

**Can the contracts concluded as a result of public procurement procedures be amended?**

The answer is yes but under strict conditions. The law seeks to balance the conflicts between two legitimate interests. On one side, there is the interest for using the public funds. In this respect, the conditions of the contracts to be entered have already been clarified when the public procurement is conducted. From the beginning, the tenderers shall know the exact parameters of the competition. On the other side, there is the interest of the contracting authority. The tendering authority shall provide an opportunity to be able to adapt to the unforeseeable amendments without conducting a new public procurement procedure.

**Basically, the law only allows to amend the contract if the amendment cannot be considered to be of significance. The legislation separately highlights cases when the amendment shall be considered to be of significance.** For example, if the economic balance of the contract has been amended in favour of the successful tenderers.

The amendment of the contract is allowed as follows:

- if as a result of the amendment, the growth of the consideration does not reach a certain threshold, it is 15 % of the original contract value in case of construction investment. Since the service, supply and the relevant, most recent legislative amendment, in case of construction and service concession, it is 10% of the original contract value. At this time, further condition is that the general nature of the contract cannot be amended and it shall adapt to the origin nature of the contract. **It shall be emphasised that due to the legislative amendment, this opportunity for amending the contract may not already be applied if the estimated value laid down due to the amendment exceeds a certain threshold.**
- if the contract can be examined in advance by all tenderers and it clearly stipulates the exact conditions and content of the subsequent amendment.
- Furthermore, if circumstances have arisen, which the contracting authority could not have foreseen by acting with due care and the growth of the consideration does not exceed 50% of the value of the original contract. In such cases, it is further condition that the amendment does not change the general nature of the contract.



It often arises that further construction works, services, or supplies are necessary from the original contracting party and any changes in the person of the contracting party cannot be implemented due to economic or technical reasons. If the tenderer can verify that the selection of the new tenderer would entail significant disadvantage or would increase the costs and the growth of the consideration does not exceed 50% of the values of the original contract, the law provides opportunity for amending the contract in a favourable way.

On this basis, it shall carefully be examined prior to the amendment of the contract whether the strict conditions of the options for amendment allowed exist. It is practical to seek assistance and advice from a public procurement law specialist if the contract is unlawfully amended without public procurement procedure, the amendment is null and void under the public procurement law.