

AUDIT ON PUBLIC PROCUREMENT PLANNING IN A PUBLIC ENTITY

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Abstract:

In the process of carrying out public procurement, any situation for which there is no explicit regulation shall be interpreted in the light of the principles provided by the Law on public procurement.

During the assignment procedure, the contracting authority has the obligation to take all necessary measures to avoid the occurrence of situations likely to give rise to a conflict of interests and / or to prevent, restrict or distort competition.

The contracting authority is responsible for the award of the procurement contract/framework agreement, including direct procurement, in compliance with all applicable legal provisions.

Key words: *public procurement, public procurement program, direct procurement, public procurement contract.*

JEL classification: *H26*

According to Government Decision nr. 395/ 2016 for the approval of the Methodological Norms or the application of the provisions regarding the award of the public procurement contract/ framework agreement from Law no. 98/2016 on public procurement, the activities within a public procurement process are grouped in 3 stages:

1. The planning/ preparation stage.
2. The stage of organizing the procedure and awarding the contract/ framework agreement.
3. The post-award stage of the contract/ framework agreement, respectively the execution and monitoring of the implementation of the contract/ framework agreement.

Thus, to achieve the stated purpose of the Law on public procurement, respectively to conduct procurement in an economically and socially efficient manner at the level of the contracting authority, a 4th stage is added to the procurement process: the performance analysis and evaluation stage, at the end of the 3rd included in public procurement legislation. This stage is necessary to continuously improve procurement processes at the level of the contracting authority, due to managerial control of performance.

The following is a brief outline of the 4 stages:

1. *Planning / preparation, including market consultation*¹. It is initiated by identifying the needs and preparing the reports of necessity and ends with the approval by the head of the contracting authority/ central procurement unit of the award documentation, including supporting documents, as well as the contracting strategy for the respective procedure.

¹ Legea nr. 672/2002 – privind auditul public intern

2. Organizing the procedure and awarding the contract/ framework agreement. The contracting authority may at this stage, in relation to the market, use the following procedures: Open auction; Restricted auction; Competitive negotiation; Competitive dialog; Innovation Partnership; Negotiation without prior publication; Solution competition; Award procedure applicable to social services and other specific services; Simplified procedure and Direct procurement. The stage of organizing the procedure and awarding the contract/ framework agreement begins by submitting the assignment documentation in SEAP and is completed when the procurement contract/ framework agreement is concluded.

3. Execution and monitoring of the implementation of the contract/ framework agreement - post-award of contract/ framework agreement. The post-contracting stage of each procurement process begins at the time of concluding the contract/ framework agreement and is completed by carrying out an analysis at the level of the Contracting Authority of the performance of the contractor, setting out, where appropriate, the conclusions resulting from the procurement process carried out, including the analysis of the achievement of benefits for Contracting Authorities, as identified in the planning/ preparation phase of the procedure in the contracting strategy.

4. Performance analysis and evaluation in the implementation of a procurement process and documentation of lessons learned. Finding positive or negative deviations from the objectives set for a procurement process, expected and achieved results, performance indicators and associated costs, identification of improvement measures.

From the verification of how the annual public procurement program was drawn up in the legally approved structure, we found that it does not include: information relating to the unique identification code of each subject of the contract, and not all public procurement contracts concluded by the entity in 2021.² Also, the Annex to the annual public procurement program did not include all the public procurement contracts that the entity awarded in 2021.

a) The Annual public procurement program drawn up by the Contracting Authority, approved by the head of the entity and registered under no. 6966XXX/20.12.2021 includes the information referred to in article 12(5) 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 approved by approved by Government Decision no. 395 of 2 June, 2016, with the exception of the unique identification code of each contract subject for which an award procedure is carried out, which is included in the annual public procurement program.

According to the legal provisions in force, the annual public procurement program is elaborated, in its initial form, in the fourth quarter of the previous year, based on the reports of necessity sent by the departments of the contracting authorities, and includes all public procurement contracts / framework agreements which the contracting authority intends to award during the following year.

As part of the annual public procurement strategy, the contracting authority is required to draw up the annual procurement program as a managerial tool used to plan and monitor the portfolio of procurement processes at the level of the contracting authority, to

² Ordinul ANAP nr. 281 din 22 iunie 2016 privind stabilirea formularelor standard ale Programului anual al achizițiilor publice și Programului anual al achizițiilor sectoriale (NAPP – National Agency for Public Procurement – Order no. 281 of June 22, 2016 on establishing the standard forms of the Annual Public Procurement Program and the Annual Sectoral Procurement Program)

plan the resources needed to carry out the processes and to verify how the local/ regional/ national development strategy objectives are met, where applicable.

The annual public procurement program is drawn up based on the reports of necessity submitted by the departments of the contracting authorities and includes all public procurement contracts/ framework agreements which the contracting authority intends to award during the following year.

When establishing the annual public procurement program, the contracting authority is required to take into account: objective needs for products, services and works; the degree of priority of needs, as well as expectations of the sources of funding to be identified.

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

The annual public procurement program must include at least information on³:

- a) the object of the procurement contract/ framework agreement,
- b) the common procurement vocabulary (CPV) code,
- c) the estimated value of the contract/ framework agreement to be awarded as a result of a purchasing process, expressed in lei, excluding VAT,
- d) the source of funding,
- e) the procedure established for carrying out the procurement process,
- f) the expected 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,
- i) the unique identification code of each subject of a contract for which an award procedure is carried out and that is included in the annual public procurement program.

The contracting authority, through its internal department specialized in the field of procurement, has the obligation to keep records of direct procurements of products, services and works, as an Annex to the Annual public procurement program.

b) Not all public procurement contracts that the audited entity awarded in 2021 were included in the Annual public procurement program.

- According to the SEAP electronic platform, the public entity XYZ as a contracting authority, following the application of a Simplified procedure concluded the Service contract no. 269AB/11.01.2021 on the performance of work regarding systematic registration of the buildings in the cadastral sectors no. 9, 20, 27, 28 and 29 in order to register the buildings in the integrated cadastral and land registry system, CPV: 71351810-4 - Topography services, with the provider SC Geoo SRL, at the value of 83.300 lei without VAT, respectively 99.127 lei including VAT. The simplified participation notice was published on 18.11.2020 under the number SCN1074504 and the award notice was published by the contracting authority on 01.01.2021 under the number SCNAXXX1011234463 on the website www.e-licitatie.ro.

c) From the verification of the procedure for awarding public procurement contracts, in compliance with the legal provisions in the field, we found deviations from the legality regarding the choice of the award criterion used for awarding the framework agreement for accommodation services and publication of award notices of public procurement contracts following the completion of award procedures.

Following the application of the negotiated procedure without prior publication of a contract notice, during the period 07.08-28.09.2021, the public entity XYZ awarded

³ HG nr. 1086/2013, pentru aprobarea Normelor generale privind exercitarea activității de audit public intern

23 public procurement contracts for the procurement of medical equipment, including equipment installation services and personnel training services related to the use of equipment. The award notices relating to the conclusion of these contracts were not published by the contracting authority in accordance with the rules on publicity and transparency provided by Law no. 98/2016 on public procurement.

Thus, XYZ had the obligation to submit a notice of award for publication within 30 days from the date of conclusion of the public procurement contract/ framework agreement following the completion of the award procedure, as well as to ensure transparency of the procurement procedure/ framework agreements through the publication, in accordance with this law, of prior information notices, contract notices and award notices.

d) The audited public authority also awarded, following the application of the Negotiated procedure without prior publication of a contract notice, the Framework agreement no. 14/03.07.2021 having as object the provision of accommodation services in hotel spaces intended for the rest between shifts or guards of the entity's medical staff. The total estimated value of the framework agreement is minimum 1.690.285,71 lei plus VAT, maximum 8.571.428,57 lei plus VAT. The assignment criterion used for the award of the framework agreement was the lowest price although, according to article 111, para. (4) of Law no. 98/2016 on public procurement, the audited entity should have used *the best value for money* or *the best value for cost* award criteria.

CONCLUSIONS

In conclusion, the deviations presented above have as a consequence the difficulty of monitoring and identifying procurement processes in the absence of a unique identification code (reference number) required for registration in the SEAP, as well as the commitment of expenditure on goods and services without an estimate of the value in order to establish the legal procurement procedure, as well as the failure to ensure transparency of information on awarded contracts/framework agreements and the risk of purchasing accommodation services of a lower quality compared to the price offered.

It is recommended to the public entity to take the measures to complete and update the Annual Public Procurement Program and the Annex to the program with all the mandatory information required by the Methodological Standards approved by G.D. no. 395/2016, as well as the disposition of measures to ensure the publication of award notices in accordance with the legal provisions.

REFERENCES

Electronic publications on the Internet

1. ***Ordinul ANAP nr. 281 din 22 iunie 2016 privind stabilirea formulelor standard ale Programului anual al achizițiilor publice și Programului anual al achizițiilor sectoriale (NAPP – National Agency for Public Procurement – Order no. 281 of June 22, 2016, on establishing the standard forms of the Annual Public Procurement Program and the Annual Sectoral Procurement Program).

2. ***OMFP nr. 1.917/2005 pentru aprobarea Normelor metodologice privind organizarea si conducerea contabilității instituțiilor publice, Planul de conturi pentru instituțiile publice si instrucțiunile de aplicare a acestuia, cu modificările și completările ulterioare;
3. ***Legea nr. 82/1991 a contabilității, republicată în anul 2008, cu modificările și completările ulterioare;
4. ***Legea nr. 672/2002 – privind auditul public intern;
5. ***Legea nr. 191/2011 – pentru modificarea și completarea Legii nr. 672/2002;
6. ***OUG nr. 26/2012- pentru modificarea și completarea Legii nr. 672/2002;
7. ***HG nr. 1086/2013, pentru aprobarea Normelor generale privind exercitarea activității de audit public intern.