

PRICE ADJUSTMENT IN PUBLIC AND SECTORAL PROCUREMENT CONTRACTS

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The National Agency for Public Procurement has clarified, in the most recent Guideline[1] applicable as of 11 January 2019, the conditions and rules for the application of the legal provisions in the field of public/sectoral procurement, regarding the manner in which the price adjustment of public/sectoral procurement contracts can operate.

Thus, through the new regulation, the National Agency for Public Procurement has clarified that the price adjustment of a public/sectoral procurement contract can take the form:

- either of a revision of the contract price, when clear, precise and unambiguous revision clauses were included in the procurement documents;
- or of an update of the price, by performing a non-substantial change to the contract, even if the price adjustment was not provided for in the procurement documentation/public procurement/sectoral procurement contract.

In this respect, the new regulation includes clear guidelines on the formula for revising the price of the public/sectoral procurement contract, as well as on the manner of adjusting the price when unforeseeable situations occur during the award procedure and/or the performance of the contract. Moreover, the new regulation also provides examples of unforeseeable circumstances which may justify the adjustment of the contract price.

[1] Guideline of the National Agency for Public Procurement no. 2/2019 regarding the adjustment of the price of the public/sectoral procurement contract, published in the Official Gazette of Romania, Part. I, no. 32/11.01.2019.

Not least, the National Agency for Public Procurement also clarifies the manner of applying certain legal provisions on price adjustment, depending on the basis of and on the moment of concluding the public/sectoral procurement contract.

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