

Fragmentation of Public Contracts and Integrity

Associate professor **Mădălina VOICAN**¹

Abstract

This article explores the impact of dividing government contracts into smaller components, highlighting the risks it poses to transparency and integrity in public procurement. Contract fragmentation can obscure decision-making process regarding public expenditure, reduce healthy competition, and facilitate corruption. Real-world examples illustrate these issues. The analysis highlights the need for strengthening public procurement regulations, increasing transparency, and promoting ethical conduct to mitigate these risks. By understanding the complex relationship between contract fragmentation and integrity, decision-makers and stakeholders can better protect public resources by promoting a fairer and more transparent business environment and upholding ethical standards in public procurement.

Keywords: public procurement, public contracts, corruption, contract fragmentation, integrity, transparency.

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1. Introduction

Public procurement, the process by which public authorities acquire goods, services, and works, stands as a cornerstone in the prudent management of public resources. With over 250,000 public authorities in the European Union allocating a substantial portion of their budgets—approximately 14% of the EU's GDP, equivalent to around €2 trillion annually² and around 12% worldwide, the economic perspective is an obvious one³. Spending money at such a level towards procurement activities, it is imperative to delve deeper into why public procurement holds such a critical position in the sphere of public governance.

This multi-faceted significance of public procurement encompasses various vital aspects. In many sectors such as energy, transportation, waste management, social protection, and the delivery of health or education services, public authorities often assume the role of primary purchasers. Their decisions regarding procurement not only influence the direction of these sectors but also profoundly impact the lives of citizens.

Beyond its immediate economic implications, public procurement serves as a potent catalyst for broader economic growth, job creation, and investment. By strategically directing procurement towards innovative, resource-efficient, and socially-inclusive solutions, governments can actively shape a more prosperous and equitable economy, fostering a holistic societal well-being.

Moreover, the quality and effectiveness of public services depend heavily on modern, well-managed, and efficient procurement practices. Effective procurement ensures value for money and the efficient delivery of services⁴, ultimately benefiting the public by enhancing their access to high-quality services.

Importantly, the improvement of procurement efficiency presents an opportunity for

¹ Mădălina Voican - Faculty of Law, University of Craiova, Romania, madalina.voican@edu.ucv.ro.

² https://ec.europa.eu/growth/single-market/public-procurement_en, consulted on 1.10.2023.

³ Schotanus, Fredo. (2023). *Organizing Public Procurement*. 10.1007/978-3-031-18490-1_4, pp. 16; Săraru, Cătălin-Silviu, *European Administrative Space - recent challenges and evolution prospects*, ADJURIS – International Academic Publisher, Bucharest, 2017, p. 68-92.

⁴ Pareek, U., Sole, N. (2022). *Quality of Public Services in the Era of Guaranteed Public Service Delivery*. „Indian Journal of Public Administration”. 68. 160-173. 10.1177/001955612111072575.

substantial cost savings. Even a modest 1% increase in efficiency within procurement processes can translate into annual savings of an impressive €20 billion across the European Union.

In the United States, public procurement plays an equally significant role as it drives substantial economic activity. The federal government and its agencies collectively procure more than \$300 billion worth of goods and services across a vast spectrum of categories annually⁵. Remarkably, the U.S. government frequently stands as the world's largest customer in many industries.

Furthermore, having a government entity as a customer bestows a mark of credibility and reliability on a business. Meeting the stringent quality, pricing, and service standards set by the government often paves the way for success with other customers.

In Romania, public procurement also stands as a pivotal driver of economic activity. National, county, commune, and city governments in Romania collectively invest more than €15 billion in goods and services annually⁶.

These statistics underscore the indispensable role of public procurement in the responsible allocation and management of public resources in Romania and throughout the European Union.

2. Dimensions of public procurement in public administration

Public procurement, as a fundamental concept within public administration, encompasses the complex process of acquiring goods, services, or works with the utilization of public funds to fulfil specified public interest objectives and needs. It serves as a necessary mechanism through which governments, whether at the national, regional, or local level, obtain the necessary resources to meet the demands and expectations of their constituents.

Scope of Public Procurement Contracts: Under EU regulation, public procurement contracts are formal agreements with pecuniary interests entered into in writing between one or more economic operators (often referred to as suppliers) and one or more contracting authorities (typically governmental entities or public organizations). These contracts can have one of three primary objectives:

(1) **Execution of Works:** These contracts pertain to the creation, renovation, or alteration of physical structures, and may encompass both the design and execution phases. A "work" signifies the entirety of a building or civil engineering project that serves an economic or technical function.

(2) **Public Supply Contracts:** These contracts are centered around the purchase, lease, rental, or hire-purchase, with or without an option to buy, of products. Public supply contracts may also encompass activities related to the installation and placement of the acquired products as an incidental component.

(3) **Public Service Contracts:** These contracts revolve around the provision of services, distinct from the execution of works. They span a wide spectrum of services, from consulting and professional expertise to the delivery of operational services that serve the public interest.

3. Navigating the landscape of public procurement

Public procurement, a cornerstone of effective governance and responsible resource management, is a multifaceted process that lies at the intersection of public interest and financial transactions. The procurement process has a well-defined lifecycle that extends from the initial identification of a need through the stages of procurement planning, supplier selection, contract award, execution, and monitoring and evaluation. It involves a series of steps and decision points that are critical to achieving value for money, ensuring transparency, and upholding ethical standards. Each phase is crucial for ensuring transparency, fairness, and efficiency in the acquisition of goods, services, or works by government entities. These phases are vital to both contracting authority and private suppliers participating in the procurement process and comprise five key phases: (1) Planning

⁵ <https://www.entrepreneur.com/encyclopedia/government-contracts>, consulted on 1.10.2023.

⁶ www.europa.eu.

and Preparation, (2) Procurement Method Selection. (3) Procurement Organization, (4) Contract Award

3.1. Planning and preparation

The procurement process begins with careful planning and preparation. During this phase, the procuring entity identifies its needs for goods or services, assesses budget availability, determining the procurement method, and developing a procurement plan or strategy. Key activities in this phase include: Identification of the contracting entity's needs, Specification Development, assessment of market conditions Market Consultation budgeting and establish procurement objectives.

Identification of the contracting entity's needs is done based on justification and then prioritization. Before proceeding with any procurement the first step is to determine what goods and services the the contracting entity is looking for and actually requires. It's also important to have a solid justification for why these needs exist and explain how the resources are allocated efficiently and effectively to meet the organization's goal and procurement aligns with the entity's mission and strategy. Justification helps ensure that the procurement is necessary and appropriate. Once the needs are identified and justified, they need to be prioritized⁷. This means determining which needs are most critical or urgent and should be addressed first. Prioritization is essential when resources are limited, and not all identified needs can be addressed simultaneously. It helps to ensure that the most important requirements are met promptly.

Specification Development involves defining detailed and clear specifications or requirements for the goods, services, or construction projects that a government agency intends to procure. These specifications serve as the foundation for the procurement process and are essential for ensuring that the procured items meet the organization's needs and standards. Well-developed specifications are essential for conducting fair and effective procurement processes and establish technical standards, and acceptance criteria for goods, services, or projects to be procured.

Market Consultation means engaging with potential suppliers and stakeholders to gather information and insights. This helps in shaping the procurement approach and ensuring that it aligns with market conditions.

Budgeting involves the creation of a practical budget for the procurement, taking into account all associated costs, encompassing acquisition, maintenance, and operational expenses.

3.2. Procurement method selection

Procurement Method Selection imply choosing the appropriate procurement method, such as open tender, competitive negotiation, or framework agreement. Method Selection is based and vary depending on the estimated value of the procurement and the nature of the procurement. Also, selection of a procurement method in Romania is governed by both national laws and regulations⁸, as well as European Union directives, as Romania is a member of the EU and follow the next steps:

Determination of the estimated value is the first step in selection of procurement method. Public Procurements are classified into different value thresholds⁹, which determine the applicable procurement rules and methods. These thresholds are defined in Romanian legislation and are subject to periodic updates.

Once the estimated value is determined, the procurement entity must classify the procurement according to the applicable threshold. Procurements with a value below the EU threshold are subject

⁷ Tátrai, T., Vörösmarty, G. (2023). *Comparative Analysis of the European Centralised Public Procurement*. „Central European Journal of Public Policy”, 10.2478/cejpp-2023-0007.

⁸ Regarding public procurement in Romania, see Săraru, Cătălin-Silviu, *Drept administrativ. Curs universitar*, vol. II, Ed. Universul Juridic, Bucharest, 2024, p. 87-90; Săraru, Cătălin-Silviu, *Drept administrativ. Probleme fundamentale ale dreptului public*, Ed. C.H. Beck, Bucharest, 2016, p. 160-165.

⁹ Tas, B. (2022). *Bunching below thresholds to manipulate public procurement*. „Empirical Economics”. 64. 10.1007/s00181-022-02250-4.

to national procurement rules and methods. While procurements with a value above the EU threshold are subject to EU rules and may require advertising at the EU level.

Based on its estimated value and thresholds, the procurement entity chooses the appropriate procurement procedure or method as regulated in the package of normative acts¹⁰ issued as part of *National Strategy in the Field of Public Procurement in Romania*:

- Open Procedure: A competitive procedure open to all interested suppliers, with or without prequalification.
- Restricted Procedure: A two-stage procedure where only prequalified suppliers are invited to submit bids or proposals.
- Competitive Dialogue: Suitable for complex procurements where a dialogue with suppliers is needed to define the best solution.
- Negotiated Procedure with Prior Publication: Allows negotiations with suppliers after publishing a notice, typically used for specific cases defined in the law.
- Direct Award: Used in exceptional cases where no competition is possible, subject to strict conditions.

3.3. Procurement organization

Once the procurement method is selected, the actual procurement process will be initiated. The procurement entity prepares and publishes the necessary procurement documents, including the procurement notice, tender documentation, and contract notice, as required by law. The procurement documents provide details about the procurement and the process to be followed. The process must be conducted in a manner that ensures equal treatment of all suppliers¹¹ and avoids conflicts of interest.

The contracting authority is responsible for conducting procurement competitions and ensuring a fair and transparent selection process and one main element is publication of Procurement Notice¹². The procuring entity publishes the procurement notice to invite potential suppliers to participate. This notice contains essential details about the procurement, including deadlines and evaluation criteria.

Evaluation of bids or proposals is the next step in the procurement organization's process, where bids or proposals submitted by suppliers are thoroughly reviewed and assessed to select the most qualified supplier. Evaluation criteria are applied consistently to select the most suitable supplier.

3.4. Contract award

The successful supplier is awarded the contract or framework agreement, and negotiations may take place to finalize the terms and conditions. This stage is a critical juncture in the public procurement process as it marks the transition from the evaluation and selection phase to the formal contractual relationship between the procuring entity and the supplier. It is essential that the awarding process is conducted transparently¹³, in accordance with applicable laws and regulations, and with a focus on obtaining the best value for the procuring entity while ensuring fair competition among suppliers.

¹⁰ O.U.G. no. 57/ 2019 on Administrative Code; Law no. 98/2016 on public procurement; Law no. 99/2016 on sectorial procurement; Law no. 100/2016 on works and services concessions; Law no. 101/2016 on remedies and appeals concerning the award of public procurement contracts, sectorial contracts and of works concession contracts and service concession contracts, and for the organization and functioning of the National Council for Solving Complaints.

¹¹ Newell, W., Ellegaard, C. (2022). *Managing buyer-supplier conflict when one party dominates: A process study*. „Industrial Marketing Management.” 107. 176-189. 10.1016/j.indmarman.2022.09.025.

¹² Ceoce, C., Ceoce, R., Vatamaniuc, A., Mihălaș, V. (2020). *Organization of the public procurement process at the level of the contracting authorities in Romania. Particularities and solutions for the management of public procurement procedures organized in the context of emergency of covid-19 crisis*. „Studies and scientific research. Economics edition”. 10.29358/scceco.v0i31.465.

¹³ Bhagat, G., Jha, K. (2023). *Modelling the competition-restrictive actions in public works procurement*. „Journal of Public Procurement”, 23. 10.1108/JOPP-12-2022-0060.

Post-Award Contract Management. After the contract is awarded, the focus shifts to managing the implementation and monitoring the contract. The supplier begins delivering the goods or services as per the agreed-upon terms and conditions. The contracting authority ensures continuous monitoring¹⁴ of the supplier's performance to certify compliance with the contract. The contract monitorization involve quality control, milestone tracking, and performance reviews. Proper mechanisms for dispute resolution should be in place to resolve conflicts efficiently and to deal with issues that may arise during the contract's execution.

In conclusion, public procurement is a multifaceted concept deeply ingrained in the fabric of public administration. It surpasses financial transactions and cover a strategic and comprehensive approach to resource allocation, policy implementation, and the pursuit of public interest objectives. At its core, public procurement is essential for effective governance, responsible resource management, and the realization of a government's mission to serve its citizens. It allows for the allocation of resources in a manner that optimizes the utilization of public funds, promotes competition among suppliers, and fosters innovation and efficiency.

Furthermore, public procurement plays a pivotal role in promoting economic development and supporting various societal goals, such as sustainability, social inclusion, and small business development. It serves as a mechanism through which governments can influence markets, drive economic growth, and enhance public service delivery.

4. The European Union legal framework for public procurement

The European Union (EU) has established a comprehensive legal framework that governs public procurement, ensuring consistency, fairness, and transparency in the acquisition of goods, services, and works across its member states. This legal framework has undergone significant revisions and updates, with the most recent directives adopted in February 2014. Member states were required to transpose these directives into their national laws, with different deadlines for various aspects of procurement.

Key Elements of the EU Legal Framework:

1. Directive 2014/23/EU - Concession Contracts: This directive addresses the award of concession contracts, which involve the provision of services or the execution of works over a defined period. It establishes rules for the awarding of concessions, ensuring that the process is competitive, non-discriminatory, and in line with EU principles.

2. Directive 2014/24/EU - Public Procurement: Directive 2014/24/EU focuses on public procurement and replaces Directive 2004/18/EC. It sets out the procedures and requirements for public procurement contracts, aiming to harmonize procurement practices across the EU. This directive emphasizes principles such as equal treatment, non-discrimination, and proportionality in the procurement process.

3. Directive 2014/25/EU - Special Sectors: Directive 2014/25/EU addresses procurement by entities operating in specific sectors, including water, energy, transport, and postal services. It replaces Directive 2004/17/EC and establishes guidelines tailored to the unique characteristics of these sectors. The directive ensures that procurement in these essential areas adheres to EU principles and regulations.

National Implementation. While the EU provides a robust legal framework for public procurement, each member state has the responsibility to transpose these directives into its national legislation. As a result, there is some degree of variation in the implementation of EU procurement rules across member states that allows member states to adapt the EU directives to their unique administrative and legal systems while maintaining the core principles of transparency, competition, and non-discrimination. It also accommodates the diverse needs and preferences of member states in the procurement process.

¹⁴ Popa, I. (2021). *Possibilities of the Contracting Authority to Amend the Public Procurement Contract/Framework Agreement*. International conference Knowledge-Based Organization. 27. 72-77. 10.2478/kbo-2021-0050.

The EU legal framework for public procurement offers several key advantages such as: Harmonization, Transparency, Fairness and Efficiency. EU regulations promote consistency and harmonization of procurement practices across member states, reducing barriers to cross-border competition and fostering a single European market. The European framework enhances transparency by requiring open and competitive procurement processes, ensuring that public funds are spent efficiently and accountably. It upholds principles of non-discrimination, equal treatment, and proportionality, ensuring that all suppliers have a level playing field when participating in procurement activities. By setting clear rules and procedures, European consolidated legislation streamlines procurement processes, making them more efficient and cost-effective.

In conclusion, the EU's legal framework on public procurement serves as a cornerstone for promoting effective, transparent, and fair procurement practices across member states. While allowing for some flexibility in national implementation, it upholds core principles that contribute to the integrity of public procurement and the overall well-functioning of the European single market.

5. The link between public procurement and the risk of corruption

However, public procurement is also recognized as one of the government activities most susceptible to corruption¹⁵. This vulnerability to corrupt practices is underscored by several key factors that render public procurement a high-risk area for unethical conduct.

Factors amplifying corruption risks in public procurement includes the following aspects¹⁶:

1. Financial Magnitude of public procurement that often involves substantial sums of money and the allocation of significant budgets for the purchase of goods and services provides ample opportunities for corrupt practices.

2. Complex and Extensive Contracts of public Procurement make them susceptible to manipulation and fraudulent activities. The complexity of these contracts can obscure irregularities and create opportunities for corruption to go unnoticed.

3. In some cases, there is a restricted number of buyers and suppliers in the procurement landscape. that can lead to stable and long-lasting personal relationships between public officials and suppliers. Such relationships can be exploited for corrupt purposes, eroding the fairness and transparency of the procurement process.

The link between public procurement and the risk of corruption is particularly concerning because corruption in this domain can have far-reaching consequences. It can result in the misallocation of public funds, subpar goods or services, and a loss of public trust in government institutions.

Efforts to mitigate corruption risks in public procurement include enhancing transparency, implementing robust oversight mechanisms, and fostering a culture of integrity and ethical conduct. Strengthening procurement regulations, conducting thorough due diligence on suppliers, and promoting accountability are essential steps in safeguarding public resources and preserving the integrity of the procurement process¹⁷.

Recognizing the inherent risks associated with public procurement and taking proactive measures to address them are vital for promoting transparency, fairness, and efficiency in government procurement processes, while also safeguarding public funds and maintaining public trust in the governance system.

¹⁵ OECD. (2016). *Preventing Corruption in Public Procurement*. Retrieved from <http://www.oecd.org/gov/ethics/Corruption-in-Public-Procurement-Brochure.pdf>; World Bank, & IBRD. (2013). *Fraud and Corruption Awareness Handbook*.

¹⁶ OECD. (2007). *Bribery in public procurement methods, actors and counter-measures*, <https://www.oecd.org/investment/anti-bribery/anti-briberyconvention/44956834.pdf>, consulted on 1.10.2023.

¹⁷ EU (2021) *Buying Social – A guide to taking account of social considerations in public procurement*, Official Journal of the European Union, [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021XC0618\(01\)&rid=5](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021XC0618(01)&rid=5).

6. Indicators of fraud and corruption in public procurement: navigating the fragmented landscape

Recognizing the indicators of potential irregularities in public procurement is essential for effective detection and prevention of fraudulent activities in the public administration sector¹⁸. We're looking into various reports to figure out the signs of fraud and corruption. We're paying special attention to the problems caused by how public purchasing is split up. Some of these signs were found in analyses done by the National Anticorruption Directorate and Prime Minister Supervisory Body¹⁹. They looked at fraud and corruption cases from previous years, where courts of justice had already made final decisions between 2016 and 2020.

Other signs came from investigations by the European Anti-Fraud Office²⁰, which looked into fraud with European funds, and from the National Office for Prevention and Combating of Money Laundering²¹, which studied money laundering²².

To fight corruption effectively, we need to do two things. First, we have to get better at spotting fraud and corruption using things like checks, watching closely, and audits. Second, we need to make and enforce strong rules to discourage and fight against corruption. Understanding these different types of crimes and signs of fraud and corruption helps us see where the government system might have risks and weaknesses.

1. Fragmentation of public procurement: a breeding ground for irregularities. Public procurement often involves multiple stakeholders, diverse procurement methods, and a myriad of contracts. This fragmentation creates opportunities for irregularities, as it can obscure the overall picture, making it difficult to detect fraudulent activities that may be scattered across various entities and transactions.

2. Irregularities in bidding processes:

- Collusion among bidders: When bidders collaborate to fix prices, allocate contracts, or eliminate competition, it indicates potential fraud. Bid rigging, in particular, can artificially inflate prices and harm fair competition.

- Inflated pricing: Overly high bids or pricing that significantly deviates from market rates can signal attempts to overcharge and embezzle public funds.

3. Unusual contract modifications:

- Frequent changes to contracts: Repeated and frequent modifications to contracts may indicate an attempt to manipulate the terms and conditions to Favor a particular supplier or contractor.

4. Lack of transparency:

- Opaque decision-making: When the decision-making process lacks transparency, such as non-disclosure of evaluation criteria or the exclusion of stakeholders from the procurement process, it raises suspicion.

- Undisclosed conflicts of interest: Failure to disclose conflicts of interest involving officials or bidders can point to corrupt practices.

5. Payment irregularities:

- Unusual payment patterns: Irregularities in payment patterns, such as excessive or unexplained advance payments, can suggest embezzlement or money laundering.

6. Weak monitoring and audit mechanisms:

- Inadequate oversight: The absence of effective monitoring and auditing mechanisms can

¹⁸ Fazekas, M., Tóth, I. King, L.P., (2106), *An objective corruption risk index using public procurement data*, „European Journal on Criminal Policy and Research” 22.3: 369-397.

¹⁹ Supervisory Body of the Prime Minister of Romania, (2021), *Guide for structural control within the central public administration. Indicators of fraud and corruption and criminal types*,

²⁰ The European Anti-Fraud Office-OLAF (2021), *Identification of conflicts of interest in public procurement procedures related to structural actions*, Luxembourg: Publications Office of the European Union, 2021.

²¹ The National Office for Prevention and Control of Money Laundering in Romania-ONPCSB (2020), *Guide on indicators of suspicion and typologies of money laundering*, <https://www.onpcsb.ro/uploads/articole/attachments/6474b08c0d177070247400.pdf>, consulted on 1.10.2023.

²² National Anti-corruption Division - DNA, 2021, *Guide regarding the abuse of service in the field of public tenders as well as the 2017-2020 annual activity report*. <https://www.pna.ro/obiect2.jsp?id=535>, consulted on 1.10.2023.

create an environment where fraudulent activities go undetected.

- Lack of documentation: Missing or incomplete documentation related to procurement processes can hinder accountability and conceal irregularities.

7. Whistleblower reports:

- Reports of wrongdoing: Reports from whistleblowers or concerned employees may provide valuable insights into potential fraud or corruption.

8. Discrepancies in supplier performance:

- Consistent underperformance: If a supplier consistently underperforms or fails to meet contract obligations without repercussions, it may indicate corrupt relationships.

Effective detection and prevention of fraud and corruption in public procurement require continuous vigilance, improved oversight, and the establishment of robust control mechanisms. Identifying and addressing these indicators is a critical step in safeguarding public funds, ensuring fair competition, and upholding the integrity of public procurement processes. Additionally, fostering a culture of ethics, transparency, and accountability is essential in deterring corrupt practices and promoting good governance in public administration.

7. Case study: fragmentation of public procurement - a breach of trust

In a small rural municipality, the mayor, a trusted figure in the community, manipulates the system to make public procurement less open and fair. This case study shows how local authorities can a sneaky strategy called 'fragmentation' in public procurement.

Here's the background: about 86 hectares of fertile fields stretch are owned by the municipality as public property. These fertile fields, a valuable asset to the municipality, required agricultural works for fertilization and trimming. The mayor, entrusted with the welfare of the town, held a significant responsibility in overseeing these essential tasks.

The Scheme Unveiled: To help out and favour a specific company, the mayor came up with a plan that exploited the fragmentation of public procurement. This tactic involved the deliberate division of the procurement into smaller, seemingly independent contracts, each valued below the threshold that would necessitate a more transparent and competitive bidding procedure:

- Contract 1: Fertilization of fertile fields (Fragmented). The first contract proposed the fertilization of the 86-hectare fertile fields, a task that could and should have been included within a more comprehensive contract. However, the mayor chose to fragment the procurement to sidestep the requirements for a more rigorous bidding process.

- Contract 2: Trimming Unused Grass (Fragmented). The second contract focused on the mowing of the same 86-hectare area, a task intrinsically linked to the previous one. Once again, the mayor opted for fragmentation to avoid scrutiny and uphold an environment of opaqueness.

The intentional fragmentation. The mayor's choice to fragment the procurement into two separate contracts was no coincidence. This deliberate act aimed to circumvent the established bidding procedure that would have been required for a single, consolidated contract. By doing so, he sought to exploit a legal loophole, violating the provisions of Article 19 and Article 23 of Government Emergency Ordinance no. 34/2006²³.

The violation of trust and the legal framework. According to the law, a contracting authority is not entitled to divide a procurement to apply a different, less competitive procurement procedure than what would have been mandated under regular circumstances. **Exceptions to this rule exist for seasonal goods and services**, but in this case, there were none. The mayor's actions flagrantly disregarded the established legal framework, undermining the principles of transparency and fairness in public procurement.

Article 19: The Threshold of Transparency. Article 19 establishes a threshold for the estimated value of acquisitions. Specifically, it delineates the procedures and requirements for acquisitions

²³ Currently repealed by Law no. 98/2016 regarding public procurement, published in the Official Gazette no. 390 of May 23, 2016, with subsequent amendments.

falling within the range of 15,000 to 100,000 euros. These provisions aim to strike a balance between efficiency and transparency by subjecting such acquisitions to a competitive bidding procedure.

On the other hand, Article 23: The Prohibition of Fragmentation serves as a safeguard against the fragmentation of procurement. It explicitly prohibits the division of a single procurement into smaller parts for the purpose of applying a different procurement procedure than what would be mandated under regular circumstances. This prohibition is in place to prevent public officials from exploiting legal loopholes to avoid more stringent procurement processes.

Violating the Provisions through Fragmentation:

In the case of fragmentation of public procurement, these legal provisions are intentionally and strategically disregarded:

1. **Intentional Division:** Procurement officials or authorities may deliberately divide a single, comprehensive procurement into smaller, seemingly independent contracts, each valued below the established threshold (e.g., below 15,000 euros). This division is often done to avoid the application of the more transparent and competitive bidding procedure mandated for acquisitions falling within the 15,000-to-100,000-euro range.

2. **Avoiding Scrutiny:** By fragmenting the procurement, the responsible parties seek to sidestep the rigorous requirements set forth by Article 19. They aim to operate in an environment with less oversight and transparency, where the potential for scrutiny and competition is reduced.

3. **Exploiting the Legal Loophole:** The intentional fragmentation of procurement exploits a legal loophole, as it technically adheres to the letter of the law while undermining its spirit. It allows those involved to benefit from less competitive and more opaque procurement procedures, ultimately serving personal interests rather than the public good.

In conclusion, intentional fragmentation of public procurement constitutes a breach of the legal provisions outlined in Article 19 and Article 23 of Government Emergency Ordinance No. 34/2006. These provisions were specifically crafted to uphold transparency, competition, and fairness in the procurement process and to prevent any abuse of public procurement for personal gain.

8. Conclusion

The hypothetical case study is a clear example of the dangers of breaking up public procurement. It shows how this seemingly harmless practice can be manipulated to benefit specific individuals, leading to a loss of trust in government officials and undermining the principles of fairness and responsibility. It emphasizes the need for careful monitoring, strong supervision, and a dedication to maintaining the honesty of public procurement procedures, ensuring that public funds are used for the community's welfare rather than for the enrichment of a select few.

Violating law provisions through the fragmentation of public procurement can have serious consequences. It erodes trust in public officials, undermines fair competition, and misuses public resources for personal gain. Accountability mechanisms, such as investigations, audits, and legal actions, may be initiated to address such violations and uphold the integrity of the procurement process.

In conclusion, the intentional fragmentation of public procurement as a means to violate legal provisions is a breach of trust and ethical conduct. It highlights the importance of maintaining vigilance, robust oversight, and a commitment to the principles of transparency and fairness in public procurement to prevent such exploitative practices.

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