

## public procurement - draft laws published in January 2018

**The draft Order for the approval of the ex-post control methodology on the award of public procurement/framework agreements, sectoral contracts/framework agreements, works and service concession contracts** was published on the website of the National Agency for Public Procurement (NAPP) on January 23, 2018.

The draft envisages the approval of the ex-post control methodology on the award of public procurement contracts/framework agreements, sectoral contracts/framework agreements, works and service concession contracts.

The methodology aims at regulating the ex-post control activity carried out by NAPP, namely the NAPP ex-post control department, on the award of public procurement contracts/framework agreements, sectoral contracts/framework agreements, works and service concession contracts by contracting authorities/ beneficiaries as a result of notifications/requests from natural/legal persons.

More specifically, in exercising the ex-post control function of public procurement, NAPP, through the Ex-Post Control Directorate will carry out the following activities:

- a) analyzing and verifying the compliance of the procedures for the award of public procurement contracts/framework agreements, sectoral contracts/framework agreements, works and service concession contracts with the relevant legislation;
- b) punctual verification of the issues raised in the area of public procurement/sectoral / works concessions and service concessions/green public procurement;
- c) verification of the way in which the decisions of the NCSC are carried out, if this the object of the referral; and
- d) finding and sanctioning the facts that violate or elude the legal provisions in the field of public procurement/sectoral procurement/concessions of works and concessions of services/green public procurement.

It is noted that the subject of ex-post control is only limited to the public procurement/sectoral procurement procedures /works and service concessions that are finalized by the conclusion of a public procurement contract/framework agreement, sectoral contract/ framework agreement, works or service concession contract. The following are not subject to ex-post analysis:

- the necessity and opportunity of a public/ sectoral procurement /concession of works or concessions of services;
- the conformity of the technical proposal with the specifications;
- the prices put forth by the economic operators;

- the technical and/or economic aspects included in the reports of the experts/specialists involved in the evaluation committees;
- issues analyzed in ex-ante controls;
- calculating or determining potential damages.

According to the Draft, the ex-post control activity is carried out by the control team designated through the control plan, following these steps:

- a) sending, after approval of the ex-post control plan, to the contracting authority/beneficiary, the notice on the commencement of the ex-post control activity whose template is provided in the Methodology (Annexes 1 and 2);
- b) performing the ex-post control itself;
- c) concluding the minutes of finding and sanctioning misdemeanors, if any;
- d) drawing up the control report or the control note, as the case may be;
- e) sending to the contracting authority/beneficiary the notice on cessation of the ex-post control activity;
- f) sending to the petitioner the conclusions resulting from ex-post control.

It is also stated in the Draft that the ex-post control activity is usually carried out at the premises of the contracting authority/beneficiary. Instead, the control activity is carried out at the headquarters of NAPP or at the headquarters of the contracting authority/beneficiary as well as at the headquarters of NAPP, if the sanction is prescribed or in other cases justified by the designated inspection team, with the approval of the head of service /manager of the department.

In addition, it is stipulated that the provisions of the Methodology are supplemented with the provisions of Government Ordinance no. 2/2001 on the legal regime of misdemeanors.

In exercising the ex-post control function, NAPP can conclude protocols of interinstitutional cooperation or cooperation agreements with public institutions/authorities that have specific competences in the field of public procurement, European funds checking/management or competition or control afferent to these areas.

The project can be consulted by accessing the following link: <http://NAPP.gov.ro/web/wp-content/uploads/2018/01/Metodologie-finala-finala-DGPPRAL2018.pdf>.