

## Assignment of the public procurement contract

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**Abstract:** At a time when the number of insolvent economic operators is increasing rapidly, we turn our attention to the fate of public procurement contracts executed by insolvent contractors. The assumption is governed by point d of Article 72(1) 2 (ii) of Directive 2014/24/EU on public procurement, expressly stating that they may be amended, without organising a new award procedure, public contracts and framework agreements where the contractor with whom the contracting authority originally concluded the public procurement contract is replaced by a new contractor, the, and the rights and obligations of the original contractor resulting from the public procurement contract are taken over, as a result of a universal or universal succession in a reorganization process, including merger, division, etc, acquisition or insolvency. According to the same law, the new contractor must meet the qualification and selection criteria initially established, the replacement does not involve other substantial changes to the contract, and the operation is not intended to circumvent the award procedures.

Therefore, the contracting authority may accept the replacement of the contractor with whom it originally concluded the public procurement contract, on the assumption provided for in point d of Article 72 (1)), point d. 2(ii) of the directive only if the three conditions laid down in the text of the law are cumulatively fulfilled.

We note that in the procedure for the assignment of the contract, the contracting authority is obliged to verify whether the proposed new contractor meets the qualification and selection criteria originally imposed. This verification procedure is not regulated and the applicable rules are therefore unknown. If, in the award procedure, the tenderer is obliged to complete the ESPD on the grounds of exclusion and on the fulfilment of the selection criteria by providing, at the request of the contracting authority, the following, supporting documents of those mentioned in the ESPD, in the event of verification of the fulfilment of the qualification and selection criteria in the process of assignment of the contract in progress, it is not known how the proposed contractor provides the information to the contracting authority. The procedure for verifying compliance with the qualification and selection criteria is also lacking transparency.

The purpose of the research is to identify, by analysis, the main obstacles to the replacement of the initial contractor in the situation in which he arrives, during the execution of the contract, unable to execute it. We consider that the solution of a divestment of the remaining remainder not executed in the original contract is always much more advantageous to the contracting authority than the termination of the contract and the initiation of a new procedure for the award of the remaining remainder not executed. The first argument on which we base our conclusion is the time argument: initiating and running a new award procedure could delay the completion of the objective with considerable time. On the other hand, prior to the initiation of a new procedure for the award of the remaining unenforced remainder, the contracting authority is obliged to determine the estimated value of the remaining unenforced remainder, value to be determined by taking into account the prices from the period prior to the initiation of the new procedure, and these prices are always higher than those that were taken into account when determining the estimated value prior to the initiation of the first award procedure.