

**Romanian Government**  
**EMERGENCY ORDINANCE No. 34\*)**  
**Of April 19, 2006**

**Concerning the awarding of public contracts, public works concession contracts, and services concession contracts**

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**\*) Note:**

**Text drafted at G&G CONSULTING, Legal Department. (S.T.)**

**Contains all the amendments brought to the official document, including those provided by:**

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**\*\*)** The lawsuits and petitions regarding public procurement in settlement in front of the courts of justice on July 2, 2010 shall continue to be judged under the conditions and procedure provided by the law in force at the date when they were started, and the appeals filed after such date shall be settled by the first instance court according to the provisions of this emergency ordinance, modified by the Government Emergency Ordinance no. 76/2010 (art. II of the Government Emergency Ordinance no. 76/2010).

Taking into consideration the need of adoption of certain urgent measures for the drafting and promoting a new legislation in public procurement, in the context of the commitments undertaken by Romania under Chapter 1, "Free circulation of goods", and of the European Commission recommendations,

Based on the provisions of art. 115 para. (4) of the Romanian Constitution, republished,

**The Government of Romania enacts this emergency ordinance.**

## **Chapter I**

### **General provisions**

#### **Section 1**

##### **Purpose. Principles**

**Art. 1** – This emergency ordinance regulates the procedures of awarding the public procurement contract, the public works concession contract, and the services concession contract, as well as the means of settlement of the appeals filed against the acts issued in relation to such procedures.

**Art. 2** - (1) The purpose of this emergency ordinance is:

- a) The promotion of competition between economic operators;
- b) The guarantee of equal treatment and non-discrimination of economic operators;
- c) The insurance of transparency and integrity of the public procurement process;
- d) The insurance of the efficient use of public funds through applying awarding procedures by contracting authorities.

(2) The principles on which public procurement contracts are based are:

- a) Non-discrimination;
- b) Equal treatment;
- c) Mutual recognition;
- d) Transparency;
- e) Proportionality;
- f) Efficiency of public funds use;
- g) Taking responsibility.

## **Section a 2-a**

### **Definitions**

**Art. 3** – For the purpose of this emergency ordinance, the terms and expressions below shall have the following meaning:

a) ***acceptance of the winning tender*** – the communication concerning the result of the awarding procedure through which the contracting authority expresses its agreement to be legally bound under the public contract to be concluded with the tenderer whose tender was declared a winner;

b) ***framework agreement*** – the written agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the essential elements/terms governing the public contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged;

c) ***candidate*** – any economic operator who filed the tender in the case of a restricted procedure, negotiation or competitive dialogue;

d) ***candidature*** – documents through which a candidate demonstrates its personal status, the capacity to exercise its professional activity, the economic and financial status, the technical and professional capacity, in view of obtaining the participation invitation for the subsequent submission of the tender, in the case of applying a restricted procedure, negotiation or competitive dialogue;

e) ***competitor*** – any economic operator who presented a project within a design contest;

e<sup>1</sup>) ***contract*** – any public contract or framework agreement;

f) ***public contract*** – the contract which also includes the category of the public utilities contracts, as defined under art. 229 para. (2), for pecuniary interests, concluded in writing between one or more contracting authorities, on one side, and one or more economic operators, on the other side, having as object the execution of works, the supply of products or the provision of services, for the purpose of this emergency ordinance;

g) ***public works concession contract*** – the contract having the same characteristics as the public works contract, except for the fact that in consideration of the works performed the contractor, as concessionary, receives from the contracting authority, as assignor, the right to exploit the result of the works over a determined period of time, or this right together with the payment of an amount previously established;

h) ***service concession contract*** – the contract having the same characteristics as the public service contract, except for the fact that in consideration of the services performed the contractor, as concessionary, receives from the contracting authority, as assignor, the right to exploit the services on a determined period of time, or this right together with the payment of an amount previously established;

i) **contractor** – the tenderer who became, under the provisions of the law, party in a public contract;

j) **tender documentation** – the documents including all information regarding the object of the public contract and its awarding procedure, including the specifications or, upon the case, the descriptive documentation;

k) **special or exclusive right** – the right resulting from any form of authorization granted, according to the legal provisions or consequence of issuance of administrative acts, by a competent authority, which has as effect the reservation of the performance of activities in the domain of certain public services by only one or a limited number of persons, substantially affecting the possibility of other persons to perform such activity;

l) **public funds** – amounts allocated from the budgets provided under art. 1 para. (2) of Law no. 500/2002 concerning the public finances, with subsequent modifications;

m) **public undertaking** – the legal entity which performs economic activities and on which is exercised, directly or indirectly, consequence of certain ownership rights, financial participations or specific regulations provided by the articles of incorporation of such company, the dominant influence of a contracting authority, as it is defined under art. 8 letter a), b) or c); the presumption of exercise of the dominant influence is applied in any situation in which, in rapport to such person, one or more contracting authorities defined according to art. 8 letter a), b) or c) is, directly or indirectly, in at least one of the following situations:

- hold the majority of the paid up share capital;
- hold control of the majority of votes in the management body, as is the general assembly;
- can appoint in the board of directors, the management or supervision body more than half of the number of members;

n) **electronic auction** – the repetitive process performed after a complete evaluation of the tenders, in which the tenderers have the possibility, exclusively through electronic means, to reduce the prices presented and/or to improve other elements of the tender; the final evaluation must be performed automatically through the electronic means used;

o) **electronic means** – using the electronic equipments for the processing and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

p) **tenderer** - any economic operator who has submitted a tender within the period of time destined to submitting the tenders indicated in the contract notice/invitation of participation;

q) **tender** – the legal act through which the economic operator manifests its will to be implicated legally in a public contract; the tender contains the financial proposal and the technical proposal;

r) **economic operator** – any supplier, service provider or contractor – individual/legal entity, private or public, or group of such persons with activity in the domain offering legally on the market products, services and/or works performance;

s) **operator of the electronic system for public procurement** – public legal entity who insures the contracting authorities the technical support destined to the appliance, by electronic means, of the awarding procedures;

s<sup>1</sup>) **public-public partnership** – conducting a project in common by two or more national and/or international public entities;

ş) **awarding procedure** – the steps to be covered by the contracting authority and by the candidates/tenderers for the agreement of the parties regarding the engagement in the public contract be considered valid; the awarding procedures are: the open procedure, the restricted

procedure, the competitive dialogue, the negotiated procedure, the call for tenders, the design contest;

t) **financial proposal** – part of the tender which contains information regarding the price, fee, other financial and commercial conditions corresponding to the satisfaction of the requests in the tender documentation;

†) **technical proposal** – part of the tender elaborated based on the specifications or, upon the case the descriptive documentation;

u) **"written" or "in writing"** – any expression consisting of words or figures which can be read, reproduced and subsequently communicated. This expression may include information which is transmitted and stored by electronic means;

u<sup>1</sup>) **dynamic purchasing system** – completely electronic process, limited in duration and opened throughout its validity to any economic operator who satisfies the selection criteria and who presented an indicative tender that complies with the specification.

v) **Public Procurement Electronic System** - SEAP – is the IT system of public utility, accessible by internet to a dedicated address, used for the purpose of appliance by electronic means of the awarding procedures;

v<sup>1</sup>) **waiting terms** – terms to which art. 205 para. (1) and art. 206 para. (3) make reference, after the passing of which the contracts within the area of applicability of this emergency ordinance can be concluded;

x) **Treaty** – The Treaty for the creation of the European Union, concluded on March 25, 1957, with further modifications and completions;

y) **The Common Procurement Vocabulary** - CPV – designates the reference nomenclature applicable to public contracts, as adopted by Regulation no. 2.195/2002/CE of the European Parliament and the Council for the common procurement vocabulary, published in the Official Journal of the European Union no. L 340 of December 16, 2002, ensuring the equivalence with the other existing nomenclatures;

z) **days** – calendar days, except the case when it is expressly provided that there are working days. The term expressed in days starts on the beginning of the first hour of the first day of the term and terminates on the expiration of the last hour of the last day of the term; the day during which an event took place or an act of the contracting authority was performed is not included in the calculation of the term. If the last day of a term expressed otherwise then in hours is a legal holiday, a Sunday or Saturday, the term terminates on the expiry of the last hour of the subsequent working day.

### **Section 3**

#### **Types of public contracts**

**Art. 3<sup>1\*</sup>** – The public contracts are:

- a) works contracts;
- b) supply contracts;
- c) services contracts.

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<sup>\*</sup>) Art. 3<sup>1</sup> was introduced by Law no. 337/2006, published in the Official Gazette no. 625 of July 20, 2006.

**Art. 4** - (1) The works contract is the procurement contract having as object:

- a) either the performance of works related to one of the activities contained in the annex no. 1 or the performance of a construction;
- b) either the design and the performance of works related to one of the activities contained in annex no. 1 or the designing and performance of a construction;
- c) either the performance by any means of a construction which corresponds to the needs and objectives of the contracting authority, if they are not included in the provisions under letters a) and b).

(2) In the meaning of the provisions of para. (1), by construction is understood the result of an ensemble of works of building constructions or civil engineering works, destined to fulfil by itself a technical or economical function.

**Art. 5** - (1) The supply contract is the public contract, other than the works contract, having as object the supply of one or more products, by purchase, including in instalments, lease or leasing, with or without purchase option.

(2) The public contract having as object the supply of products and, as an accessory, operations/works of instalment and operating such products is considered a supply contract.

**Art. 6** - (1) The services contract is the public contract, other than the works contract or the supply contract, having as object the performance of one or more services, as they are provided under annexes no. 2A and 2B.

(2) The public contract having as object mainly the performance of services and, as an accessory, the performance of activities among those provided under annex no. 1 is considered a services contract.

**Art. 7** – The public purchase contract having as object both the supply of products and the performance of services is:

- a) a supply contract, if the estimated value of the products is higher than the estimated value of the services provided for in the respective contract;
- b) services contract, if the estimated value of the services is higher than the estimated value of the products provided for in the respective contract.

#### **Section a 4-a**

#### **Contracting authorities**

**Art. 8** – In the meaning of this emergency ordinance, contracting authority is:

- a) any state body – public authority or public institution – acting at central level or at regional or local level;
- b) any body, other the one of those provided under letter a), having legal personality, which was set up to fulfil needs of general interest without commercial or industrial character and which his in at least one of the following situations:
  - is financed, in majority, by a contracting authority, as defined under letter a), or by another body governed by public law;
  - is subordinated is object of the control of a contracting authority, as defined under letter a), or of another body governed by public law;
  - in the structure of its board of directors/management or supervision body more than half of the number of its members are appointed by a contracting authority, as defined under letter a), or by another body governed by public law;
- c) any association formed by one or more contracting authorities among those provided under letters a), b), d) or e);

d) any public enterprise performing one or more of the activities provided under Chapter VIII Section 1, when it awards public contracts or concludes framework agreements destined to the performance of the respective activities;

e) any subjects of the law, others than those provided under letters a) - d), which perform one or more of the activities provided under Chapter VIII Section 1, based on a special or exclusive right, as it is defined under art. 3 letter k), granted by a competent authority, when it awards public contracts or concludes framework agreements destined to the performance of the respective activities.

**Art. 8<sup>1</sup>** - Conducting a project within a public-public partnership follows the rules of the public procurement legislation.

### **Section a 5-a**

#### **Scope. Exceptions**

**Art. 9** - This emergency ordinance applies to:

a) the awarding of the public contract, including the public utilities contract, in this latter case being applicable the provisions of Chapter VIII;

b) the conclusion of the framework agreement;

c) the awarding, by a legal entity without quality of contracting authority, of a works contract, if the following conditions are cumulatively fulfilled:

-the respective contract is financed/subsidized directly, in a proportion higher than 50%, by a contracting authority;

- the estimated value of the respective contract is equal or higher than the equivalent in RON of 5,000,000 Euro;

c<sup>1</sup>) the awarding, by a legal entity without quality of contracting authority, of a services contract, if the following conditions are cumulatively fulfilled:

- the respective contract is financed/subsidized directly, in a proportion higher than 50%, by a contracting authority;

- the estimated value of the respective contract is equal or higher than the equivalent in RON of 200,000 Euro;

d) the awarding of the public contract by a contracting authority, in the name and for another individual/legal entity, if the respective contract is financed/subsidized directly, in a proportion higher than 50%, by a contracting authority;

e) the organization of the design contest;

f) the awarding of the public works concession contract and of the services concession contract, in this case being applicable the provisions of Chapter VII.

**Art. 10** – In the cases provided under art. 9 letters c) and c<sup>1</sup>), the contracting authority has the obligation to impose by the financing contract the appliance of the provisions of this emergency ordinance for the awarding of the respective contracts.

**Art. 11** - (1) A contracting authority in the domain of the defence and national security has the obligation to make the appliance of the provisions of this emergency ordinance except for the cases when:

a) they can lead to the supply of information the disclosure of which would be contrary to the essential security interest of the country; or

b) implies the protection of certain essential security interests of the country in relation to the production of commercializing of weapons, ammo and war material.

(2) The Government has the right to establish by decision the circumstances and procedures specific to the awarding of the public contracts in the cases provided under para. (1) letters a) and b).

(3) The appliance of the provisions of para. (1) and (2) must not lead to the alteration of the competition on the market of the products not destined to certain specifically military purposes.

**Art. 12** – This emergency ordinance is not applicable for the awarding of the public contract in the case when at least one of the following conditions is fulfilled:

a) the contract is included in the category of the state secret information, in accordance with the laws in force regarding the protection of the classified information;

b) the fulfilment of the contract needs the imposture of certain special security measures, for the protection of certain national interests, according to the legal provisions in force;

c) \*\*\* Repealed by Law no. 337/2006

**Art. 12<sup>1\*)</sup>** - (1) This emergency ordinance is not applicable for the awarding of the public purchase contract by structures of the contracting authorities operating on other states' territory when the value of the contract, estimated according to the provisions of section 2 of Chapter II, is lower than the thresholds provided under art. 124.

(2) For the awarding of the public purchase contracts entering under the provisions of para. (1) and the estimated value of which is lower than the one provided under art. 19 there must be insured the appliance of the general principles provided under art. 2 para. (2), the local publicity and the compliance with the previsions of art. 35 - 38 representing minimal requirements in this regard.

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\*) Art. 12<sup>1</sup> was introduced by the Emergency Government Ordinance no. 19/2009, published in the Official Gazette no. 156 of March 12, 2009.

**Art. 13** – This Emergency Ordinance is not applicable to the award of the services contract which:

a) has as object the purchase or lease, by any financial means, of lands, existing buildings, other real estates or rights over such real estates. The awarding of the financial services contracts which are concluded, regardless of the form, in relation to the respective purchase or lease agreement, is object of this emergency ordinance;

b) concerns the purchase, development, production or co-production of programs destined to broadcasting, by radio-broadcasting or television institutions;

c) concerns the performance of services of arbitration and conciliation;

d) concerns the performance of financial services related to the issuance, purchase, sale or transfer of equity or other financial instruments, especially operations of the contracting authority performed for the purpose of attracting financial and/or capital resources, as well as the performance of services specific to a central bank by the National Bank of Romania;

e) concerns the employment of work force, respectively the conclusion of labour contracts;

f) concerns the performance of services of research-development entirely paid by the contracting authority and the results of which are not destined, exclusively, to the contracting authority for its own benefit.

**Art. 14** - (1) This emergency ordinance is not applicable when the public contract is awarded as a consequence of:

a) an international agreement concluded in compliance with the provisions of the Treaty with one or more states which are not members of the European Union and which has as

object the supply of products, performance of services, or performance of works destined to the implementing or exploiting of a project in common with the signatory states, and only if by the respective agreement was mentioned a specific procedure for the awarding of the respective contract;

b) to an international agreement regarding the stationing of troupes and only if by the respective agreement was mentioned a specific procedure for the awarding of the respective contract;

c) to the appliance of a procedure specific to certain international bodies and institutions;

d) to the appliance of a specific procedure provided by the European community law, under the context of the programs and projects of territorial cooperation.

(2) The contracting authorities have the obligation to inform the National Authority for Regulating and Monitoring of Public Procurements on the agreements provided under para. (1) letter a), existing in their domain of activity.

(3) The National Authority for Regulating and Monitoring of Public Procurements has the obligation to communicate to the European Commission the information received according to para. (2).\*)

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\*) The provisions of art. 14 para. (3) enter in force since January 1<sup>st</sup> 2007 (see art. 307).

**Art. 15** - (1) This emergency ordinance is not applicable for the awarding of the services contract to another contracting authority or to an association of contracting authorities, if they benefit of an exclusive right for the performance of the respective services, according to the law or other normative acts which are published, in the measure in which they are compatible with the provisions of the Treaty.

(1<sup>1</sup>) The provisions of this emergency ordinance are not applicable to the services of research and release of archaeological loads for the archaeological patrimony and archaeological sites. The works shall be performed by the National Museum of Romanian History and by the other museum institutions legally habilitated.

(2) The contracting authority which, based on the legal competencies held by it, grants to a subject of law, which is not defined as contracting authority, special or exclusive right to perform a public service, has the obligation to impose, through the authorization it issues for this purpose, the compliance with the principle of non-discrimination by the one which benefits of the special or exclusive rights, when it awards supply contracts to third parties.

**Art. 16** - (1) If the contracting authority awards a contract having as object the performance of services of the category of those included in the annex no. 2B, then the obligation to apply this emergency ordinance is imposed only for the contracts the value of which is higher or equal to the one provided under art. 57 para. (2) and is limited to the provisions of art. 35 - 38 and art. 56 and the appliance all during the awarding procedure of the procedures provided under art. 2 para. (2). The appeals regarding the awarding procedure of the services contracts included in annex no. 2B, the value of which is equal or higher than the one provided under art. 57 para. (2), are settled according to the provisions of Chapter IX.

(2) If the public contract provided under para. (1) has as object, together with the performance of services of the category of those included un annex no. 2B, also the performance of services of the category of those included in annex no. 2A, the provisions of para. (1) are applicable only if the estimated value of the services included in annex no. 2B is higher than the estimated value of the services included in annex no. 2A.



(3) The contracting authority does not have the right to combine, within the same contract, services included both in annex no. 2B and in annex no. 2A for the purpose of benefiting of the appliance of the provisions of para. (1), when it awards the respective public contract.

## **Chapter II**

### **Common regulation applicable for the awarding of the public contract**

#### **Section 1**

##### **General rules**

**Art. 17** – The contracting authority has the obligation to comply with the principles provided under art. 2 para. (2) in the relation with the economic operators interested in participating in the awarding procedure.

**Art. 18** - (1) The awarding procedures of the public contract are:

a) the open procedure, respectively the procedure in which any interested economic operator has the right to submit the tender;

b) the restricted procedure, respectively the procedure in which any economic operator has the right to submit its application, following that only the selected candidates have the right to submit the tenders;

c) the competitive dialogue, respectively the procedure in which any economic operator has the right to submit the application and through which the contracting authority leads a dialogue with the admitted candidates, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of the alternative/alternative, the candidates chosen elaborate the final tender;

d) the negotiated procedure, respectively the procedure through which the contracting authority consult the candidates chosen and negotiate the contractual clauses, inclusively the price, with one or more of them. The negotiated procedure can be:

- Negotiated procedure with prior publication of a contract notice;
- Negotiated procedure without prior publication of a contract notice;

e) the call for tenders, respectively the simplified procedure through which the contracting authority requests tenders from more economic operators.

(2) The contracting authority has the right to organize a design contest, respectively a special procedure through which it acquires, mainly in the fields of city and country planning, architecture, or data processing a plan or design, by selecting it by a jury after being put out to competition, with or without the award of prizes.

**Art. 19** – The contracting authority has the right to purchase directly products, services or works, if the value of the purchase, estimated according to the provisions of section 2 of this chapter, is not higher than the equivalent in RON of 15,000 Euro per purchase of products, services or works. The purchase is performed based on a justificatory note.

**Art. 20** - (1) If the estimated value of the respective contract is equal or higher as provided under art. 124, the contracting authority has the obligation to award the public contract by applying the open procedure or the restricted procedure.

(2) By exception from the provisions of para. (1), the contracting authority has the right to apply the other procedures provided under art. 18 para. (1), upon the case, only in the circumstances provided under art. 94, art. 110 para. (1) or art. 122.

**Art. 21** - (1) Any contracting authority has the right to apply the awarding procedures provided under art. 18, by using the electronic means.

(2) The appliance of the awarding procedures using the electronic means is performed through SEAP.

(3) The government has the right to establish by decision the obligation of certain contracting authorities to apply the awarding procedures of certain public contracts only using the electronic means.

**Art. 22** - (1) The government has the right to approve by decision the design and implementing of a national centralized system of specialized procurement of certain products, services or works from one or more centralized procurement units.

(2) The centralized procurement unit is a contracting authority, as defined under art. 8 letter a), b) or c), which:

a) acquires in its own name products and/or services, which are or can be destined to one/more contracting authorities;

b) awards public contracts or concludes framework agreements in the name and on behalf of another/others contracting authorities.

(3) It is considered that the contracting authority which acquires products, services or works from or through a centralized procurement unit, complies with the provisions of this emergency ordinance in the measure in which the centralized procurement unit complies with them, at its turn, when it performs the activities provided under para. (2).

**Art. 23** – The contracting authority does not have the right to divide the public contract in more separate contracts of lower value, nor to use methods of calculus which lead to a sub-evaluation of the estimated value of the public contract, for the purpose of avoiding the appliance of the provisions of this emergency ordinance which institutes obligations for the contracting authority regarding certain thresholds.

**Art. 24** – Without prejudice to the other provisions of this emergency ordinance, the contracting authority has the obligation to assure the guarantee of the protection of the information mentioned by the economic operator as being confidential, in the measure in which, objectively, the disclosure of such information would bring prejudice to the legitimate interest of the economic operator, especially as regards the trade secret and the intellectual property.

## **Section a 2-a**

### **Rules of estimation of the public contract value**

**Art. 25** - (1) The contracting authority has the obligation to estimate the public contract value based on the calculation and addition of all amounts payable for the performance of the respective contract, without VAT, taking into consideration any form of options and, if they can be anticipated in the moment of the assessment, any possible supplements or increases of the contract's value.

(2) If the contracting authority provided, according to the provisions of this emergency ordinance, the possibility of granting certain prizes/bonuses for the candidates/tenderers, the determination of the estimated value of the public contract must include also the value of such prizes/bonuses.

**Art. 26** – The estimated value of the public contract must be determined before the initiation of the awarding procedure of the respective contract. This value must be valid at the moment of the transmission for publication of the contract notice or, if the awarding procedure does not imply the publishing of such notice, at the moment when the participation invitation is sent.

**Art. 27** - (1) If, by the award of the supply contract, the contracting authority intends to purchase products which need also operations/works of instalment and operation, the estimated value of this contract must include also the estimated value of the respective operations/works.

(2) If, on the date of the estimation of the value of the supply contract, the contracting authority does not have yet established the manner of acquiring the products, respectively, purchase, including in instalments, lease or leasing, with or without option to purchase, the estimated value of this contract must be considered as being equal to the higher of the values corresponding to each manner of acquiring the products.

(3) If, on the date of the estimation of the supply contract, the contracting authority has established the manner of acquiring the products, respectively, purchase, including in instalments, lease or leasing, with or without option to purchase, the method of estimation varies considering the period of the respective contract, thus:

a) if the period of the contract is established and is smaller or equal to 12 months, the estimated value must be calculated by adding all the instalments payable all during the respective contract;

b) if the period of the contract is established and is higher than 12 months, then the estimated value must be calculated by adding the total value of the instalments payable all throughout the period of the respective contract, to which is added the residual estimated value of the products at the end of the period for which the contract was concluded;

c) if the contract is concluded on an undetermined period or if the period of the contract cannot be determined at the date of the estimation, the estimated value must be calculated by multiplying by 48 the value of the monthly payable instalment.

(4) If the contracting authority intends to award a supply contract which must be renewed within a certain period, then the estimation of this contract must have as base of calculation:

a) either the total value of the similar supply contracts, awarded in the last 12 months, adjusted, if possible, with the foreseeable modifications which can occur in the following 12 months regarding the quantities purchased and the corresponding values;

b) either the total estimated value of all similar supply contracts which are anticipated to be awarded in the following 12 months, starting with the moment of the first delivery.

(5) If the contracting authority purposes to purchase similar products, but separated on lots the purchase of which is performed by awarding several distinct supply contracts, then the estimated value is considered to be the cumulated value of all lots. If the cumulated value of all lots is higher than the threshold established under art. 124 letter a), the contracting authority has the right to apply the procedure of requests of tenders only for the lots which fulfil, cumulatively, the following conditions:

a) the estimated value, without VAT, of the respective lot is lower or equal to the equivalent in RON of 75,000 Euro;

b) the cumulated value of the lots for which the procedure of the call for tenders is applied is not higher than 20% of the total value of the products to be supplied.

**Art. 28** - (1) If the contracting authority intends to award a services contract for which the total price of the performance cannot be anticipated, but the estimation of a monthly average tariff is possible, then the estimation method varies considering the period of the respective contract, as follows:

a) when the period of the contract is established and is no longer than 48 months, then the estimated value must be calculated taking into consideration the entire period of the contract;

b) when the period of the contract cannot be determined or is higher than 48 months, the estimated value must be calculated by multiplying by 48 the monthly value.

(2) If the contracting authority intends to award a services contract which must be renewed within a certain period, the estimation of the value of this contract must have as base of calculation:

a) either the total value of the similar supply contracts, awarded in the last 12 months, adjusted, if possible, with the foreseeable modifications which can occur in the following 12 months regarding the quantities purchased and the corresponding values;

b) either the total estimated value of all similar services contracts which are anticipated to be awarded in the following 12 months, starting with the moment of the first performance.

(3) If the contracting authority purposes to purchase similar services, but separated on lots the purchase of which is performed by awarding several distinct services contracts, then the estimated value is considered to be the cumulated value of all lots. If the cumulated value of all lots is higher than the threshold established under art. 124 letter b), the contracting authority has the right to apply the procedure of call for tenders only for the lots which fulfil, cumulatively, the following conditions:

a) the estimated value, without VAT, of the respective lot is lower or equal to the equivalent in RON of 75,000 Euro;

b) the cumulated value of the lots for which the procedure of the call for tenders is applied is not higher than 20% of the total value of the services to be performed.

(4) If the contracting authority intends to purchase services of insurance, the estimated value of these services contracts is calculated based on the first insurance premiums to be paid, as well as of other forms of payment corresponding to the respective services.

(5) If the contracting authority intends to purchase banking services or other financial services, the estimate value of these services contracts shall be calculated based on the fees, commissions, interests and any other forms of payment corresponding to the respective services.

(6) If the contracting authority intends to purchase design, city planning, engineering and other technical services, the estimated value of these services contracts is calculated based on the fees to be paid and any other forms of payments corresponding to the respective services.

**Art. 29** - (1) If the contracting authority intends to purchase works for which it shall make available to the performer materials, machines, technological equipment or any other arrangements and equipments needed for the performance of the works, the estimated value of the respective contract must include both the cost of the work to be executed, and the total value of the mentioned facilities.

(2) If the works contract's object is constituted by the performance of an ensemble of works which supposes, upon the case, also supply of equipment, installations, machines or other corresponding endowments, the estimated value is determined taking into consideration the total value of the entire ensemble.

(3) If a work allows the performance on objects/lots, for which the contracting authority intends to award, to one or more performers, separate works contracts, the estimated value must be determined taking into consideration the cumulated value of all objects/lots forming the respective work. If the cumulated value of all objects/lots forming the respective work is higher than the threshold established under art. 124 letter c), the contracting authority has the right to apply the procedure of call for tenders only for the objects/lots which fulfil, cumulatively, the following conditions:

a) the estimated value, without VAT, of the respective object/lot is lower or equal to the equivalent in RON of 500,000 Euro;

b) the estimated cumulated value of the objects/lots for which this exception is applied is not higher than 20% of the total estimated value of the work.

**Art. 30** – If the contracting authority intends to organize a design contest, the estimated value that must be taken into consideration is determined as follows:

a) if the design contest is organized as independent procedure, the estimated value includes the value of all prizes/amounts to be granted to the competitors, including the estimated value of the services contract which could be concluded afterwards, according to the provisions of art. 122 letter h) or art. 252 letter i), if the contracting authority did not exclude this possibility in the contract notice of the contest;

b) if the design contest is organized as part of a procedure of awarding a services contract, the estimated value taken into consideration is the estimated value of the respective services contract, in which the value of the possible prizes/amounts to be granted to the competitors is included.

**Art. 31** – If the contracting authority intends to conclude a framework agreement, the estimated value is considered to be the maximal estimated value, without VAT, of all the public contracts anticipated to be awarded based on the respective framework agreement, on its entire duration.

**Art. 32** – If the contracting authority intends to use a dynamic system of procurement, the estimated value is considered to be the maximal estimated value, without VAT, of all public contracts anticipated to be awarded using the respective dynamic system of procurement, on its entire duration.

### **Section a 3-a**

#### **Rules of elaboration the tender documentation**

**Art. 33** - (1) The contracting authority has the obligation to specify in the tender documentation any request, criteria and other information needed to insure the tenderer/candidate a complete, correct and explicit information regarding the manner of appliance of the awarding procedure.

(2) The tender documentation must contain, without limitation to the following, at least:

a) general information regarding the contracting authority, especially regarding the address - including telephone, fax, e-mail -, contact persons, means of communication etc.;

b) instructions which must be complied with in relation to the participation in the awarding procedure;

c) if requested, minimal requirements for qualification, as well as documents to be presented by tenderers/candidates for evidencing the fulfilment of the qualification and selection criteria;

d) the specifications or descriptive documentation, the latter being used in the case of competitive dialogue or negotiation procedure;

e) instructions regarding the manner of elaboration and presentation of the technical proposal and the financial proposal;

f) detailed and complete information regarding the criteria of awarding applied for the establishment of the winning tender, according to the provisions under Chapter V - Section a 3-a;

g) instructions regarding the manner of use of the ways of appeal;

h) information regarding the compelling contractual clauses.

**Art. 33<sup>1</sup>** - (1) The National Authority for Regulating and Monitoring of Public Procurement, evaluates, before the submission of the announcement/invitation notice, the conformity with the public procurement legislation of the tender documentation of the contracts under the provisions of this emergency ordinance.

(2) Within 14 maximum days from attaching of the tender documentation to SEAP the National Authority for Regulating and Monitoring of Public Procurement has the obligation to:

a) To issue permission for the contracting authority to start the awarding procedure, if the provisions from the tender documentation comply with the legal provision within the public procurement laws;

b) To inform the contracting authority of any inconsistency identified inside the tender documentation and the reasons for they are not in accordance within the public procurement laws.

(3) The documents will be attached in SEAP on working days by the contracting authorities and they will be signed with electronic signature issued by an authorized supplier.

**Art. 34** - (1) The contracting authority has the right to specify in the tender documentation the competent institutions from which the economic operators can obtain information regarding the regulations concerning the taxation, as well as those concerning the environment protection.

(2) The contracting authority has the obligation to specify in the tender documentation the compelling rules regarding the labour conditions and the work safety conditions, which are in force nationally and which must be complied with during the fulfilment of the works or services contract, or to indicate the competent institutions from which the economic operators can obtain detailed information regarding the respective regulations. In this case, the contracting authority has also the obligation to request the economic operators to indicate in the tender the fact that in the elaboration of the tender they took into consideration the obligations regarding the labour conditions and the work safety conditions.

**Art. 35** - (1) The specifications contain, compellingly, technical specifications.

(2) The technical specifications represent technical requests, requisitions, characteristics which allow to each product, service or work to be described, objectively, in such manner that it corresponds to the needs of the contracting authority.

(3) The technical specifications define, upon the case and without being limited to the following: characteristics regarding the quantitative, technical and performance level, requests regarding the impact on the environment, safety in exploitation, dimensions, terminology, symbols, tests and testing methods, packaging, labelling, marking and instructions for use of the products, technologies and methods of production, as well as systems of insurance of the quality and conditions for the certification of the conformity with the relevant standards, or such. In the situation of the works contracts, the technical specifications can also refer to design requisitions and to costs calculation, to verification, inspection and conditions of reception of the works or techniques, procedures and methods of execution, as well as any other technical conditions which the contracting authority is able to describe, considering also

various normative acts and general or specific regulations, regarding the finalized works and the materials or components of such works.

(4) The technical specifications are defined in such manner that they correspond, when possible, to the needs/requirements of any user, including disabled persons.

(5) The technical specifications must allow any tenderer equal access to the awarding procedure and must not have as effect the insertion of unjustified obstacles of nature to restraint the competition among the economic operators.

(6) Without prejudice to mandatory national technical regulations, provided they are compatible with Community law, the contracting authority has to define the technical specifications:

a) either by reference, usually in the following order of priority, to the national standards adopting European standards, to the European technical approvals, to international standards or other technical references developed by European standardization bodies; if these do not exist, then the specifications are defined by reference to other standards, approvals or national technical regulations regarding the use of products or design, calculation and execution of works. Any such reference must be accompanied by the words or equivalent;

b) either by specifying the functional performances and/or requirements required, which must be described precisely enough to allow tenderers to determine the public contract's object, and to the contracting authority to award the contract;

c) either by specifying the functional performances and/or requirements required, as they are provided under letter b) and by reference to standards, technical approvals, common technical specifications referred to under letter a) as means of presuming conformity with the performance level and functional requirements in question;

d) either by specifying the functional performances and/or requirements required, as they are provided under letter b), for certain characteristics and by reference to technical standards and approvals referred to under letter a) for other characteristics.

**Art. 36** - (1) If the contracting authority defines the technical specifications in the specifications, choosing the manner provided for in art. 35. (6) letter a) when no tender may be rejected on the grounds that the products or services provided in the technical proposal do not comply with the specifications indicated, if the tenderer proves, by any suitable means, that the technical proposal presented meets in a manner equivalent to the requirements of the contracting authority defined by the technical specifications.

(2) If the contracting authority defines the technical specifications in the specifications by specifying the performance and / or functional requirements required, then no tender may be rejected if the tenderer proves by any suitable means that the products, services or works offered ensure the fulfilment of the performances or functional requirements, as they comply with:

a) a national standard adopting a European standard;

b) a European technical approval;

c) a common technical specification used in the European Community;

d) an international standard;

e) other technical regulations developed by European standardization bodies.

(3) For the purposes of para. (1) and (2) appropriate means to prove compliance with the required technical specifications can be the technical dossier of the producer or a trial/test report issued by a recognized body, such as, where appropriate, a neutral laboratory of test and calibration or a certification and inspection body which ensures the compliance with the

applicable European standards; the contracting authority is obliged to accept certificates issued by bodies recognized in any of the Member States of the European Union.

**Art. 37** - (1) Performances and functional requirements set out under art. 35 para. (6) letter b), which define the technical specifications, may also include environmental characteristics.

(2) If the contracting authority requires the compliance with certain environmental characteristics in terms of performance and functional requirements, it is entitled to use, entirely or partially, specifications defined by European, (multi)national "green labels" or any other "green labels", if there are met, cumulatively, the following conditions:

a) those specifications are appropriate for defining characteristics of products or services whose supply/performance is the object of the public contract;

b) the requirements for "green label" were developed on a scientific basis;

c) the "green label" was adopted by a specific procedure that allowed the involvement of all interested parties - government bodies, consumers, producers, distributors, environmental organizations;

d) the "green label" is accessible/available to anyone interested.

(3) The contracting authority is entitled to specify in the specifications that the products or services offered which have a certain "green label" are deemed to meet the technical specifications required by default. On the other hand, the contracting authority does not have the right to consider a technical proposal as non-compliant, for the sole reason that the products or services tendered do not have the "green label" specified, if the tenderer proves, by any appropriate means, that the products/services offered meet technical specifications required.

(4) For the purposes of para. (3) appropriate means to prove compliance with the required technical specifications can be represented by the technical dossier of the producer or a trial/test report issued by a recognized testing body as provided for in art. 36 para. (3); the contracting authority is obliged to accept the certificates issued by bodies recognized in any of the Member States of the European Union.

**Art. 38** - (1) It is prohibited the definition in the specifications of certain technical specifications that indicate a specific origin, source, production, a special procedure, a brand or trade name, a patent, a production license, which has as effect the favouring or eliminating certain economic operators or certain products.

(2) Notwithstanding the provisions of para. (1), such an indication is allowed, but only in exceptional cases, where a sufficiently precise and intelligible description of the object of the contract is not possible through the application of art. 35 and 36 and only accompanied by the words or equivalent.

**Art. 39** - The contracting authority is entitled to impose in the tender documentation, to the extent that they are compatible with Community law, special conditions of fulfilment of the contract through which it is intended the obtaining of social effects or related to the environmental protection and promotion of sustainable development.

**Art. 40** - (1) The contracting authority is obliged to ensure the obtaining of the tender documentation by any economic operator by providing direct unrestricted and full access, by electronic means, to the content of the tender documentation.

(2) Notwithstanding the provisions of para. (1), in the case when the attaching of the tender documentation to SEAP is not possible for technical reasons attributable to SEAP operator, the contracting authority has the obligation to make available to any economic operator which submitted a request to this effect or, where appropriate, to which it was sent an invitation to participation a copy of the tender documentation, on paper or on magnetic media.



(3) In the case under para. (2), the contracting authority has the obligation to ensure the free obtaining of the tender documentation for any economic operator which receives it directly at the contracting authority's headquarters or from another address indicated by the latter. If the documentation is sent by mail, the contracting authority has the right to require the economic operators who will benefit of this facility a payment which must not exceed, however, the cost of transmitting such documents.

## **Section 4**

### **Rules for participation in the awarding procedure**

**Art. 41** - Any economic operator has the right to participate, individually or in a group of operators to the awarding procedure.

**Art. 42** - The tenderer/candidate who, in accordance with the laws of the state where it is established, is empowered to perform a certain activity cannot be excluded from an awarding procedure for the sole reason that, in accordance with the national legislation, this type of activity can be provided only by legal entities or only by individuals.

**Art. 43** - (1) The contracting authority is entitled to require that the participation in the awarding procedure be only allowed to protected workshops or those tenderers who undertake to fulfil the contract in the context of protected employment programs, where most of the employees involved are persons with disabilities, who by the nature or severity of their disabilities, cannot carry on a professional activity under normal conditions.

(2) If the contracting authority decides to limit participation in the awarding procedure according to the provisions of para. (1), then this decision must be stated explicitly in the invitation to the awarding procedure.

**Art. 43<sup>1\*)</sup>** - (1) The participation guarantee is set up by the tenderer in order to protect the contract authority against the risk of a possible misconduct of such tenderer on the entire period until the conclusion of the contract.

(2) The contracting authority is obliged to request the tenderers to set up the participation guarantee, in order to participate in the contract award procedure, when this emergency ordinance stipulates the requirement of publishing an announcement or a participation invitation. The tender documentation must contain the following information:

a) the amount of the participation guarantee mentioned in the contract notice/invitation of participation, in a fixed amount of up to 2% of the estimated contract value, but not less than the amounts provided for in art. 278<sup>1</sup> para. (1);

b) the validity period of the guarantee of participation will be at least equal to the minimum period of validity of the tender, at its establishment being taken into consideration the provisions of art. 276 para. (1), as required by the tender documentation.

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\*) Art. 43<sup>1</sup> was introduced by EGO no. 76/2010\_ Published in the Official Gazette No. 453 of July 2, 2010.

**Art. 44** - (1) Several economic operators have the right to associate for the purpose of submitting a joint application or tender, without being obliged to formally legalize the association.

(2) The contracting authority has the right to request that the association is legalized only if the joint tender is declared the winner and only if such action is a prerequisite for the proper performance of the contract.

**Art. 45** - (1) Without diminishing the responsibility regarding the fulfilment of the future public contract, the tenderer is entitled to include in the technical proposal the possibility to subcontract part of the respective contract.

(2) If the contracting authority requires so, the tenderer has to specify the party/parties of the contract which it shall subcontract and the proposed subcontractors' identification data.

**Art. 46** - (1) Without bringing prejudice to the possibility of the economic operators to submit alternative tenders according to the provision of art. 173 or to tender several separate lots, the candidate/tenderer is not entitled, in the same procedure to:

a) to submit two or more individual and/or joint application/tenders, under the sanction of the exclusion from the competition of all applications/tenders in question;

b) to submit an individual/joint tender and be nominated as a subcontractor in another tender, under the sanction of exclusion of its individual tender or, where appropriate, of the one in which it is associated tenderer.

c) To submit the common tender/application and to be nominated as a third party within another tender, under the sanction of the exclusion from the competition of the individual tender or, if applicable, of the associated tender.

(2) The affiliated companies are entitled to participate in the same awarding procedure, but only if their participation is not of nature to distort competition. In this regard, the economic operator has the obligation to include in its tender the list of affiliated companies, to the extent that they exist.

(3) For the purposes of para. (2), affiliated company means any subject of law:

a) on which another subject of law can exercise, directly or indirectly, dominant influence, or

b) which can exert a dominant influence over another subject of law, or

c) which, as a result of association with a subject of law, is under the dominant influence of another subject of law.

## **Section 5**

### **Publicity Rules**

#### **Paragraph 1**

##### **Publication of contract notices**

**Art. 47** - (1) The contracting authority is obliged to ensure transparency in awarding the public contracts and in the conclusion of the framework agreements by publishing, in accordance with the provisions of this chapter, prior information notice, contract notices / participation invitations and contracts award notices.

(2) For the contracts the estimated value of which equals or exceeds the thresholds provided for in art. 55 para. (2) the contracting authority is obliged to include in the notices under par.

(1) at least the information contained in the annex. 3A and, if necessary, other information deemed useful by the contracting authority, using standard forms adopted by the European Commission.

(3) The manners of appliance of the provisions of para. (2) as well as the contents of contract notices and contract award notices for which, in accordance with the provisions of this emergency ordinance, the submission for publication to the Official Journal of the European Union is not mandatory shall be established by Government decision.

**Art. 48** - (1) Except for the case provided in Art. 299, the contracting authority has the obligation to transmit for publication the notices referred to in art. 47 para. (1) to the SEAP operator using only electronic means to this end.

(2) In the cases stipulated by this emergency ordinance, the SEAP operator has the obligation to ensure the electronic transmission of notices for publication in the Official Journal of the European Union.

**Art. 49** - (1) The SEAP operator has the obligation to provide the National Authority for Regulating and Monitoring of Public Procurement unrestricted access to announcements / invitations sent by the contracting authorities before their publication.

(2) The National Authority for Regulating and Monitoring of Public Procurement verifies:

a) each notice/participation notice sent by the contracting authority for publication in SEAP, if the respective notice is in relation to the appliance of the procedure of awarding a contract with an estimated value equal to or higher than the thresholds provided for in art. 124;

b) each contract notice/participation invitation sent by the contracting authority for publication in SEAP, with an estimated value below the thresholds provided for in art. 124.

(2<sup>1</sup>) Within 3 working days since the receipt of the contract notice / invitation in the SEAP, the National Authority for Regulating and Monitoring of Public Procurement has the obligation:

a) either to issue to the SEAP operator the authorization of publication for the respective announcement / invitation, if after the review no errors/omissions of filling are found;

b) either to reject the publication of the contract notice/participation invitation, if it finds errors/omissions of filling, while informing the contracting authority of this decision as well as on the manner in which the errors/omissions can be remedied.

(2<sup>2</sup>) Errors under para. (2<sup>1</sup>) represent the information/requirements in the contract notice/participation invitation sent for publication that are not real or lead to violations of the public procurement legislation and of the principles underlying the awarding of the public contract.

(2<sup>3</sup>) Not detection of errors provided under para. (2<sup>2</sup>) in the verification process does not affect the right of the National Authority for Regulating and Monitoring of Public Procurement to sanction, in the course of the supervision, the facts set out in art. 293.

(3) In the case provided under par. (2) letter a) the SEAP operator has the obligation:

a) to send the notice for publication in the Official Journal of the European Union within maximum one working day since the receipt of authorization for publication, where, in accordance with the provisions of this emergency ordinance, an obligation in this regard is provided; the SEAP operator has the obligation to ensure the registration in the electronic data system of the date when the notice was sent for publication, as evidence regarding the transmission time;

b) to publish the notice in the SEAP within maximum two working days since receipt of the authorization for publication.

(4) The SEAP operator does not have the right to publish the notice sent by the contracting authority or to submit it for publication in the Official Journal of the European Union, without obtaining the authorization for publication issued by the National Authority for Regulating and Monitoring of Public Procurement.

(5) If, for technical reasons, the SEAP operator does not have the possibility of transmitting a notice for publication in the Official Journal of the European Union, the contracting authority shall be responsible for the transmission for publication of the respective notice through their own means. The SEAP operator is required to notify the contracting authority on the

appearance of such cases within maximum one working day since the termination of the period referred to in para. (3) letter a).

(6) After publication of the notice in the SEAP, the contracting authority may choose to send the notice also to the Regie Autonome "Official Gazette", for publication in the Official Gazette of Romania, Part VI, Public procurement.

(7) The Regie Autonome "Official Gazette" publishes the notices submitted for publication no later than 8 days after their registration. In the case of the notice for participation referred to in art. 114, the Regie Autonome "Official Gazette" publishes the respective notice within maximum 3 days from the date of registration.

**Art. 50** - (1) If the provisions of this emergency ordinance establish the requirement to publish the notice in the Official Journal of the European Union, the respective notice cannot be published nationally before its transmission to the European Commission.

(2) The notice published nationally should not contain other information than those existing in the notice published in the Official Journal of the European Union and must indicate the date of the transmission to the European Commission.

## **Paragraph 2**

### **Prior information notice**

**Art. 51** - (1) The contracting authority is obliged to submit for publication a prior information notice, when seeking to benefit from the provision of art. 75 para. (2) or art. 89 para. (2) and if:

a) the total estimated value of the contracts to be awarded in the next 12 months for procurement of products from the same CPV group is equal to or higher than the equivalent in RON of EUR 750,000;

b) the total estimated value of the contracts to be awarded in the next 12 months for procurement of services that are in the same category in terms of the manner of grouping of Annex 2A, is equal to or higher than the equivalent in RON of EUR 750,000;

c) the estimated value of the works contracts to be awarded in the next 12 months is equal to or higher than the equivalent in RON of EUR 5,000,000.

(2) The contracting authority is entitled to submit for publication a prior information notice also in situations other than those provided in para. (1).

(3) The publication of the prior information notice does not create for the contracting authority the obligation to perform the respective public procurement.

**Art. 52** - (1) In the cases provided under Art. 51 para. (1) letters a) and b) the authority has the obligation to transmit for publication the prior information notice as soon as possible after the beginning of the budget year.

(2) In the case provided under art. 51 para. (1) letter c), the contracting authority is obliged to submit for publication the prior information notice as soon as possible after approval of the program in which the respective works contract or the respective framework agreement are provided.

**Art. 53** - (1) The prior information notice shall be published:

a) in the SEAP and, as appropriate, in the Official Journal of the European Union and optionally in the Official Gazette of Romania, Part VI, Public Procurement; or

b) only in the SEAP, provided that, before publication, to be sent a simplified prior information notice to the European Commission.

(2) In the case provided under par. (1) letter b), the prior information notice must include the date of transmission of the simplified notice to the European Commission.

### **Paragraph 3**

#### **The contract notice**

**Art. 54** - The contracting authority is obliged to submit for publication a contract notice when:

- a) it initiates the open procedure, the restricted procedure, the competitive dialogue or the negotiation procedure with prior publication of a contract notice, for the awarding of the public contract or the conclusion of the framework agreement;
- b) it launches a dynamic purchasing system;
- c) it initiates the process for awarding a public contract through a dynamic purchasing system, in this case publishing a simplified notice;
- d) organizes a design contest.

**Art. 55** - (1) The contract notice shall be published in the SEAP and, as appropriate, in the Official Journal of the European Union and, optionally, in the Official Gazette of Romania, Part VI, Public Procurement.

(2) The publication in the Official Journal of the European Union is mandatory in all cases in which:

- a) the contracting authority falls into one of the categories mentioned in art. 8 letters a) - c) and the estimated value of the supply or services contract to be awarded is equal to or higher than the RON equivalent of EUR 130,000;
- b) the contracting authority falls into one of the categories mentioned in art. 8 letters d) or e), and the estimated value of services or supply contract to be awarded is equal to or higher than the RON equivalent of EUR 400,000;
- c) the estimated value of the works contract to be awarded is equal to or higher than the RON equivalent of EUR 5,000,000.

### **Paragraph 4**

#### **The contract award notice**

**Art. 56** - (1) The contracting authority is obliged to submit for publication a contract award notice within maximum 48 days after:

- a) it completes the awarding procedure - open procedure, restricted procedure, competitive dialogue, negotiation with / without prior publication of a contract notice, call of tenders - by awarding the public contract or concluding the framework agreement;
- b) has completed the design contest by establishing a winning competitor;
- c) has awarded a public contract through a dynamic purchasing system.

(2) For the services included in Annex no. 2B, the obligation under para. (1) applies only to contracts whose value is equal to or higher than the threshold provided in art. 57 para. (2) letter a) or, where appropriate, letter b). In these cases, the contracting authority shall indicate, also, in the notice sent whether or not it agrees with its publication.

**Art. 57** - (1) The contract award notice published in the SEAP and, as appropriate, in the Official Journal of the European Union as well as, optionally, in the Official Gazette of Romania, Part VI, Public Procurement.

(2) The publication in the Official Journal of the European Union is mandatory in all cases when:

a) The contracting authority falls into one of the categories mentioned in art. 8 letter a) - c) and the value of supply or services contract that was awarded is equal to or higher than the RON equivalent of EUR 130,000;

b) the contracting authority falls into one of the categories mentioned in art. 8 letters d) or e), and the estimated value of services or supply contract that was awarded is equal to or higher than the RON equivalent of EUR 400.000;

c) the estimated value of the works contract that was awarded is equal to or higher than the RON equivalent of EUR 5,00,000.

## **Section 6**

### **Special rules of transparency applicable to public procurement for services of media advertising**

**Art. 58** - (1) In the case of the awarding of the media advertising contracts, with combined annual value, excluding VAT, estimated to be higher than the RON equivalent of EUR 15,000, the contracting authority has the obligation to publish a contract notice and a contract award notice in the public information system available on the internet, at a dedicated address, and its own website.

(2) For the purposes of para. (1), media advertising contract means any services contract covering the broadcast of advertising or other forms of promotion through the written, audiovisual or electronic mass media.

(3) The obligation under para. (1) does not exempt the contracting authority from observing the general rules on advertising, as they are set out in section 5 of this chapter.

(4) The contracting authority has the obligation to specify in the contract notice referred to in para. (1) the qualification and selection criteria and, if the criterion for award of contract is the most advantageous tender economically, the algorithm for calculating the score; the notice must be accompanied by an opportunity report through which is justified the reason for the purchase of the advertising services, while indicating the impact intended and the criteria for measuring the outcome.

(5) No later than 120 days after completion of the advertising services contract, the contracting authority have the obligation to publish in the information system referred to in paragraph (1) a report of assessment the impact of the purchase of advertising services.

(6) The media advertising contracts must contain also the following specific clauses regarding the parties' obligation to ensure, including during the performance of the contract, the public access to at least the following information: the final recipients of the advertising funds, criteria for allocation these funds, the amounts allocated to each final beneficiary and terms of fulfilment of the contractual provisions

(7) The public access to the information referred to in para. (6) is achieved by diligence of the contracting authority which is required to hold updated information regarding the manner of fulfilment of the contract.

(8) In the case of media advertising contracts the mentioning in the advertising material of the contracting authority/authorities is compelling.

## **Section 7**

### **Rules of communication and data transmission**

**Art. 59** - (1) Any communication, demand, information, notification and others alike, provided in this emergency ordinance, must be submitted in writing.

(2) Any written document must be registered on the time of transmission, respectively on the time of receipt.

(3) The communication, transmission and storage of information is done in order to ensure the integrity and confidentiality of the respective data.

**Art. 60** - (1) The written documents can be sent by any of the following ways:

- a) by post;
- b) by fax;
- c) electronically;
- d) any combination of those provided under letters a) - c).

(2) The contracting authority is entitled to impose, in the tender documentation, the methods of communication that it intends to use during the procedure.

**Art. 61** - (1) The means of communication imposed by the contracting authority must not restrict economic operators' access to the awarding procedure.

(2) The tools used for electronic communication and their technical characteristics must be non-discriminatory, easily available in any economic operator must ensure interoperability with common information and communication technologies.

(3) If the documents are delivered by electronic means, the legal provisions related to the electronic signature are applicable.

**Art. 62** - (1) The economic operator has the right to send a request to participation in the awarding procedure by any of the procedures laid down under art. 60 para. (1) or by telephone, in the latter case the economic operator being required to confirm the request of participation in writing, as soon as possible.

(2) The contracting authority is entitled to impose that any request of participation in the awarding procedure, which was transmitted by fax, be confirmed, within a reasonable period of time, by letter sent by mail or by electronic means. In this case, the contracting authority has the obligation to specify in the contract notice the respective requirement, as well as the time within which it must be satisfied.

**Art. 63** - (1) The economic operator has the right to send the tender only by post or, if the contracting authority provides such possibility, through electronic means.

(2) If the contracting authority establishes that the tenders are to be mailed, the tenderer has, implicitly, also the right to submit the tender directly to the contracting authority's premises or to another address indicated by it.

**Art. 64** - The contracting authority has the right to determine that the requests to participation and/or tenders shall be submitted by electronic means, only if the following requirements are ensured:

- a) the information regarding the specific possibilities for electronic transmission, including encryption, are available to any interested economic operator;
- b) the electronic devices of receipt adequately guarantee the integrity and confidentiality of the data received;
- c) the economic operators must submit before the deadline of submission the documents, certificates, statements and others such, required according to the provisions of chapter. V, Section 2, if they are not available in electronic format.

**Art. 65** - For the purposes of art. 64 the ensuring of the integrity and confidentiality of data received means that the electronic devices, through the technical characteristics they have

and/or by the specific procedures used, allow the cumulative fulfilment of at least the following conditions:

- a) the exact timing of receipt of tenders or requests to participation and, if appropriate, plans/projects can be determined with precision;
- b) before the deadline for data transmission, no person has access to the data transmitted;
- c) if the prohibition of access provided for in point b) was violated, the unauthorized access is clearly detectable;
- d) only persons authorized for this purpose shall have the right to establish or change the date of view of the received data;
- e) the access to received data is possible at all stages of the process, only through a simultaneous action of at least two authorized persons/systems, and only after the date of visualization established according to the provision under letter d);
- f) after viewing the received data, the access to the respective data remains possible only for the persons authorized to view such data.

## **Section 8**

### **Rules for avoiding the conflict of interest**

**Art. 66** - During the application of the awarding procedure, the contracting authority has the obligation to take all necessary measures to avoid situations likely to cause a conflict of interest and/or unfair competition.

**Art. 67** - The natural or legal person who participated in the preparation of the tender documentation has the right, as economic operator, to be tenderer, associate tenderer or subcontractor, but only if his involvement in drafting the tender documentation is not likely to distort competition.

**Art. 68** - The individuals or legal entities directly involved in the process of verification/evaluation of applications/tenders are not allowed to be candidate, tenderer, associate tenderer or subcontractor, under penalty of exclusion from the awarding procedure.

**Art. 69** - The following persons do not have the right to be involved in the process of verification/evaluation of applications/tenders:

a) persons who hold shares, parts of interest, shares of the subscribed capital of one of the tenderers/candidates or subcontractors, or persons that are part of the Board of directors/management or supervisory body of one of the tenderers/candidates or subcontractors;

b) husband/wife or close family relative, to the fourth degree inclusive, with people who are part of the Board of directors/management or supervisory body of one of the tenderers/candidates or subcontractors;

c) persons about whom it is ascertained that may have an interest likely to affect their impartiality in the process of verification/evaluation of applications/tenders;

d) persons acting in the exercise of the position they hold in the contracting authority when there is a conflict of interest as it covered by Law no. 161/2003 regarding measures to ensure the transparency in the exercise of public dignities, public functions and in the business environment, prevention and punishment of corruption, as amended and supplemented.

**Art. 69<sup>1\*)</sup>** - The tenderer/candidate /associate tenderer/ subcontractor/third party that has as members of the board of directors/management or supervisory body and/or has shareholders or associates who are husband/wife or close family relative to the fourth degree inclusively, or who is in commercial relations, as they are referred to under art. 69 point a) with persons



holding positions of decision within the contracting authority is excluded from the awarding procedure.

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\*) Art. 69<sup>1</sup> was introduced by EGO No. 76/2010, published in the Official Gazette No. 453 of July 2, 2010.

**Art. 70** - The contractor is not entitled to employ in order to fulfil the public contract, natural or legal persons who were involved in the process of verification/evaluation of applications/tender submitted in the application of an awarding procedure, for a period of at least 12 months from the conclusion of the contract, under penalty of annulment of the respective contract for immoral cause.

### **Chapter III**

#### **Awarding Procedures**

##### **Section 1**

##### **Steps before initiation of the awarding procedure**

**Art. 71** - Notwithstanding the applicability of the provisions of this emergency ordinance relating to the minimum periods to be provided between, on one hand, the date of transmission for publication of the contract notices or the date of transmission of the participation invitations and, on the other hand, the deadline for submission of tenders/applications, the contracting authority have the obligation to establish the respective period depending on the complexity of the contract and/or specific requirements, so that the interested economic operators can benefit from an adequate and sufficient period of time for drawing up the tenders and preparing the qualification documents required by the tender documentation.

**Art. 72** - The contracting authority has the obligation to extend the period of time for drawing up tenders when they cannot be elaborated until after visiting the sites or after the study on-site of certain documents - annex to the specifications as well as if the contracting authority is not able to send the tender documentation or the response to the request for clarifications within the deadlines set by this emergency ordinance, although it received in due time a request in this regard. In such a situation, the deadline for submission of tenders shall be postponed for a sufficient period of time, so that any interested economic operator can have a reasonable period of time necessary to obtain complete and relevant information for the elaboration of the tender.

##### **Section 2**

##### **The open procedure**

**Art. 73** - (1) The open procedure is generally carried out in a single step.

(2) The contracting authority has the right to decide to hold a supplementary stage of electronic auction, in which case it has the obligation to announce this decision in the contract notice and in the tender documentation.

**Art. 74** - The open procedure is initiated by sending for publication in accordance with the provisions of art. 55, of a contract notice through which it is requested to the interested economic operators to submit tenders.

**Art. 75** - (1) Without prejudice to the provisions of art. 71, where the estimated value of the public contract is equal to or higher than the one provided in art. 55 para. (2), the period from the date of sending contract notice for publication in the Official Journal of the European Union and the deadline for submission of tenders must be at least 52 days.

(2) If the contracting authority has published a prior information notice regarding the public contract to be awarded, it has the right to reduce the period referred to in para. (1) up to 36 days.

(3) The reduction referred to in para. (2) is allowed in the situation when the prior information notice contained all the information provided for the contract notice - as far as they are known at the time of publication of the a prior information notice - and was submitted for publication at most 12 months and at least 52 days before the date of transmission for publication of the contract notice.

(4) If the contract notice is sent electronically for publication in the Official Journal of the European Union, the period referred to in para. (1) or, where appropriate, in para. (2) may be reduced by 7 days.

(5) If the contracting authority publishes in the SEAP the entire tender documentation and allows, from the date of publication of the contract notice, direct and unrestricted access of the economic operators to this documentation, it is entitled to reduce the period referred to in para. (1) as well as those resulting from the application of para. (4) by 5 days.

(6) The reduction referred to in para. (5) is allowed only if the contract notice contains details regarding the Internet address where the tender documentation is available.

**Art. 76** - (1) Without prejudice to the provisions of art. 71, where the estimated value of the public contract is lower than the one provided in art. 55 para. (2), the contracting authority has the obligation to send the contract notice to be published in the SEAP with at least 20 days before the deadline for submission of tenders.

(2) If the contracting authority publishes in the SEAP the entire tender documentation and allows, from the date of publication of the contract notice, direct and unrestricted access of the economic operators to this documentation, it is entitled to reduce the period referred to in para. (1) by 5 days.

(3) The reduction referred to in para. (2) is allowed only if the contract notice contains details regarding the Internet address where the tender documentation is available.

**Art. 77** - (1) Any interested economic operator has the right to request and obtain the tender documentation.

(2) In the case under art. 40 para. (2), the contracting authority has the obligation to make the tender documentation available to the economic operator as soon as possible, within a period not exceeding four days since the receipt of a request from such economic operator.

(3) The interested economic operator shall be obliged to undertake the necessary efforts so that the compliance by the contracting authority of the period provided under para. (2) does not lead to a situation where the tender documentation is made available to it with less than two days before the deadline for submitting the tender.

**Art. 78** - (1) Any interested economic operator has the right to request clarifications on the tender documentation.

(2) The contracting authority is obliged to respond, clearly, fully and without ambiguity, as soon as possible, to any clarification required in a period which must not exceed, usually, 3 working days since the receipt of a such request from the economic operator.

(3) The contracting authority have the obligation to send the answers - accompanied by related questions - to all economic operators who obtained, as provided by this emergency

ordinance, the tender documentation, taking measures to conceal the identity of the person who requested such clarifications.

**Art. 79** - (1) Notwithstanding the provisions of art. 78 para. (2), to the extent that the clarifications are required in due time, the response of the contracting authority to such requests must be published/submitted no later than six days before the deadline for submitting the tenders.

(2) If the economic operator did not submit the request for clarifications in a timely manner, thereby making the contracting authority unable to meet the deadline set in para. (1), the latter has, however, the obligation to respond to the request for clarifications to the extent that the period required for the preparation and the transmission of the response enables the receipt thereof by the economic operators before the deadline for submission of tenders.

**Art. 80** - The contracting authority shall open the tenders on the date, time and address indicated in the contract notice, provided that the obligation regarding the offset of the deadline for submission of tenders did not become applicable, as provided by art. 72, except for the case when the deadline for submission of tenders was delayed as a consequence of the suspension of the procedure.

### **Section 3**

#### **The restricted procedure**

**Art. 81** - (1) The restricted procedure is generally carried out in two stages:

- a) the selection of candidates stage, by applying the selection criteria;
- b) the stage of evaluation of the tenders submitted by the candidates selected, by applying the awarding criteria.

(2) The contracting authority has the right to decide to hold a supplemental stage of electronic tender, in which case it has the obligation to announce this decision in the contract notice and in the tender documentation.

**Art. 82** - The restricted procedure is initiated by sending for publication, in accordance with the provisions of art. 55, of a contract notice through which it is required the submission of applications to the interested economic operators.

**Art. 83** - (1) Without prejudice to the provisions of art. 71, where the estimated value of the public contract is equal to or higher than the one provided in art. 55 para. (2), the period from the date of transmission of the contract notice to be published in the Official Journal of the European Union and the deadline for applications should be at least 37 days.

(2) If, for reasons of urgency, number of days specified in para. (1) cannot be observed, the contracting authority has the right to accelerate the appliance of the procedure by reducing the period referred to in para. (1), but not to less than 15 days.

(3) If the notice is sent electronically for publication in the Official Journal of the European Union, the period referred to in para. (1) may be reduced by 7 days and the period referred to in para. (2) may be reduced by 5 days.

**Art. 84** - Without prejudice to the provisions of art. 71, where the estimated value of public procurement contract is less than the one provided in art. 55 para. (2), the contracting

authority has the obligation to send the contract notice to be published in the SEAP at least 10 days before the deadline for submission of the applications.

**Art 84** <sup>1 \*)</sup> - If the contracting authority publishes in the SEAP the entire tender documentation, it is provided direct, complete and unrestricted access of economic operators to this documentation from the date of publication of contract notice.

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\*) Art. 84 <sup>1</sup> was introduced by EGO. 76/2010, published in the Official Gazette No. 453 of July 2, 2010.

**Art. 85** - (1) Any economic operator is entitled to submit its application for the first phase of the restricted procedure.

(2) In the phase provided in art. 81 para. (1) letter a), the contracting authority has the right to limit the number of candidates to be selected to submit tenders, provided that a sufficient number of candidates is available. When selecting the candidates, the contracting authority has the obligation to apply objective and non-discriminatory criteria, using for this purpose only the selection criteria set out in the contract notice.

(3) The contracting authority must indicate in the contract notice the selection criteria and the applicable rules, the minimum number of candidates it intends to select and, if necessary, their maximum number.

(4) The minimum number of candidates, indicated in the contract notice referred to in para. (3) should be sufficient to ensure a genuine competition and, in any case, cannot be of less than 5.

**Art. 86** - (1) The number of candidates selected after the first phase of the restricted procedure must be at least equal to the minimum specified in the contract notice.

(2) If the number of candidates meeting the selection criteria is less than the minimum number specified in the contract notice., the contracting authority has the right:

a) to cancel the restricted procedure;

b) to continue the restricted procedure only with the candidate/candidates who fulfil/meet the required criteria.

**Art. 87** - (1) The contracting authority is obliged to transmit simultaneously an invitation to participation in the second phase of the restricted procedure to all the selected candidates.

(2) It is forbidden to invite in the second phase of the restricted procedure an economic operator who did not submit the application in the first stage or did not meet the selection criteria.

**Art. 88** - (1) The invitation must include at least the following information:

a) references regarding the contract notice. published;

b) the limit date and time for submitting tenders;

c) the address to which the tenders will be submitted;

d) the language or languages in which the tender must be elaborated;

e) the address, date and time of opening of tenders;

f) where appropriate, details on additional documents that the economic operators must submit for the purpose of verification of the statements or of supplement of the documents, presented in the first step to demonstrate the technical and the economic and financial capacity.

(2) If the tender documentation is accessible directly through electronic means in the SEAP, the contracting authority has the obligation to include also in the invitation to participation information on the manner of access of such documents.

(3) If the attachment of the tender documentation in the SEAP is not possible for technical reasons, the contracting authority has the obligation to send the invitation of participation accompanied by a counterpart of the tender documentation to all selected candidates.

**Art. 89** - (1) Without prejudice to the provisions of art. 71, where the estimated value of the public contract is equal to or higher than the one provided in art. 55 para. (2) the contracting authority is obliged to send the invitation at least 40 days before the deadline for submission of tenders.

(2) If the contracting authority has published a prior information notice regarding the public contract to be awarded, it has the right to reduce the period referred to in para. (1) up to 36 days, usually, and under any circumstance, not to less than 22 days.

(3) The reduction referred to in para. (2) is allowed if the prior information notice contained all information provided to contract notice - as far as they are known at the time of publication of the prior information notice - and was submitted for publication at most 12 months and at least 52 days before the date of transmission for publication of the contract notice.

(4) If the contracting authority publishes in the SEAP the entire tender documentation and allows, from the date of publication of contract notice, direct and unrestricted access of economic operators to this documentation, it is entitled to reduce the period referred to in para. (1) by 5 days.

(5) The reduction referred to in para. (4) is allowed only if the contract notice contains details regarding the Internet address where the tender documentation is available.

(6) If, for reasons of urgency, cannot be observed the number of days specified in para. (1) and (2), as well as the one resulting from the application of para. (4), the contracting authority has the right to accelerate the procedure by reducing the period, but not at less than 10 days.

**Art. 90** - (1) Without prejudice to the provision of art. 71, where the estimated value of the public contract is less than the one provided in art. 55 para. (2) the contracting authority is obliged to send the invitation at least 15 days before the deadline for submission of tenders.

(2) If the contracting authority publishes in the SEAP the entire tender documentation and allows, from the date of publication of contract notice, direct and unrestricted access of the economic operators to this documentation, it is entitled to reduce the period referred to in para. (1) by 5 more days.

(3) The reduction referred to in para. (2) is allowed only if the contract notice contains details regarding the Internet address where the tender documentation is available.

(4) \*\*\* Repealed by EGO No. 19/2009

**Art. 91** - (1) Any candidate selected has the right to request clarifications on the tender documentation.

(2) The contracting authority is obliged to respond, clearly, fully and without ambiguity, as soon as possible, to any clarification required in a period which must not exceed, usually, 3 working days since the receipt of such request from the economic operator.

(3) The contracting authority has the obligation to send the answers - accompanied by the related questions - to all elected candidates, taking steps to conceal the identity of the person who requested the respective clarifications.

**Art. 92** - (1) Notwithstanding the provisions of art. 91 para. (2), to the extent that the clarifications are required in due time, the response of the contracting authority to these requests must be submitted no later than six days before the deadline for submitting tenders. In the situation of the acceleration of the restricted procedure, the contracting authority's response must be sent no later than four days before the deadline for submitting tenders.

(2) If the economic operator did not submit the request for clarifications in a timely manner, thereby making the contracting authority unable to meet the deadline set in para. (1), the latter has, however, the obligation to respond to the request for clarifications to the extent that the period required for the preparation and the transmission of the response enables the receipt thereof by the economic operators before the deadline for submission of tenders.

**Art. 93** - The contracting authority shall open the tenders on the date, time and address indicated in the invitation to participation, to the extent that the obligation regarding the offset of the deadline for submission of tenders did not become incident, under art. 72 or as a result of the filing a appeal.

## **Section 4**

### **The competitive dialogue**

**Art. 94** - The contracting authority is entitled to apply the competitive dialogue procedure for awarding a public contract if the following conditions are cumulatively met:

- a) the respective contract is considered to be extremely complex;
- b) the application of the open or restricted procedure would not allow the awarding of the respective public contract.

**Art. 95** - For the purposes of art. 94 letter a), an extremely complex contract is considered the public contract for which the contracting authority is not objectively able:

- a) to define the technical specifications capable of satisfying its needs and requirements, and / or
- b) to establish financial assembly and/or legal framework of implementation of the project.

**Art. 96** - The competitive dialogue is conducted in three stages:

- a) the pre-selection of candidates stage;
- b) the phase of dialogue with the candidates admitted in the pre-selection, to identify the solution/solutions able to meet the needs of the contracting authority and under which the candidates shall develop and submit the final tender;
- c) the stage of evaluation of the final tenders submitted.

**Art. 97** - The competitive dialogue is initiated by sending for publication in accordance with the provisions of art. 55, of a contract notice requiring the submission of applications to interested economic operators.

**Art. 98** - (1) Without prejudice to the provisions of art. 71, where the estimated value of public contract is equal to or higher than the one provided in art. 55 para. (2), the period from the date of sending contract notice to be published in the Official Journal of the European Union and the deadline for applications should be at least 37 days.

(2) If the contract notice is sent electronically for publication in the Official Journal of the European Union, the period referred to in para. (1) may be reduced by 7 days.

**Art. 99** - Without prejudice to the provisions of art. 71, where the estimated value of the public contract is less than the one provided in art. 55 para. (2), the contracting authority has the obligation to send the contract notice to be published in the SEAP with at least 20 days before the deadline for applications.

**Art. 100** - Any economic operator is entitled to submit an application to participate in the competitive dialogue procedure.

**Art. 101** - (1) When pre-selecting the candidates, the contracting authority has the obligation to apply objective and non-discriminatory criteria, using for this purpose only the pre-selection criteria specified in the contract notice.

(2) The contracting authority must indicate in the contract notice the criteria for pre-selection and the applicable rules, the minimum number of candidates they intend to pre-select and, if necessary, their maximum number.

(3) The minimum number of candidates indicated in the contract notice referred to in para. (2) should be sufficient to ensure genuine competition and, in any case, not less than 3.

**Art. 102** - (1) The number of candidates admitted to the second stage of competitive dialogue must be at least equal to the minimum number specified in the contract notice.

(2) If the number of candidates meeting the pre-selection criteria is less than the minimum number specified in the contract notice, the contracting authority may:

a) either cancel the competitive dialogue procedure;

b) either continue the competitive dialogue procedure only with that candidate/candidates who fulfil the required criteria.

**Art. 103** - (1) The contracting authority is required to simultaneously send an invitation to the second stage of the competitive dialogue procedure to all admitted candidates.

(2) It is forbidden to invite in the second stage of the competitive dialogue an economic operator which did not apply in the first step or does not meet the criteria for selection.

**Art. 104** - (1) The invitation of participation must include at least the following information:

a) references regarding the contract notice published;

b) the address where the dialogue will take place and the date and time of its launch;

c) the language / languages in which the dialogue will take place;

d) where appropriate, details on additional documents that the economic operators must submit for the purpose of verification of statements or supplement of documents presented in the first step to demonstrate the technical capacity and the economic and financial capacity.

(2) The contracting authority is obliged to send the invitation accompanied by a copy of the tender documentation, which shall also include the descriptive documentation.

(3) If the tender documentation is accessible directly through electronic means in the SEAP, the contracting authority has the obligation to include in the invitation information on the manner of access the respective documents.

**Art. 105** - (1) The contracting authority is obliged to include in the descriptive documentation at least a description of the needs, objectives and constraints of the contracting authority, on which the dialogue will be conducted to identify viable solutions, and, if necessary, the bonuses to be awarded to the participants in the dialogue.

(2) The contracting authority is entitled to provide in the descriptive documentation the possibility to perform the dialogue in successive rounds, in order to reduce the number of solutions discussed. The successive reduction of the solutions discussed is performed only on the basis of the evaluation criteria that were established in the tender documentation.

**Art. 106** - (1) The contracting authority has the dialogue with each admitted candidate, separately. In this dialogue are discussed options on the technical aspects, financial montages, way of solving certain issues related to the legal frame, and any other elements of the future contract, so that the identified solutions meet the objectives needs of the contracting authority.

(2) During the dialogue, the contracting authority has the obligation to ensure the appliance of the principle of equal treatment towards all participants. In this regard, the contracting authority does not have the right to provide information in a discriminatory manner that could create to one/more of the participants an additional advantage over others.

(3) The contracting authority has the obligation to do not disclose, without consent of the participant concerned, the proposed solution and other confidential information presented by it.

(4) The contracting authority carries out the dialogue until it identifies the solution/solutions appropriate to its objective needs.

(5) After declaring closed the dialog stage and announcing the participants in this regard, the contracting authority have the obligation to invite the selected participants to submit a final tender, tender which is elaborated based on the solution/solutions identified during this phase and which must contain all the necessary elements through which is presented the manner of fulfilment of the future contract.

**Art. 107** - (1) The contracting authority is required to transmit the invitation for submission of the final tender invitation with a sufficient number of days before the deadline for submission of tenders, so that each participant selected to benefit of a reasonable period to develop the final tender.

(2) The period granted for the elaboration of the final tender must not be less than the minimum period agreed with selected participants during the course of the second phase of the competitive dialogue procedure.

**Art. 108** - The invitation to submission of the final tender must include at least the following information:

- a) references regarding the contract notice published;
- b) the date and time limit for submitting the tenders;
- c) the address where tenders will be submitted;
- d) language or languages in which the tender must be elaborated;
- e) the address, date and time of opening of tenders;

f) where appropriate, details on additional documents that the economic operators must submit documents for the verification of the statements or supplement of the documents, presented in the first step for the demonstration of the technical capacity and the economic and financial capacity.

**Art. 109** - (1) During the evaluation phase, the contracting authority has the right to request clarifications, details and nuances of the tender. The evaluation of the tenders shall be performed based on criteria specified in the tender documentation and the winning tender is determined according to art. 198 para. (2).

(2) The contracting authority is entitled to require the tenderer identified to have made the most economically advantageous tender to reconfirm certain economic elements of the tender or certain commitments therein.

(3) In any of the situations referred to in para. (1) or (2), the clarifications, details, nuances, additional information or reconfirmations given should not lead to changes of basic features of the tender of solutions that were the basis for launching the invitation of submission of the final tenders, changes that would cause distortion of competition or create a supplemental advantage compared to other tenderers.

## **Section 5**

### **The negotiation with prior publication of a contract notice**

**Art. 110** - (1) The contracting authority is entitled to apply the negotiated procedure with prior publication of a contract notice in the following cases:



a) when, after applying the open procedure, restricted procedure, competitive dialogue or the request for tender, there was not submitted any tender or there have been submitted only unacceptable or irregular tenders. The application of the negotiated procedure in this case is possible only after the annulment of the initial open procedure, restricted procedure, competitive dialogue or call for tenders and only if the original requirements specified in the tender documentation are not substantially altered;

b) in exceptional circumstances, duly justified, when the nature works/products/services or the risks involved in the execution / supply / performance thereof does not allow an initial global estimation of the price of the future public contract;

c) when the services to be purchased, especially financial services, as they are listed in category 6 of annex no. 2A, or intellectual services, such as those involving the design of the works, are such that specifications cannot be developed with the precision required by the awarding of a public contract by applying the open procedure or restricted procedure;

d) where the works to be performed are necessary exclusively for scientific research, experimentation and technological development, and only if they are not performed for a profit, nor seek the covering of the corresponding costs.

(2) In the cases under para. (1) letter a) the contracting authority has the right to do not publish the contract notice if invites for negotiations only and all those tenderers who had fulfilled the qualification and selection criteria in the previous procedure and who have submitted tenders under the formal rules as set out in tender documentation.

**Art. 111** - In the case provided under Art. 110 para. (1) letter a), the contracting authority is entitled to decide the organization of a final stage of electronic tender, in which case it has the obligation to announce this decision in the contract notice and in the descriptive documentation.

**Art. 112** - The negotiation with the prior publication of a contract notice is initiated by sending for publication in accordance with art. 55, of a contract notice, through which is required the submission of applications to the interested economic operators.

**Art. 113** - (1) Without prejudice to the provisions of art. 71, where the estimated value of the public contract is equal to or higher than the one provided in art. 55 para. (2), the period from the date of transmission of the contract notice to be published in the Official Journal of the European Union and the deadline for submission of the applications must be at least 37 days.

(2) If, for reasons of urgency, the number of days specified in para. (1) cannot be met, the contracting authority has the right to accelerate the application of the procedure by reducing the period referred to in para. (1), but not to less than 15 days.

(3) If the contract notice is sent electronically for publication in the Official Journal of the European Union, the period referred to in para. (1) may be reduced by 7 days and period referred to in para. (2) may be reduced by 5 days.

**Art. 114** - Without prejudice to the provisions of art. 71, where the estimated value of the public contract is less than the one provided in art. 55 para. (2), the contracting authority has the obligation to send the contract notice to be published in the SEAP at least 10 days before the deadline for submission of the applications.

**Art. 115** - (1) Any economic operator has the right to request and obtain a copy of the descriptive documentation.

(2) In the case under art. 40 para. (2), the contracting authority has the obligation to make available to the economic operator the descriptive documentation as soon as possible, within a period not exceeding four days of receiving a request from it.

(3) The descriptive documentation must include a description of the needs, objectives and constraints of the contracting authority, on which the negotiations shall be held.

**Art. 116** - (1) Any economic operator is entitled to submit the application to participate in negotiated procedure with prior publication of a contract notice.

(2) When pre-selecting the candidates, the contracting authority has the obligation to apply objective and non-discriminatory criteria, using for this purpose only the pre-selection criteria specified in the contract notice.

(3) The contracting authority has the obligation to indicate in the contract notice the criteria for pre-selection and rules, the minimum number of candidates it intend to pre-select and, if necessary, their maximum number.

(4) The minimum number of candidates, indicated in the contract notice referred to in para. (3) must be sufficient to ensure genuine competition and, in any case not less than 3.

**Art. 117** - (1) The number of short listed candidates must be at least equal to the minimum specified in the contract notice.

(2) If the number of candidates meeting the pre-selection criteria is less than the minimum number specified in the contract notice, the contracting authority has the right:

a) either to cancel the negotiated procedure with prior publication of a contract notice;

b) either to continue the negotiated procedure with prior publication of a contract notice only with that candidate/candidates who fulfils/fulfil the required criteria.

**Art. 118** - (1) The contracting authority has the obligation to simultaneously send an invitation to participation in the second stage of the negotiated procedure with prior publication of a contract notice to all pre-selected candidates.

(2) It is forbidden to invite in the second stage of the negotiated procedure an economic operator who did not submit the application in the first step or does not meet the criteria for pre-selection.

**Art. 119** - The invitation of participation must include at least the following information:

a) references regarding the contract notice published;

b) the address where the negotiations will take place and the date and time of their beginning;

c) the language/languages in which the negotiations shall be held;

d) where appropriate, details on additional documents that economic operators must submit for the purpose of verification of statements or supplement the documents presented in the first step to demonstrate the technical capacity and the economic and financial capacity;

e) full and detailed information on the awarding criteria applied to determine the winning tender, according to the provisions of chapter V Section 3.

**Art. 119<sup>1</sup> \*)** - (1) Any candidate selected has the right to request clarifications on the descriptive documentation.

(2) The contracting authority is obliged to respond, clearly, fully and without ambiguity, as soon as possible, to any clarification required in a period which must not to exceed, usually, 3 working days since the receipt of such a request from the economic operator.

(3) The contracting authority has the obligation send the answers - accompanied by the related questions - to all the candidates selected, taking steps to conceal the identity of the person who requested the respective clarifications.

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\*) Art. 119<sup>1</sup> was introduced by EGO no. 72/2009, published in the Official Gazette No. 426 of June 23, 2009.

**Art. 119<sup>2</sup> \*** - (1) Notwithstanding the provisions of art. 119<sup>1</sup> para. (2), to the extent that the clarifications are required in due time, the response of the contracting authority to these requests must be sent no later than six days before the deadline set for the beginning of the negotiations. In the situation of acceleration of the negotiated procedure, the contracting authority's response must be sent no later than four days before the deadline set for the beginning of the negotiations.

(2) If the economic operator did not send request for clarifications in a timely manner, thereby making the contracting authority unable to meet the deadline set in para. (1), the latter still has an obligation to respond to the request for clarifications, as far as the period required for the preparation and the transmission of the response makes possible the receipt thereof by the economic operators before the deadline set for the beginning of the negotiations.

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\*) Art. 119<sup>2</sup> was introduced by EGO no. 72/2009, published in the Official Gazette No. 426 of June 23, 2009.

**Art. 120** - (1) The contracting authority is conducting negotiations with each pre-selected candidate individually. During the negotiations there are determined all the technical, financial and legal aspects of the future contract.

(2) During the negotiations, the contracting authority has the obligation to ensure the principle of equal treatment to all candidates. In this regard, the contracting authority does not have the right to provide information in a discriminatory manner that could create to one/more candidates an advantage over others.

(3) The contracting authority has the obligation to do not disclose, without consent of the candidate in question, the proposed tender or other confidential information presented to it.

**Art. 121** - (1) The contracting authority has the right to provide in the descriptive documentation the possibility to conduct the negotiations in successive rounds in order to reduce the number of proposed tenders entering into negotiation. The successive reduction of the proposed tenders is made only on the basis of the evaluation criteria that were established in the tender documentation.

(2) The contracting authority carries out negotiations until the identification and establishment of the successful tender, taking into consideration the provisions of art. 200.

(3) and (4) \*\*\* Repealed by EGO No. 19/2009

## **Section 6**

### **The negotiation without prior publication of a contract notice**

**Art. 122** - The contracting authority is entitled to apply a negotiated procedure without prior publication of a contract notice only in the following cases:

- a) \*\*\* Repealed by L. No. 337/2006
- b) when, for technical, artistic reasons or for reasons related to the protection of certain exclusive rights, the public contract can be awarded only to a particular economic operator;
- c) as a strictly necessary measure, when the time limits for appliance of the open procedure, restricted procedure, negotiation with publication of a contract notice or call for tenders can not be met for reasons of extreme urgency brought about by events unforeseeable and not due in any way to the action or inaction of the contracting authority. The contracting authority has the right to determine the duration of the contract for a longer period than the needed on, to meet the urgency situation which determined the appliance of the negotiated procedure

without prior publication of a contract notice. In cases of force majeure and in duly justified cases the contracting authority has the right to issue an order of commencement of services / work simultaneously with the initiation of the negotiated procedure without prior publication of a contract notice;

d) when the products to be delivered are produced exclusively for scientific research, experimentation, studies and technological development, and only if they are not done for obtaining profit, nor seek the covering of the corresponding costs;

e) when it is needed the purchase from the original supplier, of additional quantities of products destined to partial replacement or extension of equipment/facilities previously delivered, and only if the changing the initial supplier would put the contracting authority in the position to purchase products which, due to their technical features different from the existing ones, determine increased technical difficulties or incompatibilities of operation and maintenance. As a general rule, the duration of such contracts, as well as the one of the renewed contracts cannot be higher than three years;

f) for the purchase of raw materials listed on stock exchanges, their purchase being accomplished as a result of transactions on the cash market;

g) when the products can be purchased on particularly advantageous conditions, from an economic operator who finally liquidates its business, from a syndic judge administering the affairs of an economic operator in bankruptcy or liquidation, through an arrangement with the creditors of an economic operator in bankruptcy or liquidation or by another similar procedure as those above mentioned, regulated by law;

h) where, following a design contest, the services contract must be awarded, according to the rules initially established, to the winning competitor or to one of the winning competitors of the respective contest, in the latter case, the contracting authority having the obligation to transmit invitation to negotiation to all the winning candidates;

i) when it is needed the purchase of supplemental/additional works or services, not included in the initial contract, but which, due to unforeseen circumstances, have become necessary for the fulfilment of the contract in question, and only if are complied, cumulatively, the following conditions:

- the award is made to the initial contractor;

- The supplemental/additional works or services cannot be, technically and economically, separated from the original contract without the appearance of major inconveniences to the contracting authority and, although separable from the initial contract, are strictly necessary for its achievement;

- the aggregate value of the contracts to be awarded and addendums to be signed for supplemental/additional works and/or services does not exceed 20% of the value of the initial contract;

j) where, following the awarding of a contract of works or services, the contracting authority intends to purchase new works, respectively new services, which are similar to the works or services purchased by the awarding of the initial contract and only if are complied, cumulatively, the following conditions:

- the awarding is made to the initial contractor, and the new works, respectively the new services, consist in the repetition of works or services similar to those provided under the contract originally awarded and comply with the requirements provided in the tender book elaborated at the award of that contract;

- the initial works/services contract was originally awarded by request for tender / open or restricted procedure;

- the estimated value of the original works / services contract was determined by taking into account including the similar works /services that can be purchased thereafter;
- in the contract notice of the procedure applied for the award of the original contract was specified that the contracting authority has the right to opt for the subsequent procurement of new similar works, respectively new similar services, from the economic operator whose tender will be declared winning in the respective procedure;
- the contracting authority is entitled to apply this procedure in an interval which cannot exceed three years since the awarding of the initial contract.

**Art. 123** - If possible, excepting the cases provided in art. 122 letters b), e), g), h), i) and j), the contracting authority has the obligation to invite to negotiations a number of operators which ensure a genuine competition.

## **Section 7**

### **The call for tenders**

**Art. 124** - Above the threshold provided at art. 19, the contracting authority is entitled to apply the procedure of request for tenders if the estimated value, excluding VAT, of the public contract is less than the equivalent in RON of the following thresholds:

- a) for the supply contract: EUR 125,000;
- b) for the services contract: EUR 125,000;
- c) for works contract: EUR 4,845,000.

**Art. 125** - (1) As of January 1st, 2007, the call for tenders is initiated by publication in SEAP of an invitation to the awarding procedure.

(2) The invitation includes the following information:

- a) the date and time limit for receipt of tenders;
- b) the address to which tenders will be submitted;
- b<sup>1</sup>) the date and time of opening of tenders;
- c) the language or languages in which the tender must be elaborated;
- d) if is required the fulfilment of certain minimum qualification criteria, their indication;
- e) a brief description of the object of the public contract to be awarded;
- f) the manner of obtaining the tender documentation;
- g) the funding source.

(3) If the tender documentation is accessible directly through electronic means, the authority has the obligation to include in the invitation to participation information on the manner of accessing of these documents.

**Art. 126** - (1) Until December 31, 2006 the contracting authority has the right to do not publish the invitation to participation in the SEAP, subject to passing it to at least three economic operators.

(2) From January 1st, 2007, the contracting authority has the right, in duly justified cases, to request the National Authority for Regulating and Monitoring of Public Procurement the exemption from the obligation under art. 125 para. (1) for a period not exceeding more than 12 months after the entry into force of this emergency ordinance.

(3) The National Authority for Regulating and Monitoring of Public Procurement has the right to reject the request for exemption, if the justification provided is not pertinent.

**Art. 127** - (1) Notwithstanding the provisions of art. 71, in the case provided under art. 125 para. (1) the contracting authority is obliged to submit for publication the invitation to participation at least 10 days before the deadline for submission of tenders.

(2) If the contracting authority publishes in the SEAP the entire tender documentation and allows from the date of publication of the invitation to participation, direct and unrestricted access of economic operators to this documentation, it is entitled, in the case of the award of a less complex supply contract, to reduce the period referred to in para. (1) by 4 days.

(3) abrogated

**Art. 128** - Notwithstanding the provisions of art. 71, in the case provided under art. 126 para. (1) the contracting authority is obliged to send the invitation to participation at least 12 days before the deadline for submission of tenders.

**Art. 129** - The contracting authority shall open the tenders at the address, date and time indicated in the invitation to participation, to the extent that it did not become needed the offset of the deadline for submission of tenders, as specified in art. 72 or as a result of the filing a appeal.

**Art. 130** - (1) In the case under Art. 126 para. (1) the contracting authority is obliged to cancel the procedure of request of tenders if, after transmission of the invitation to participation, there were not submitted at least two adequate tenders.

(2) In the case under para. (1) after cancelling the procedure of request of tenders, the contracting authority has the obligation to, in case of application of a new procedure of request of tenders, send invitation to participation to other economic operators which have the prerequisites for obtaining the tender. If, after applying a new procedure, the contracting authority receives only one adequate tender, it has the right to award the public contract to the respective tenderer.

## **Section 8**

### **Design contest**

**Art. 131** - The contracting authority is entitled to hold a design contest, as described under art. 18 para. (2) as an independent procedure, in which competitors can obtain prizes and / or bonuses for participation, or as part of other procedure which leads to the award of a services contract.

**Art. 132** - The contracting authority has the obligation to specify in the contest documentation any information, requirement, rule, criterion or the others alike, necessary to ensure that potential competitors a complete and accurate information on the manner of application of the design contest.

**Art. 133** - The competition documentation must include at least:

- a) general information on the contracting authority;
- b) instructions regarding deadlines to be respected and formalities that must be fulfilled in connection with the participation in the contest;
- c) minimum qualification requirements which the contracting authority has decided to request, and documents to be presented by the competitors to prove the fulfilment of the respective requirements;
- d) all requirements based on which the competitors shall elaborate and present the project;
- e) the amount of the prizes to be granted, if the contest is organized as an independent procedure;
- f) the commitment of the contracting authority to enter into the service contract with the winner or winners of the respective contest, if the contest is held as part of another procedure of awarding the services contract;

g) detailed and complete information regarding the criteria applied to determine the winning project /projects.

**Art. 134** - (1) The design contest shall be initiated by publication in accordance with art. 55, of a contract notice through which it requests to the interested economic operators to submit projects. The notice must include at least the information set out in annex no. 3D and is developed in accordance with the standard form adopted by the European Commission.

(2) The number of days between the date of publication of contract notice and the date of submission of the projects must be established so that the economic operators benefit of a reasonable period for the elaboration of such projects.

(3) Notwithstanding the provisions of para. (2) the contracting authority is obliged to submit for publication the contract notice at least 52 days before the deadline for submission of projects.

**Art. 135** - If the contracting authority requests the electronic transmission of the projects, the requirements of art. 64 and 65 shall apply accordingly.

**Art. 136** - (1) The contracting authority has the obligation to take all measures necessary so that the exchange of messages, communications and archiving information be made in such a way as to ensure the full integrity and confidentiality of all information provided by the competitors.

(2) The content of the plans or projects submitted must remain confidential at least until the date set for their opening, the jury following to take note of the contents of those projects only after that date.

**Art. 137** - (1) The contracting authority is entitled to make a preliminary selection of candidates, using for this purpose clear, objective, non-discriminatory criteria, which must be specified explicitly in the competition documentation.

(2) The number of candidates selected must be sufficient to ensure a genuine competition.

**Art. 138** - (1) In order to assess the projects submitted in a design contest, the contracting authority has the obligation to appoint a jury formed of at least 3 members, individuals independent to the competitors, with professional training and relevant experience in the field, and with recognized moral probity.

(2) If the contestants were asked a specific professional qualification, at least one third of the number of the members of the jury should have that qualification or an equivalent one.

**Art. 139** - (1) The projects must be submitted anonymously, such anonymity following to be preserved until the moment when the jury has adopted a decision or formulated an opinion.

(2) The jury is autonomous in the decisions and opinions which it issues.

**Art. 140** - (1) The jury has the obligation to evaluate the projects submitted exclusively based on the evaluation criteria specified in the notice of contest.

(2) The jury has the obligation to prepare a report, signed by all its members, which must include the qualitative assessment of each project, specific comments and, if appropriate, the list of issues to be clarified.

**Art. 141** - (1) The jury has the right to invite the competitors to respond to problems that have been recorded in the report referred to in art. 140 para. (2) to clarify any aspects regarding the solution/project proposed.

(2) The jury has the obligation to produce complete minutes of the discussions carried out according to para. (1).

## **Chapter IV**

### **Special procedures for awarding the public contract**

## **Section 1**

### **The Framework Agreement**

**Art. 142** - (1) The contracting authority is obliged to conclude a framework agreement, usually by applying the open or restricted procedure.

(2) Notwithstanding the provisions of para. (1), for the conclusion of a framework agreement the contracting authority has the right to apply other procedures provided for in art. 18 only in the specific circumstances provided for in this emergency ordinance.

**Art. 143** - The contracting authority has no right to misuse or improperly use the framework agreements, so as to prevent, restrict or distort competition.

**Art. 144** - (1) The contracting authority is not entitled to establish that the duration of a framework agreement exceeds more than four years, except for exceptional cases that can justify in particular by the specific object of the contracts to be awarded based on framework agreement.

(2) The contracts awarded based on a framework agreement can only be concluded between the contracting authority/authorities and the economic operator/operators that are part of the agreement.

**Art. 145** - When awarding a public contract based on the provisions of a framework agreement, the contracting authority has no right to impose or accept substantial changes to the elements/conditions initially set by the framework agreement.

**Art. 146** - The contracting authority is required to determine the economic operator or, where appropriate, economic operators to be part of the respective framework agreement by applying the selection and awarding criteria provided under the chapter V.

**Art. 147** - (1) If the contracting authority concludes a framework agreement with several economic operators, the respective agreement must provide at least:

- a) the obligations undertaken by the economic operator through the technical proposal;
- b) the unit price provided by the economic operator in the financial proposal and based on which it will be determined the price of each contract awarded thereafter.

(2) The contracting authority has the obligation to award the public contracts subsequent to the framework agreement only with the compliance of the technical and financial conditions laid down in the respective framework agreement.

(3) Every time it intends to award a public contract subsequent to a framework agreement, the contracting authority has the obligation to consult in writing the economic the economic operator, requesting it, if required, the completing of the tender.

**Art. 148** - If the contracting authority concludes the framework agreement with several economic operators, their number can not be less than 3, provided that there is a sufficient number of economic operators who met the qualification and selection criteria and who have presented admissible tenders.

**Art. 148<sup>1\*)</sup>** - If the number of economic operators who met the qualification and selection criteria and have submitted admissible tenders is less than the minimum specified in the contract notice / participation invitation to tender, the contracting authority has the right:

- a) to cancel the awarding procedure for concluding the framework agreement;
  - b) to continue the award procedure for concluding the framework agreement only with that/those economic operator/operators who meets/meet the required qualification and selection criteria and have submitted admissible tenders.
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\*) Art. 148<sup>1</sup> was introduced by EGO. 76/2010, published in the Official Gazette No. 453 of July 2, 2010.

**Art. 149** - (1) If the contracting authority concludes the framework agreement with several economic operators, the agreement must provide at least:

a) the obligations that each of the economic operators undertook through the technical proposal;

b) the unit price that each economic operator have provided in the financial proposal.

(2) The contracting authority has the right to award public contracts subsequent to a framework agreement with several economic operators:

a) either without reopening the competition;

b) either by reopening the competition between economic operators who signed the framework agreement.

(3) The contracting authority has the right to award public contracts in accordance with the provisions of para. (2) letter a) only if all elements/conditions that will govern such contracts have been established in the framework agreement.

(4) The contracting authority has the right to award public contracts in accordance with the provisions of para. (2) letter b):

a) either respecting the elements/conditions of the framework agreement;

b) either, if not all elements/conditions were clearly set out in the framework agreement, by detailing them or using, if necessary, other elements/conditions provided in the specifications developed for the respective framework agreement.

**Art. 150** - In the case under art. 149 para. (4) letter b) the contracting authority is obliged to reopen the competition in compliance with the following procedure:

a) for each contract to be awarded, the contracting authorities shall consult in writing the economic operators that signed the respective framework agreement;

b) the contracting authority sets a sufficient deadline for submission of the tenders, in this respect having the obligation to take into account issues such as the complexity of the object and the time required for the submission of tenders;

c) the tenders shall be submitted in writing and their content shall remain confidential until the deadline stipulated for opening date;

d) the contracting authority shall award each contract to the tenderer which has submitted the best tender on the basis of the award criteria stated in the documentation based on which the framework agreement was concluded.

## **Section 2**

### **The dynamic purchasing system**

**Art. 151** - (1) The contracting authority has the right to use a dynamic purchasing system only through the SEAP, and only for the purchase of everyday consumer products, whose general features available on the market meet the needs of the contracting authority.

(2) The contracting authority has no right to misuse or improperly use the dynamic purchasing system in order to prevent, restrict or distort competition.

(3) The request for fees to the interested economic operators or participants in the purchasing system is forbidden.

**Art. 152** - The contracting authority has the right to determine the duration of a dynamic purchasing system to exceed more than 4 years only in exceptional cases duly justified.

**Art. 153** - The contracting authority has the obligation to observe the rules of the open procedure in all phases of the dynamic purchasing system.

**Art. 154** - To launch the dynamic purchasing system and awarding the public contracts under that system, the contracting authority is obliged to use only electronic means, while respecting the provisions concerning the rules of communication and transmission of tenders referred to in art. 59 para. (3), art. 61, 64 and 65.

**Art. 155** - When launching a dynamic purchasing system, the contracting authority has the obligation to:

a) publish a contract notice clearly stating that for the awarding of the public contract/contracts is used a dynamic purchasing system as well as the internet address where the tender documentation is available;

b) indicate in the specifications, along with the characteristics of the products to be purchased, also the relevant information on the characteristics of the system used, electronic equipment used, options and instructions for access;

c) to allow by electronic means from the time of publication of the contract notice and until the closing of the dynamic purchasing system, unrestricted, direct and complete access to the content of the tender documentation.

**Art. 156** - (1) After launching a dynamic purchasing system and on the entire period of its existence, the contracting authority has the obligation to enable any interested economic operator to submit an indicative tender, in order to be admitted in the system.

(2) After receiving an indicative tender, the contracting authority has the obligation to verify if the tenderer meets the qualification criteria established and if the technical proposal submitted complies with the requirements of the specifications.

(3) The contracting authority is required to complete the verification referred to in para. (2) within maximum 15 days since the receipt of the indicative tenders.

(4) Immediately after completion of the verification referred to in para. (2), the contracting authority has the obligation to inform the tenderer regarding its acceptance in the dynamic purchasing system or, where appropriate, on the decision to reject the indicative tender.

**Art. 157** - The tenderer has the right to improve its indicative tender at any time, provided that the technical proposal continues to meet the requirements of the specifications.

**Art. 158** - (1) For the purpose of awarding the public contracts through the dynamic purchasing system, the contracting authority has the obligation to publish for each contract, a new simplified contract notice, through which all the interested economic operators are invited to submit indicative tenders in accordance with the provisions of art. 156.

(2) The contracting authority has the obligation to establish a deadline for the submission of the indicative tenders, reported to the date of the publication of the simplified contract notice referred to in para. (1,) must not be earlier than:

a) 15 days, if the estimated value, according to art. 32, is equal to or higher than the RON equivalent of EUR 125,000;

b) 5 days, if the estimated value, according to art. 32, is lower than the RON equivalent of EUR 125,000.

**Art. 159** - (1) The contracting authority has the obligation to invite all tenderers admitted to the dynamic purchasing system to submit a firm tender for the public contract to be awarded, establishing in this regard a deadline for submission.

(2) The contracting authority does not have the right to invite the tenderers to submit firm tenders until it has finished the verification of all the indicative tenders submitted within the period provided for in art. 158 para. (2).

**Art. 160** - The contracting authority has the obligation to award the private contract to the tenderer who submits the most advantageous firm tender based applying the award criteria set out in the contract notice published at the launch of a dynamic purchasing system. Where appropriate, these criteria can be formulated more accurately in the invitation referred to in art. 159 para. (1).

### **Section 3**

#### **The electronic auction**

**Art. 161** - (1) The contracting authority has the right to use the electronic auction in the following situations:

a) as a final stage of the open procedure, restricted procedure, negotiation with publication of a contract notice, applied in the cases provided for in art. 110 letters a) or in those referred to in art. 251 para. (1), or of the call for tenders before the awarding of the public contract, and only if the technical specifications have been defined with precision in the specifications;

b) to the reopening of the competition between the economic operators who have signed a framework agreement in accordance with art. 149 para. (4) and art. 150;

c) on the submission of the firm tenders for the awarding of a public contract using a dynamic purchasing system.

(2) The contracting authority is obliged to announce the decision to use the electronic tender in the contract notice and in the tender documentation.

**Art. 162** - The contracting authority has no right to misuse or improper use electronic tender in order to:

a) prevent, restrict or distort competition;

b) amend the private contract, as it was provided in the contract notice and the tender documentation.

**Art. 163** - The award of the services and works contracts involving intellectual performances, such as consulting, design and other alike cannot be object of the electronic auction.

**Art. 164** - When planning to use the electronic auction the contracting authority has the obligation to include in the information and instructions provided in art. 33 also the following specific clarifications:

a) the elements of the tender which shall be object to the repetitive tendering process, provided that such elements are quantifiable and can be expressed in figures or percentages;

b) any limits on the values by which the elements referred to under letter. a) can be improved, as they result from the specifications that define the object of the contract;

c) the information to be provided to the tenderers during the electronic tender and the moment when this information will be available;

d) the relevant information concerning the electronic tender process;

e) the conditions under which the tenderers will be allowed to tender, with particular reference to the minimum differences which, if any, will be required tendering the new tenders;

f) the relevant information concerning the electronic equipment used, the technical conditions and practical ways to achieve the connection.

**Art. 165** - (1) Before issuing an electronic tender the contracting authority has the obligation to make a full initial evaluation of the enders in accordance with the award criteria set in the tender documentation.

(2) The contracting authority is obliged to invite all tenderers who have submitted admissible tenders to submit new prices and/or, where appropriate, new values of the tender's elements. The invitation is sent electronically simultaneously to all tenderers concerned.

(3) The invitation must state the date and the start time of the electronic tender as well as any information necessary for the performance of the individual connection to the electronic equipment used.

(4) The contracting authority does not have the right to start the electronic earlier than two working days after the date on which the invitations are sent.

**Art. 166** - If the contract to be awarded based on the criterion of the 'most economically advantageous tender', the invitation referred to in art. 165 para. (3) must contain information on:

a) the result of the first evaluation of the tender submitted by the recipient tenderer;  
b) the mathematical formula to be used for the automatic establishment of the final classification, considering the new prices and/or new values submitted by the tenderers. The mathematical formula used incorporates weights of the criteria factors to be applied for determining the most economically advantageous tender, as specified in the contract notice or the tender documentation.

**Art. 167** - (1) The electronic tender, the repetitive tendering process concerns:

a) either only prices, when the awarding criterion is the lowest price;  
b) either prices and/or other elements of the tender, as provided in the tender documentation, if the criterion for award is the most economically advantageous tender.

(2) The electronic tender shall be conducted in one or more successive rounds.

**Art. 168** - (1) During each round of the electronic tender, the contracting authorities has the obligation to instantaneously communicate to all tenderers at least the information necessary for them to determine, at any time, the position they occupy in the ranking. The contracting authority has the right to communicate also other information concerning:

a) the number of participants in that round of the electronic auction;  
b) new prices or values submitted in the round of tender by other tenderers, if the tender documentation provided for this possibility.

(2) During the performing of the rounds of tender, the contracting authority does not have the right to disclose the identity of the tenderers.

**Art. 169** - (1) The electronic tender is completed by one or a combination of the following ways:

a) at a moment clearly established in advance and communicated to the tenderers in the invitation;

b) after several rounds of bidding the calendar of performance of which was precisely determined in advance and communicated to tenderers in the invitation;

c) when there are not received any more new prices and/or values which meet the minimum requirements of differentiation imposed; in this case, the invitation must specify a deadline that will be left to run since the receipt of the last tender until the completion of the electronic tender.

(2) The contracting authority has the obligation to award the public contract according to the provisions of art. 200, based on the result obtained following the completion of the electronic tender.

## **Chapter V**

### **The award of the public contract**

## **Section 1**

### **The tender. Alternative tenders**

**Art. 170** - The tenderer is required to prepare the tender in accordance with the provisions of the tender documentation.

**Art. 171** - The tender has binding character, as concerns the content, throughout the period of validity established by the contracting authority.

**Art. 172** - (1) The economic operator is required to submit the tender to the address and until the date and time limit for submission set out in the contract notice or participation invitation.

(2) The risks of the transmission of the tender, including force majeure, shall be borne by the economic operator.

(3) The tender submitted to an address of the contracting party other than the one established or after the deadline for submission is returned unopened.

(4) The content of the tenders must remain confidential until the date set for their opening, the contracting authority following to take note of the content of the respective tenders only after that date.

**Art. 173** - (1) The contracting authority has the right to allow the tenderers to submit alternative tenders only if the award criterion is the "the most economically advantageous tender".

(2) The contract notice must state explicitly whether it is allowed to submit alternative tenders or if this possibility is prohibited. If this statement is missing, the contracting authority has no right to take into consideration the alternative tenders.

**Art. 174** - (1) The contracting authority that allows the submission of alternative tenders has the obligation to specify in the specifications the minimum compelling requirements that these must observe and any other requirements for their presentation.

(2) The contracting authority has the obligation to do not consider the alternative tenders that do not meet the minimum requirements set out in para. (1).

**Art. 175** - If it announced the possibility of submission of alternative tenders, the contracting authority does not have the right to reject such tender on the sole reason that if it is declared the winner:

a) the supply contract for the award of which the procedure was organized turns into a services contract, or

b) the services contract for the award of which the procedure was organized turns into a supply contract.

## **Section 2**

### **Selection and qualification of candidates/tenderers**

#### **Paragraph 1**

##### **Qualification and selection criteria**

**Art. 176** - The contracting authority is entitled to apply qualification and selection criteria concerning only:

- a) the personal situation of the candidate or tenderer;
- b) the capacity of exercise of the professional activity;
- c) the economic and financial situation;

- d) the technical and/or professional capacity;
- e) the quality assurance standards;
- f) the environmental standards, in cases provided for in art. 188 para. (2) letter f) and para. (3) letter e).

**Art. 177** - (1) The economic operators are entitled to present certificates issued by a competent public authority or a public or private legal body complying with the European certification standards, to demonstrate the fulfilment of certain qualification and selection criteria formulated in accordance with art. 176.

(2) The contracting authority is not entitled to impose to candidates/tenderers the obligation to present a specific certification, the latter having the right to present, in order to demonstrate the compliance with certain requirements, any other documents equivalent to such certificate or which prove, conclusively, the compliance with such requirements. The contracting authority is entitled to request, if considered necessary, clarification or for additions to the presented documents.

(3) The Government has the right to establish, by resolution, methods of certification or inclusion on official lists, at national level, of the economic operators who opt for such a certification system. In this case the National Authority for Regulating and Monitoring of Public Procurement is required to inform the European Commission about the details and operation manner of the system.

(4) When using the official lists of designated economic operators, the contracting authorities will require additional certificates attesting the fulfilment of the obligations of payment of taxes and social security contributions in accordance with legal provisions in force.

**Art. 178** - (1) If, for the criteria of the type of those referred to in art. 176 letters c) and d), the contracting authority considers that it is justified the imposition of certain minimum requirements that the tenderers/candidates must meet to be considered qualified, then these requirements must be specified, according to the principle of transparency, within the invitation / contract notice.

(2) The contracting authority is entitled to require the fulfilment of certain minimum requirements regarding the economic and financial situation and/or technical and professional capacity, which would lead to the restriction of the participation in the awarding procedure.

**Art. 179** - (1) Qualification and selection criteria established by the contracting authority must have a concrete connection with the contract to be awarded.

(2) The contracting authority is obliged to respect the principle of proportionality when establishing the qualification and selection criteria, and the level of the minimum requirements which the tenderers/candidates must fulfil.

(3) Qualification and selection criteria determinate within the invitation / contract notice must be the same with those within the tender documentation.

(4) Any modification and / or addition to the qualification and selection criteria specified under par. (3) leads to the annulment of the award procedure, except for changes ordered by decision of National Council for Solving Complaints. "

## **Paragraph 2**

### **Personal situation of the candidate or tenderer**

**Art. 180** - The contracting authority has the obligation to exclude from the procedure applied for awarding the public contract any tenderer/candidate of which it is aware that, over

the past five years, was sentenced by a final decision of a court, for having participating in the activities of a criminal organization, for corruption, for fraud and/or money laundering.

**Art. 181** - The contracting authority has the right to exclude from a procedure for awarding the public contract any tenderer/candidate which is in any of the following situations:

- a) went bankrupt as a result of the decision rendered by the syndic judge;
- b) \*\*\* Repealed EGO no. 76/2010
- c) has not fulfilled the obligations relating to payment of taxes and social security contributions to the budgets of the general government, in accordance with the laws in force in Romania or in the country of establishment;
- c<sup>1</sup>) in the last two years has not fulfilled or has fulfilled improperly its contractual obligations, for reasons attributable to the tenderer in question, which caused or is likely to cause serious damages to its beneficiaries;
- d) was convicted, in the past three years, by the final decision of a court, for an act which brought damage to the professional ethics or for committing a professional error;
- e) present false information or do not have the information requested by the contracting authority, in order to demonstrate the fulfilment of the qualification and selection criteria.

**Art. 182** - (1) The contracting authority is obliged to accept as sufficient and relevant demonstration of the fact that the tenderer/candidate does not fall into one of the situations referred to in art. 180 and 181 any document found enlightening, in this regard, in the country of origin or the country where the tenderer/candidate is established, such as certificates, criminal records or equivalent documents issued by the competent authorities of that country.

(2) In case of doubt regarding the personal situation of the respective candidates/tenderers, the contracting authority has the right to request information directly from the competent authorities which issue documents as provided in para. (1). As regards the cases mentioned in art. 180, in accordance with the law of the State where the candidates or tenderers are established, these applications relate to individuals and legal entities, including, where appropriate, company managers or any person with powers of representation, decision or control in relation to the candidate or tenderer.

(3) Where the country of origin or country in which the tenderer/candidate is established does not issue documents such as those provided in para. (1) or where such documents do not cover all the situations referred to in art. 180 and 181, the contracting authority is obliged to accept an affidavit or, if the respective country does not provide legal dispositions regarding such affidavit, an authenticated statement issued before a notary, an administrative or judicial authority or a professional association that has jurisdiction in this regard.

### **Paragraph 3**

#### **Capacity of exercise the professional activity**

**Art. 183** - The contracting authority is entitled to claim any economic operator to submit documents proving registration form as natural or legal person and, where applicable, professional certification or membership, in accordance with the provisions of the country in which the tenderer/candidate is established.

### **Paragraph 4**

#### **Economic and financial situation**

**Art. 184** - (1) The contracting authority has the right to request that economic operator participating in the procedure for awarding of a public contract to prove his economic and financial situation.

(2) If the contracting authority requires the demonstration of the economic and financial situation, then it must indicate in the tender documentation and information that operators are going to present for this purpose.

**Art. 185** - (1) Proof of economic and financial situation is made, where appropriate, by presenting one or more documents, such as:

a) the relevant bank statements or, where appropriate, evidence of professional risk insurance;

b) balance sheets or extracts from balance sheets, where publication of such balance sheets is required under the law of the country where the tenderer/candidate is established;

c) statement of overall turnover and, where appropriate, of turnover in the activity area corresponding to the object of the contract for an earlier period, covering the activity of at most last three years, to the extent that such information is available; in the latter case the contracting authority must take into account the date on which the trader was established or started its commercial activity.

(2) If, for objective reasons, duly justified, the economic operator is unable to produce the documents requested by the contracting authority, he has the right to demonstrate his economic and financial situation also by the presentation of other documents that the contracting authority may consider clarifying, in the extent that they reflect a true picture of the economic and financial situation of the candidate/tenderer.

**Art. 186** - (1) The economic and financial capacity of tenderer/candidate can be sustained, for the fulfilment of a contract, also by another person, regardless of legal relations between the tenderer/candidate and the respective person.

(2) If the tenderer/candidate demonstrates its economic and financial situation also invoking the support granted, in accordance with para. (1), by another person, then he must prove the support they receive, usually, by presenting a firm commitment of the respective person, signed in original by which it confirms that it will provide the tenderer/candidate the invoked financial resources. The person who provides financial support should not be in the situation that leads to exclusion from the awarding procedure, according to art. 180 and 181 lit. a), c1) and d).

(3) When a group of economic operators submits the common tender/application, the economic and financial situation is demonstrated by considering the resources of all group members. If the group benefits from the financial support of one/more third party/parties, the economic and financial situation is demonstrated in accordance with the provisions of para. (2).

## **Paragraph 5**

### **Technical and/or professional capacity**

**Art. 187** - (1) The contracting authority has the right to request that the economic operator participating in the procedure for awarding the public contract proves its technical and/or professional capacity.

(2) If the contracting authority requires demonstration of the technical and/or professional capacity, it must indicate in the tender documentation, the information that the economic operators are going to present for this purpose.



(3) The technical and/or professional capacity of a tenderer/candidate is evaluated based on its experience, skills, efficiency and effectiveness, resulting from the analysis of the information presented during the awarding procedure.

**Art. 188** - (1) In the case of the procedure for awarding a supply contract, in order to verify the technical and/or professional capacity of the tenderers/candidates, the contracting authority has the right to require them, according to the specific, quantity and complexity of the products to be supplied, and only to the extent that such information is relevant for the fulfilment of the contract, the following:

a) a list of main deliveries of products made in the last three years, containing values, delivery periods, beneficiaries, whether the latter are contracting authorities or private clients. Deliveries of products are confirmed by presenting certificates/documents issued or countersigned by an authority or by the beneficiary client. If the beneficiary is a private client and, for objective reasons, the economic operator is unable to obtain a certification/confirmation from it, the demonstration of deliveries is made by a declaration by the economic operator;

b) a statement regarding the technical equipment and the measures taken to ensure the quality and, where appropriate, the study and research resources;

c) information on specialty staff/technical body of which it disposes or whose commitment to participate was obtained by the candidate/tenderer, in particular to ensure quality control;

d) certificates or other documents issued by competent bodies in this respect, showing conformity of products, clearly identified by references to relevant specifications or standards;

e) samples, descriptions and/or photographs the authenticity of which must be proved if the contracting authority so requests.

(2) In the case of the procedure for awarding a services contract, in order to verify the technical and/or professional capacity of the tenderers/candidates, the contracting authority has the right to require them, according to the specific, quantity and complexity of the services to be performed, and only to the extent that such information is relevant for the fulfilment of the contract, the following:

a) a list of main services provided in the past three years, containing values, periods of performance, beneficiaries, whether the latter are contracting authorities or private clients. The performance of services is confirmed by the presentation of certificates/documents issued or countersigned by an authority or by the private client beneficiary. If the beneficiary is a private client and, for objective reasons, the economic operator is unable to obtain a certification/confirmation from it, the demonstration of the provision of services is achieved by a statement of the economic operator;

b) a statement of the technical equipments and measures taken to ensure the quality and, where appropriate, the study and research resources;

c) information on specialty staff/technical body of which it disposes or whose commitment to participate was obtained by the candidate/tenderer, in particular to ensure quality control;

d) information regarding the education, training and qualification of the management staff, and persons responsible for carrying out the service contract;

e) a statement regarding the average annual number of staff employed and managerial staff over the past three years;

f) where appropriate, information on environmental protection measures which the economic operator may apply during the performance of the services contract;

g) information on technical equipment, facilities, machinery of which the economic can dispose for the proper performance of the services contract;

h) information regarding the part of the contract which the economic operator has any intention to subcontract.

(3) In the case of the procedure for awarding a works contract, in order to verify the technical and/or professional capacity of the tenderers/candidates, the contracting authority has the right to require them, according to the specific, quantity and complexity of the works to be performed, and only to the extent that such information is relevant for the fulfilment of the contract, the following:

a) a list of works executed in the last 5 years, accompanied by a certification of performance for the most important works. These certifications indicate the beneficiaries, whether they are contracting authorities or private clients, the value, date and location of performance of works and shall specify whether they were carried out in accordance with the professional norms and if they were carried out successfully;

b) information on specialty staff/technical body of which it disposes or whose commitment to participate was obtained by the candidate/tenderer, in particular to ensure quality control;

c) information regarding the education, training and qualification of the management staff, as well as of the persons responsible for the execution of the works;

d) a statement regarding the average annual number of staff and managerial staff over the past three years;

e) where appropriate, information on environmental protection measures which the economic operator may apply during the performance of works contract;

f) a statement regarding the equipment, facilities, machinery of which the economic operator may dispose for the proper performance of the works contract;

g) information on the part of the contract which the economic operator has, possibly, intention to subcontract.

**Art. 189** - (1) If the products to be supplied or services to be provided are complex or are destined for a specific purpose, the contracting authority has the right to verify/control - directly or through a competent authority belonging to State in which the economic operator is established and subject to the agreement of these authorities - the productive capacity of the supplier or the technical capacity of the provider, the study and research methods used, as well as the quality control measures applied.

**Art. 190** - (1) The technical and professional capacity of the tenderer/candidate can be sustained, for the fulfilment of a contract, and another person, regardless of the legal relations between the tenderer/candidate and such person.

(2) If the tenderer/candidate demonstrates its technical and professional capacity invoking also the granted support, in accordance with para. (1), of another person, then he has the obligation to prove the support they receive, usually by presenting a firm commitment of the respective person, signed in original by which it confirms that it shall provide the candidate/tenderer the technical and professional resources invoked. The person who provides technical and professional support must not be in the situation that leads to exclusion from the awarding procedure, according to the provisions of art. 180 and of art. 181 a), c1), d).".

(3) When a group of economic operators submits the tender/application, the technical and professional capacity is demonstrated by considering the resources of all group members. If the group benefits of the technical and professional support from one/more third party/parties, the technical and professional capacity is demonstrated in accordance with the provisions of para. (2).

## **Paragraph 6**

### **Quality assurance standards**

**Art. 191** - If it is required the presentation of certificates, issued by independent bodies, attesting that the economic operator observes certain quality assurance standards, the contracting authority must refer to quality assurance systems based on the relevant European standards series, certified by bodies conforming to European standards series concerning the certification.

**Art. 192** - In accordance with the principle of mutual recognition, the contracting authority has the obligation to accept equivalent certificates issued by bodies established in other European Union countries.

**Art. 193** - If the economic operator does not have a quality certificate as required by the contracting authority, the latter is obliged to accept any other evidences or proves presented by the economic operator, provided that evidence/proof presented confirms the insurance of an appropriate level of quality.

## **Paragraph 7**

### **Environmental Standards**

**Art. 194** - If it is requested that the demonstration of the measures provided under art. 188 para. (2) letter f) and para. (3) letter e) to be made by the presentation of certificates issued by independent bodies attesting that the economic operator meets certain standards of environmental protection, the contracting authority must be reported:

- a) either to the Community Eco-Management and Audit Scheme (EMAS);
- b) either to the environmental management standards based on European or international standards series, certified by bodies conforming to the Community law or to European or international standards concerning the certification.

**Art. 195** - In accordance with the principle of mutual recognition, the contracting authority has the obligation to accept equivalent certificates issued by bodies established in other European Union countries.

**Art. 196** - If the economic operator does not have an environmental certificate as required by the contracting authority, the latter is obliged to accept any other evidence or proof presented by the economic operator, provided that such evidence/proof presented confirms the insurance of an appropriate level of environmental protection.

## **Section 3**

### **Criteria for awarding the public contract**

**Art. 197** - The contracting authority has the obligation to specify in the participation notice the criteria of award of the public contract, which, once established, can not be changed throughout the duration of the award procedure.

**Art. 198** - (1) Notwithstanding the legal or administrative provisions relating to the remuneration of certain services, the criteria for awarding the public contract can only be:

- a) either the most economically advantageous tender;
- b) either, exclusively, the lowest price.

(2) If the awarding of the public contract is realized through the competitive dialogue procedure, the award criteria used must be only the most advantageous economically tender.

**Art. 199** - (1) Where the criterion of the "most economically advantageous" tender is applied, the tender established as being winning, is the tender that meets the highest score resulting from the application of a system of evaluation factors for which are established relative weight. If, for objective reasons, which the contracting authority can justify thoroughly, it is impossible to accurately determine the relative weights for each evaluation factor, the contracting authority has the obligation to indicate in the contract notice or in the tender documentation at least the decreasing order of importance of the evaluation factors to be used.

(2) tender evaluation factors set out in para. (1) may be, together with the price: quality, technical or functional characteristics, environmental characteristics, running costs, cost/effectiveness rapport, after-sale services and technical assistance, delivery or performance term, other elements considered significant for the evaluation of the tenders.

(3) the contracting authority has the obligation to state, clearly and detailed, in the invitation/participation notice as well as in the tender documentation, the tender evaluation factors with their relative weights.

(4) The contracting authority shall specify in the tender documentation calculation algorithm or methodology of scoring concrete benefits that will result from technical and financial proposals submitted by the tenderers.

(5) Any amendment and / or supplement the evaluation factors specify under para. (3) leads to cancelling the award procedure.

#### **Section 4**

##### **The establishment of the winning tender**

**Art. 200** - (1) Within 20 days from the date of opening of tenders, the contracting authority has the obligation to determine the winning tender, based on the awarding criteria specified in the contract notice and in the tender documentation, provided that the tenderer satisfies the selection and qualification criteria required.

(2) In duly justified cases, the contracting authority may extend the evaluation period only once.

(3) The grounded reasons are presented in an explanatory note, approved by the manager of the contracting authority which is part of the public procurement file.

**Art. 201** - (1) During the application of the awarding procedure, the contracting authority has the right to request clarification and, if necessary, completions of the documents submitted by tenderers/candidates for the demonstration of the fulfilment of the requirements established though the qualification and selection criteria or for the demonstration of the compliance with the requirements of the tender with the requirements.

(2) The contracting authority is not entitled to determine through the clarifications/completions required the appearance of an obvious advantage for a tenderer/candidate.

**Art. 202** - (1) Where a tender has an apparently unusually low price compared to what is to be supplied, performed or provided, the contracting authority must request the tenderer, in writing and before making a decision of rejecting such tender, details and explanations which it considers significant regarding the tender, as well as to verify the answers that justify such price.

(1<sup>1</sup>) A tender has an apparently unusually low price compared to what is to be delivered, executed or performed, when the tendered price, excluding VAT, represents less than 85% of the estimated value of the respective contract or, if in the awarding procedure are at least 5 tenders that are not considered unacceptable and/or inconsistent, when the price offered is less than 85% of the arithmetic mean of the tenders calculated without regard to the lowest financial proposal and the highest financial proposal.

(2) The contracting authority is obliged to consider the justifications received from the tenderer, as provided under para. (1), particularly those relating to:

a) economic substantiation of the formation of the price, corresponding to the methods of execution used, to the production process or to the services performed;

b) the technical solutions chosen and/or other very favourable conditions enjoyed by the tenderer for the execution of the works, for the provision of the products or services;

c) originality of the tender in terms of meeting all requirements provided in the specification;

d) the observance of the provisions relating to employment and working conditions applicable to the work execution, service performance or products delivery;

e) possibility of the tenderer to receive state aid.

**Art. 203** - (1) When the contracting authority establishes that a tender has an unusually low price because the tenderer apparently benefits from state aid, that tender may be rejected on that ground only if, following the clarifications requested, the tenderer is unable to demonstrate, within a reasonable time period established by the contracting authority, that the state aid was granted legally.

(2) Where the contracting authority rejects a tender in the circumstances specified in para. (1), it is required to give notice in this regard the National Authority for Regulating and Monitoring of Public Procurement.

**Art. 204** - (1) The contracting authority is obliged to conclude the public contract with the tenderer whose tender has been established as the winner, based on the technical and financial proposals contained in the tender.

(1<sup>1</sup>) If the contracting authority cannot conclude the contract with the tenderer whose tender was determined as being the winning tender, due to the fact that the respective tenderer is in a situation of force majeure or is fortuitous unable to perform the contract, then it has the right to declare winning the tender classified on the second place, given that it exists and is admissible. Otherwise, the procedure for awarding the public contract is cancelled.

(2) The contracting authority is obliged to ensure the obtaining and preservation of justifying documents proving the completion of any procurement.

**Art. 205** - (1) The contracts covered by this emergency ordinance may be concluded only after the completion of the waiting terms of:

a) 11 days after the date of transmission of the communication on the outcome of the procedure, if the estimated value, according to the provisions of art. 23 and the chapter II Section 2, of the respective contract is equal to or higher than the thresholds provided in art. 55 para. (2);

b) 6 days after the date of transmission of the communication on the outcome of the procedure, if the estimated value, according to the provisions of art. 23 and the chapter II Section 2, of the respective contract is less than the thresholds provided under art. 55 para. (2).

(2) The contracts/framework agreements covered by this emergency ordinance, concluded before reaching the terms provided under para. (1), are void.

- (3) The observance of the terms set out in para. (1) is optional in the following cases:
- a) when this emergency ordinance does not provide the publication of a contract notice or participation invitation;
  - b) when the contract/framework agreement shall be concluded with an economic operator who was the only tenderer in the awarding procedure and there are other entities involved in the awarding procedure;
  - c) when is awarded a contract subsequent to a framework agreement or as a result of using a dynamic purchasing system.

## **Section 5**

### **Information of the candidates and tenderers**

**Art. 206** - (1) The contracting authority is obliged to inform the economic operators involved in the awarding procedure on the decisions regarding the result of the selection, the outcome of the procedure for awarding the public contract or the conclusion of the framework agreement, the admission into a dynamic procurement system, the outcome of a design contest or, where applicable, the cancellation of the awarding procedure and possible subsequent initiation of a new procedure, in writing as soon as possible, but not later than 3 working days of their issuance, within the period provided for in art. 200.

(1<sup>1</sup>) For the purposes of para. (1) shall be deemed economic operator involved in the awarding procedure any candidate/tenderer that the contracting authority did not yet informed about decisions affecting directly its application/tender or any candidate/tenderer whose application/tender has not yet been rejected definitively by the contracting authority. A rejection is considered final if it was communicated to the economic operator concerned and has either been considered lawful by the National Council for Solving Complaints notified about this, either was not or is no longer subject to appeal.

(2) The communication through which the information provided under para. (1) is transmitted shall be sent also by fax or by electronic means.

(3) If the contracting authority does not transmit the communication regarding the result of the procedure also by fax or by electronic means, the limits provided under art. 205 para. (1) shall be increased by 5 days.

**Art. 207** - (1) In the communication referred to in art. 206 para. (2), the contracting authority shall inform the winning tenderer/tenderers on the acceptance of submitted tender/tenders.

(2) In the communication referred to in art. 206 para. (2), the contracting authority has the obligation to inform the tenderers/candidates who have been rejected or whose tender was declared winner of the reasons behind the decision, as follows:

a) to each candidate rejected, the reasons which led to the decision to the rejection of his application;

b) for each tender rejected, the reasons which led to the rejection decision, detailing the reasons based on which the tender was considered unacceptable and/or inconsistent, especially the items of the tender that failed to meet the functioning and performance requirements provided in the specifications;

c) to any tenderer who has made an admissible and consistent tender, hence admissible, but that was not declared winner, the characteristics and relative advantages of the winning tender/tenders in relation to its tender, the name of the tenderer to whom the public contract shall be awarded or, where applicable, the tenderers who shall conclude a framework agreement;

d) to each economic operator among those referred to under letters a) - c), the deadline for filing appeals, taking into account the provisions of art. 256<sup>2</sup> para. (1).

**Art. 208** - The contracting authority is entitled to withhold certain information among those referred to in art. 207 para. (2) letter c), but only if the disclosure:

a) would lead to failure in appliance of a legal provision, would impede the application of the a legal provision or would be contrary to public interest;

b) would prejudice the legitimate commercial interests of the economic operators, public or private, or might prejudice fair competition between them.

## **Section 6**

### **Cancellation of the procedure for awarding the public contract**

**Art. 209** - (1) The contracting authority has the obligation to cancel the procedure for awarding the public contract in the following cases:

a) have been submitted only unacceptable and/or inconsistent tenders;

b) was not submitted any tender or were submitted only tenders which, although they may be taken into account, can not be compared because of the uneven manner of approach of the technical and/or financial solutions;

c) serious violations of legislative provisions are affecting the awarding procedure or the conclusion of the contract is impossible;

(2) Notwithstanding the provisions of art. 204, the contracting authority has the right to cancel the procedure for awarding the public contract, if it takes this decision before signing the contract, only in the following cases:

a) the contracting authority is in one of the situations referred to in art. 86 para. (2) letter a), art. 102 para. (2) letter a), art. 117 para. (2) letter a) or art. 148<sup>1</sup> letter a);

b) following the decision of the National Council for Solving Complaints through which is ordered the elimination of any technical, economic or financial specifications of the contract notice /invitation of participation, of the tender documentation or other documents issued in connection with the awarding procedure.

(3) The provisions of paragraphs. (2) cannot affect the obligation of the contracting authority to cancel a tender procedure following a judgment or decision in this regard of the National Council for Solving Complaints.

(4) For the purposes of par. (1). c), the serious violations of legal provisions mean:

a) the qualification and selection as well as the award criteria or evaluation factors listed in the call for tenders / contract notice and in the tender documents have been altered;

b) during the analysis, evaluation and / or completion of the tender procedure, errors or omissions are identified and the contracting authority is unable to take corrective measures without those leading to breaches of the principles laid down in Art. 2 (2). a) - f).

**Art. 210** - The contracting authority has the obligation to communicate in writing to all participants in the awarding procedure, within maximum 3 working days from the date of cancellation, both the termination of the obligations which they created by submitting tenders, and the concrete reason that prompted the decision of cancellation, within the period provided in art. 200.

**Art. 210**<sup>1</sup> \*) - Except for the negotiation without prior publication of a contract notice, within 48 days since the cancellation of the awarding procedure, the contracting authority has the obligation to transmit in SEAP information on the reasons for the cancellation.

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\*) Art. 210<sup>1</sup> was introduced EGO no. 143/2008 Published in the Official Gazette No. 805 of December 2, 2008

## **Chapter VI**

### **Public procurement file**

**Art. 211** - The contracting authority is required to prepare the public procurement file for each awarded contract or framework agreement concluded, and for every launching of a dynamic purchasing system.

**Art. 212** - The public procurement file, and the tenders accompanied by the qualification and selection documents, is kept by the contracting authority as long as the public contract/framework agreement has legal effects, but not less than 5 years after completion of the respective contract. In case of cancellation of the awarding procedure, the file is kept for at least 5 years after the cancellation of the respective procedure.

**Art. 213** - (1) The public procurement file must include documents produced/received by the contracting authority in the awarding procedure, such as, but not limited to, the following:

- a) note on the determination of the estimated value;
- b) prior information notice and proof of sending it for publication, if applicable;
- c) contract notice and proof of sending it for publication and/or, where appropriate, the invitation;
- d) the tender documentation;
- e) the explanatory note on the election of the awarding procedure, if the applied procedure was other than the open procedure or restricted procedure;
- f) the explanatory note on the acceleration of the procedure, if any;
- g) minutes of the meeting of opening of tenders;
- h) tender forms submitted in the awarding procedure;
- i) requests for clarification, as well as the clarification sent/received by the contracting authority;
- j) the minute of the awarding procedure;
- k) evidence of the communication of the outcome of the procedure;
- l) the public contract/framework agreement, signed;
- m) the contract award notice and proof of sending it for publication;
- n) if applicable, appeals filed under the awarding procedure, accompanied by motivated decisions issued by the National Council for Solving Complaints;
- o) documents relating to the verification function of the procedural aspects related to the award of public procurement contracts, if applicable;
- p) ascertaining document which contains information regarding the fulfilment of the contractual obligations by the contractor.

(2) The awarding procedure report referred to in para. (1) letter j) is elaborated before the conclusion of the public contract/framework agreement/dynamic purchasing system and includes at least:

- a) the name and address of the contracting authority;
- b) the object of the public contract/framework agreement or dynamic purchasing system;



- c) if applicable, the name/names of the candidates participating in the proceedings;
- d) if applicable, the name/names of the candidates selected and unselected, and the reasons behind the selection or non-selection of the respective candidates;
- e) the name of the tenderers participating in the proceedings;
- f) the name of the tenderers rejected and the reasons for this decision;
- g) if applicable, the concrete reasons for which one or more tenders were rejected following the consideration of the prices presented as being unusually low;
- h) the name tenderer/tenderers which/whose tender was declared winner and the reasons for this decision;
- i) in the case of the winning tenderer/tenderers, the part of the contract that he/they declared they shall subcontract and the name of the subcontractors;
- j) where appropriate, justification of the decision to cancel the awarding procedure.

**Art. 214** - The provisions of art. 213 para. (1) shall apply accordingly in the case of awarding the contracts provided under chapter VII.

**Art. 215** - (1) The public procurement file has character of public document. The access of the persons to this information is done in compliance of the terms and procedures prescribed by the legal regulations concerning the free access to public information and can be restricted only to the extent that such information is classified or protected by intellectual property rights under the law.

(2) \*\*\* repealed by EGO no. 76/2010.

**Art. 216** - If the contracting authority applies an awarding procedure by electronic means, uses a dynamic purchasing system or an electronic procurement system, it is required to ensure full traceability of the actions they carry out during the awarding process, so that the elaboration of the public procurement file in accordance with art. 213, is not affected.

## **Chapter VII**

### **Concession contracts**

#### **Section 1**

#### **Principles and general rules for awarding the concession contracts**

**Art. 217** - The principles underlying the award of the concession contract are set out in art. 2 para. (2).

**Art. 218** - (1) The contracting authority has the obligation to award the concession contract under the provisions of this section.

(2) The substantiation of the decision to perform the project, the manner of transfer and recovery of the concession object, the manner of preparation of the tender documentation and the procedures provided under this emergency ordinance are established by Government decision.

**Art. 218<sup>1</sup> \*)** - The contracting authority has the right to award the public works concession contract or the services concession contract using one of the procedures provided for in art. 18 para. (1) letters a) - c), as well as the negotiation with the prior publication of a contract notice in the cases provided in art. 110 or those provided in art. 251 para. (1).

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\*) Art. 218<sup>1</sup> was introduced by EGO. 76/2010, published in the Official Gazette No. 453 of July 2, 2010.

**Art. 219** - (1) Rules of estimation provided under chapter II Section 2 shall apply accordingly to determine the estimated value of the concession contract.

(2) The manner of settlement of the appeals filed during the application of the procedure of awarding the concession contract is provided under chapter IX.

**Art. 220** - This emergency ordinance shall not apply if the concession contract:

a) is awarded under one of the situations referred to in art. 12 - 14;

b) is awarded by a contracting authority performing among its activities one or more of the relevant activities under art. 232 - 241, where the concession contract has as object the performance of the respective activities, or

c) has as purpose the concession of public property, but only if, through the object of that contract, the contracting authority does not seek to procure the execution of a work or service, which would frame such contract either in the category of the public contracts, or in the category of the concession contracts the award of which is regulated by this emergency ordinance.

**Art. 221** - This emergency ordinance shall not apply when is necessary the purchase of supplemental/additional works or services that were not included in the initial concession contract, but due to unforeseen circumstances have become necessary for the fulfilment of the respective contract, if observed, cumulatively, the following conditions:

a) the award is made to the original contractor;

b) the supplemental/additional works or services can not be, technically and economically, separated from the original contract without the emergence of major inconveniences to the contracting authority and, although separable from the initial contract, are strictly necessary to achieve it;

c) the aggregate value of the contracts awarded for supplemental/additional works and services does not exceed 50% of the value of the initial contract.

**Art. 222** - (1) The contracting authority is obliged to ensure transparency in the award of the concession contracts.

(2) The procedure for awarding a concession contract is initiated by publication of a contract notice.

(3) The contracting authority is obliged to include in the notice referred to in para. (2) at least the information contained in the annex no. 3B and, if necessary, other information deemed useful by the contracting authority, in accordance with the standard form adopted by the European Commission.

(4) In the case of contract notices for which, in accordance with the provisions of this emergency ordinance, it is not required the transmission for publication to the Official Journal of the European Union, their content is determined by Government decision.

(5) The provisions of art. 48 - 50 and of art. 56 are applied accordingly.

**Art. 223** - (1) The contract notice shall be published in the SEAP and, as appropriate, in the Official Journal of the European Union and, optionally, in the Official Gazette of Romania, Part VI, Public procurement.

(2) The publication in the Official Journal of the European Union is required for the public works concession contract, in situations where the estimated value of the contract is equal to or higher than the RON equivalent of EUR 4,845,000.

**Art. 224** - (1) The contracting authority is required to determine the number of days between the date of publication of the contract notice and the date of submission of application so that the economic operators benefit from a proper and sufficient period of time to elaborate the applications.

(2) Regardless of the procedure applied and without prejudice to para. (1), the contracting authority is obliged to submit for publication contract notice at least 52 days before the deadline for submission of applications.

(3) If the contract notice is sent electronically for publication in the Official Journal of the European Union, the period referred to in para. (2) may be reduced by 7 days.

(4) The provisions of art. 72 shall apply accordingly.

**Art. 225** - When awarding a public works concession contract, the contracting authority has the right to request:

a) the concessionaire to award contracts to third parties, at a rate of at least 30% of the total value of the work object of the concession, allowing candidates the opportunity to increase the part/parts of the contract to subcontract;

b) applicants to specify, in the application submitted, the value of the works in the concession contract which they intend to assign to third parties.

## **Section 2**

### **Rules for awarding the public contracts by concessionaires**

**Art. 226** - If the concessionaire has the capacity of contracting authority within the meaning of art. 8 letters a) - c), it is required to observe the provisions of chapters I - VI when awarding a public contract to third parties.

**Art. 227** - (1) If the concessionaire is not a contracting authority within the meaning of art. 8 letters a) - c), it nevertheless has an obligation, when awarding a contract for works or services to a third party, to publish a contract notice in the Official Journal of the European Union, the SEAP and, optionally, in the Official Gazette Part VI, Public procurement, in all cases when the estimated value of the contract to be awarded is equal to or higher than the RON equivalent of EUR 4,845,000, except as provided in art. 122. The determination of the estimated contract value is done according to the rules provided in art. 23 and chapter II Section 2.

(2) The concessionaire is obliged to observe the following conditions:

a) the number of days between the date of dispatch of the contract notice and the date of submission of applications must be at least 37 days; and

b) the number of days between the date of dispatch of the contract notice, or transmission of the invitation, and the date of submission of tenders must be at least 40 days.

(3) If the contract notice is sent electronically for publication in the Official Journal of the European Union, the periods referred to in para. (2) can be reduced by 7 days.

(4) If the concessionaire published in SEAP the entire tender documentation and allows, from the date of publication of contract notice, direct and unrestricted access of economic operators to this documentation, it is entitled to reduce the period referred to in para. (2) letter b) by an additional 5 days.

(5) The provisions of art. 72 shall apply accordingly.

(6) The concessionaire is obliged to include in the notice referred to in para. (1) at least the information contained in the annex no. 3C and, if necessary, other information deemed useful by it, in accordance with the standard form adopted by the European Commission.

(7) The provisions of art. 48 - 50 shall apply accordingly.

**Art. 228** - (1) The enterprise groups that were set up to obtain the concession or their affiliated companies are not considered third parties.

(2) For the purposes of para. (1), affiliated company means any person engaged in economic activities and:

- a) over which the concessionaire can exert, directly or indirectly, dominant influence; or
- b) that can exert on the concessionaire dominant influence; or
- c) that, as the concessionaire, is subject to the dominant influence of another person. For the notion of dominant influence, the provisions of art. 3 letter m) shall apply accordingly.

(3) The economic operator participating in the procedure for awarding a concession contract is required to include in the application the list of persons who have the quality of its affiliated companies; the concessionaire is required to update the list permanently, until the completion of concession contract.

## **Chapter VIII**

### **Public utilities contracts**

#### **Section 1**

##### **Relevant activities**

#### **Paragraph 1**

##### **Scope**

**Art. 229** - (1) The provisions of chapters I - VI are applicable to the public utilities contract if this chapter does not provide otherwise.

(2) For the purposes of para. (1), the public utilities agreement means the public procurement contract awarded for the carrying out of a relevant activity in public utility sectors:

- a) water;
- b) energy;
- c) transportation;
- d) post.

**Art. 230** - The contracting authority is obliged to award a public utilities contract for carrying out several relevant activities, according to the rules applicable to the activity to which it is mainly intended.

**Art. 231** - (1) If the contracting authority falling within any categories referred to in art. 8 letter a) - c) awards a public contract destined to more types of activities, among which at least one is relevant activity, and other activity falls under the provisions of chapters I - VI and, objectively, it is impossible to be determined to which activity the respective contract is mainly destined, the contracting authority does not have the right to not frame the respective contract in the category of the public utilities contracts, having the obligation to comply with the provisions of chapters I - VI.

(2) If the contracting authority falling within any category referred to in art. 8 letter a) - c) awards a public contract destined to more types of activities, among which at least one is relevant activity, and other activity is not covered by the provisions of this emergency ordinance and, objectively, it is impossible to determine to which activity the respective contract is mainly destined, the contracting authority is obliged to frame the respective contract in the category of public utilities contracts.

(3) If the contracting authority falling within any of the categories referred to in art. 8 letters d) or e) awards a public contract destined to more types of activities, among which at least one is relevant activity, and, objectively, it is impossible to determine to which activity the

respective contract is mainly destined, the contracting authority is obliged to frame the respective contract in the category of public utilities contracts.

## **Paragraph 2**

### **Water**

**Art. 232** - Are considered relevant activities in the public utilities sector provided for in art. 229 para. (2) letter a) the following:

- a) the provision or operation of fixed networks intended to provide, for the benefit of the public, services of manufacturing, transport or distribution of drinking water;
- b) drinking water supply networks of the kind referred to in letter a).

**Art. 233** - The contracting authority which is carrying out any of the activities referred to in art. 232 has the obligation to comply with the provisions of this chapter when it awards a contract or organizes a design contest that is related to:

- a) hydraulic technology projects, irrigation and soil improvement, if the volume of water used for the supply of drinking water represents more than 20% of the total volume of water made available by such projects or by the irrigation or drainage facilities; or
- b) disposal or treatment of used water.

**Art. 234** - The supply of drinking water to public networks by a contracting authority of the kind defined in art. 8 letters d) or e) is not considered a relevant activity within the meaning of art. 232, if there are met, cumulatively, the following conditions:

- a) the supplier produces drinking water the consumption of which is necessary for carrying out an activity other than those considered by this emergency ordinance as the relevant activities;
- b) the supply of drinking water to public networks depends only on the provider's own consumption, and the amount supplied to those networks is not higher than 30% of its total drinking water production, taking into account the average of the last three years, including the current year.

## **Paragraph 3**

### **Energy**

**Art. 235** - Are considered relevant activities in the public utility sector provided for in art. 229 para. (2) letter b) the following:

- a) the provision or operation of fixed networks intended to provide, for the benefit of the public, services of production, transportation or distribution of gas based fuels, thermal or electric power;
- b) the supply of gas based fuels, thermal or electric power networks of the kind referred to under letter a).

**Art. 236** - Delivery of gas based fuels or thermal power by public networks by a contracting authority networks of the kind defined in art. 8 letters. d) or e) is not considered a relevant activity within the meaning of art. 235, if there are met, cumulatively, the following conditions:

- a) the economic operator produces thermal power or the gas based fuels as an inevitable consequence of an activity other than those considered by this emergency ordinance as being relevant activities;

b) the supply of thermal power or the gas based fuels by public networks is done only for the purpose to economically exploit this production, and the turnover resulting from the supply of such networks does not exceed 20% of total turnover achieved, taking into consideration the average of the last three years, including the current year.

**Art. 237** - The supply of the electric power by public networks by a contracting authority of the category of those defined in art. 8 letters d) or e) is not considered a relevant activity within the meaning of art. 235, if there are met, cumulatively, the following conditions:

a) the economic operators produces electric power for the purpose of the performance of an activity other than those considered by this emergency ordinance as being relevant activities;

b) the supply of electric power through the public networks depends only on the economic operator's own consumption, and the amount transported through the respective networks does not exceed 30% of its total electric power production, taking into account the average of the last three years, including the current year.

#### **Paragraph 4 Transportation**

**Art 238** - (1) Is considered relevant activity in the public utility sector provided for in art. 229 para. (2) letter c) the provision or operation of networks destined to ensure, for the benefit of the public, transport services by railway and inland passenger transport services, based on a schedule, such as public transport with buses, tramways, subway, trolley or cable transportation.

(2) For the purposes of para. (1), it is considered that there is a network for performance of transport services, where the operating conditions - which may include routes to be served, the carrying capacity to be provided or the frequency of the service - are predetermined by a competent authority.

**Art. 239** - Supply of transport by bus is not considered relevant activity where other entities are entitled to provide the same type of services in the same geographical area and under the same conditions as the contracting authorities.

#### **Paragraph 5 Mail**

**Art 240** - (1) Is considered relevant activity in the public sector provided under art. 229 para. (2) letter d) the performance of the following services:

a) postal services, whether or not reserved within the meaning of art. 12 of the Government Ordinance no. 31/2002 concerning the postal services, approved with modifications by Law no. 642/2002, with subsequent amendments, respectively the services consisting of collection, sorting, transport and delivery to recipients of postal items - correspondence, books, catalogues, newspapers, periodicals and postal packages containing goods with or without commercial value - regardless of weight ;

b) services of management of the delivery services, respectively services preceding and following dispatches;

c) value added services related to e-mail and provided entirely by electronic means, including the secure transmission of coded documents by electronic means, address management services and transmission by recommended electronic mail;

d) the services regarding the postal deliveries not included under letter a), such as direct publicity by mail, bearing no address;

e) postal financial services, such as those listed in category 6 of annex no. 2A and art. 13 letter d), which include mainly postal money orders and transfers based on postal current accounts;

f) philatelic services;

g) logistics, which combines the delivery and/or storage with other functions than the postal ones.

(2) The performance of the services provided under para. (1) letters b) - g) falls into the category of relevant activities only if the respective person provides also postal services within the meaning of paragraph. (1) letter a) and only if the postal services activity is not directly exposed to competition as provided by art. 248.

## **Paragraph 6**

### **Other relevant activities**

**Art 241** - (1) For the purposes of this emergency ordinance are considered relevant activities also those activities involving the exploitation of a geographical area in order to:

a) exploring for or extracting crude oil, natural gas, coal or other solid fuels;

b) the provision to transporters operating by air, sea or river ways of airports, sea/river ports or other transport network terminals.

(2) The contracts awarded for carrying out the relevant activities provided under par. (1) are considered public utilities contracts.

## **Section 2**

### **Specific exceptions**

**Art 242** - This emergency ordinance shall not apply to public utilities contracts awarded for the purchase of:

a) products to be resold or leased to third parties, provided that the contracting authority does not receive a special or exclusive right in this respect, and other persons also have the right to sell or lease similar products in the same conditions as the contracting authority;

b) products, services or works destined to the carrying out of relevant activities in a third country to the European Union, provided that in the performance of such activities do not intervene the physical use of a network or geographical area of the European Community.

**Art 243** - This emergency ordinance shall not apply to contracts awarded by the contracting authority falling within one of the categories mentioned in art. 8 letters d) or e) and have as object the procurement of products, services or works destined to the performance of other works than the relevant activities.

**Art 244** - This emergency ordinance shall not apply to the contract having as object the purchase of water if it is awarded by a contracting authority conducting relevant activities of the kind referred to in art. 232.

**Art 245** - This emergency ordinance shall not apply to the contract having as object the purchase of energy, energy products of the extractive industry or other fuels destined to the production of energy, if it is awarded by a contracting authority performing activities of the kind referred to in art. 235 and art. 241 letter a).

**Art 246** - (1) This emergency ordinance shall not apply for the awarding of the public utilities contract:

a) by a contracting authority to one of its affiliated companies;

b) by a combination of several contracting authorities, formed solely to carry out a relevant activity, to a company affiliated with one of the contracting authorities concerned.

(2) Paragraph. (1) shall apply:

a) in the case of a supply contract only if at least 80% of average turnover in the provision of products, of the last three years, of the affiliated company comes from supplying such products to companies with which it is affiliated;

b) in the case of a services contract only if at least 80% of average turnover in the services domain, of the last three years, of the affiliated company comes from the provision of such services to companies with which it is affiliated;

c) in the case of a works contract only if at least 80% of average turnover in the works domain, of the last three years, of the affiliated company comes from the execution of such works to companies with which it is affiliated.

(3) For the purposes of para. (1) and (2) affiliated company means any person engaged in economic activities which fall, as provided by the legal provisions regarding the consolidation of accounts, in the area of consolidation of the contracting authority or any person engaged in economic activities and is in any of the following situations:

a) the contracting authority exercises, directly or indirectly a dominant influence over it;

b) exercises, directly or indirectly, a dominant influence over the contracting authority;

c) together with the contracting authority, is, directly or indirectly, under the dominant influence of another person engaged in economic activities.

For the notion of influence, art. 3 letter m) shall apply accordingly.

(4) If, according to the date on which an affiliated company was set up or has started its activity, its turnover is not available for the last three years, it is sufficient for the company to show that the turnover referred to para. (2). letters a), b) or c) is credible, this being demonstrated based on a business plan.

(5) If more than one company affiliated with the contracting authority provides services, products or works, the percentages referred to in para. (2) is calculated taking into account the total turnover deriving from the provision of goods, performance of services or, where appropriate, execution of works by those affiliated companies.

**Art 247** - (1) This emergency ordinance shall not apply for the awarding of a public utilities contract:

a) by a combination of several contracting authorities, formed solely to carry out a relevant activity, to one of the respective contracting authority;

b) by a contracting authority to an association of contracting authorities of which itself is part and was formed solely to carry out a relevant activity.

(2) The provisions of para. (1) are applicable only if the association was established to carry out relevant activities for at least three years, and the legal instrument through which the



association was established in question provides that the contracting authorities will be part of that association for a period at least equal to the mentioned one.

**Art 248** - (1) This emergency ordinance shall not apply for the awarding of the public utilities contracts if the relevant activity to which they are destined is directly exposed to the competition in a market to which access is not restricted.

(2) For the purposes of para. (1), the ascertainment of the fact that a particular relevant activity is or is not directly exposed to competition is established by the European Commission upon notification/request in this respect from the contracting authority concerned, which will include all necessary information relevant for adopting a decision about the existing situation.

(3) The specific procedure for the preparation and submission of the notification/request under para. (2) shall be established by Government decision.

**Art 249** - The contracting authority is obliged to send to the National Authority for Regulating and Monitoring of Public Procurement any information it requests regarding the contracts for which were considered applicable the provisions of art. 242 and 243, as well as of art. 246 and 247.

### **Section 3**

#### **Specific rules of awarding the public utilities contracts**

**Art 250** - (1) procedures for the award of public utilities contracts are:

- a) open procedure;
- b) restricted procedure;
- c) negotiated procedure with prior publication of a contract notice;
- d) negotiated procedure without prior publication of a contract notice;
- e) call for tenders.

(2) The provisions of art. 18 para. (2) are applicable to the award of public utilities contracts.

(3) To award public utilities contracts, the contracting authority may also use special methods of award provided under Chapter IV with the observance of the provisions of this section.

**Art 251** - (1) The contracting authority must award the public utilities contract, usually, by applying the open procedure, the restricted procedure or the negotiated procedure with prior publication of a contract notice.

(2) Notwithstanding the provisions of para. (1), the contracting authority has the right to apply other procedures provided for in art. 250 para. (1), as appropriate, only in the specific circumstances provided for in art. 252 or 124.

**Art 252** - For the award of the public utilities contract, the contracting authority has the right to apply a negotiated procedure without prior publication of a contract notice only in the following cases:

a) when, after applying the open procedure, restricted procedure or negotiated procedure with prior publication of a contract notice or call for tenders, was not submitted any tender or were presented only inadequate tenders due to the fact that they are completely irrelevant in relation to the object of the contract. The appliace of the negotiated procedure in this case is possible only after the annulment of the initial procedure and only if the original requirements specified in the tender documentation are not substantially altered;

b) when, for technical, artistic reasons or for reasons of protection of exclusive rights, the public contract can be awarded only to a particular economic operator;

c) as strictly necessary measure, when the time limits for appliance of the open procedure, restricted procedure, negotiated procedure with prior publication of a contract notice or call for tenders cannot be observed for reasons of extreme urgency, determined by unforeseeable events and not due to any form of action or inaction of the contracting authority. The contracting authority has the right to determine the duration of the contract for a longer period than necessary, to meet the emergency situation which caused the appliance of the negotiated procedure without prior publication of a contract notice;

d) when the contract to be awarded is destined for the sole purpose of scientific research, experimentation, studies and technological development, and only if it is not intended to obtaining a profit or cover the related costs, and the award does not affect subsequent award on competitive basis of subsequent contracts which are designed to fulfil the intended purpose;

e) when is needed the purchase from the original supplier of additional quantities of products for partial replacement or extension of equipment/facilities previously delivered and only if the changing of the initial supplier would put the contracting authority in the position to purchase products which, due to technical characteristics different to the existing ones, would cause incompatibilities or disproportionate technical difficulties of operation and maintenance;

f) for the purchase of raw materials listed on stock exchanges, their purchase being accomplished as a result of transactions on the cash market;

g) when the products can be purchased on particularly advantageous conditions from an economic operator who finally liquidates its businesses, from a judicial administrator which administrates the affairs of an economic operator in bankruptcy or liquidation, through an arrangement with the creditors of an operator economic in bankruptcy or liquidation or by another similar procedure, regulated by law;

h) when it is possible to purchase products at a price considerably lower than the normal prices used on the market, consequence of the emergence of a particularly advantageous opportunity, available for only a very short period of time;

i) when, following a design contest, the services contract must be awarded, according to the rules initially established, to the winner competitor or to the winner competitors of the respective contest, in the latter case the contracting authority having the obligation to send the invitation to negotiations to all winner competitors;

j) when the purchase of additional/supplementary works or services is needed, works or services that were not included in the initial contract, but due to unforeseen circumstances have become necessary for the contract in question, and only if are observed, cumulatively, the following conditions:

- the award is made to the initial contractor;

- the additional/supplementary works or services cannot be, technically and economically, separated from the original contract without the emergence of major inconvenience for the contracting authority and, although separable from the initial contract, are strictly necessary to fulfil it;

k) where, following the award of a works contract, the contracting authority intends to purchase new works which are similar to the works purchased through the initial contract award and only if the following conditions cumulatively apply:

- the contract is awarded to the initial contractor and new works are repetitions of similar works under the initial contract and comply with the requirements in the tender book developed during the initial contract award;

- the initial works contract was awarded by request for tenders procedure / open tender, restricted tender or negotiated tender with prior publication of a contract notice;  
- the estimated value of the initial works contract was originally determined by taking into account also the works that might be acquired later;  
- in the contract notice of the procedure applied to award the initial contract was stated that the contracting authority has the right to opt for the subsequent acquisition of new similar works from the economic operator whose tender will be declared the winner in these proceedings

**Art. 253** - If possible, except as provided in art. 252 letters b) e), g), i), j) and k), the contracting authority has the obligation to invite to negotiations the number of operators which ensure the genuine competition.

**Art. 254** - (1) If the bids submitted under a procedure applied to award a supply contract containing products originating in third countries with which EU has no multilateral or bilateral framework agreement that ensures the effective access of community entities on such markets, these offers may be rejected if the proportion of products originating in third countries exceed 50% of the total value of products making up the tender. For the purposes of this paragraph, the software used in equipment for telecommunications network are considered as products.

(2) If two or more tenders are equal or equivalent in terms of their score when applying the evaluation criteria, the offer which cannot be rejected under the provisions of par. (1) shall be chosen. The value of those tenders shall be considered equivalent for the purposes of this Article, if the difference between the prices set in financial proposals shall not exceed 3%.

(3) However, an offer cannot be chosen over another offer if that choice would oblige the contracting authority to acquire equipment having technical different characteristics from those of the existing equipment, which would result in incompatibility or technical difficulties in operation or maintenance or disproportionate costs.

## **Chapter IX**

### **Appeals**

#### **Section 1**

##### **General provisions**

**Art. 255** - (1) Any person who believes having been injured as regards a right or a legitimate interest by an act of the contracting authority, by violation of the legal provisions on public procurement, may request, by appeal, the cancellation of the act, the obliging of the contracting authority to issue an act, the recognition of the claimed right or legitimate interest by administrative-judicial way, under the provisions of this ordinance.

(1<sup>1</sup>) - (1<sup>3</sup>) \*\*\* *Repealed by Law No. 278/2010*

(2) For the purposes of para. (1), person injured means any economic operator who:

a) has or had a legitimate interest in connection with the award procedure, and  
b) suffered, suffers or may suffer injury as a result of an act of the contracting authority, likely to produce legal effects or due to the not solving within the legal deadline of a request regarding such awarding procedure.

(3) For the purposes of para. (1), act of the contracting authority means any administrative act, any other administrative operation that produce or may produce legal effects, the non-

fulfilment within the legal term of any obligation provided by this emergency ordinance, the failure or refusal to issue an act or perform a certain operation, in relation to or in the award procedure.

(4) Any reference, throughout this chapter, to the appliance of the awarding procedure includes all cases referred to in art. 9, and any other contracts or procedures that fall within the scope of the provisions of this emergency ordinance.

(5) The settlement of appeals regarding the award of the contract of delegation of the management of a public utilities service for which the specific legislation refers to the application of this emergency ordinance is made according to the provisions of this chapter.

**Art. 256** - (1) For the settlement of the appeals on administrative-jurisdictional way, the party considering itself injured party is entitled to address the National Council for Solving Complaints with the observance of the provisions of art. 256<sup>2</sup> and 270-271.

(2) \*\*\* Repealed by EGO no. 76/2010

**Art. 256**<sup>1 \*)</sup> - (1) Before addressing the National Council for Solving Complaints, the injured party shall notify the contracting authority concerning the alleged violation of the legal provisions on public procurement and the intention to notify the National Council for Solving Complaints. The provisions of art. 205 and 256<sup>2</sup> remain applicable.

(2) The lack of the notification provided under para. (1) does not impede the filing of the request before the Council for Solving Complaints.

(3) The notification referred to in para. (1) does not have as effect the suspension of the awarding procedure. Upon notification, the contracting authority may take any measures it considers necessary to remedy the alleged violation, including the suspension of the awarding procedure or revocation of a document issued in that procedure.

(4) The measures adopted under para. (3) shall be communicated within one working day to the person who notified the contracting authority, as well as to the other economic operators involved.

(5) The injured party who has notified the contracting authority according to the provisions of para. (1) can immediately address the National Council for Solving Complaints, without being required to wait for communication of the measures taken by the contracting authority according to the provisions of para. (3).

(6) Any injured person who, receiving the communication referred to in para. (4), considers that the measures taken are sufficient to remedy the alleged violation, shall send to the contracting authority a notification regarding the waiving of the right to appeal before the Council for Solving Complaints or, where appropriate, a request for waiver of the judging of the appeal.

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\*) Art. 256<sup>1</sup> was introduced by EGO no. 94/2007, published in the Official Gazette No. 676 of October 4, 2007

**Art. 256**<sup>2 \*)</sup> - (1) Any injured person may notify the National Council for Solving Complaints for the annulment of the act and/or recognition of the claimed right or legitimate interest, within:

a) 10 days from the day following the acknowledgment, under the provisions of this emergency ordinance, of an act of the contracting authority deemed illegal, if the value of the contract to be awarded, estimated according to art. 23 and the chapter II Section 2, is equal to or higher than the thresholds provided under art. 55 para. (2);

b) 5 days from the day following the acknowledgment, under the provisions of this emergency ordinance, of an act of the contracting authority deemed illegal, if the value of the contract to be awarded, estimated according to art. 23 and the chapter II Section 2, is lower than the thresholds provided under art. 55 para. (2).

(2) If the request referred to in para. (1) concerns the content of tender documentation, published in the SEAP under art. 75 para. (5), art. 89 para. (4) and art. 127 para. (2), the date of acknowledgement is the date of publication of tender documentation.

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\*) Art. 256<sup>2</sup> was introduced by EGO no. 19/2009, published in the Official Gazette No. 156 of March 12, 2009

**Art. 256<sup>3</sup>\*** - (1) After receiving an appeal, the contracting authority has the right to take the corrective measures it deems necessary as a result of that appeal. Any such measures must be communicated to the applicant, to the other economic operators involved in the awarding procedure, as well as to the National Council for Solving Complaints, no later than one working day after adoption.

(2) If the appellant considers that the measures taken are sufficient to remedy the acts alleged to be illegal, it will send the National Council for Solving Complaints and to the contracting authority a notification on the waiver to the appeal. In this case, the contracting authority has no obligation to communicate its point of view as provided under art. 274.

(3) In the situation of receipt of a complaint by the National Council for Solving Complaints, for which a waiver notification have not been received according to para. (2), the contracting authority has the right to terminate the contract only after the communication of the decision of the National Council for Solving Complaints, within the period provided for in art. 279 para. (3), but not before the expiration of the waiting time, including when these terms refer to the cases under art. 287<sup>12</sup> para. (1) and art. 287<sup>13</sup> letter a). If the decision of the National Council for Solving Complaints was appealed by complaint, the provisions of art. 287<sup>7</sup> shall apply accordingly.

(4) The contract concluded in violation of the provisions of para. (3) is null and void.

(5) If, within the same award procedure, the contracting authority purchases products, services or works divided into lots, the provisions of para. (3) are applicable only to the lots for which appeal was filed. "

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\*) Art. 256<sup>3</sup> was introduced by EGO No. 76/2010, published in the Official Gazette No. 453 of July 2, 2010.

## **Section 2**

### **The National Council for Solving Complaints**

**Art. 257** - (1) The National Council for Solving Complaints, hereinafter referred to as the Council, is an independent organism with administrative and judicial activity.

(2) The Council operates based on an organization and operation regulation which is approved in accordance with art. 291.

(3) In its activity, the Council shall be subject only to the law, and the meetings of the Council are legally constituted in the presence of the majority of its members.

(4) With regard to its decisions, the Council is independent and not subordinated to the National Authority for Regulating and Monitoring of Public Procurement.

(5) \*\*\* Repealed by EGO No. 94/2007

**Art. 258** - (1) The Council is presided by a Chairman elected among its members.

(2) In the appliance of the provisions of para. (1) the Council members elect the chairman by secret vote, by an absolute majority.

(3) The Chairman is elected for a period of 3 years, and the mandate can be renewed once.

(4) The powers of the Chairman of the Council shall be established by the regulation of organization and functioning. In exercising its powers, the chairman issues orders.

(4<sup>1</sup>) In exercising its powers, the chairman of the Council is assisted by a panel consisting of 3 members, elected from the counsels for settlement of disputes in public procurement, with proper application of the provisions of para. (2).

(5) The Chairman of the Council submits to the Prime Minister the nomination proposals for the members of the Council, for the candidates admitted in the competition, except as provided in art. 290 para. (4).

**Art. 259** - The Chairman of the Council has the obligation to prepare an annual activity report, which it presents and supports in the Parliament until 31 March of the next year.

### **Section 3**

#### **Statute of the staff of the National Council for Solving Complaints**

**Art. 260** - (1) The number of Council members and the number of persons with technical and administrative personnel status shall be established by Government decision.

(2) At least half of Council members must be graduates in law.

(3) The Chairman of the Council must be licensed in law.

**Art. 261** - (1) The Council members are selected by competition, being appointed by the Prime Minister, under the provisions of the law.

(2) The Council members are selected based on professional skills and good reputation. The candidates must have university studies, activity of at least 9 years in the legal, economic or technical field, as well as at least two years' experience in public procurement.

(3) The administrative and technical staff is employed by competition under the provisions of the law.

**Art. 262** - (1) The Council members are civil servants with special status, denominated advisers of settlement of appeals in public procurement domain. They are assimilated in terms of remuneration to the civil function of deputy secretary general of the Government's working body.

(2) \*\*\* Repealed by Law No. 284/2010

(2<sup>1</sup>) The chairman of the Council benefits also of the management bonus corresponding to the general manager position.

(3) The auxiliary staff has the status of contractual staff and is assimilated in terms of remuneration to the contractual staff of the National Authority for Regulating and Monitoring of Public Procurement.

(4) The provisions of this emergency ordinance shall be supplemented by the provisions of Law no. 188/1999 on the status of civil servants, republished, amended, and with the

provisions of Law no. 53/2003 - the Labour Code, as amended and supplemented, insofar as they do not contravene this regulation.

(5) the exercise of the public function of counsellor in solving complaints constitutes seniority in the specialty taken into consideration at the employment, respectively legal, economic or technical.

**Art. 263** - (1) The Council members have the primary task of carrying out the duties mentioned as being in the competence of the Council by this emergency ordinance.

(2) The assessment of the activity of the Council is carried out once a year by a commission.

(3) the Commission referred to in para. (2) consists of 5 members, as follows:

a) a representative of the National Authority for Regulating and Monitoring of Public Procurement;

b) 2 representatives of the Romanian Parliament, a member of the Senate and a member of the Chamber of Deputies, appointed by both Chambers of the Parliament;

c) a representative of the National Agency of Civil Servants;

d) a representative of the Competition Council.

(4) For the purposes of para. (2), the commission prepares an evaluation report which is forwarded to the Prime Minister.

(5) The procedure of assessment of the activity of the Council and of its Chairman has in view exclusively the administrative and organizational activity and is established by Government decision, on the proposal of the National Agency of Civil Servants.

(6) Notwithstanding the provisions of para. (2) in case of special circumstances, the evaluation procedure can be also carried out whenever necessary, before that deadline.

(7) The evaluation of the individual professional performances of the Council members is made in accordance with the regulation of organization and functioning of the Council, approved by Government Decision.

**Art. 264** - (1) It is forbidden to the Council members to:

a) to perform commercial activities, directly or through intermediaries;

b) have the capacity of associate or member of the management or control bodies in civil companies, commercial companies, including banks and other credit institutions, insurance companies or financial companies, national, national companies or regies autonomes,

c) hold the quality of member of a group of economic interest;

d) hold the quality of member of a political party and to perform or participate in political activities;

e) exercise any public or private function, except for the duties or activities in teaching, scientific research and literary and artistic creation;

f) exercise any other professional or consultancy activities.

(2) The Council members have the obligation to submit statements of assets and interests in accordance with the provisions of Law no. 161/2003 on measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, prevention and punishment of corruption, as amended and supplemented.

(3) The Council members are not eligible to participate in the settlement of a dispute if they are in one of the situations described below, subject to cancellation of the decision issued:

a) if they, their spouse or descendants or ascendants have any interest in the settlement of the appeal, or if they are spouses, relatives and in-laws up to the fourth degree inclusively, to any of the parties;

b) if between them and one of the parties existed a criminal trial with up to 5 years before the settlement of the case;

c) if they made public statements regarding the appeal they are settling;

d) if it is found that they received from one of the parties goods or promises of goods or other advantages.

**Art. 265** - (1) The ascertainment of disciplinary offences is in the duties of the Discipline Commission constituted within the Council.

(2) The Discipline Commission has a number of 5 members, 2 of which are appointed by the Chairman of the Council and 3 are elected by the Council members by simple majority.

#### **Section 4**

### **The procedure of settlement of appeals before the National Council for Solving Complaints**

**Art. 266** - (1) The Council shall have jurisdiction to solve complaints filed in the awarding procedure, by specialized panels, constituted under the Regulation of organization and functioning of the Council approved according to art. 291.

(2) In exercising its powers, the Council adopts decisions.

**Art. 267** - (1) The appeal shall be settled by a panel formed of 3 Council members, one of whom acts as panel chairman.

(2) Within each panel, at least the chairman should be graduated in law.

**Art. 268** - Causes are distributed randomly to the panels.

**Art. 269** - The procedure of settlement of the appeals is carried out in accordance with the principles of legality, celerity, adversarial and the right to defence.

**Art. 270** - (1) The appeal shall be made in writing and must contain the following elements:  
a) name, domicile or residence of the appellant, or, for legal persons, name, headquarters and their unique registration code. In case of legal persons there shall be indicated also the persons representing them and the capacity of such persons;

b) name and address of the contracting authority;

c) name and object of the public procurement contract and awarding procedure applied;

c<sup>1</sup>) And c<sup>2</sup>) \*\*\* Repealed by EGO No. 19/2009

d) object of the appeal;

s) factual and legal arguments of the application;

f) the evidence means on which the appeal is grounded, as far as possible;

g) signature of the party or of the legal entity's representative.

(2) Where the Council considers that the appeal does not cover all information provided in para. (1) it shall ask the applicant to, within 5 days since the notification by which it acknowledges such situation, complete the appeal. If the contestant does not comply with the obligation imposed by the Council, the appeal will be rejected.

**Art. 271** - (1) Under the penalty of rejection of the appeal as overdue, it shall be submitted to both the Council and the contracting authority, no later than the deadlines provided for in art. 256<sup>2</sup>. The appellant shall attach to the appeal a copy of the appealed act, if it was issued, and copies of documents referred to in art. 270 para. (1), if available.

(2) Within one working day since the receipt of the appeal, the contracting authority has the obligation to notify on such situation the other participants still involved in the awarding procedure. The notice must include a copy of the respective appeal.



(3) All notification or communication of procedural documents are made with confirmation of receipt. The provisions of art. 60 para. (1) shall apply accordingly.

(4) If the case of infringement of the obligation referred to in para. (1), the provisions of art. 274 and art. 256<sup>3</sup> para. (3) are not applicable.

**Art. 272** - \*\*\* Repealed by EGO No. 19/2009

**Art. 273** - (1) The appeals made in the same awarding procedure will be joined by the Council for the issuance of a unified solution. For the appeals filed in the same awarding procedure, it will be preserved the continuity of the settlement panel.

(2) Until the settlement of the appeal by the Council, the participants in the same awarding procedure can associate to the appeal by an own claim which must contain all items referred to in art. 270 para. (1).

**Art. 274** - (1) For the settlement of the appeal/appeals, the contracting authority has the obligation to transmit to the Council, within maximum 3 working days from the deadline referred to in art. 205 para. (1), its point of view on it/them together with any other documents considered enlightening and, under penalty of fines set out in art. 275 para. (3) a copy of the public procurement file, except the notices published in ESPP and the tender documentation, when it is available on and may be downloaded directly from ESPP. The lack of the point of view of the contracting authority shall not prevent the settlement of the appeal/appeals, insofar as there was made proof of its/their communication.

(2) The contracting authority shall notify the point of view also to the appellant/appellants, within the same time limit provided under para. (1).

(3) \*\*\* Repealed by EGO No. 19/2009

(4) Upon request, the appellant has access to the documents filed in the public procurement file, filed by the authority with the Council, except for technical proposals of other tenderers to the awarding procedure, they being available for consultation by the appellant only with the written consent of the respective tenderers, agreement accompanying the application that the appellant addresses to the Council.

**Art. 274<sup>1</sup>\*)** - The contracting authority is entitled to transmit its point of view to the Council on the appeal/appeals, together with any other documents considered enlightening, and a copy of the public procurement file, before the deadline stipulated in art. 205 para. (1).

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\*) Art. 274<sup>1</sup> was introduced by EGO No. 76/2010, published in the Official Gazette No. 453 of July 2, 2010.

**Art. 275** - (1) For the settlement of the appeal the Council has the right to request clarifications from the parties, to administrate evidences and to request any other information / documents to the extent they are relevant to the object of the appeal. The Council also has the right to request any data necessary for the settlement of the appeal from other natural or legal persons.

(2) The appliance of the provisions of para. (1) must not result in the exceeding of the limit of settlement of the appeal, as it is provided in art. 276.

(3) The contracting authority is obliged to respond to any request from the Council and to forward any other documents relevant to the settlement of the appeal, within a period not exceeding 5 days from receipt of the request, under penalty of a fine amounting to RON 10,000, applied the contracting authority's manager.

(3<sup>1</sup>) The Council is obliged to issue the decision on the fine no later than the 5th day after the deadline provided in para. (3).

(3<sup>2</sup>) The Decision of the Council on the fine, not challenged within the time limit, is enforceable and is enforced by the competent authorities according to the legal provisions on the forced enforcement of tax duties and the procedure prescribed by these provisions.

(4) The Council may appoint an independent expert to clarify some aspects of technical or financial nature. The duration of the performance of the expertise must fall within the period provided for the settlement of the appeals by the Council. The cost of the expertise will be borne by the party that made the request for performance of such expertise.

(5) The procedure in front of the Council is written, and the parties will be heard only if it is deemed necessary by the panel of settlement of the appeal.

(6) The parties may be represented by attorneys and may file written conclusions during the proceedings. The parties may request the filing of oral conclusions in front of the Council, without thereby prejudicing the time limits provided for in art. 276.

**Art. 275<sup>1</sup> \*** - (1) In duly justified cases and to prevent imminent damage, the Council, until the the settlement of the merits of the case, can order, within 3 days, at the request of the interested party, by decision, the measure of suspension of the procurement procedure.

(2) The Council settles the request of suspension taking into account the consequences of such measures for all categories of interests that could be harmed, including the public interest.

(3) The decision referred to in para. (1) may be appealed in the competent court, separately, within 5 days since notification.

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\*) Art. 275<sup>1</sup> was introduced by Law No. 278/2010, published in the Official Gazette No. 898 of 31 December 2010 and in force since 3 January 2011.

**Art. 276** - (1) The Council has the obligation to settle the merits of the appeal, regardless there are other cases pending before the court on the same awarding procedure, within 20 days since the receipt of the public procurement file from the contracting authority, respectively within 10 days in the situation of the incidence of an exception which prevents the analysis on merits of the appeal, according to art. 278 para. (1). In duly justified cases, the deadline for settlement the appeal may be extended once for another 10 days.

(2) The failure in the observance of the period of settlement of the appeal referred to in para. (1) constitutes misconduct and may result inclusively in the starting of the assessment procedure in accordance with the provisions of art. 263 para. (6).

**Art. 276<sup>1</sup>** - \*\*\* Introduced by EGO no. No. 143/2008 and repealed by E.G.O. no. 19/2009

## **Section 5**

### **Remedy measures**

\*\*\* Repealed by EGO no. 76/2010

**Art. 277** - \*\*\* Repealed by EGO no. 76/2010.

## **Section 6**

### **Solutions that can be issued by the National Council for Solving Complaints**

**Art. 278** - (1) The Council decides first on the procedural and substantive exceptions, and when it is ascertained that they are grounded, no longer carries out the analysis on merits of the cause.

(2) The Council examines in terms of legality and grounds of the challenged act and may issue a decision through which cancels it partially or entirely, obliges the contracting authority to issue an act or orders any other measure necessary to remedy the acts which affect the awarding procedure. If the Council orders the modification/elimination of any technical specification from the tender book or from any other documents issued in connection with the awarding procedure, the contracting authority has the right to cancel the awarding procedure.

(3) If the Council considers that, apart from the acts challenged in the awarding procedure, there are other acts which violate the provisions of this emergency ordinance, to which reference was not made in the appeal, then it will notify the National Authority for Regulating and Public Procurement Monitoring and the Unit for Coordination and Verification of Public Procurement within the Ministry of Finance, sending them to this end all relevant data/documents in support of the notification.

(4) If the Council accepts the appeal and orders a measure of measures of remedy of the challenged act, it shall specify the term in which it has to be fulfilled, which will not be higher than the deadline for exercising the right to appeal against the Council's decision as provided in art. 281 para. (1).

(5) The Council may reject the appeal as ungrounded, late, lacking interest, lacking object, as brought by a person without capacity or not empowered to file the appeal, as well as any other procedural or substantive exception.

(6) Depending on the decision issued, the Council will decide on the continuation or cancellation of the procurement procedure.

(7) The Council may ascertain, at any time during the settlement of the appeal, the waiver to it by the appellant.

(8) The Council may require, upon request, the defaulting party to pay the costs incurred during the settlement of the appeal.

(9) The Council may decide to award a contract to a certain economic operator.

**Art. 278<sup>1\*)</sup>** - (1) To the extent that the Council reject the complaint as unfounded, the contracting authority will keep from the participation guarantee in relation to the estimated contract value the following amounts:

a) between RON 63,000 and 420,000 inclusively - 1% of this value;

b) between RON 420,001 and RON 4,200,000 inclusively - RON 4,200 + 0.1% of what exceeds RON 420,001;

c) between RON 4,200,001 and RON 4,200,001 inclusively - RON 7,980 + 0.01% of what exceeds RON 4,200,001;

d) from RON 42,000,001 and RON 42,000,001 inclusively - RON 11 760 + 0.001% of what exceeds RON 42,000,001;

e) between RON 420,000,001 and RON 4,200,000,000 inclusively - RON 15,540 + 0.0001% of what exceeds RON 420 000 001;

f) over RON 4,200,000,001 - RON 19,320 + 0.00001% of what exceeds RON 4,200,000,001.

(2) If the competent court allows the appeal filed against the decision of the Council to reject the appeal, the contracting authority is obliged to refund the applicant the sums provided in para. (1), within 5 working days from the date of delivery of the court decision.

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\*) Art. 278<sup>1</sup> was introduced by EGO No. 76/2010, published in the Official Gazette No. 453 of July 2, 2010.

**Art. 279** - (1) The Council Decision on the manner of settlement of the appeal is adopted by vote of the majority of the panel's members, without the possibility to abstain.

(2) After the issuance of the decision, the panel will draw up a minute signed by all panel's members and is recorded in a special register kept by the Council.

(3) The Council Decision, adopted under para. (1) shall be substantiated and communicated in writing to the parties within 3 days since issuance. The Decision without substantiation shall be published on the Council's website within the same period of time.

(4) The Decision substantiated shall be published on the website of the Council, in the official bulletin, without reference to the identification data of the decision and of the parties, as well as to the personal data, within 10 days from the date it becomes final and irrevocable.

(5) The Decision through which the Council have ordered certain remedial measures will be submitted, in copy, within the same period of time provided in para. (3), to the National Authority for Regulating and Monitoring of Public Procurement, which has the obligation to monitor the performance of the remedial measures.

**Art. 280** - (1) The Decision through which the Council cancels entirely or partially of the appealed act is mandatory for contracting authority.

(2) If the period prescribed by art. 278 para. (4) is not respected by the contracting authority, there shall be applied to the manager of the unit which has not made all necessary arrangements for carrying out the Council's decision or to the person liable, a fine for each day of delay, consisting in 20% of the monthly minimum economy wage, at the request of the interested party.

(3) The Council Decision is binding on the parties, the public contract concluded in breach of the Council's decision being null and void.

(4) The decision issued by the Council concerning the fine, not challenged within the provided period of time, constitutes writ of execution and is enforced by the competent authorities according to legal provisions on forced enforcement of tax duties and the procedure prescribed by these provisions.

(5) \*\*\* Repealed by EGO No. 19/2009

**Art. 281** - (1) The Decisions of the Council regarding the settlement of the appeal and the compelling to pay the fine can be appealed by complaint in front of the court provided under art. 283 para. (1), within 10 days since communication, both on grounds of illegality, and for being groundless.

(2) The appeal shall be made in writing and shall be justified, the provisions of art. 270 para. (1) being applied accordingly.

(3) The party filing the appeal has the obligation to communicate, within the period specified in para. (1) a copy of it, and documentary evidence also to the opposing party, submitting proof of communication in front of the court until the first court hearing.

## **Section 7**

### **The procedure of verification of the legality**

\*\*\* Repealed by EGO No. 94/2007

**Art. 282** - \*\*\* Repealed by EGO no. 94/2007

## **Section 8**

### **Appeals against decisions of the National Council for Solving Complaints**

**Art. 283** - (1) The court competent to settle the complaint against the decision of the Council is the court of appeal, litigation, administrative and fiscal department in whose area the headquarters of the contracting authority is located. Except for the cases when the complaint has as object the challenge of the fine, the National Council for Solving Complaints does not have the quality of party in the trial.

(1<sup>1</sup>) The court competent to settle the complaint filed against the decision of the Council regarding the procedures for awarding services and/or works related to transport infrastructure of national interest, as defined by the laws in force, is the Bucharest Court of Appeal, Administrative and fiscal Department.

(2) The complaint shall be settled by a panel formed of 3 judges.

(3) The complaint shall be settled according to the provisions of art. 304<sup>1</sup> of the Civil Procedure Code. The provisions of section 9 shall apply accordingly.

(4) After settlement of the complaint by the court provided under para. (1) or (1<sup>1</sup>), the case file shall be returned to Council by the court.

**Art. 283<sup>1</sup>\*)** - (1) In duly justified cases and to prevent imminent damage, the presiding judge may order, at the request of the interested party, by minute issued with the summoning of the parties, the suspension of the performance of the contract.

(2) The court settles the request for suspension taking into consideration its possible consequences on all categories of interests that could be harmed, including the public interest. The court has the possibility to do not order the measure provided under par. (1) if its negative consequences could outweigh its benefits. The decision to not suspend the execution of the contract shall not prejudice any rights of the person who submitted the request in para. (1).

(3) The minute provided in para. (1) may be appealed separately, within 5 days since the notification.

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\*) Art. 283<sup>1</sup> was introduced by EGO No. 76/2010, published in the Official Gazette No. 453 of July 2, 2010.

**Art. 284** - \*\*\* Repealed by EGO No. 19/2009

**Art. 285** - (1) The court, allowing the complaint, modifies the Council's decision, ordering, upon the case:

- a) the cancellation in all or in part of the act of the contracting authority;
- b) the compelling to issuance of the act by the contracting authority;
- c) the fulfilment of an obligation by the contracting authority, including the elimination of any discriminating technical, economic or financial specifications of the contract notice / participation invitation, of the tender documentation, or of other documents issued in connection with the awarding procedure;
- d) any other measures necessary to remedy violations of the legal provisions on public procurement.

(2) The court, notified with a complaint against a decision of the National Council for Solving Complaints, through which the latter resolved the appeal on exceptions, allowing the complaint, shall annul the respective decision and shall retain the cause for trial on merits taking into account the grounds which led to the annulment of the decision.

(3) If the court allows the complaint, modifies the Council's decision and ascertains that the contracting authority's act has violated the legal provisions on public procurement, and the contract was concluded before notification of the decision by the Council, in violation of the provisions of art. 256<sup>3</sup> para. (3), the provisions of art. 287<sup>10</sup> para. (1) letter b) para. (2) - (6) or, where appropriate, of art. 287<sup>11</sup> shall apply accordingly.

(4) The court may reject the complaint on merits.

(5) The decision of the court is final and irrevocable.

**Art. 285<sup>1\*)</sup>** - The complaint against the decision of the Council is charged with 50% of the amounts provided under art. 287<sup>17</sup>.

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\*) Art. 285<sup>1</sup> was introduced by EGO No. 76/2010, published in the Official Gazette No. 453 of July 2, 2010.

## **Section 9**

### **Settlement of disputes in court**

**Art. 286** - (1) The trials and applications for granting compensations for reparation of damages caused in the awarding procedure, as well as those concerning the execution, the nullity, cancellation, resolution, termination or unilateral termination of public contracts are settled in the first instance by the commercial department of the tribunal in the jurisdiction of which the contracting authority is headquartered.

(1<sup>1</sup>) \*\*\* Repealed by Law No. 278/2010

(2) In front of the court, the disputes concerning rights and obligations contracted under the awarding procedures falling within the scope of the provisions of this emergency ordinance shall be settled urgently, in accordance with art. 720<sup>2</sup> - 720<sup>7</sup> and art. 720<sup>9</sup> of the Civil Procedure Code, which applies accordingly.

**Art. 287** - (1) The compensations for reparation of damages caused in the awarding procedure are required by separate action in court.

(2) The compensation representing damage caused by an act of the contracting authority or consequence of the not settlement within the legal deadline of a request regarding the awarding procedure, in violation of legal provisions on public procurement, may be granted only after the prior cancellation, according to the law, of the respective act or, where appropriate, after the revocation of the act or taking of any other remedial action by the contracting authority.

(3) When requesting the payment of compensations for damages representing the costs of elaboration of the tender or participation in the awarding procedure, the injured party must only make proof of the violation of this emergency ordinance, as well as of the fact that it would have had a real chance of winning the contract, and this has been compromised as a result of that infringement.

**Art. 287<sup>1\*)</sup>** - (1) The judge, once it ascertains that the conditions provided by the law for the legal claim, orders by resolution, its communication, as well as of the documents to the defendant and sets the first judgement hearing term which shall be up to 20 days as from the date it was registered.

(2) The subsequent trial terms cannot be longer than 10 days.

(3) The defendant is compelled to submit written defence within 3 days since the communication of the legal claim, under sanction of forfeiture, according to the provisions of the Civil Code.

(4) The applicant shall be informed immediately on the written defence submitted by the defendant, within the term under para. (3).

(5) The counterclaim is filed within the period specified in para. (3).

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\*) Art. 287<sup>1</sup> was introduced by EGO no. 19/2009, published in the Official Gazette No. 156 of March 12, 2009

**Art. 287<sup>2</sup> \*)** - (1) Communication of subpoenas and other procedural documents may be made by the court registry and by fax, e-mail or other means providing transmission of the text of the document and confirmation of receipt. The parties, if they have such means of communication, have the obligation to indicate the appropriate data in the legal claim, respectively in the written defence.

(2) The party who, personally or by representative or by official or person responsible for receiving correspondence, was served the summons for a hearing in court will not be summoned throughout the trial in that court, being presumed that it knows the court hearings subsequent to the one for which summons was delivered.

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\*) Art. 287<sup>2</sup> was introduced by EGO no. 19/2009, published in the Official Gazette No. 156 of March 12, 2009

**Art. 287<sup>3</sup> \*)** - \*\*\* *Repealed by Law No. 278/2010*

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\*) Art. 287<sup>3</sup> was introduced by EGO no. 19/2009, published in the Official Gazette No. 156 of March 12, 2009

**Art. 287<sup>4</sup>** - \*\*\* *Repealed by Law No. 279/2011*

**Art. 287<sup>5</sup> \*)** - (1) The lack of the party legally summoned cannot prevent the judging of the case, unless otherwise provided by the law.

(2) If on any court hearing established for judgment only one of the parties is present, the court, after analyzing all the documents in the file and listening all the arguments of the present party, shall decide based on the evidence brought, examining also the exceptions and defences of the missing party.

(3) The provisions of para. (1) and (2) shall apply accordingly if both parties are missing, although they have been legally summoned, if at least one of them asked in writing the judging of the case in absence.

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\*) Art. 287<sup>5</sup> was introduced by EGO no. 19/2009, published in the Official Gazette No. 156 of March 12, 2009

**Art. 287<sup>6</sup> \*)** - The can order only once the postponement of judgement of the case, exceptionally, for grounded reasons that are not attributable to the party or its representative.

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\*) Art. 287<sup>6</sup> was introduced by EGO no. 19/2009, published in the Official Gazette No. 156 of March 12, 2009

**Art. 287<sup>7</sup> \*)** - (1) In duly justified cases and to prevent imminent damage, the court, until the settlement of the case on merits, can order at the request of the interested party, by a motivated minute, with the summons of the parties, the suspension of the performance of the contract.

(2) The court settles the request for suspension or other interim measure, taking into account the probable consequences of this measure on all categories of interest that could be harmed, including the public interest. The court may not order the measures referred to in para. (1), where their negative consequences could exceed their benefits. The decision to do not to take interim measures should not prejudice any rights of the person who submitted the request provided in para. (1).

(3) The minute provided in para. (1) may be appealed separately, within 5 days since the notification.

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\*) Art. 287<sup>7</sup> was introduced by EGO no. 19/2009, published in the Official Gazette No. 156 of March 12, 2009

**Art. 287<sup>8</sup> \*)** - \*\*\* *Repealed by Law no. 278/2010*

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\*) Art. 287<sup>8</sup> was introduced by EGO no. 19/2009, published in the Official Gazette No. 156 of March 12, 2009

**Art. 287<sup>9</sup> \*)** - \*\*\* *Repealed by Law no. 278/2010*

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\*) Art. 287<sup>9</sup> was introduced by EGO no. 19/2009, published in the Official Gazette No. 156 of March 12, 2009

**Art. 287<sup>10</sup> \*)** - (1) The court declares the contract void if:

a) the contracting authority awarded the contract without complying with the obligations relating to the publication of a contract notice / participation invitation as provided by this emergency ordinance;

b) were violated the provisions of art. 205 para. (1), art. 206 para. (3), art. 256<sup>3</sup> para. (3) if this violation deprived the interested economic operator of the opportunity to submit an appeal before the conclusion of the contract, if such breach is combined with the violation of other provisions in public procurement filed, if the latter violation affected the chances of the interested economic operator to obtain the contract;

c) the contracting authority has not complied with the provisions of art. 150 or art. 158 - 160.

(2) Notwithstanding the provisions of para. (1), if the court believes, after considering all relevant aspects, that imperative reasons of general interest require the maintenance of the effects of the contract, it shall order, instead, alternative sanctions, as follows:

a) limitation of the effects of the contract, by reducing its period of execution; and/or

b) the appliance of a fine to the contracting authority of between 2% and 15% of the value of the contract's object, its amount being inversely proportional to the possibility of limiting the effects of the contract, as provided for under letter a).



(3) The application of the alternative sanctions provided under para. (2), the court shall consider that they are effective, proportionate and dissuasive.

(4) Granting compensations is not an appropriate alternative sanction within the meaning of para. (2).

(5) The economic interests related to the capacity of the contract to produce effects must be taken into consideration as imperative reason only if, under exceptional circumstances, the absence of the effects would lead to disproportionate consequences. The economic interests directly linked to the contract, such as costs arising from delays in performance, cost of launching a new awarding procedure, the cost of changing the economic operator who will perform the contract or the costs of legal obligations arising from the absence of the effects of the contract do not constitute imperative reasons of general interest.

(6) In all cases in which the nullity penalty provided under para. (1) cannot have retroactive effect, since the abolition of the contractual obligations already performed is impossible, the court will apply in addition the penalties provided in para. (2) letter b).

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\*) Art. 287<sup>10</sup> was introduced by EGO no. 19/2009, published in the Official Gazette No. 156 of March 12, 2009

**Art. 287<sup>11</sup> \*)** - In case of violation of the provisions of art. 205 para. (1), art. 206 para. (3), art. 256<sup>3</sup> para. (3) which is not subject to art. 287<sup>10</sup> para. (1) letter b) the court may decide, after considering all relevant aspects, if it shall find the nullity of the contract or whether it is sufficient to order alternative sanctions such as those provided under art. 287<sup>10</sup> para. (2).

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\*) Art. 287<sup>11</sup> was introduced by EGO no. 19/2009, published in the Official Gazette No. 156 of March 12, 2009

**Art. 287<sup>12</sup> \*)** - (1) The provisions of art. 287<sup>10</sup> para. (1). a) do not apply when the contracting authority, considering that it falls into one of the situations provided for in this emergency ordinance in which it has the right not to submit for publication a contract notice / participation invitation, proceeded as follows:

a) voluntarily published in the SEAP and the Official Journal of the European Union a notice for insurance of the transparency, stating their intention to conclude the respective contract. The notice for insurance of the transparency should include the following information: name and contact details of the contracting authority, description of the object of the contract, the justification of the contracting authority's decision to award the contract without prior publication in SEAP and the Official Journal of the European Union of a notice, the name and contact details of the economic operator in whose favour a decision of awarding was taken and, if necessary, any other information deemed useful by the contracting authority;

b) it concluded the contract observing, on its own initiative, the provisions of art. 205 para. (1) the deadlines starting in this case since the date of publication of the notice provided for under letter a).

(2) For the purposes of para. (1) letter a) the publishing of the notice in the Official Journal of the European Union is not required if:

a) contracting authority falls into one of the categories mentioned in art. 8 letters a) - c), and the estimated value of services or supply contract to be awarded is less than the equivalent in RON of EUR 125,000;

b) the contracting authority falls into one of the categories mentioned in art. 8 letters d) or e) and the estimated value of the supply or services contract to be awarded/concluded is less than the equivalent in RON of EUR 387,000;

c) The estimated value of the works contract to be awarded/concluded is lower than the RON equivalent of EUR 4,845,000.

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\*) Art. 287<sup>12</sup> was introduced by EGO no. 19/2009, published in the Official Gazette No. 156 of March 12, 2009

**Art. 287<sup>13</sup> \*)** - The provisions of art. 287<sup>10</sup> para. (1). c) do not apply when the contracting authority, considering that it observed the provisions of art. 150 or, where appropriate, of art. 158 - 160, proceeded as follows:

a) communicated to tenderers involved the decision to award the contract in compliance with the provisions of art. 206 para. (1) and (2) and of art. 207, subject to the provisions of art. 208; and

b) concluded the contract observing, on its own initiative, the provisions of art. 205 para. (1) and art. 206 para. (3), the deadlines starting in this case since the date of the transmission of the communication referred to under the letter a).

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\*) Art. 287<sup>13</sup> was introduced by EGO no. 19/2009, published in the Official Gazette No. 156 of March 12, 2009

**Art. 287<sup>14</sup> \*)** - (1) The ascertainment of the nullity of the contract, in accordance with art. 287<sup>10</sup> para. (1), may also be required by separate action, within:

a) no more than 30 days from the day following:

- the publication of the contract award notice in accordance with the provisions of art. 47 para. (2), art. 48, 50 and 56, provided that the notice contains justification of the contracting authority's decision to award the contract without prior publication of a contract notice in the Official Journal of the European Union; or

- information by the contracting authority of the interested tenderers and candidates regarding the conclusion of the contract, provided that the information is accompanied by a summary of the relevant reasons established in art. 207, subject to the provisions of art. 208. This option applies also to cases referred to in art. 205 para. (3) letter c);

b) at most 6 months from the day following the conclusion of the contract, where the conditions provided under letter a) were not observed.

(2) The claim submitted after the deadlines provided in para. (1) is settled according to the provisions of art. 287<sup>11</sup>.

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\*) Art. 287<sup>14</sup> was introduced by EGO no. 19/2009, published in the Official Gazette No. 156 of March 12, 2009

**Art. 287<sup>15</sup> \*)** - The decision shall be issued within 3 days since the closing of the debates and shall be communicated to the parties within 5 days since the issuance.

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\*) Art. 287<sup>15</sup> was introduced by EGO no. 19/2009, published in the Official Gazette No. 156 of March 12, 2009

**Art. 287<sup>16</sup> \*)** - (1) The decision issued by the first instance may be appealed within five days since the communication. The last appeal shall be heard by the commercial section of the Court of Appeal.

(2) The last appeal does not suspend the execution and is judged with emergency.

(3) In the situation when the last appeal is allowed by the last appeal court, modifying or annulling the decision, it shall in all cases re-judged the case on merits.

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\*) Art. 287<sup>16</sup> was introduced by EGO no. 19/2009, published in the Official Gazette No. 156 of March 12, 2009

**Art. 287<sup>17</sup> \*)** - (1) The claims submitted under the provisions of this emergency ordinance, before the courts, concerning contracts falling within the scope of this emergency ordinance, as well as those concerning the reparation of the prejudice caused are charged, according to value, as follows:

a) up to the value of RON 40,000 inclusively - 1% of this value;

b) between RON 40,001 and RON 400,000 inclusively - RON 400 + 0.1% of the amount exceeding RON 40,001;

c) between RON 400,001 and RON 4,000,000 inclusively - RON 760 + 0.01% of the amount exceeding RON 400,001;

d) from RON 4,000,001 and RON 40,000,000 inclusively - RON 1,120 + 0.001% of the amount exceeding RON 4,000,001;

e) from RON 40,000,001 and 400,000,000 inclusively - RON 1480 + 0.0001% of the amount exceeding RON 40,000,001;

f) between RON 400,000,001 and RON 4,000,000,000 inclusively - RON 1,840 + 0.00001% of the amount exceeding RON 400 000 001;

g) over RON 4,000,000,000 - RON 2200.

(2) The claims which cannot be assessed in money are charged with RON 4.

(3) The provisions of art. 14 of Law no. 146/1997 on judicial stamp, as amended and supplemented, shall remain applicable.

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\*) Art. 287<sup>17</sup> was introduced by EGO no. 19/2009, published in the Official Gazette No. 156 of March 12, 2009

**Art. 287<sup>18</sup> \*)** - \*\*\* *Repealed by Law No. 278/2010*

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\*) Art. 287<sup>18</sup> was introduced by EGO no. 19/2009, published in the Official Gazette No. 156 of March 12, 2009

**Art. 288** - \*\*\* Repealed by Law No. 337/2006

## **Section 10**

### **Operational measures on the National Council for Solving Complaints**

**Art. 289** - (1) The Council shall become operational after the entry into force of this emergency ordinance.

(2) Until 31 December 2006, the Council is operating without legal status, and current and capital expenses financing are provided from the state budget, through the budget of the Authority for Regulating and Monitoring of Public Procurement.

**Art. 290** - (1) The Council has legal status, the financing of the current and capital expenses of the Council shall be ensured from the state budget, its chairman having the quality of a chief credit officer.

(2) For the operation of the Council, the Government will transmit to its administration a real estate in the public or private property of the state.

(3) The Government, by decision, may approve norms of application of the provisions of para. (1).

(4) Until becoming a legal person, the proposals for appointment of the Council's members are submitted to the Prime Minister by the President of the National Authority for Regulating and Monitoring of Public Procurement, for the candidates declared admitted in the contest as provided by art. 261 para. (1) and (2).

**Art. 291** - The regulation of organization and functioning of the Council shall be approved by Government Decision on the proposal of its Chairman.

**Art. 292** - (1) Until December 31, 2006, the number of positions corresponding to the Council falls within the maximum number of positions available in the National Authority for Regulating and Monitoring of Public Procurement.

(2) The Government, upon proposal from the Chairman of the Council and with the agreement of the National Authority for Regulating and Monitoring of Public Procurement, as a result of an increased number of cases, may approve, by resolution, the setting up of local offices of the Council in the cities of residence of the courts of appeal and/or additional number of Council staff determined in accordance with art. 260 para. (1).

## **Chapter X**

### **Offences and penalties**

#### **Section 1**

#### **Offences**

**Art. 293** - The following deeds constitute offences and are sanctioned:

- a) violation of the provisions of art. 23;
- b) violation of the provisions of art. 33, as well as of the rules for elaboration of technical specifications;
- c) violation of the provisions of art. 20 para. (2), art. 142 para. (2) and art. 251 para. (2);
- d) use of other awarding procedures than those provided for by this emergency ordinance;
- e) violation of the publicity regulations provided by this emergency ordinance, except those relating to the award notice and/or failure in the fulfilment by the contracting authority of the obligation to registration in SEAP, as required by the laws on public procurement;
- e1) violation of the publicity regulations provided by this emergency ordinance, except those relating to the award notice;
- f) failure to comply with special rules provided under art. 58;

g) incorrect application of rules for communication and data transmission, resulting in the restriction of the access of economic operators to the awarding procedure, infringement of the equal treatment and/or breach of the principle of transparency;

h) using other selection and qualification criteria than those provided by this emergency ordinance;

i) breach of the principle of proportionality by using the qualification and selection criteria as a means of restricting the competition;

j) use of other criteria for awarding the public contract than those provided for in art. 198, including using the qualification and selection criteria as factors of evaluation of tenders;

j<sup>1</sup>) changing the award criteria specified in the call for tenders / contract notice and in the tender documentation during the application of the awarding procedure;

k) not-justifying by the contracting authority of the benefits reflected by applying the evaluation factors;

l) incorrect application, during the selection and/or evaluation process, of the criteria established by the tender documentation or other criteria than those established by call for tenders / contract notice and by the tender documentation;

m) refusal to provide the National Authority for Regulating and Monitoring of Public Procurement the information on the award of the public contracts, which it requires in order to carry out its functions of supervision;

m<sup>1</sup>) failure in transmission of the information on the award of public contracts within 5 days since the receipt of the written request from the National Authority for Regulating and Monitoring of Public Procurement;

n) breach of the obligation provided under art. 80, 93 and 129;

a) cancellation of an awarding procedure in cases other than those referred to in art. 209;

p) violation of the provisions of art. 204 para. (1);

q) violation of the provisions of art. 204 para. (11);

r) violation of the provisions of art. 206 - 207;

s) failure to comply with the Council's decision within the time limit established according to this ordinance, date after which it becomes final and irrevocable;

t) violation of the provisions of art. 211-213, relating to the preparation and/or maintaining the public procurement file;

u) not setting-up of the compartment provided for in art. 304<sup>1</sup>;

v) any violation of the provisions of this emergency ordinance or of the normative acts issued for its application, resulting in the breach of the provisions of art. 2, except para. (2) letter f).

w) failure by the contracting authority to request the information necessary for evaluation of tenders which have an abnormally low price in relation to what is to be provided / performed / executed."

## **Section 2**

### **Sanctions for contraventions**

**Art. 294** - (1) The contraventions provided in art. 293 letters e1), f) n), u) and v) are sanctioned with fine from RON 20,000 to RON 40,000i.

(2) The contraventions provided in art. 293 letters a), c), k), m<sup>1</sup> ), q), s), t) and w) are sanctioned with fine from RON 40.000 to RON 80.000.

(3) The contraventions provided in art. 293 letters b) d) e) g) h) i) j) j<sup>1</sup> ), L), m), o), p) and r) are sanctioned with fine from RON 80,000 to RON 100,000.

(4) The fines provided as penalties for committing the violations provided under art. 293 can be applied both to legal entities and to individuals.

(5) The offender individual and/or legal entity is entitled to pay within maximum 48 hours from the conclusion of the minutes or, where applicable, from the date of its communication, half of the minimum fine provided for in art. 294 para. (1) - (3).

(6) Notwithstanding the provisions of art. 8 para. (4) of the Government Ordinance no. 2/2001 on legal regime of contraventions, approved with amendments by Law no. 180/2002, with subsequent amendments, the proceeds coming from the fines provided for in art. 294 para. (1) - (3) applied to individuals are made entirely income to the state budget.

**Art. 295** - (1) The ascertainment of the contraventions and the enforcement of sanctions is carried out by persons authorized by the National Authority for Regulating and Monitoring of Public Procurement.

(2) The appliance of the sanction with the fine is prescribed within 36 months from the date of the offence.

(3) \*\*\* Repealed by Law No. 337/2006

(4) Any person has the right to notify the National Authority for Regulating and Monitoring of Public Procurement with regard to the infringement of the legal provisions on public procurement. In order to exercise this right the respective persons will transmit the National Authority for Regulating and Monitoring of Public Procurement together with the notification and relevant data/documents in support thereof.

**Art. 296** - (1) To the contraventions referred to in art. 293 are applicable the provisions of the Government Ordinance no. 2/2001, approved with amendments by Law no. 180/2002, as amended and supplemented.

(2) Notwithstanding the provisions of the Government Ordinance no. 2/2001, approved with amendments by Law no. 180/2002, as amended and supplemented, the complaints against the minutes of finding and sanction of the violations concluded by the persons authorized by the National Authority for Regulating and Monitoring Public Procurement shall be settled by Bucharest District 1 First Instance Court.

**Art. 296<sup>1</sup> \*)** - (1) Notwithstanding the provisions of art. 294 and to the extent that an economic operator did not use an appeal in this regard, the National Authority for Regulating and Monitoring of Public Procurement has the right to request the court, as provided by art. 2 of Decree no. 167/1958 regarding statutes of limitation, the ascertainment of the absolute nullity of the contracts for the following reasons:

a) the contracting authority awarded the contract without complying with the obligations relating to the publication of a contract notice / participation invitation, according to the provisions of this emergency ordinance;

b) were violated the provisions of art. 205 para. (1), art. 206 para. (3), art. 256<sup>3</sup> para. (3);

c) the contracting authority has not complied with the provisions of art. 150 or art. 158 - 160;

d) the public contract, the public works concession or the services concession contract was concluded in violation of the minimum requirements provided by the contracting authority in the specifications or, although the respective requirements are observed, the contract was

concluded on terms less favourable than those provided in the technical and/or financial proposals which constituted the winning tender;

e) when the contracting authority aims at acquiring the execution of works, a service or a product, which would frame the respective contract either in the category of the public contracts or in the category of public works concession contracts or services concession contracts, but the contracting authority concludes another type of contract than these or does not conclude any contract, in violation of procurement procedures provided by this emergency ordinance;

f) the public contract, the public works concession contract or the services concession contract was signed in violation of the provisions of art. 69<sup>1</sup>.

g) failure to comply with/ modification of the qualification and selection criteria and / or of the evaluation factors provided in the call for tenders / contract notice;

h) the amendment has resulted in lowering benefits and, by case, the criteria that led to the declaration of the winning bid. "

(2) The disputes referred to in para. (1) are settled, with emergency, by the Bucharest Court of Appeal, Administrative department, as provided by art. 720<sup>2</sup> - 720<sup>7</sup> and art. 720<sup>9</sup> of the Civil Procedure Code, which apply accordingly.

(3) The decision of the Bucharest Court of Appeal may be appealed within 15 days since the date of the communication, before the High Court of Cassation and Justice, Administrative section.

(4) In duly justified cases, the court, until the merits, may order, by request of the National Authority for Regulating and Monitoring Public Procurement, through a motivated closing with the summoning of the parties, the suspension of contract."

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\*) Art. 296<sup>1</sup> was introduced by EGO no. 94/2007, published in the Official Gazette No. 676 of October 4, 2007

## **Chapter XI**

### **Transitional and Final Provisions**

**Art. 297** - If not otherwise provided by this emergency ordinance, the common law provisions shall apply.

**Art. 298** - Contracts under execution and the awarding procedures pending on the date of entry into force of this emergency ordinance are finalized based on the legal provisions in force on their initiation.

**Art. 299** - (1) Until December 31, 2006 the contracting authority has the obligation to publish the notices referred to in art. 47 para. (1) only to by the "Official Gazette" Regie Autonome, for their publication in the Official Gazette of Romania, Part VI, Public Procurement.

(2) In the case provided under para. (1), the contracting authority has the obligation to observe the minimum periods of time provided under this emergency ordinance between the date of submission for publication and date of submission of tenders or, where appropriate, applications.

(3) Notwithstanding the provisions of para. (1), until 31 December 2006, the contracting authority has the right to publish the notices referred to in art. 47 para. (1) also in the Official Journal of the European Union and/or the SEAP operator.

(4) From 1 January 2008, the publication of notices under this ordinance in the Official Gazette of Romania is optional.

**Art. 300** - (1) The contracting authority is obliged to send the National Authority for Regulating and Monitoring of Public Procurement any information requested by it on the application of procurement procedures and the contracts awarded.

(1<sup>1</sup>) The contracting authority is obliged to send the National Authority for Regulating and Monitoring of Public Procurement, for cases in which it was a party, copy of the court decision issued according to the provisions of art. 287<sup>15</sup>, within maximum 30 days after the decision became final.

(2) The National Council for Solving Complaints is obliged to send to the National Authority for Regulating and Monitoring of Public Procurement:

- a) the report referred to in art. 259, for information before its presentation in Parliament; and
- b) any other information requested by it on the decisions taken in relation to the settlement of appeals.

**Art. 301** - (1) The SEAP operator is the General Inspectorate for Communications and Information Technology.

(2) Based on data available in SEAP, the SEAP operator is obliged to provide the National Authority for Regulating and Monitoring of Public Procurement in electronic format, the reports required by it, in order to ensure the information needed to create the statistics database.

**Art. 302** - Thresholds set out in art. 9 letters c) and c<sup>1</sup>), art. 51 para. (1) letter c) art. 55 para. (2), art. 57 para. (2), art. 223 para. (2), art. 227 para. (1) and art. 287<sup>12</sup> para. (2) can be modified by Government Decision, if this modification is driven by the need to respect the obligations undertaken at European level by the agreement regarding the public procurement concluded within the World Trade Organization.

**Art. 303** - (1) The National Authority for Regulating and Monitoring of Public Procurement elaborates rules for implementing this emergency ordinance, including the template of the public contract, of the public works concession contract and of the services concession contract, which shall be submitted for adoption to the Government within 60 days after publication in the Official Gazette of Romania, Part I, of this emergency ordinance.

(2) Pursuant to art. 248 para. (3), the National Authority for Regulating and Monitoring of Public Procurement elaborates rules on the specific procedure for preparing and transmitting the notification/request for ascertainment of the fact that a relevant activity is directly exposed to competition, which it submits for adoption to the Government within 90 days after publication in the Official Gazette of Romania, Part I of this emergency ordinance.

(3) The National Authority for Regulating and Monitoring Public Procurement and the Ministry of Communications and Information Technology shall develop norms for implementing this emergency ordinance for the procurement by electronic means, which shall be submitted for adoption to the Government within 90 days since the publication in Official Gazette of Romania, Part I of this emergency ordinance.

(4) Pursuant to art. 218 para. (1), the National Authority for Regulating and Monitoring of Public Procurement elaborates rules on procedures for the award of public works and services contracts, which shall be submitted for adoption to the Government within 90 days after the publication in the Official Gazette Romania, Part I of this emergency ordinance.

**Art. 304** - (1) The decision of the Government there can be established the circumstances and manner in which the economic operator and the contracting authority have the right to resort to a conciliation procedure.



(2) By decision of the Government there can be determined the manner in which the contracting authorities have the right to use, for the award of the public utilities contracts, preliminary qualification systems.

**Art. 304<sup>1</sup>\*)** - (1) For the award of the contracts, the contracting authority has the obligation to establish an internal department specialized in public procurement, until 1 January 2008.

(2) In the case of the new set-up contracting authorities the obligation under para. (1) shall be carried out in a period of 3 months after the setting up of the contracting authority.

(3) To the extent that the organizational structure of the contracting authority does not allow the setting up of a separate department, the requirement under para. (1) and (2) is met by administrative act of the manager of the contracting authority or, where appropriate, more persons within the respective contracting authority are responsible for carrying out the main tasks of the specialized internal department, as are provided by the laws on public procurement.

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\*) Art. 304<sup>1</sup> was introduced by Law No. 337/2006, published in the Official No. 625 of July 20, 2006

**Art. 305** - On the date of entering in force of this emergency ordinance are hereby repealed:

a) Law no. 219/1998 on the concessions regime, published in the Official Gazette, Part I, no. 459 of 30 November 1998, with subsequent amendments, as well as the normative acts issued for the implementation thereof;

b) Government Emergency Ordinance no. 60/2001 concerning the public procurement, published in the Official Gazette, Part I, no. 241 of May 11, 2001, approved with amendments by Law no. 212/2002, with subsequent amendments, as well as the normative acts issued for the implementation thereof;

c) art. 5 para. (6) and (7) of the Government Ordinance no. 80/2001 regarding the establishment of normatives regarding the costs for public authorities and public institutions, published in the Official Gazette, Part I, no. 542 of 11 September 2001, approved with amendments by Law no. 247/2002, as amended and supplemented;

d) Government Ordinance no. 16/2002 on public-private partnership contracts, published in the Official Gazette, Part I, no. 94 of February 2, 2002, approved with amendments by Law no. 470/2002, with subsequent amendments as well as the normative acts issued for the implementation thereof;

e) Government Ordinance no. 20/2002 concerning the procurement through electronic tenders, published in the Official Gazette, Part I, no. 86 of February 1, 2002, approved with amendments by Law no. 468/2002, with subsequent amendments, as well as the normative acts issued for the implementation thereof;

f) art. 3 Government Emergency Ordinance no. 34/2005 on the appointment of the National Housing Agency to carry out works of construction and/or rehabilitation of houses in the calamity areas following the floods of 2005, published in Official Gazette of Romania, Part I, no. 389 of May 9, 2005, approved with amendments by Law no. 211/2005;

g) The Government Decision no. 1.186/2001 approving the Procedures for the public procurement of goods and services involving national defense, public order, national safety and security and the related list, published in the Official Gazette, Part I, no. 815 of December 18, 2001, as amended and supplemented;

h) art. 7 of the Government Decision no. 273/2003 on the establishment of subsidiary companies for repairs and services by reorganizing the activities of the Company for

Production of Electric and Thermal Power "Termoelectrica" - SA, published in the Official Gazette, Part I, no. 204 of March 20, 2003;

i) point 3.12 of the annex to Government Decision no. 1.293/2003 approving the Mandate on the implementation of the privatization strategy for national companies and companies operating under the authority of the Ministry of Transport, Constructions and Tourism, published in the Official Gazette, Part I, no. 835 of 25 November 2003.

**Art. 306** - Annexes no. 1, 2 and 3 \*) are part of this emergency ordinance.

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\*) Annexes no. 1, 2 and 3 are reproduced in facsimile.

**Art. 307** - (1) This emergency ordinance shall enter into force on 30 June 2006.

(2) Notwithstanding the provisions of para. (1):

a) the provisions of art. 14 para. (3) and art. 254 enter into force on 1 January 2007;

b) the provisions of art. 257 para. (1) shall enter into force on the date of the publication of this emergency ordinance in the Official Gazette, Part I.

\*

This emergency ordinance transposes the Directive no. 2004/18/EC on the coordination of procedures for award of works, supplies and services contracts, Directive no. 2004/17/EC regarding the coordinating of the procurement procedures of entities operating in the water, energy, transport and postal services sectors, published in the Official Journal of the European Union (OJEU) no. Law 134 of 30 April 2004, except for art. 41 (3), art. 49 (3) - (5) and art. 53, which are transposed by Government Decision, the Directive 1989/665/CEE regarding the coordination of the laws, regulations and administrative provisions relating to the application of the appeal procedures concerning the award of public supply and works contracts published in the Official Journal of the European Communities (OJEC) no. Law 395 of 30 December 1989 and Directive 1992/13/CEE regarding the coordination of the laws, regulations and administrative provisions relating to the application of the Community rules on procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, published in the Official Journal European Union (OJEC) no. Law 76 of 23 March 1992 except for art. 9-11, which are transposed by Government Decision.

PRIME MINISTER  
**CĂLIN POPESCU-TĂRICEANU**

Countersigned:  
President of the National Authority for Regulating  
and Monitoring the Public Procurement,  
**Alexandru Cojocaru**

Head of the Chancellery of the Prime Minister,  
**Marian Aleodor Frâncu**

For the Public Finances Minister  
**Istvan Jakab,**

Secretary of State

**Annex no. 1**

NACE*					
CPV Code			Section F		Construction works
Division	Group	Class	Description	General explanations	
*Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1). Regulation as amended by Commission Regulation (EEC) No 761/93 of 24 March 1993 (OJ L 83, 3.4.1993, p. 1)					
45			Construction works	<b>This division includes:</b> construction of new buildings and works, restoring and common repairs	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	<b>This class includes:</b> – demolition of buildings and other structures – clearing of building sites – earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. – site preparation for mining: – overburden removal and other development and preparation of mineral properties and sites – building site drainage – drainage of agricultural or forestry land	45110000
		45.12	Test drilling and boring	<b>This class includes:</b> – test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes  <b>This class excludes:</b> – drilling of production oil or gas wells, classified under 11.20 – water well drilling,	45120000

				<p>classified under 45.25</p> <ul style="list-style-type: none"> <li>- shaft sinking, classified under 45.25</li> <li>- oil and gas field exploration, geophysical, geological and seismic surveying, classified under 74.20</li> </ul>	
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000
		45.21	General construction of buildings and civil engineering works	<p><b>This class includes:</b></p> <ul style="list-style-type: none"> <li>- construction of all types of buildings</li> <li>- construction of civil engineering constructions: bridges, including those for elevated highways, viaducts, tunnels and subways</li> <li>- long-distance pipelines (oil, gas, water), communication and power lines</li> <li>- urban pipelines, urban communication and power lines;</li> <li>- ancillary urban works</li> <li>- assembly and erection of prefabricated constructions on the site</li> </ul> <p><b>This class excludes:</b></p> <ul style="list-style-type: none"> <li>- service activities incidental to oil and gas extraction, classified under 11.20</li> <li>- erection of complete prefabricated constructions from self-manufactured parts not of concrete, classified under 20, 26 and 28</li> </ul>	45210000

				<ul style="list-style-type: none"> <li>– construction work (other than buildings) for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, classified under 45.23</li> <li>– building installation, classified under 45.3</li> <li>– building completion, classified under 45.4</li> <li>– architectural and engineering activities, classified under 74.20</li> <li>– project management for construction, classified under 74.20</li> </ul>	
	45.22	Erection of roof covering and frames	<p><b>This class includes:</b></p> <ul style="list-style-type: none"> <li>– erection of roofs</li> <li>– roof covering</li> <li>– waterproofing</li> </ul>	45220000	
	45.23	Construction of highways, roads, airfields and sports facilities	<p><b>This class includes:</b></p> <ul style="list-style-type: none"> <li>– construction of highways, streets, roads, other vehicular and pedestrian ways</li> <li>– construction of railways</li> <li>– construction of airfield runways</li> <li>– construction work (other than buildings) for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations</li> <li>– painting of markings on road surfaces and car parks</li> </ul> <p><b>This class excludes:</b></p> <ul style="list-style-type: none"> <li>– preliminary earth moving, classified under 45.11</li> </ul>	45230000	
	45.24	Construction	<p><b>This class includes:</b></p>	45240000	

			of water projects	<ul style="list-style-type: none"> <li>– construction of:</li> <li>– waterways, harbour and river works, pleasure ports (marinas), locks, etc.</li> <li>– dams and dykes</li> <li>– dredging subsurface work</li> </ul>	
		45.25	Other special construction work	<p><b>This class includes:</b></p> <ul style="list-style-type: none"> <li>– construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment:</li> <li>– construction of foundations, including pile driving</li> <li>– water well drilling and construction, shaft sinking</li> <li>– erection of steel elements (non-self-manufactured)</li> <li>– steel bending</li> <li>– bricklaying and stone setting</li> <li>– scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms</li> <li>– erection of chimneys and industrial ovens</li> </ul> <p><b>This class excludes:</b></p> <ul style="list-style-type: none"> <li>– renting of scaffolds without erection and dismantling, classified under 71.32</li> </ul>	45250000
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	<p><b>This class includes:</b></p> <ul style="list-style-type: none"> <li>– installation in buildings or other construction projects of:</li> <li>– electrical wiring and fittings</li> <li>– telecommunications</li> </ul>	45310000

				<p>systems</p> <ul style="list-style-type: none"> <li>– electrical heating systems</li> <li>– residential antennas and aerials fire alarms</li> <li>– burglar alarm systems</li> <li>– lifts and escalators</li> <li>– lightning conductors, etc.</li> </ul>	
		45.32	Insulation work activities	<p><b>This class includes:</b></p> <ul style="list-style-type: none"> <li>– installation in buildings or other construction projects of thermal, sound or vibration insulation</li> </ul> <p><b>This class excludes:</b></p> <ul style="list-style-type: none"> <li>– waterproofing, classified under 45.22</li> </ul>	45320000
		45.33	Plumbing	<p><b>This class includes:</b></p> <ul style="list-style-type: none"> <li>– installation in buildings or other construction projects of:</li> <li>– plumbing and sanitary equipment gas fittings</li> <li>– heating, ventilation, refrigeration or air-conditioning equipment and ducts</li> <li>– sprinkler systems</li> </ul> <p><b>This class excludes:</b></p> <ul style="list-style-type: none"> <li>– installation of electrical heating systems, classified under 45.31</li> </ul>	45330000
		45.34	Other building installation	<p><b>This class includes:</b></p> <ul style="list-style-type: none"> <li>– installation of illumination and signalling systems for roads, railways, airports and harbours</li> <li>– installation in buildings or other construction projects of fittings and fixtures n.e.c.</li> </ul>	45340000
	45.4		Building completion		45400000



	45.41	Plastering	<p><b>This class includes:</b></p> <ul style="list-style-type: none"> <li>– application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials</li> </ul>	45410000
	45.42	Joinery installation	<p><b>This class includes:</b></p> <ul style="list-style-type: none"> <li>– installation of doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials (non self-manufactured)</li> <li>– interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</li> </ul> <p><b>This class excludes:</b></p> <ul style="list-style-type: none"> <li>– laying of parquet and other wood floor coverings, classified under 45.43</li> </ul>	45420000
	45.43	Floor and wall covering	<p><b>This class includes:</b></p> <ul style="list-style-type: none"> <li>– laying, tiling, hanging or fitting in buildings or other construction projects of: <ul style="list-style-type: none"> <li>– ceramic, concrete or cut stone wall or floor tiles</li> <li>– parquet and other wood floor coverings</li> <li>– carpets and linoleum floor coverings, including of rubber or plastic</li> <li>– granite, marble, or slate floor or wall coverings</li> <li>– wallpaper</li> </ul> </li> </ul>	45430000
	45.44	Painting and glazing	<p><b>This class includes:</b></p> <ul style="list-style-type: none"> <li>– interior and exterior painting of buildings</li> <li>– painting of civil</li> </ul>	45440000

				<p>engineering structures</p> <ul style="list-style-type: none"> <li>– installation of glass, mirrors, etc</li> </ul> <p><b>This class excludes:</b></p> <ul style="list-style-type: none"> <li>– installation of windows, classified under 45.42</li> </ul>	
		45.45	Other building completion	<p><b>This class includes:</b></p> <ul style="list-style-type: none"> <li>– installation of private swimming pools</li> <li>– steam cleaning, sand blasting and similar activities for building exteriors</li> <li>– other building completion and finishing work n.e.c.</li> </ul> <p><b>This class excludes:</b></p> <ul style="list-style-type: none"> <li>– interior cleaning of buildings and other structures, classified under 74.70</li> </ul>	45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	<p><b>This class excludes:</b></p> <ul style="list-style-type: none"> <li>– renting of construction or demolition machinery and equipment without operators, classified under 71.32</li> </ul>	

## Annex no. 2

### Annex no. 2A\*)

\*) In the event of any difference of interpretation between the CPV and the CPC, the CPC nomenclature will apply.

Category	Description of services	CPC Reference numbers	CPV Reference numbers
1	Maintenance and repair services	6112, 6122, 633, 886	From 50100000-6 to 50884000 -5 (except for 50310000-1 to 50324200-4 and 50116510-9, 50190000-3, 50229000-6, 50243000-0) and from 51000000-9 to 51900000-1
2	Land transport services (,), including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304	From 60100000-9 to 60183000-4 (excepting 60160000-7, 60161000-4, 60220000-6) and from 64120000-3 to 64121200-2
3	Air transport services of passengers and freight, except transport of mail	73 (except 7321)	From 60410000-5 to 60424120-3 (except 60411000-2, 60411000-5) and 60500000-3 From 60440000-4 to 60445000-9
4	Transport of mail by land (,) and by air	71235, 7321	60160000-7, 60161000-4 60411000-2, 60421000-5
5	Telecommunications services	752	From 64200000-8 to 64228200-2 72318000-7 and from 72700000-7 to 72720000-3
6	Financial services: a) Insurance services b) Banking and investment services (f)	ex 81, 812, 814	From 66100000-1 to 66720000-3 (,,)
<p>(,) Except for rail transport services covered by category 18 of CVC.  (f) Except financial services public contracts in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services. Also excluded: the services contracts involving the purchase or rental, by whatever financial procedures, of land, existing buildings, or other immovable property or concerning rights thereon; nevertheless, financial services supplied at the same time as, before or after the contract of purchase or rental, in whatever form, shall be subject to this emergency ordinance.</p>			
7	Computer and related services	84	From 50310000-1 to 50324200-4 From 72000000-5 to 72920000-5 (except 72318000-7 and from 72700000-7 to 72720000-3),

			79342410-4
8	Research and development services (,,)	85	From 73000000-2 to 73436000-7 except 73200000-4, 73210000-7, 73220000-0)
9	Accounting, auditing and bookkeeping services	862	From 79210000-9 to 79223000-3
10	Market research and public opinion polling services	864	From 79300000-7 to 79330000-6 and 79342310-9, 79342311-6
11	Management consulting services ...) and related services	865, 866	From 73200000-4 to 73220000-0 From 79400000-8 to 79421200-3 79342000-3, 79342100-4, 79342300-6, 79342320-2, 79342321-9, 79910000-6, 79991000-7, 98362000-8
<p>(,,) Except research and development services public contracts other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting authority.</p> <p>...) Except arbitration and conciliation services.</p>			
12	Architectural services; engineering services and integrated engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services	867	From 71000000-8 and 71900000-7 Except 71550000-8) and 79994000-8
13	Advertising services	871	From 79341000-6 to 79342200-5 (except 79342000-3 and 79342100-4)
14	Building-cleaning services and property management services	874, 82201 to 82206	From 70300000-4 to 70340000-6 And from 90900000-6 to 90924000-0
15	Publishing and printing services on a fee or contract basis	88442	From 79800000-2 to 79824000-6 From 79970000-6 to 79980000-7
16	Sewage and refuse disposal services; sanitation and similar services	94	From 90400000-1 to 90743200-9 except 90712200-3) From 90910000-9 to 90920000-2

			and 50190000-3, 50229000-6 50243000-0
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**Annex No. 2B\*)**

\*) In the event of any difference of interpretation between the CPV and the CPC, the CPC nomenclature will apply.

Category	Description of services	CPC*) Reference numbers	CPV Reference numbers
*) CPC Nomenclature (provisional version), used to define the scope of Directive 92/50/EEC			
17	Hotel and restaurant services	64	From 55100000-1 la 55524000-9 and from 98340000-8 to 98341100-6
18	Rail transport services	711	From 60200000-0 to 60220000-6
19	Water transport services	72	From 60600000-4 la 60653000-0 and from 63727000-1 to 63727200-3
20	Supporting and auxiliary transport services	74	From 63000000-9 la 63734000-3 except 63711200-8, 63712700-0, 63712710-3 and from 63727000-1, to 63727200-3) and 98361000-1
21	Legal services	861	From 79100000-5 to 79140000-7
22	Personnel placement and supply services (,)	872	From 79600000-0 to 79635000-4 (except 79611000-0, 79632000-3, 79633000-0) and from 98500000-8 to 98514000-9
23	Investigation and security services, except armoured car services	873 (except 87304)	From 79700000-1 to 79723000-8
24	Education and vocational education services	92	From 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1)
25	Health and social services	93	79611000-0 and from 85000000-9

			1a 85323000-9 (except 85321000-5 to 85322000-2)
26	Recreational, cultural and sporting services ( <i>f</i> )	96	From 79995000-5 to 79995200-7 and from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6)
27	Other services		
<p>(1) Except employment contracts.</p> <p>(2) Except contracts for the procurement, development, production or co-production of programmes by broadcasting organisations and contracts for broadcasting time.</p>			

## **Annex No. 3**

### **INFORMATION WHICH MUST BE INCLUDED IN NOTICES**

#### **Annex No. 3A**

### **INFORMATION WHICH MUST BE INCLUDED IN PUBLIC CONTRACT NOTICES**

#### **SIMPLIFIED NOTICE OF PRIOR INFORMATION CONCERNING THE PUBLICATION OF THE NOTICE IN SEAP**

1. Country of the contracting authority
2. Name of the contracting authority
3. Internet address where the notice is published (URL)
4. CPV Nomenclature reference number (numbers)

#### **PRIOR INFORMATION NOTICE**

1. The name, address, fax number and email address of the contracting authority and, of the service from which additional information may be obtained and, if applicable. In the case of services or works contracts, is specified the competent institutions and the contact points (including the Internet site) from which information can be obtained concerning the general regulatory framework for taxes, environmental protection, employment protection and working conditions applicable in the place where the contract is to be performed.
2. Where appropriate, is indicated whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmers.
3. In the case of public works contracts: the nature and extent of the works; the place of execution; if the work is to be subdivided into several lots, the essential characteristics of those lots; if available, an estimate of the range of the cost of the proposed works; Nomenclature reference number (numbers).  
In the case of public supply contracts: the nature and quantity or value of the products to be supplied, Nomenclature reference number (numbers).  
In the case of public services contracts: the total value of the proposed purchases in each of the service categories in Annex no. 2 A; Nomenclature reference number (numbers).
4. Estimated date for initiating the award procedures in respect of the contract or contracts, in the case of public service contracts specifying the category in which each contract is included.
5. Where appropriate, is indicated whether a framework agreement is involved.
6. Where appropriate, other information.
7. Date of dispatch of the prior information notice or of dispatch of the notice of the publication of the prior simplified information notice.
8. It is specified if the contracts is under the OMC Agreement (only in the case of notices sent for publication to the Official Journal of the European Union).

## PUBLIC CONTRACT NOTICES

Open procedure, restricted procedure, competitive dialogue, negotiated procedure:

1. Name, address, telephone and fax number, email address of the contracting authority.
2. Where appropriate, it is indicated whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programs.
3. (a) The award procedure chosen;
  - (b) Where appropriate, the reasons for use of the accelerated procedure (in restricted and negotiated procedures);
  - (c) Where appropriate, it is indicated whether a framework agreement is to be concluded;
  - (d) Where appropriate, it is indicated whether a dynamic purchasing system is to be used;
  - (e) Where appropriate, it is indicated if an electronic auction is to be applied [according to the provisions of art. 161 letter a)].
4. Form of the contract.
5. Where applicable, place of execution/performance of the works, for delivery of products or of the provision of services.
6. (a) Public works contracts:
  - nature and extent of the works, general nature of the work; it is indicated, if applicable, the option concerning the purchase of supplementary similar works, and, if known, the provisional timetable for recourse to these options, as well as the number of possible renewals; if the contract is subdivided into several lots, the size of the different lots; Nomenclature reference number(s),
  - information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects,
  - in the event of a framework agreement, it is indicated also the planned duration of the framework agreement, the estimated total value of the works for the entire duration of the framework agreement and, as far as possible, the value and the frequency of the contracts to be awarded.
- (b) Public supply contracts:
  - nature of the products to be supplied, indicating in particular whether tenders are requested with a view to purchase, lease rental, hire or hire purchase or a combination of these; quantity of products to be supplied; it is indicated, if applicable, the option concerning supplementary purchases and, if known, the provisional timetable for recourse to these options as well as the number of renewals, if any; Nomenclature reference number(s),
  - in the case of regular or renewable contracts during the course of a given period, indicate also, if known, it is mentioned, if known, the timetable for subsequent contracts,
  - in the event of a framework agreement, it is indicated the planned duration of the framework agreement, the estimated total value of the supplies for the entire duration of the framework agreement and, as far as possible, the individual value and the frequency of the contracts to be awarded.
- (c) Public service contracts:
  - category and description of service; Nomenclature reference number(s); quantity of services to be provided; it is indicated, if applicable, the option concerning supplementary purchases



and, if known, the provisional timetable for recourse to these options as well as the number of renewals.

- in the case of regular or renewable contracts over a given period, is specified the estimated time frame, if known, for subsequent public contracts.

- in the case of a framework agreement, it is indicated the planned duration of the framework agreement, the estimated total value of the services for the entire duration of the framework agreement and, as far as possible, the value and the frequency of the contracts to be awarded,

- it is indicated whether the execution of the service is reserved, according to certain normative acts, to a particular profession (such normative acts shall be mentioned).

- it is indicated whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.

7. If the contracts are subdivided into lots, it is indicated the possibility of tendering for one, for several or for all the lots.

8. The time limit for completion of works/supplies/services or duration of the works/supply/services contract. Where possible any time limit by which works will begin or any time limit by which delivery of supplies or services will begin.

9. Admission or prohibition of alternative tenders.

10. Where applicable, particular conditions to which the performance of the contract is subject.

11. In the case of open procedures:

- (a) name, address, telephone and fax number and electronic address of the service from which tender documentation (specifications and any additional documents) can be requested;

- (b) where appropriate, time limit for submission of such requests;

- (c) where appropriate, cost of and payment conditions for obtaining these documents.

12. (a) Time limit for receipt of tenders or indicative tenders where a dynamic purchasing system is being used (open procedures);

- (b) In the case of restricted and negotiated procedures, the time limit for receipt of request to participate;

- (c) address where these have to be transmitted;

- (d) the language or languages in which they must be drawn up.

13. In the case of open procedures:

- (a) persons authorised to be present at the opening of tenders;

- (b) date, time and place for opening of tenders.

14. Where appropriate any deposit and guarantees required.

15. Main terms concerning financing and payment and/or references to the texts in which these are contained.

16. Where applicable, the legal form to be taken by the association of economic operators to whom the contract is awarded.

17. Qualification/selection criteria regarding the personal situation of economic operators that may lead to their exclusion, and the information/documents proving that they do not fall within the cases justifying exclusion. Qualification/selection criteria and information concerning the economic operators' personal situation, information and any necessary formalities for assessment of the minimum economic and technical standards required of the economic operator. Minimum specific level(s) of standards imposed.

18. Where there is a framework agreement: the number and, where appropriate, proposed maximum number of economic operators who will be members of it, the duration of the framework agreement provided for, stating, if appropriate, the reasons for any duration exceeding four years.

19. In the case of a competitive dialogue or a negotiated procedure with the publication of a contract notice, it is indicated, if appropriate, the recourse to a staged procedure in order gradually to reduce the number of solutions to be discussed or tenders to be negotiated.

20. In the case of a restricted procedure, a competitive dialogue or a negotiated procedure with the publication of a contract notice, when recourse is had to the option of reducing the number of candidates to be invited to submit tenders, to engage in dialogue or to negotiate: minimum and, if appropriate, proposed maximum number of candidates and objective criteria to be used to choose that number of candidates.

21. Time frame during which the tenderer must maintain its tender.

22. Where appropriate, names and addresses of economic operators already selected by the contracting authority (negotiated procedures).

23. Criteria referred to be used for award of the contract: “lowest price” or “most economically advantageous tender”, as well as their weighting shall be mentioned where they do not appear in the tender documentation or, in the event of a competitive dialogue, in the descriptive document.

24. Name and address of the body responsible for appeals. Precise information concerning deadlines for lodging appeals, or if need, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

25. Date of publication of the prior information notice or, where applicable, statement that no such publication was made.

26. Date of dispatch of the notice.

27. It is specified if the contracts is under the OMC Agreement (only in the case of notices sent for publication to the Official Journal of the European Union).

## **SIMPLIFIED CONTRACT NOTICE FOR USE IN A DYNAMIC PURCHASING SYSTEM**

1. Country of contracting authority.

2. Name and e-mail address of contracting authority.

3. Publication reference of the contract notice for the dynamic purchasing system.

4. E-mail address at which the tender documentation (specifications and additional documents) relating to the dynamic purchasing system are available.

5. Object of contract: description by reference number(s) of “CPV” nomenclature and quantity or extent of the contract to be awarded.

6. Time frame for submitting indicative tenders.

## **CONTRACT AWARD NOTICES**

1. Name and address of the contracting authority.
2. Award procedures chosen. In the case of negotiated procedure without prior publication of a contract notice justification reasons shall be presented.
3. Public works contracts: nature and extent of the contract, general characteristics of the work.  
Public supply contracts: nature and quantity of products supplied, where appropriate, by the supplier; nomenclature reference number.  
Public service contracts: category and description of the service; nomenclature reference number; quantity of services bought.
4. Date of contract award.
5. Public contract award criteria.
6. Number of tenders received.
7. Name and address of the successful tenderer/s.
8. Price or range of prices paid.
9. Value of the highest tender and lowest tender taken into consideration for the contract award.
10. Where appropriate, value and proportion of contract likely to be subcontracted to third parties.
11. Date of publication of the contract notice.
12. Date of dispatch of the contract award notice.
13. Name and address of the body responsible for appeal. Precise information concerning the deadline for lodging appeals, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

## **Annex No. 3B**

### **INFORMATION WHICH MUST APPEAR IN PUBLIC WORKS/SERVICES CONCESSION NOTICES**

1. Name, address, fax number and email address of the contracting authority
2. (a) Place of execution of works/performance of services.  
(b) Object of the concession; nature and extent of the works/services.
3. (a) Time limit for the submission of applications,  
(b) Address to which they must be sent;  
(c) Language or languages in which they must be elaborated.
4. Personal, technical and financial conditions to be met by the candidates.
5. Criteria which will be applied in the award of the contract.
6. If appropriate, the minimum proportion of the works which will be contracted to third parties.
7. Date of dispatch of the contract notice.

8. Name and address of the body responsible for appeal. Precise information concerning the deadline for lodging appeals, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

### **Annex No. 3C**

#### **INFORMATION WHICH MUST APPEAR IN WORKS CONTRACT NOTICES OF CONCESSIONAIRES WHO ARE NOT CONTRACTING AUTHORITIES**

1. (a) Place of execution of works;  
(b) Nature and extent of the services, general characteristics of the works.
2. Any time limit for completion imposed
3. Name and address of the body from whom the specifications and the additional documents may be requested.
4. (a) Time limit for the receipt of applications to participate and receipt of tenders;  
(b) Address to which they must be sent;  
(c) Language or languages in which they must be elaborated.
5. Any deposits or guarantees required.
6. Economic and technical conditions to be met by the contractor.
7. Criteria which will be applied in the award of the contract.
8. Date of dispatch of the contract notice.

### **Annex No. 3D**

#### **INFORMATION WHICH MUST APPEAR IN DESIGN CONTEST NOTICES**

##### **CONTEST NOTICES**

1. Name, address, fax number and email address of the contracting authority and those of the service from which the additional documents may be obtained.
2. Description of the project.
3. Type of contest: open or restricted.
4. In the event of an open contest: time limit for the submission of projects.
5. In the event of a restricted contest:
  - (a) number of participants contemplated;
  - (b) names of the participants already selected, if any;
  - (c) criteria for the selection of participants;
  - (d) time limit for requests to participate.
6. If appropriate, it is indicated if the participation is restricted to specified professions.
7. Criteria which will be applied in the evaluation of the projects.
8. Names of the members of the jury.

9. It is indicated whether the jury's decision is binding on the contracting authority.
10. Where applicable, number and value of the prizes.
11. Where applicable, payments to be made to all participants
12. It is indicated whether any contracts following the contest will or will not be awarded to the winner or winners of the contest.
13. Date of dispatch of the contract notice.

### **NOTICE OF THE RESULTS OF A CONTEST**

1. Name, address, fax number and email address of the contracting authority.
2. Description of the project.
3. Total number of participants.
4. Number of foreign participants.
5. Winner (winners) of the contest.
6. Where applicable, the prize (prizes) granted.
7. Reference of the contest notice.
8. Date of dispatch of the notice.