

THE FIRST INFORMATION AND SUPPORT CENTER OF THE ECONOMIC OPERATORS FOR PARTICIPATING IN PUBLIC PROCUREMENT PROCEDURES IN ROMANIA

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ABSTRACT

The relationship between the contracting authorities and the economic operators is a much discussed topic, many materials have been written, views and recommendations have been presented in nearly all training courses about public procurement. However, the cooperation between the two entities remains one of the great unsolved problems of the system in Romania.

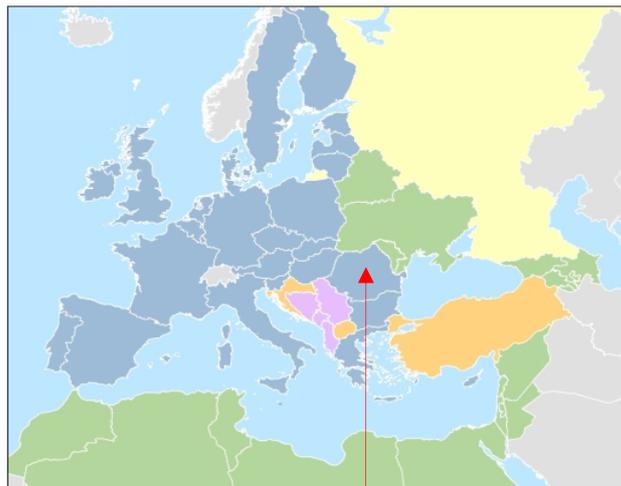
Contracting authorities try to ensure that public procurement process consumes effectively, ethically, equidistantly, and transparently the public funds. The obligation to stimulate and respect free competition is leading the contracting authority to define its requirements very well and to consider the various potential solutions to meet them, while the economic operators are motivated to strive to present the best offer in terms of quality and price. Thus, the thorough preparation of a contractual relationship that achieve the desired performance parameters for each acquisition must motivate the contracting authority in developing and maintaining very good relations with all potential future contracting partners. In turn, most traders cannot afford to neglect the opportunity to become a partner of a contracting authority, provided that the size of this industry is estimated by the European Commission to 16.5% of EU GDP.

Within the municipality of Bistrita I have initiated the approaches to set up an Information and Support Center of the economic operators for participating in public procurement procedures, the first of its kind in Romania. The advantages are numerous and bilateral. As soon as the public authorities from Romania will understand the importance of the relationship with local economic operators and that they all are on the same side of the barricade, the overall activity and in particular the public procurement will reach the performance level of the countries which are still sending their experts to teach us what and how to do. If only we were open.

INTRODUCTION

Public Procurement in Romania

In order to better understand the place and part of an *Information and Support Center* organized in Romania at a local level and destined not exclusively, but mostly, for the economic operators, I find it interesting to have a short presentation of the Romanian system of public procurement. Romania is situated in the South-East of Europe. It is a member state within NATO (2004), the European Union (2007), the Latin Union, the Francophonie, and the OSCE. It's the ninth country by the surface of the territory (238 391 km²) and the seventh by the population number (over 22 million inhabitants) between the member states of the European Union. The capital of the country, Bucharest, is the biggest Romanian city and the sixth city of the European Union according to the population criterion (2 million inhabitants).



Romania on EU map

Presently it is estimated that in Romania the number of the contracting authorities is of approximately 14.000, while the number of people having attributes in the field of public procurement is of approximately 25.000 (persons).

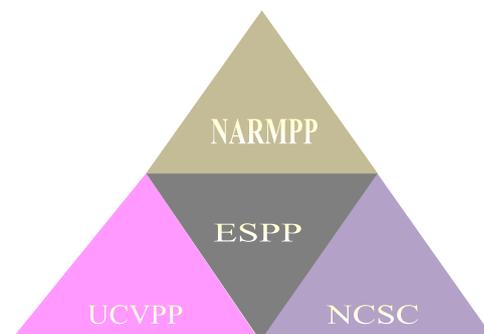
The structure of the system of public procurement is made up of the following institutional actors:

- a) **The National Authority for Regulating and Monitoring Public Procurement (NARMPP)**: which has as a mission to formulate, promote, and implement the politics in the field of public procurement; main attributions: monitoring, analyzing,

assessing, and supervising the way of awarding the public procurement contracts and methodological counseling of the contracting authorities during the process of awarding of public procurement contracts; it fulfills a part of support in correctly applying the legislation in this field and in developing the capacity of implementing the legislation at the level of the contracting authorities.

- b)* **The National Council for Solving the Complaints (NCSC):** solves the complaints formulated within the awarding procedure, before the signing of the contract, by specialized chambers constituted according to the organizing and functioning regulations; it pronounces itself on the legal validity of the procedures and operations unfolded by the contracting authority in the awarding of a contract of public procurement, according to the legal provisions; it states opinions on the dispute brought to Court, at the solicitation of the court.
- c)* **The Unit for Coordination and Verification of Public Procurement (UCVPP):** functions at a level of general directorate within the Ministry of Economics and Finance; it fulfills the function of verification of the procedural aspects related to the process of awarding the contracts of public procurement, of the concession contracts for public works, and concession contracts for services financed by public funds and which are under the incidence of the legislation in the field of public procurement.
- d)* **The Electronic System of Public Procurement (ESPP):** functions as a public institution with legal personality subordinated to the Ministry of Communications and Technology of Information in the purpose of implementing and operating at a national level of the IT systems of the central public administration which offers public services destined for governing through electronic means.

The institutional organization of the system of public procurement in Romania can be represented as follows:



Regarding the national legislation, it must be said that it transposes the Directive no. 2004/18/EC related to the coordination of the awarding procedures for the works, supply, and services contracts, Directive no. 2004/17/EC related to the coordination of the procedures of procurement applied by the entities operating in the water, energy, transportation, and mail services sectors, Directive 1989/665/EEC related to coordination of laws, regulations, and administrative provisions related to applying the appeal procedures in the field of awarding the supply and works contracts, and the Directive 1992/13/EEC relate to the coordination of the laws, regulations, and administrative provisions related to the enforcement of the rules of the Community for the procurement procedures of the entities that operate in the water, energy, transportation, and telecommunications sectors.

A special care has to be offered to the financial support that can be given to Romania by the European Union. This *has acquired, after the adhesion, a new dimension - approximately 4% of the annual GDP of Romania, which means an annual non-reimbursable financial assistance of approximately 28 billion Euros for the period 2007-2013* (The Solicitor's Guide...). Unfortunately, so far, the result of the funds' absorption is not at all satisfactory. But approaching the structural funds and their use concerns all of us because through these structural funds Romania has the chance to develop and modernize at a faster pace. This is why we consider that the activity of public procurement has an important role in increasing the performances and obtaining much better results related to funds absorption that the European Union puts at our disposal.

The Need for the Information and Support Center

At any level we may analyze the activity of public procurement, we ascertain, on one hand, that there is an extremely visible preoccupation from the Government and the Governmental Agencies for creating a favorable framework for the actions of the contracting authority in order to assure the initiation, training, and perfecting or specialization programs for the staff of these authorities and, on the other hand, we ascertain that there is a much lesser interest for the economic operators. This concern may seem righteous while considering the fact that the successful implementation of the community/national policies in the field of public procurement is achieved at the level of each contracting authority, and is largely dependant on the way these authorities take action. The organization and development of the public procurement procedures with respect for the legislation and fundamental principles, efficient spending of public funds, these are the attributes of the public institutions. This is

why the possibilities of training are numerous and varied exactly for the people who are involved in the activity of public procurement at the level of the contracting authority. There's a consistent offer of perfecting courses and seminars. Most of them are organized by consultancy companies. Lately, even some institutions playing a decisive part in the activity of public procurement have decided to offer training programs.

What would be the great shortcomings of this "professional training system", both from the perspective of the contracting authority and the perspective of the economic operator? First of all we need to say that offers shape very well on the rigidity and the conservatism of the public administration system. A praiseworthy fact is that all the public institutions comprise, annually in the expense budget, amounts destined for professional perfecting. But the basic preoccupation does not seem to be the one about training real specialists, ones that are capable of efficiently managing each public procurement procedure. Any public officer is much more interested in adding lines on their CVs than in acquiring new and useful knowledge. It is impressive to be able to exhibit a diploma of *expert in public procurement*, even though this diploma was obtained following a 2-day course during which the study phase was sacrificed in favor of tourism or socializing activities. Under these circumstances, as a well adapted answer to the existing conditions, the "expert" certificates are offered to each person participating to such a course. This is a situation pleasing everybody: the consultancy company has sold very well its services in a field where the pressure of the European Commission has quickened and multiplied the legal modifications, therefore there are permanent new things in the field; the public servant became an "expert" and can thus consolidate even more his or her stability in function; and finally, the contracting authority makes a good impression by its continuous preoccupation to improve the training level of its own staff. It is a state of fact perpetuating also on the background of the inconsequence of the National Authority for Regulating and Monitoring Public Procurement. This institution has drawn up in time a series of documents in which it assumed the mission of regulating the status of experts in public procurement, of the real experts, proposing even an action plan detailing the way of training and control in order to award the certificate of *expert in public procurement* even based on the experience and results in one's activity. The training fields have been foreseen with emphasis – except for the study of the specific legislation – on an intensive technical, economical, and legal training. That is an overbidding of the *Homo Universalis* which could be at the same time a construction specialist, an economist, a legal expert, and anything else there's a need for. However, nothing materialized. Moreover, there is no regulation, not even an indication/recommendation related to the

conditions regarding the education and necessary studies in recruiting those involved in the activity of public procurement. There are seldom rather comical situations where within the public procurement department there are 7-8 civil servants, specialized engineers in various fields (mining, petrol and gas, textiles) or artists, but no economist, no legal expert or construction engineer. I have personally notified the national authority related to the need of having a legal expert for instance considering that each procedure of public procurement is finalized with a framework contract/agreement and these have to be drafted by specialists in the field. I have also published materials on this subject in the *Romanian Public Procurement* magazine. The official answer was a manual-based one, but contradicting the stated principles regarding obtaining the attributes of *expert in public procurement*: “the national authority cannot get involved in the recruiting action of public servants, which is the exclusive attribute of the public institutions”. This was said, although, as it was mentioned hereabove, the national authority’s main part is to formulate, promote, and implement the policies in the field of public procurement.

On the other hand, probably by a better awareness of the lack of consistency of the perfecting courses, but also still neglecting the need of having within the company specialists in public procurement, economic operators have an extremely low representation rate for the training actions. Definitely one of the explanations has to aim the financial aspects. Much more economical than those at the head of the public institutions, managers from the private sector – especially those from the small companies – maintain a pretty high degree of reticence. Their attitude can be easily understood if we consider that they are asked to spend 500-600 USD, to settle up their transportation fees and pay for 2 or 3 days the daily fee and salary of one person, in a situation where experience never gave them the possibility to quantify any benefit from such actions.

Under these conditions, the creation and functioning at the level of the territorial administrative unit of an Information and Support Center in public procurement for the economic operators is certainly an important opportunity for the business environment. But no matter how many benefits it could bring to the economic agents, the present work aims to present the Information and Support Center in public procurement as a factor generating advantages mainly for the contracting authority. Only like this can we justify its effort to develop within an institutionalized framework a large training action, a permanent dialogue with the other participants in the process of public procurement. The provisioned results (which will be detailed in a separate chapter) strongly support this statement and can make for the apparition of as many similar initiatives as possible.

METHODS

The proposition for creating an Information and Support Center in public procurement is part of the strategy for improving the organizational efficiency that we're trying to finalize at the present moment. In my opinion the moment is favorable for the creation of a strategy because now the function of procurement needs to find its balance in a complex situation, characterized by stringent economical conditions, by the imperative need to reduce costs, by the fluctuations and risks from the suppliers' market. Moreover, the perspective in which the municipality will make the procurement for schools, kindergarten, and hospitals too is very near and implies a maximum efficiency in the activity, with reaching a corresponding level of performance. For the time being, the procurement department from most of the public institutions is undervalued and underappreciated, although it might have the chance to play a crucial part in the present moment crisis. Any public institution manager, and especially the mayor of a town who needs so many investments, needs to understand that rendering procurement efficient becomes an essential objective for the public administration; each economy made up through performant procurement equals funds for other projects of public interest.

Drafting the strategy for improving the organizational efficiency and therefore for developing the activity of procurement implies a very detailed analysis. The main objectives of this strategy would be to diagnose the problems, establishing some directions of actions and identifying the methods through which one can implement reliable solutions, capable of assuring substantial efficiency of expenditures and, an extremely important aspect, the acceleration of the European fund absorption. Otherwise, this activity risks to get carried away, without any direction and be perceived only as the action of a team that is concentrated on processes, that is involved in simple purchasing. The strategy project that I've drafted is focused on three main axes: a) the municipality becomes one single contracting authority and all procurement will be unfolded within the service of public procurement (thus all the procurement that are is done at the level of the municipality is centralized within the specialized department and the premises of increasing the performances following the principle "the quantity dictates the prices" are being created); b) the Internal Regulations will be drafted for public procurement in order to regulate situations that are less detailed in the specific legislation; c) the Information and Support Center for public procurement will be created, a distinct compartment within the Service for public procurement. The need to delimitate the information and support activity from the one of unfolding the

procedures of public procurement is not determined only by administrative reasons. The main argument is, in my opinion, the one that the economic operators hesitate in developing relationships with the procurement departments of the public institutions that they perceive as being on an opposite position (this fact is confirmed by my experience in public procurement: I have never met an economic operator having come to solicit the support of the specialized department of the municipality). This new structure aims to develop and supply training programs (seminars, conferences, and forums), permanent consultancy and dialogue on issues of public procurement, addressed mostly to the economic operators. Thus a „partnership” will be made in order to solve any legal, technical, or economical problem that we may be confronted with frequently in the activity of procurement, a ”group of dialogue” with beneficial results for both parties.

In considering the presently exposed reasons, I have informed the mayor related to the propositions that might stand at the basis of the drafting of a new strategy in public procurement. Moreover, in order to create the Information and Support Center I have solicited non-reimbursable financial assistance from structural instruments of the European Union for the Regional Operational Programme, the main field of intervention being the Development of the Administrative Capacity. From this perspective, the main directions of action can be grouped as follows: selecting the team; plan of preparing actions, previous to the functioning of the center; plan of implementation actions.

Selecting the Team

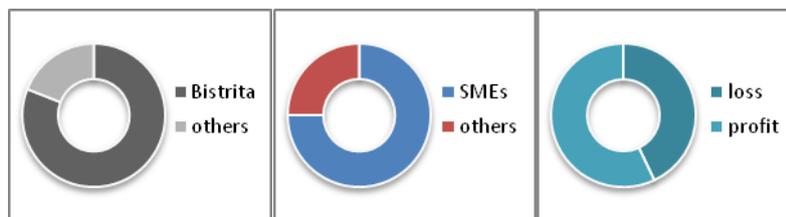
In the financing application of the project, for the preparation and implementation stage of the Information and Support Center in public procurement it was foreseen to create a team made up of 3 people. According to the future evolution and to the resources that will be allocated, the number of people involved in this activity might suffer modifications. The 3 people have been chosen within the service of public procurement of the municipality after a rigorous selection in which meeting several essential conditions was pursued: level of education: University studies in the legal (1), economic (1), technical – constructions fields); the people who are selected have relevant experience in public procurement, know very well the incident law in the field, have very good communication and managing the interpersonal relationships skills; two of these people speak English very well.

A really special attention was given to the selection of the team. The people who will manage the relationship with the economic operators

must prove to have general learning skills in order to keep up with the social and structural changes within the local community, with the legislation and the practice in public procurement; these people must also have good speaking skills, knowledge of methods and various communication tools with different speakers and understanding the non-verbal communication methods. In addition to that, Information and Support Center staff must complete their competences with a rigorous documentation to be able to provide accurate and complete information. In essence, the practitioner of such an occupation should be an action-oriented person, conscientious and serious, rigorous in achieving goals, able to carry out on a long period a time different tasks, under time pressure, and with a good emotional balance.

Plan of Preparing Actions

The Action Plan has to be considered as the essential framework for the future implementation of the objectives proposed within the strategy. It will outline, in a precise manner the method (mechanism, stages, and timetable) for implementing the priorities and determining resource use. When the municipality aims to provide such services to the economic operators from the city and area, some statistical data must be taken into account, data relative to the number of commercial companies and individuals involved in procurement activities.



Area Distribution Types of commercial companies Financial result

The total of the active population in the 10,876 companies (45,847 people) is for the most of it located in the city of Bistrita (81%), the other 3 cities and 53 communes dividing between themselves the rest of 19%. Small and Medium Enterprises hold the weight - approximately 75% - both in number of employees and the profit generated by commercial companies at the county level. (Status of the economy...2009).

The first objective included in the plan of preparing actions was to make a complex, SWOT type analysis in order to identify strengths and weaknesses (the internal factors), but also the opportunities and threats (the external factors). There is a first stage in planning, which would help focus on key aspects regarding current operating, and perspective development. The results of this assessment, that has already been made, highlight a number of positive aspects meant to encourage our approach. Equally obvious is also the fact that for the project implementation a series of complex measures should be set correctly and then carried out, measures aimed at a stage of solving organizational problems, a further stage of the team's intense preparation, but also very important will be the consistent promotion of the center, of the mission and opportunities it offers.

In the first category there may be included issues related to the space in which the center will operate and for assuring equipment of a superior level. For the activity of the Information and Support Center in public procurement, the mayor has already approved the allocation of appropriate space, consisting of an office and a conference room. All the necessary equipment was based on the budget proposal that was from of the application. It was intended to ensure very good working conditions and access to a range of IT equipment and performant software.

For preparing the team, several stages of training and perfecting have been provisioned. The first one includes a preparatory stage in the National Authority for Regulating and Monitoring Public Procurement. The National Authority deals with formulating, promoting and implementing public procurement policies, but also for monitoring, analysis, assessment and supervision of the awarding of public procurement contracts and methodological counseling for the contracting authorities. It is the institution with the largest number and the best trained professionals in the field and, starting the second half of last year, it organizes perfecting courses, including on the themes requested by participants. For the following stages trainings were selected for two institutions from the same "family": the National Institute of Administration (a course on communication and public relations) and the European Institute of Public Administration (European policies and practices in public procurement). The last stage in preparing the team is a study visit to a European country having relevant experience in public procurement. I should also add the fact that I am one of the team members and have benefited from theoretical and practical perfecting periods in Brussels and Leeds (UK) and have organized so far as an expert in regional training programs (RTP) of the European Commission, with its support, 11 seminars for people involved in the public procurement activity of 4 regions of the country.

Promoting the Information and Support Center should not be considered as a single, isolated action, but as a process in which the goals that we want to achieve will develop a concept that we'll have to communicate through the most appropriate channels. Therefore, a promotional campaign will be developed, one that includes various actions as they were provisioned in the project for which financing was solicited from the structural funds. Among these actions could be named broadcasting spots on TV and local radio stations, articles in the written press, publishing and distributing leaflets to all economic operators in the area, but also an inauguration festivity of the center where representatives of the business environment, of the public institutions and the media will be invited.

Plan of Implementing Actions

The Information and Support Center in public procurement has been created as a public interest service to meet the need for information and counseling for business environment representatives in their relationship with the public authorities, so that they have increased access to information, to benefit from support in identifying possible ways to solve certain problems they're facing within the public procurement activity. The Center must be an interface between the local administration and economic operators, being aimed at providing training, answers, points of view, opinions towards the presented problems and proposed solutions. The public servants working in the Center have also the mission to establish and maintain cooperation relationships with the representatives of the business environment, planning and coordination of activities, organizing and making the presentation materials, of meetings, debates and various forms of training. Tracking feedback will be an important task of the civil servants working in the Center; setting new goals will depend on it as well as policies and the needs of organization of the activity in order to develop the relationships' strategy with the representatives of the business environment; In chapter *Results* we will also analyze the way in which all efforts should be materialized in benefits too for those contracting authorities who take on a mission to develop training sessions and a permanent dialogue with the economic operators.

Practically activities that are to ensure achievement of the objectives of the Information and Support Center in public procurement have been structured upon 3 main components. Establishing these components was made by taking into consideration the fact that for the first year of operation, everyone's hoping for financial support from non-reimbursable structural funds, which cover 98% of the necessary costs. During the first year there will be:

- a) A number of 12 **training sessions** (workshops), lasting for 2 days each, 6 of them will benefit from the participation of lecturers from the National Authority for Regulating and Monitoring of Public Procurement together with internal trainers of the Center; for the other 6 it was decided to invite external experts with extensive experience in public procurement but especially in actions of training the economic operators. The two types of workshops will rotate on a monthly basis and will include each time special sections moderated by the economic operators during which they will present technical/technology novelties, inventions, innovations, etc., generally any kind of information considered useful for the public institutions and their procurement activity.
- b) An information bulletin (**newsletter**) will be edited by the Information and Support Center in public procurement of the municipality and will be circulated throughout the network that will be constituted. It is a simple and very effective means of providing timely information, and a regular update to the legislative changes (so frequent lately in Romania). *The newsletter* could also include information on the calendar of the awarding procedures of public procurement contracts for the next period, but also cases and situations in the purchases, including materials coming from the economic operators.
- c) Carrying out a **permanent dialogue** between the center and the representatives of economic operators. It will probably be the main component of the Center for it will hold a permanent character (within the working hours of the Center) and will respond promptly to concrete problems that economic operators are facing.

Three ways of possible dialogue have been established: the most efficient seems to be that of the *online* communication; it is fast, efficient, it does not involve costs, and it excludes the need for traveling or the allocation of significant resources of time. Special, complex problems or which require extensive, face to face discussion will be settled at the center. For some special situations that may occur, dialogue could be held on the head office of the economic operators.

There is a special mention to be made: dialogue with a particular economic operator shall be suspended during the period in which the economic operator participates as a bidder in a procedure of public procurement carried out by the municipality. During the procedure, communication is

carried out according to the legal provisions and with respect to the fundamental principles that support the public procurement activity. At least one of them, that of *equal treatment*, would be infringed if a bidder involved in a tendering procedure organized by the Municipality of Bistrita received support from the Information and Support Center.

RESULTS

The results of the activity of the Information and Support Center in public procurement are beneficial to both parties. But we will review the main advantages that this activity generates especially for the contracting authority. This should be the decisive argument so that other local public institutions start too taking responsibility as a trainer and partner of the economic operators in the area.

We will analyze the provisioned results of the center from two distinct perspectives: the first is that the municipality related to the attributes of administration and a good management of assets and public funds, to assure public health services, social assistance, education, culture, defense of public order, civil protection etc., but also for economic and social forecasting and development. From this perspective, training of the economic operators should lead to more tenders won by the economic operators having benefited from services from the Information and Support Center, including tenders held elsewhere in the country. The immediate consequence is the development of the business environment, increasing employment and implicitly increasing the revenue of the local budget. The other perspective is related to direct effects, which are also influencing the public procurement procedures; this is the reason why we will detail below how they can contribute to improving the quality of public procurement.

Streamlining Procedures and Reducing Deadlines

European legislation on public procurement, and implicitly the Romanian one, creates facilities to the contracting authorities regarding the reducing to a minimum possible of the deadlines for the procedures of awarding a public procurement contract with respect, of course, to the principle of transparency. However, the difficulties are very numerous. In Romania multi-annual budgets are not used, and the framework agreements have, for the time being, an exceptional character. The number of public procurement procedures

is very large because a series of procedures are practically repeated each year. Moreover, local budgets are being approved late in the year, usually in April. A great pressure on the rhythm of running contract awarding procedures is thus created, especially towards the end of the year. Under these circumstances, streamlining procedures and reducing time spans become decisive. In practice, in 9 out of 10 cases, after the opening and the first analysis of the offers, a long line of mailing episodes follows for clarifications and addendum to tender notices.

Until recently, the law did not provision a time span in which the authority was required to determine the successful bidder. This legislative loophole allowed the authority unwarranted extension of the awarding procedure of the public procurement contracts. A welcome change is the provision that *within 20 days from the date of opening the offers, the contracting authority is required to determine the winning offer based on the awarding criterion specified in the participation notice and the awarding documentation provided that the respective tenderer meets the imposed selection and qualification criteria. In duly justified cases, the contracting authority may extend the assessment period with maximum 20 days. Grounded reasons are presented in an explanatory note which is approved by the authorizing officer of the contracting authority, and is part of the public procurement file.* (Emergency Ordinance no. 34/2006 ...). It is, as I said, a change that should produce positive effects starting from the consideration of what tends to become a new principle in public procurement: *time is money*. But legislative modification has some other effect too: it creates an additional pressure on the contracting authority, regardless of the complexity of the procedure and of the content of the submitted bids; it has the obligation to fit within a deadline that can become, in many cases, insufficient.

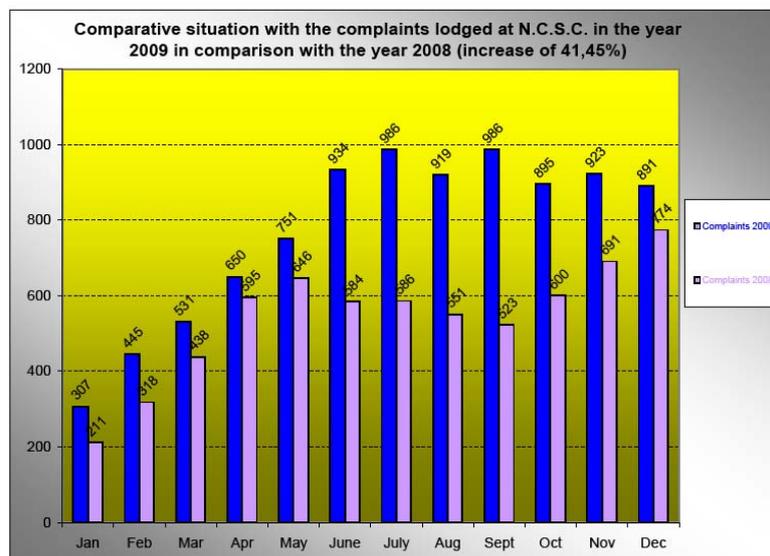
One can intervene here by training the economic operators. Very good knowledge of the legislation, getting familiar with the forms being used, proper understanding of the drafted requirements are all essential conditions for bidders to submit complete offers that meet the requirements of the contracting authority, thus streamlining procedures and tremendously reducing the time span. Then a participant in the procedure of awarding the contract of public procurement, who's well trained and informed, will know how to use the possibility to request in time, before the submission of bids, any clarification related to the published awarding documentation. But this time it's a common interest. If the public institution fails to award contracts (also because of the periods of assessment that are very prolonged by the lack of bids), the investment plan is not made, and after this the objectives for which no contract has been awarded will be possibly left to be included in the following year's budget.

Some of them may even be waived. This implicitly affects the possibility of development of the service providers/works contractors.

Reducing the Number of Complaints

In the Romanian legal system, the nature of the public procurement contract is that of administrative contract (Petrescu, 2001, but also Prisăcaru, 1996). This is why the administrative legal remedy against unlawful acts and decisions related to public procurement, the complaint, is used very often. EU legislation on public procurement provides, on its turn, the possibility to remedy the acts of the contracting authorities by filing complaints. I do not know the situation in other legal systems, but it appears that also in unitary legal systems with unitary jurisdiction such as the one from the United States even if they do not use the concept of administrative contract, the disputes related to this type of contracts are in a trial court subject to a specialized jurisdiction (Court of Claims) which, in the recent years, has developed a genuine law for administrative contracts, derogatory to the common law (Aşimow, 1992).

One of the most stringent problems the public procurement system in Romania has been facing lately is the extremely large number of complaints. Practically, the complaints appear anyhow and related to



anything. A separate category of participants in the public procurement procedures began to take shape: the “professional” plaintiffs. Legislative shortcomings encourage this behavior. Even

though a year ago there were clear legal provisions setting penalties for abusive complaints, they were removed from the legislation (apparently following an intense lobby activity coming from the lawyers who are increasingly specializing in this field and thus have direct interest in dealing with a large number of complaints). We've reached a situation where the unchallenged procedures are mere exceptions. It is true that there are quite enough cases where the contracting authorities do not comply with legal requirements. But it is equally true that there are cases where the bidders come to negotiate through blackmail the waiver of a complaint. Below is *a comparative situation of the complaints submitted within the NCSC in 2009 compared to their number from 2008* (www.cnsc.ro). As it can be seen, since the elimination from the legislation of the provisions related to sanctioning the abusive complaints, the number of complaints registered a tremendous increase (of 41.45%).

Under these conditions, any procedure of public procurement risks to become unexpectedly long. *The National Council for Solving the Complaints is a body with administrative-jurisdictional activity. The Council works on the grounds of its own Organization and Working Regulations and in its activity, the Council obeys only to the law, the Council sessions are legally established in the presence of the majority of its members. As regards the Decisions issued by the Council, the Council is independent and obeys only to the law. The Council has 33 members and other 64 employees having the status of technical-administrative staff, there are 97 employees in total, the members of the Council are public servants with special status and they are called counselors for solving complaints in the field of public procurement. Through its specialized chambers, the Council is competent to resolve the complaints lodged within the awarding procedure, before the contract is concluded. In order to perform its responsibilities, the Council issues Decisions. The Council is made of 11 chambers. The complaint is resolved by a chamber composed of 3 members of the Council, one of which is the president of the chamber and is a graduate of Law Faculty* (www.cnsc.ro).

It is a situation that can certainly be improved if the dialogue between the public institutions and the economic operators is working and the latter start to have a very good understanding of the mechanisms of the procurement process, including the impact of their actions, may it be indirectly, on their own interests.

Improving the Contractual Relations

The contractual relations between the contracting authorities and the winning bidder of the awarding procedure for public procurement contracts are still one of the sensitive issues of the public procurement system in Romania. Contract administration requires teamwork and implicitly a symbiosis of interdisciplinary knowledge representing in fact the result of a proactive approach to the items below:

- planning activities;
- understanding and knowledge of the procurement process;
- teamwork skills of the contracting authority' staff;
- the capacity of the contracting authority's staff to analyze, forecast, and predict risks resulting from the unfolding of the contract, possible changes in its period, changes that might influence the budget allocated to the contract.

At the level of the contracting authority, the responsibilities in managing the contract entails such responsibilities:

- operational - with regard to monitoring performance indicators;
- technical - regarding both assuring the technical assistance needed for the development of the contract and the technical assessment of the activities / works done by the contractor or goods supplied by the latter;
- administrative - meaning ensuring an adequate framework (logistics and resources) for the development of the contract.

If we were to name a few of these issues without getting into an analysis of the phenomenon, we could notice that usually both sides are guilty. The lack of rigorous monitoring of how the contract is executed coming from the contracting authority allows the contracted candidate to subcontract, to use inferior quality of materials or resources than those presented in the offer, to slow down the execution of works or the supply of goods, all these leading to additional costs for the contracting authority; any breach of the terms and conditions of payment by the contracting authority, late payment of invoices, acceptance of invoices related to goods or services that do not actually exist, determine the economic operator to consider themselves entitled to ignore all contractual obligations.

Perhaps this explains also the fact that although in every public procurement contract there is a full set of penalty clauses inserted, which have never been used. Since contracting authority is also guilty, it is easy to predict that it will not solicit for penalties or other types of damages and compensations. Things have started to change although the inertia is huge. Template contracts are used as much as before, but most contracts are already tailored to each particular situation so as to respond to any possible situation that could appear during the development of the contract. Moreover, I insisted before signing each contract to have a meeting with the economic operator having won in the public tender procedure in order to have a detailed discussion about the contract clauses. The purpose of this meeting is not that of any possible negotiations. Contract clauses were made known to bidders since the publication of the awarding documentation and they have had the possibility to carefully analyze the contract proposition, accepting – with or without any modification propositions – the clauses drafted by the contracting authority. However, one last discussion before signing the contract is welcome and its role is to ensure the contractors that each of them understands exactly what obligations they assume and what is expected from them.

Setting up a Type of Ethic Behavior

There are many sets of rules regarding the behavior in public procurement, many of them having already been mentioned in the long known *codes of ethics*, developed both at a central level and at the level of the institutions. Most of them establish rules that add to those imposed by norms, so as to assure an impartial behavior, integrity and loyalty towards the public interest and the society. Still, codes of conduct in Romania generally aim at rules applicable almost exclusively to officers working in the public institutions. We even have a Code of conduct for the civil servants that is established by law (Law no. 7 / 2004, republished). The phenomenon is somewhat understandable if the arguments set out in the Introduction chapter of the present work regarding the training possibilities. Similarly, the concern of the authorities in this direction seems justified considering the fact that successful implementation of the Community/national policies in the field of public procurement is done at the level of every contracting authority and depends largely on the way these authorities operate. However, in my opinion, establishing some kind of ethical behavior for the economic operators, besides the already created legal one, is equally necessary. Principles such as those

related to integrity, sovereignty of law, competence, professionalism, responsibility, fairness, accuracy of information or avoiding corruption are issues that concern equally the economic operators. It suffices to remember that Romania is situated on the last position in Europe in a ranking of countries having obtained good results in fighting corruption. Related to the issue of corruption in the field of public procurement I have found an interesting explanation in a treaty of administrative law published in France, linking the increase of cases of corruption to the administrative reform having consecrated the local decentralization and abolished the regime of prior authorizations. The new chief executives of the local authorities - mayors, presidents of the councils – have concentrated in their hands important decision-making powers until that time shared with other administrative authorities. According to the specialized authors, "corruption in the field of public procurement was not born out of the decentralization, but occurred more ostentatiously after its implementation (André de Laubadère, Jean-Claude Venezia, Yves Gaudemet). It can be very easy to make an analogy with the situation in Romania. With the mention that the presented situation referred to the French administrative reform from 1982, while in 2010 Romania, although a series of commitments in the fight against corruption were made to the European Commission, the situation is already alarming. *Corruption at the level of the public administration has in general a character of "small corruption". However, on a long term it may have negative consequences that may affect the proper functioning of the local public administration* (National strategy ... 2008-2010).

But this situation does not incriminate exclusively the public authorities. For the corruption phenomenon to be manifested there is a need of a "contribution" from both parties.

The activity of the Information and Support Center in public procurement will be focused on reaching this objective too: an ethical behavior of the economic operators, actions undertaken in good faith, under fair and honest usages, with respect for beneficiaries' interests and for the fair competition's requirements. Several strategic targets can therefore be established, whose achievement would establish another dimension of the relationships between the public institutions and the representatives of the business environment. Let us review only some of them:

- Establishing a framework based on trust, fairness and impartiality;
- Assuring visibility for the rules, opportunities, internal procedures and for results;
- Limitation of errors during the public procurement process;
- Limitation of fraud and corruption phenomena;

- Developing a healthy public procurement market.

However, without actual implementation and without control measures, no set of rules or code of ethics will work, it will only have an informative character. As it was shown, there are preoccupations in this way, including at the Government's level and at the level of the national authority with public procurement attributions. But no modification of the legislation will make for the need of permanent education of the public authorities and the economic operators.

CONCLUSIONS

My conviction is that there are a series of strategic advantages that can be put into value by a function that trains on issues of public procurement the representatives of the business environment, to take the pulse and follow the trends of the market, the evolution of the innovations, opportunities, the competition's behavior and the economic and financial „health” of the suppliers. I strongly believe that in Romania we're having *cultural* change in public procurement at every level. This is why my proposals for the objectives aiming the development on a short term of the activity of public procurement included in the strategy of improving the organizational efficiency at the level of the municipality represents an important step headed towards a new stage: the one in which Romania will no longer be limited to copying the expertise of other countries with a strong democratic tradition because currently, there are few countries in which the authorities are concerned with training the economic operators to participate at the procedures of public procurement. There where these actions are being unfolded and where they generate positive and measurable effects, they are probably the result of some personal initiatives or at the level of some small groups. They became aware that it can be created, in a necessary way, a flux of mutual stimulation, of bilateral support and they have found the means to convince the rulers of the authorities regarding the advantages that an appropriate relationship between the contracting authority and the economic operators can develop. Understanding and accepting the benefits of the Information and Support Centers in public procurement at a local/regional level, Romania can become itself a model to follow. Everything depends on us, on the way we understand to get involved. Indifference has never been a solution.

Nota:

This work is not an academic or university research work. It is more likely the presentation of an experiment that might have a large applicability in the activity of the contracting authorities of everywhere. The way the topic is approached, the simplified language and the reduced number of references clearly characterize the present work as belonging to a practitioner.

However, I believe that the interest for its contents will not be insignificant because the impact of the activity of an Information and Support Center for Public Procurement should be equally consistent for any institution having delegated participants to the International Public Procurement Conference in Seoul, because a forum of such amplitude needs to bring into the attention, along the important contributions to the research of the phenomenon of public procurement, also the aspects of practical order which have already passed through the dense filter of experience.

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