU law into Romani-

an law; secondary legislation (G.D. No 394/2016 and G.D. No 395/2016); and tertiary legislation (the ANAP guidelines). Together, these sources ensure transparency, fairness and alignment with EU public procurement standards.

1.2 Entities Subject to Procurement Regulation

The following entities are subject to public procurement regulation in Romania:

- contracting authorities;
- certain non-contracting authorities that meet specific financial and threshold criteria; and
- economic operators participating in the procurement process.

Contracting Authorities in Romania

According to Article 4 of Law No 98/2016, contracting authorities are:

- central and local public authorities and institutions, as well as their subordinate structures, to which public procurement powers have been delegated;
- public law bodies established to meet non-commercial needs of general interest, which have legal personality and are mainly financed by public funds. These entities may not operate under normal market conditions or seek to make a profit; and
- associations that include at least one contracting authority, whether from the public administration or a public law body.

Non-Contracting Authorities in Romania

According to Article 6 of Law No 98/2016, non-contracting authorities must apply procurement regulations when awarding contracts for works or services, provided that the following conditions are met:

- more than 50% of the value of the contract comes from public funds;
- the estimated value of the contract exceeds the thresholds for works (RON27,334,460 (approximately EUR5,493,800)) and RON1,090,812 (approximately EUR219,200)) for services; and
- the contract concerns civil engineering works or construction projects for hospitals, sports facilities, educational buildings or administrative buildings.

Economic Operators in Romanian Public Procurement

As defined in Article 3(1)(jj) of Law No 98/2016, an economic operator includes any natural or legal person (public or private), or any group or association of these persons, that offers to carry out works, supply products or provide services. This includes temporary associations formed between these various entities.

1.3 Types of Contracts Subject to Procurement Regulation

Contracts Subject to Procurement Regulation in Romania

Under the Romanian Public Procurement Regulation, a public procurement contract is defined as a contract for pecuniary interest, assimilated by law to an administrative act, concluded in writing between one or more economic operators and one or more contracting authorities, having the execution of works, the supply of products or the provision of services as its objective.

In Romania, the following types of contracts are subject to procurement regulations:

- procurements related to national defence and security: these are regulated under G.E.O. No 114/2011, which includes additional govern-

mental decisions and ministerial orders, forming a more specialised legal framework;

- sectoral/utility procurements: these procurements are governed by Law No 99/2016 and include contracts for products, services, or works in sectors such as electrical energy, water, transportation, ports and airports and postal services and partially defence and security; and
- classic procurements: these refer to contracts for works, products and services that exceed the legal value thresholds set by law.

Minimum Value Thresholds in Romanian Public Procurement

Article 134 of G.E.O. No 114/2011, lays down certain legal value thresholds for procurements related to national defence and security:

- for works contracts, the estimated contract value (excluding VAT) is equal to or greater than EUR5,538,000; and
- for services and goods contracts, the estimated contract value (excluding VAT) is equal to or greater than EUR443,000.

Article 12 of Law No 99/2016 lays down certain legal value thresholds for sectoral procurements:

- for works sectoral contracts, the estimated contract value (excluding VAT) is equal to or greater than RON27,334,460 (approximately EUR5,493,800);
- for services and goods sectoral contracts, the estimated contract value (excluding VAT) is equal to or greater than RON2,186,559 (approximately EUR440,000); and
- for social services and other specific sectoral contract services, the estimated contract value (excluding VAT) is equal to or greater than RON4,935.800 (approximately EUR1 million).

Article 7 of Law No 98/2016 lays down certain legal value thresholds for classic procurement contracts, depending on its objective:

- for works contracts, the estimated contract value (excluding VAT) is equal to or greater than RON27,334,460 (approximately EUR5,493,800);
 - for services and goods contracts awarded by the central public sector, the estimated contract value (excluding VAT) is equal to or greater than RON705,819 (approximately EUR141,160);
 - for services and goods contracts awarded by the non-central public sector, the estimated contract value (excluding VAT) is equal to or greater than RON1,090,812 (approximately EUR219,200); and
 - for social services and other specific services contracts, the estimated contract value (excluding VAT) is equal to or greater than RON3,701,850 (approximately EUR750,000)
- The contract is linked to a works contract.

The contracts with estimated values (excluding VAT) lower than the thresholds mentioned above are subject to simplified procedures or direct award (see **2.3 Tender Procedure for the Award of a Contract**).

1.4 Openness and International Competition

Romanian public procurement law allows EU and non-EU entities to have broad access. Contract award procedures in Romania are open to interested parties from various jurisdictions, provided they meet specific criteria.

Entities from the following jurisdictions are eligible to participate.

- EU member states: entities established in any EU member state can participate in public procurement procedures in Romania.
- European Economic Area (EEA) member states: entities from EEA member states (which includes EU countries and Iceland, Liechtenstein and Norway) are also eligible to participate.
- Third countries that have ratified the World Trade Organisation's (WTO) Agreement on Government Procurement (GPA): these countries can participate to the extent that the public procurement contract falls under the relevant annexes of the WTO GPA, which covers a wide range of public procurement activities.
- Third countries in the EU accession process: entities from countries currently in the process of joining the EU are also eligible.
- Third countries with other international agreements with the EU: countries that are not part of the WTO GPA but are signatories of other agreements with the EU, which obligate the EU to grant open access to their public procurement markets.

1.5 Key Obligations of Awarding Authorities

The Romanian Public Procurement Regulation imposes key obligations on contracting authorities to ensure a fair, transparent and efficient award procedure, in line with the fundamental principles of Romanian public procurement: non-discrimination; equal treatment; transparency; proportionality; and responsibility.

Contracting authorities must secure the necessary funds for the procurement process and contract execution before starting any procedure, ensuring financial viability. They are also required to publish a contract notice that is accessible

to all interested economic operators, promoting transparency and competition.

Furthermore, Romanian contracting authorities must establish clear and fair qualification and award criteria that align with public needs and prevent any unfair advantages. This ensures the process serves the public interest without bias.

Finally, avoiding conflicts of interest is essential in Romanian public procurement. Authorities must prevent any personal interests from influencing the procurement process, maintaining fairness and integrity throughout. These obligations help uphold the credibility and accountability of the public procurement system, benefiting both the public and private sectors.

2. Contract Award Process

2.1 Prior Advertisement

The Romanian Public Procurement Regulation mandates the prior advertisement of regulated contract award procedures. The law ensures that contracting authorities adhere to transparency and publication obligations throughout the award procedure.

All relevant notices must be published on the Electronic System for Public Procurements (the "*Sistemul Electronic de Achiziții Publice*" or SEAP), an online platform designed for accessing information on public procurement procedures in Romania. Additionally, for contracts that meet or exceed the thresholds (see **1.3 Types of Contracts Subject to Procurement Regulation**), contracting authorities are required to publish notices in the Official Journal of the European Union (the "*OJEU*").

The prior information notice is one of the key elements that must be published at the beginning of a Romanian public procurement award procedure. It includes several crucial pieces of information such as the:

- procedure type (eg, open procedure or simplified procedure);
- type of contract (eg, works or services);
- procedure status (eg, ongoing or cancelled); and
- estimated value of the contract, along with the relevant common procurement vocabulary (CPV) code.

Additionally, the notice provides information on the contracting authority and the deadline for submitting tenders. Alongside the prior information notice, the award documentation is also published to ensure equal access for all potential bidders.

The award documentation provides detailed guidelines for economic operators interested in participating in the procurement procedure. It typically contains two parts: the technical and financial sections. The technical part includes specifications, execution plans, time schedules and material or equipment lists. The financial section outlines the financial requirements that tenders must meet, aligned with the technical specifications. Furthermore, the award documentation includes procedural rules and templates that bidders must follow when submitting their tenders.

2.2 Preliminary Market Consultations

Preliminary market consultations are allowed in Romanian public procurement. Contracting authorities are allowed to carry them out before initiating the contract award procedure. Preliminary market consultations are particularly appli-

cable when the authority intends to procure goods, services or works that are technically complex or involve rapid technological advancements, as well as those with significant financial or contractual challenges.

In these cases, the contracting authority may organise a market consultation by publishing a consultation notice on the SEAP. This allows the authority to engage with a variety of independent experts, other public entities or economic operators, in order to gather valuable insights. The objective is to clarify the requirements and ensure the procurement process is well-prepared. The consultations may involve discussions about potential technical, financial or contractual solutions, the overall procurement strategy (eg, how to divide the contract into lots), and whether alternative tenders should be considered.

The information obtained during these consultations may be used to shape the procurement process, as long as it does not compromise the principles of competition, non-discrimination or transparency. If the contracting authority incorporates suggestions or advice from these consultations, it must ensure that these actions do not give any unfair advantage to certain participants.

Furthermore, the contracting authority is obligated to publish the results of the market consultation on the SEAP before or at the time of launching the official award procedure. In cases where a participant has contributed suggestions during the consultation, the authority must take steps to ensure that this does not result in any conflict of interest or distort the competitive process.

2.3 Tender Procedure for the Award of a Contract

Tender Procedures in Romanian Public Procurement

Romanian public procurement law provides several procedures for awarding contracts, each with its own structure and specific rules. They are as follows.

- **Open procedure:** this procedure allows any interested economic operator to submit an offer. It is a single-phase procedure and the contract is awarded based on the evaluation of submitted offers.
- **Restricted procedure:** this procedure involves two phases. The first is the qualification phase, which involves candidates being selected from the economic operator who submitted a participation request based on qualification and selection criteria. This phase is then followed by the submission and evaluation of offers phase. Only candidates who pass the qualification stage are invited to submit their offers.
- **Competitive procedure with negotiation:** this is a two-phase procedure which initially involves the submission of participation requests and selection of candidates based on qualification and selection criteria. In the second phase, the selected candidates submit initial offers, followed by negotiations to improve these offers. The final offers are then evaluated according to the award criteria.
- **Competitive dialogue:** this procedure is used for complex projects where contracting authorities engage with bidders to discuss solutions before final offers are submitted. It includes three phases: submission of participation requests and selection of participants, based on qualification and selection criteria; dialogues for solution development; and final offers submission and evaluation of offers phase.
- **Innovation partnership:** this is a multi-phase procedure used when innovative products or services are needed that are not yet available in the market. It includes three phases: submission of participation requests and selection of participants, based on qualification and selection criteria; submission of initial offers and evaluation of offers with the minimum requirements set by contracting authorities; and negotiations to improve the offers and evaluation of the final offers, based on awarding criteria.
- **Negotiated procedure without prior publication:** this procedure can be used in specific cases, which are strictly regulated by law. It allows negotiations on all aspects of the offer, but conditions for using this procedure are strictly regulated (eg, urgency or lack of competition).
- **Solutions contest:** this procedure involves the submission of innovative solutions, with the winner being invited to negotiate the terms of the contract. The contest usually consists of one stage for the submission and evaluation of solutions, followed by negotiation.
- **Procedure for social and other specific services:** this is a simplified procedure for certain services, including social services, with fewer formalities. If the estimated value is equal to or greater than RON3,701,850 (EUR744,077), the contracting authority has the obligation to publish a contract notice or continuously valid intention notice and an award notice.
- **Simplified procedure:** this procedure is intended for lower-value contracts (with an estimated value below the legal thresholds) and can involve a reduced number of steps. It typically allows for fewer formalities in the selection and award process. The contracting authority may decide to carry out the

simplified procedure either in one stage or in several stages involving both the selection of candidates and the negotiation and evaluation of tenders.

Negotiations in Romanian Public Procurement Procedures

Negotiations are permissible in certain procedures, notably the competitive procedure with negotiation, competitive dialogue, innovation partnership and negotiated procedure without prior publication. However, there are key restrictions:

- no negotiations on minimum requirements or award criteria (eg, the best price-quality ratio or best cost-quality ratio);
- equal treatment must be ensured for all bidders during negotiations, with no preferential treatment or disclosure of confidential information without consent; and
- transparency must be maintained throughout, and negotiations must not distort competition.

2.4 Choice/Conditions of a Tender Procedure

In Romanian public procurement, the choice of the awarding procedure is subject to criteria established by law, including:

- the estimated value of the purchase: if the estimated value meets or exceeds the legal thresholds, the contracting authority must use either the open or restricted procedure to award public contracts. If the estimated value is lower than the legal thresholds, the contracting authority will use a simplified procedure;
- the complexity of the contract or framework agreement: the open procedure is usually used for simpler, more routine investments,

while the restricted procedure is intended for more complex or non-standard purchases.

The restricted procedure involves an additional stage to narrow down the number of candidates on the basis of predefined selection criteria. This procedure may be chosen when the contracting authority considers it advantageous to limit the number of bidders; and

- the specific conditions required by law for each type of procedure: under certain conditions expressly provided by law, the contracting authority has the right to use competitive procedure with negotiation, competitive dialogue, innovation partnership, negotiated procedure without prior publication, solutions contest or the procedure for social and other specific services, as the case may be.

2.5 Direct Contract Awards

The Romanian Public Procurement Regulation permits contracting authorities to make direct purchases in specific circumstances, based on the estimated value of the procurement (excluding VAT) which will be below certain values. Under Law No 98/2016, the thresholds for direct contract awards are:

- RON900,400 (approximately EUR180,900) for works contracts; and
- RON270,120 (approximately EUR54,300) for products and services contracts.

Direct procurement is carried out with the aim of ensuring the efficient use of public funds, whilst also ensuring that the principles of non-discrimination, equal treatment, transparency and proportionality are respected.

Contracting authorities have certain obligations regarding direct purchases:

- if the estimated value exceeds RON200,000 (approximately EUR40,000) for products and services and respectively RON560,000 (approximately EUR112,000) for works contracts, the contracting authority must either use the SEAP electronic catalogue or publish a notice on the SEAP website or their own website, describing the items to be purchased;
- if the estimated value is greater than RON140,000 (approximately EUR28,000) for products and services and respectively RON300,000 (approximately EUR60,000) for works contracts, but less than the aforementioned thresholds, the authority is required to consult at least three economic operators; and
- contracting authorities must submit a quarterly notification to the SEAP, detailing direct purchases, including the object, quantity, value and CPV code, excluding those made through the SEAP catalogue.

Contracting authorities also have certain rights regarding direct contract award:

- if the estimated value is less than or equal to RON140,000 (approximately EUR28,000) for products and services or RON300,000 (approximately EUR60,000) for works, the authority has the right to purchase on the basis of a single offer; and
- if the estimated value is less than RON9,000 (approximately EUR1,800), the contracting authority is allowed to make a direct payment for purchases without requiring prior acceptance of a tender.

2.6 Timing for Publication of Documents

Procurement documents are subject to certain obligations regarding the timing of the publication under the Romanian Public Procurement

Regulation. This is to ensure transparency throughout the awarding procedure. Contracting authorities are required to publish the following notices and documents on the SEAP at designated times:

- prior intention notices: these must be published before starting a procurement procedure and must be published within 30 days of the end of each trimester;
- contract notices: contracting authorities must publish a contract notice inviting economic operators to participate in the procedure at least 35 days before the submission deadline for tenders;
- contract award notices: once a decision on awarding the contract is made, the contracting authority must notify each candidate within three days. The contracting authority is also required to send a contract award notice for publication in the SEAP within 30 days of the date of conclusion of the public procurement contract/framework agreement following the award procedure; and
- invitation to participate: in the restricted tender, competitive dialogue, competitive negotiation and innovation partnership procedures, the contracting authority is required to send the invitation to participate in the second stage of the procedure to all selected candidates simultaneously and in writing.

For contracts with an estimated value equal to or greater than the legal thresholds, contracting authorities are also required to publish notices in the OJEU.

During the procurement process, the following documents must be published to ensure transparency:

- award documentation, which is made available to all economic operators for review and preparation of their tenders on equal terms;
- clarifications and updates, including responses to clarifications and any changes to the tendering conditions;
- errata notices, which correct any mistakes in the awarding documentation; and
- the final report of the procedure, which announces the winning bidder and triggers the deadline for submitting complaints.

Additionally, decisions made by jurisdictional bodies regarding complaints are also published, with party names anonymised.

2.7 Time Limits for Receipt of Expressions of Interest or Submission of Tenders

The time limits for the receipt of expressions of interest or the submission of tenders are subject to the Romanian Public Procurement Regulation.

In open procedures, the time limit for submitting tenders is at least 35 days from the date the contract notice is sent for publication in the OJEU. This time limit may be reduced to at least:

- 30 days in cases where the contracting authority accepts the submission of tenders by electronic means; and
- 15 days in emergency situations or if the contracting authority publishes an intention notice, under the conditions laid down by the law.

In restricted procedures and competitive procedure with negotiations, for the first phase of the procedure, the time limit for the submission of requests to participate is at least 30 days from the date the contract notice is sent for publica-

tion. This time limit may be reduced to at least 15 days in emergency situations.

For the second stage, the time limit for the submission of tenders will be at least 30 days from the date of the invitation to participate in the second phase being sent for publication. This time limit may be reduced to at least:

- 25 days in cases where the contracting authority accepts the submission of tenders by electronic means; and
- ten days in emergency situations or if the contracting authority publishes an intention notice, under the conditions laid down by the law.

In competitive dialogue and innovation partnership, the time limit for the submission of requests to participate is at least 30 days from the date the contract notice is sent for publication.

In the case of a single-stage simplified procedure, the time limit for the submission of tenders will be at least:

- ten days in case of procurement of services or products;
- six days in case of procurement of low-complexity products; or
- 15 days for procurement of works.

In the case of a single-stage simplified procedure conducted in multiple stages, the time limit for the submission of requests to participate will be at least ten days from the date the simplified contract notice is sent for publication. The time limit for the submission of tenders will be at least:

- ten days from the date on which the invitation to participate in the second stage is sent to publication; or
- six days in the case of procurement of low complexity products.

In emergency situations, the time limits may be reduced to at least:

- six days from the date the contract notice is sent to publication or the invitation to participate in the case of products or service contracts; or
- nine days in the case of a works contract.

2.8 Eligibility for Participation in a Procurement Process

Besides the grounds for exclusion (see **2.11 Exclusion of Tenders**), Romanian public procurement law establishes specific criteria that interested parties must meet to be eligible for participation in an award procedure. The criteria can be divided into qualification and selection criteria:

- qualification criteria arise in any award procedure and assess whether the tenderers possess the necessary capability to perform the contract; and
- selection criteria arise in procedures where it is necessary to limit the number of qualified candidates, as multi-stage award procedures; ie, restricted procedures and competitive procedure with negotiation. These criteria are applied to evaluate the qualified economic operators and select those with the best economic, financial, technical and/or professional capacity.

The selection and qualification criteria (along with the award criteria) should align with the requirements outlined in the award documenta-

tion and reflect the nature and complexity of the public procurement contract.

Romanian contracting authorities often use similar experience as a qualification or selection criterion to assess whether the economic operators have successfully completed tasks similar to those required by the contract. In this regard, it is important to outline that while similar experience criterion is lawful, requiring tenderers to have experience in exactly the same type of contract would be overly restrictive and contrary to the principle of proportionality.

2.9 Restriction of Participation in a Procurement Process

In Romanian public procurement, it is possible to limit participation in a procurement process to a small number of qualified candidates in certain procedures, such as the restricted procedure, competitive procedure with negotiation, competitive dialogue and innovation partnership.

The shortlist is determined based on the application of the selection criteria. The contracting authority can narrow down the pool of qualified candidates to a select group who will be invited to submit initial tenders.

However, the Romanian contracting authorities must ensure that there is a sufficient number of candidates to maintain effective competition and, in any case:

- more than five in restricted procedures; and
- more than three in competitive procedures with negotiation, competitive dialogue and innovation partnerships.

2.10 Evaluation Criteria

In order to determine the winner of an award procedure in Romania, the tenders are evaluated on the basis of several criteria.

Exclusion grounds are initially applied in order to determine which candidates should be excluded from the procedure. qualification criteria and, if the case may be, selection criteria works in conjunction in order to identify the candidates have the capacity to perform the contract and, if they are, are eligible to submit offers for the next stage. Finally, the award criteria are applied in order to determine which bidder is the most suitable to perform the contract.

The award criteria, as outlined in the award documentation, must be objective and ensure proportionality either in terms of the benefit to the contracting authority from awarding the contract to a particular economic operator and ensuring that the winning economic operator can execute the contract efficiently while also receiving the economic benefits that motivated their tender.

Romanian public procurement law provides the following awarding criteria:

- best price-quality ratio;
- best cost-quality ratio;
- lowest cost; and
- lowest price.

These broad criteria give contracting authorities flexibility in defining the specifics based on the contract type. For example, the term “*quality*” in the price-quality ratio could vary depending on factors like project duration, material requirements or the tenderer’s experience.

2.11 Exclusion of Tenders

Under the Romanian Public Procurement Regulation, the contracting authorities are required to exclude from the contract award procedure, under certain conditions, any economic operators who:

- have violated mandatory environmental, social or labour regulations at the EU, national or conventional level;
- are undergoing insolvency proceedings, liquidation, court supervision or have ceased trading;
- have committed serious professional misconduct that raises concerns about their integrity;
- have made agreements with other economic operators aimed at distorting competition;
- are subject to a conflict of interest in connection with or in relation to the procedure in question;
- have caused a distortion of competition by participating in the preparation of the award procedure;
- have repeatedly or seriously breached their main obligations under a public contract;
- have provided false or misleading information upon the contracting authority’s request;
- have attempted to unlawfully influence the contracting authority’s decision-making process;
- have obtained confidential information unlawfully; or
- have provided incorrect information negligently.

In most cases, the contracting authorities are required to request clarifications from the economic operators, who may submit documents proving their capacity to perform the contract and demonstrate that they have taken corrective action to restore their market credibility and resolve the issues leading to their exclusion.

3. General Transparency Obligations

3.1 Obligation to Disclose Bidder/Tender Evaluation Methodology

Transparency obligations are a key concern when it comes to public procurement procedures carried out in Romania, as the Romanian public procurement law establishes general provisions for publication and transparency of procurement documents, including the evaluation methodology. Contracting authorities also have a legal obligation to ensure by electronic means, through the SEAP, direct, full, unrestricted and free of charge access of economic operators to the procurement documents from the date of publication of the contract notice.

The contracting authority must make these criteria and evaluation methods transparent and publicly available. Once published, the evaluation methodology cannot be modified.

The evaluation methodology allows the contracting authority to request clarifications from tenderers during the evaluation process. These clarifications are typically related to minor omissions, mathematical errors, unclear statements or similar issues. However, it is important to emphasise that the clarification process is only meant to provide further details or explanations regarding existing tender elements. It does not allow for modifications or additions to the tenders.

3.2 Obligation to Notify Interested Parties Who Have Not Been Selected

In a Romanian public procurement award procedure, the contracting authority has an obligation to notify each candidate/tenderer of the decisions reached as regards:

- the outcome of the selection;
- the result of the procedure; and
- the respective conclusion of the contract (including the grounds for any decision not to award a contract or to recommence the award procedure) as soon as possible, but no later than three days after the decisions are taken.

The contracting authority must state the specific reasons for the rejection clearly in the notification.

As for the methodology, following the general rule for communication in Romanian public procedure, the rejection notice must be sent electronically, but in exceptional cases, other means of communication may be used.

3.3 Obligation to Notify Bidders of a Contract Award Decision

Under the Romanian Public Procurement Regulation, the contracting authority must send a notification to the successful bidder within three days of the decision being made, informing them that their tender has been accepted and that the authority agrees to proceed with the public procurement contract.

This decision is communicated through the final procedure report, which must be prepared within specific time limits, depending on the type of procedure:

- 20 days from the time limit of tenders for simplified procedures and negotiated procedures without prior publication;
- 60 days from the time limit of tenders for open procedures, restricted procedures, innovation partnerships and solution contests; and

- 100 days from the time limit of tenders for competitive dialogue and competitive procedures with negotiation.

3.4 Obligation to Grant a Prior Hearing

The Romanian public procurement law does not specify an obligation to grant prior hearing to bidders before a contracting authority's decision is taken.

3.5 Requirement for a “Standstill Period”

The Romanian Public Procurement Regulation provides for “*standstill period*” between the notification of the contract award decision and the conclusion of the contract.

According to Law No 101/2016, the minimum “*standstill period*” is:

- 11 days starting from the day after the contract award decision is communicated to the interested parties, when the estimated value of the public procurement procedure exceeds the established thresholds; and
- eight days when the estimated value is below the legal thresholds.

This “*standstill period*” ensures that all parties have time to review the decision before the contract is finalised.

Breaching the “*standstill period*” provision represents a ground for annulment of the public procurement contract under the Romanian Public Procurement Regulation. As an exception, the court may keep the contract but may limit its effects or impose a fine on the contracting authority, ranging from 1% to 5% of the contract's value.

4. Review Procedures

4.1 Responsibility for Review of the Awarding Authority's Decisions

In Romanian public procurement, the review of the contracting authority's decisions can be made in two ways under Law No 101/2016 (which aligns with EU Directive 89/665/EEC):

- the administrative-jurisdictional procedure before the CNSC; and
- the judicial procedure before the competent national state courts.

The Romanian public procurement framework guarantees economic operators the freedom to choose the most suitable option for them. The main distinction between the procedure in front of the CNSC and in front of the state courts lies in the cost structure (see 4.8 **Costs Involved in Challenging Decisions**).

The decisions of the CNSC and the state courts on complaints can both be appealed to the competent Court of Appeal. The CNSC's decision is based on both legal grounds and reasons related to the merits of the decision. The decisions of the national courts can be further appealed through recourse.

4.2 Remedies Available for Breach of Procurement Legislation

The Romanian Public Procurement Regulation provide several remedies for addressing breaches in public procurement award procedures.

Remedies Available to Romanian Contracting Authorities

Upon receiving a complaint, the contracting authority may take the remedial action it deems necessary following contestation within three days. This can include actions such as cancel-

ling and revising an evaluation report that contained errors, such as incorrectly calculated scores for a tenderer or revoking a decision that rejected a tenderer.

If the complainant is satisfied with the corrective actions taken, they may submit a waiver request to the contracting authority and to the Council. Once this request is made, no further actions will be taken and the authority will not be required to provide its opinion on the matter.

If the remedies do not fully address the concerns, the complainant may seek a partial waiver. In this case, the contracting authority will continue to review the remaining issues, and the CNSC will still need to evaluate those aspects.

Remedies Ordered by the CNSC

The CNSC plays a critical role in remedying procurement issues. Notably, the contracting authority can only conclude the contract after the CNSC has issued its decision, under the sanction of absolute nullity.

Once the CNSC admits a complaint, it may:

- annul the contested decision, fully or partially;
- order the contracting authority to take remedial actions to restore legality, specifying the measures that should be taken and within what timeframe; and
- in cases where the procedure cannot be rectified, the CNSC may annul the entire procurement procedure.

However, there are two important exceptions:

- if the complainant requests remedies, but the CNSC finds them insufficient to restore legality, it may annul the entire award procedure; and

- if the CNSC identifies other violations of procurement rules beyond the complainant's complaint, it can refer the matter to the ANAP and the Court of Auditors for further action.

In cases where the contracting authority cannot comply with the CNSC's decision without breaching procurement law principles, it has to cancel the entire procurement procedure by law.

4.3 Interim Measures

Romanian public procurement law provides for the suspension of the award procedure of a public procurement contract, as an interim measure available in public procurement.

The CNSC has the authority, only upon the request of an interested party, to suspend a contract award procedure if certain conditions are met. These are as follows.

- A well-founded claim: there must be a valid reason for the dispute that justifies the suspension.
- Prevention of harm: the suspension should aim to prevent potential damage.
- Imminent damage: the harm must be immediate and unavoidable.

The contracting authority is required to provide its perspective on the suspension request and may, on its own initiative, decide to suspend the procedure.

If these conditions are met, the CNSC can issue a provisional suspension of the award procedure, halting any further actions until the complaint is resolved.

The CNSC is obligated to make its decision within three days of receiving the suspension request. The CNSC's decision can be appealed

within five days from its communication before the Court of Appeal.

4.4 Challenging the Awarding Authority's Decisions

The Romanian Public Procurement Regulation gives any individual or entity who believes their rights or legitimate interests have been affected by the actions of a contracting authority the standing to challenge the contracting authority's decisions.

According to Law No 101/2016, a person is considered "*injured*" if they are an economic operator with an interest in a procurement procedure and have been or are at risk of being harmed by the contracting authority's act, which can produce legal effects, or by the failure to address a request regarding the award procedure within the prescribed legal timeframe.

To have standing to challenge a decision of a Romanian contracting authority, two key conditions must be met:

- the party must have a legitimate interest in the process; and
- they must have suffered or risk suffering prejudice as a result of the authority's actions.

This means that third parties, such as sub-contractors or suppliers, do not have standing to challenge the decisions of the contracting authority on behalf of the tenderer, as they lack a direct interest in the resolution of the case. In the case of a tenderer being an association, any member of the association has the right to challenge the contracting authority's decision.

4.5 Time Limits for Challenging Decisions

The time limits for challenging the decisions of a contracting authority under the Romanian Public Procurement Regulation are the following:

- ten days from the day after becoming aware of the allegedly illegal act of the contracting authority, if the estimated value of the public procurement procedure is equal to or greater than the thresholds that require the publication of participation notices in the OJEU; and
- seven days from the day after becoming aware of the allegedly illegal act if the estimated value of the public procurement procedure is below the thresholds.

4.6 Length of Proceedings

According to the ANAP, the average length of a complaint in public procurement proceedings in Romania was 33 days in 2023.

4.7 Annual Number of Procurement Claims

According to the CNSC, the total number of complaints brought before the CNSC in 2023 was 3,668.

4.8 Costs Involved in Challenging Decisions

In Romanian public procurement, the administrative-jurisdictional procedure for challenging the contracting authorities' decisions is free of charge. Although the procedure before the CNSC does not involve a fee, a security is required.

The amount of the security varies based on the estimated value of the contract:

- 2% of the estimated value of the contract, when the value is lower than the thresholds,

but no more than RON35,000 (equivalent to EUR7,000) for complaints submitted before the time limit for submission of tenders and no more than RON88,000 (equivalent to EUR17,700) for complaints submitted after the time limit for submission of tenders; or

- 2% of the estimated value of the contract, when the value is equal to or greater than the thresholds, but no more than RON220,000 (equivalent to EUR44,200) for complaints submitted before the time limit for submission of tenders, and RON2 million (equivalent to EUR402,000) for complaints submitted after the time limit for submission of tenders.

The judicial procedure before the national courts involves a legal fee of 2% of the estimated contract value having to be paid, but no more than RON100 million (approximately EUR20 million), but does not require a security.

5. Miscellaneous

5.1 Modification of Contracts After the Award

Romanian public procurement law permits the modification of a public procurement contract after it has been awarded without initiating a new award procedure in any of the following situations (subject to certain conditions):

- inclusion of revision clauses: modifications are allowed if the initial award documentation included a clear, precise and unequivocal revision clause, including possible price adjustments, regardless of their value;
- necessity of additional works, services or products: if additional works, services or products become necessary and were not foreseen in the initial award documentation and the change of contractor is impossible

for economic or technical reasons, and would cause the contracting authority a significant increase in costs, modifications can be made up to a maximum of 50% of the original contract value;

- unforeseeable circumstances: modifications may also be allowed if they are necessary due to unforeseen circumstances that a diligent contracting authority could not have predicted. These modifications must not alter the general character of the contract, and the price increase must not exceed 50% of the initial contract value;
- replacement of the contractor: if the original contractor is replaced, modifications can occur under the following circumstances: (i) as a result of a revision clause or an option specified by the contracting authority; or (ii) in the event of a universal succession (eg, through reorganisation, merger, acquisition or insolvency), where the new contractor meets the original qualification criteria and the change does not substantially alter the contract;
- non-substantial modifications: if the modifications do not substantially change the contract, they are permissible, regardless of their value. Modifications are considered non-substantial if they do not introduce conditions which, if they had been included in the original tender procedure, would have allowed the selection of candidates other than those initially selected or the acceptance of a tender other than that initially accepted or would have attracted other participants in the tender procedure; the modifications do not alter the economic equilibrium of the public procurement contract in favour of the contractor in a way which was not foreseen in the original public procurement contract; the modification does not considerably extend the subject matter of the public procurement contract; or

the modification does not lead to the replacement of the original contractor, in cases other than those mentioned above; and

- small-scale modifications: if the following conditions are cumulatively met, the modification is permitted: (i) modification is below the thresholds for publication in the OJEU; (ii) the modification does not exceed 10% of the initial contract value for services or products or 15% for works contracts; and (iii) the general character of the contract is not altered.

When any of these conditions apply, the contracting authority and the contractor may agree on a contract modification, typically documented through an addendum detailing the changes.

5.2 Termination of Contracts

Besides the specific cases of contract termination detailed in **5.3 Prerogatives of the Awarding Authority**, the Romanian Public Procurement Regulation does not specifically provide grounds for terminating public procurement contracts. Instead, the general termination grounds stated by the Romanian Civil Code apply: the performance of the contract; the expiration of the contract term; the fulfilment or non-fulfilment of a condition; or the impossibility of performance due to unforeseen circumstances, etc.

5.3 Prerogatives of the Awarding Authority

Romanian public procurement legislation grants contracting authorities several special prerogatives due to the public nature of the contracts involved.

Firstly, contracting authorities have the right to unilaterally terminate a contract in the following circumstances:

- if the contract is modified and the conditions for making the amendments without initiating a new procurement procedure are not met (see **5.1 Modification of Contracts after the Award**);
- if, at the time of contract award, the contractor was in a situation that would have warranted exclusion from the procurement procedure, as specified in **2.11 Exclusion of Tenders**; and
- if the contract should not have been awarded to that contractor due to a significant breach of relevant EU legislation, as determined by a ruling from the CJEU.

The authority's right of unilateral termination must be included in the award documentation.

Based on another special prerogative provided in Romanian public procurement law, the contracting authority may declare a tender non-compliant and exclude the economic operator from the award procedure if the tender includes proposed amendments to the contract terms laid out in the award documentation and those proposals are clearly disadvantageous to the contracting authority. If the tenderer is notified of this issue and does not agree to withdraw the terms, they may be eliminated from the procedure.

Lastly, the contracting authority is empowered to issue periodic documents during the contract's execution, specifically every 90 days after the contract's signing. These documents must record the status of the contract, any delays or deficiencies in its implementation and any damages caused by the fault of the contractor. These interim reports hold the same legal value as the final completion documents.

5.4 Recent Important Court Decisions

In a recent decision on Romanian public procurement, the importance of balancing confidentiality and transparency was addressed. The CNSC highlighted that bidders must prove confidentiality claims with evidence, not just declarations. In this case, the winning bidders failed to provide this evidence and the contracting authority incorrectly withheld documents from the complaining bidder. The contracting authority had to grant access to non-confidential parts of the bid within one working day of the request. By not verifying confidentiality claims and denying access, the authority violated transparency laws. The ANAP's March 2023 guidance further supports the need for substantiated confidentiality, ensuring fairness in public procurement.

In another case, the CNSC decided that the principle of transparency prevents a contracting authority from rejecting a tender that meets the documentation requirements based on reasons not outlined in the documentation. The CNSC further highlighted that if certain tasks under the contract require specific licences or qualifications, the contracting authority must clearly ask for the proof at the tender submission stage. If this request is not made, the selected tenderer will be expected to meet these requirements during the execution of the contract, rather than at the time of tender submission.

5.5 Legislative Amendments Under Consideration

At the time of writing, there are no legislative amendments under consideration. Given that the Romanian Public Procurement Regulation is frequently amended in relation to the adjustment of value thresholds, it is expected that these amendments will be made, which will take factors such as inflation and exchange rates into account.

In 2024, the public procurement legislation in Romania underwent significant changes, the most remarkable being introduced by G.E.O. No 52/2024. Among the major changes are the emphasis on using the best price-quality ratio criterion, especially for contracts with environmental impact, requiring authorities to include ecological factors in the evaluation of offers.

Additionally, the provisions related to price adjustments in the case of legislative or administrative changes were modified, removing the obligation for the authorities to adjust prices in the event of delays which cannot be attributed to the contractor. However, contracting authorities are allowed to include price adjustment clauses in service or goods contracts lasting up to 24 months and in works contracts lasting up to six months.

A provision was also introduced allowing negotiation without prior publication of a participation notice, but only in cases of extreme urgency caused by unforeseeable events.

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