

public procurement - legal changes published in November 2017

Order of the National Agency for Public Procurement no. 6712/890/2017 on the approval of procurement procedures under the framework of European-funded projects implemented in partnership was published in the Official Gazette of Romania, Part I, no. 933 of November 27, 2017, with effect from that date.

The Order approves the procurement procedure for the projects under European funding implemented in partnership.

Subject to the provisions of Law no. 98/2016 on public procurement, the provisions of the Order apply to beneficiaries / partners of European-financed projects implemented in partnership for the award of supply, services or works contracts afferent to:

- programs funded from the European Structural Funds and Investment Funds 2014-2020, namely the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Fund for Fisheries and Maritime Affairs;
- programs financed from the financial mechanisms of the European and Norwegian Economic Area;
- The Swiss-Romanian Cooperation Program aimed at reducing the economic and social disparities within the enlarged European Union - Objective 1 of the Focus Area 4 - "Improving the Environment".

In the case of projects implemented in partnership consisting of one or more contracting authorities and one or more legal entities without the status of contracting authority, that partnership is considered to be a contracting authority based on art. 4 par. (1) lit. c) of Law no. 98/2016.

The partnership will opt for one of the following ways to organize the procurement process:

- each of the members of the partnership will carry out public procurement procedures related to the activities for which it is responsible in the project / financing contract;
- the partnership leader or one of the members of the partnership, the contracting authority or the legal entity without the quality of contracting authority will carry out all the public procurement procedures under the project / financing contract.

Regardless of the way of organizing, the partnership has the obligation, upon choosing the way in which the procurement process is to be carried out, to relate to the calculation of the estimated value of the acquisition, as it is regulated by the provisions of art. 9-25 of Law no. 98/2016.

In both situations described, each of the members of the partnership contributes to the elaboration of the public procurement program at the project level, by establishing their own public acquisitions / projects envisaged in the project.

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In the case of projects implemented in a partnership consisting of two or more legal entities without the quality of contracting authority, in case the conditions of application of the provisions of art. 6 of the Law no. 98/2016 are not fulfilled, the provisions of the Order of the Minister of European Funds no. 1284/2016 will be applicable.