

**OFFICIAL GAZETTE OF ROMANIA**

Year 174 (XVIII) – No. 894 bis

Thursday, 2 November 2006

Part I

LAWS, DECREES, RESOLUTIONS AND OTHER DOCUMENTS

SUMMARY

	<u>Page</u>
Annex to the Order of the President of the National Authority for Regulation and Monitoring Public Procurements no. 155/2006 regarding the approval of the Guidelines for awarding the public procurement contracts	2 -200

DOCUMENTS OF THE SPECIALITY BODIES OF THE CENTRAL PUBLIC  
ADMINISTRATION

ROMANIAN GOVERNMENT  
NATIONAL AUTHORITY FOR REGULATION AND MONITORING PUBLIC  
PROCUREMENTS

**ORDER No. 155 of October 2, 2006, regarding the approval of the Guidelines for awarding the public procurement contracts\*)**

Pursuant to the provisions of:

- art. 1, 4 and 5 in Government Emergency Ordinance No. 74/2005 regarding the establishment of the National Authority for Regulation and Monitoring Public procurements, approved with amendments under Law No. 111/2006;
- art. 1 and 4 of Government Resolution No. 895/2005 regarding the organization and operation of the National Authority for Regulation and Supervision of Public Procurements;
- art. 106 of Government Resolution No. 925/2006 regarding the approval of the norms for the implementation of the provisions referring to the awarding of public procurement contracts in Government Emergency Ordinance No. 34/2006 regarding the awarding of public procurement contracts, of public works concession contracts and of service concession contracts, with subsequent amendments,

**president of the National Authority for Regulation and Supervision of Public Procurements issues this order:**

**Art. 1**

The Guidelines for awarding the public procurement contracts, hereinafter referred to as the Guidelines and provided in the Annex to this order are approved.

**Art. 2**

The Guidelines contain information regarding the contents of the documentation for awarding public procurement contracts and the related specific forms, as well as explanations regarding the implementation of the provisions of Government Emergency Ordinance No. 34/2006 regarding the awarding of public procurement contracts, of public works concession contracts and of service concession contracts, approved with

---

\*) Order no. 155/2006 was published in the Official Gazette of Romania, Part I, no. 894 of 2 November 2006, and it is republished in this bis no.

amendments and supplements under Law No. 337/2006, and of Government Resolution No. 925/206 for the approval of the norms for implementation of the provisions referring to awarding public procurements contracts in Government Emergency Ordinance No. 34/2006 regarding the awarding of public procurement contracts, of public works concession contracts and of service concession contracts, with subsequent amendments.

**Art. 3**

The guidelines are a useful instrument for work both for the contracting authorities, and for the economic operators in the implementation of the procedures for awarding the public procurement contracts.

**Art. 4**

-The Annex constitutes integral part hereof.

**Art. 5.**

This order is published in the Official Gazette of Romania, Part I.

---

President of the National Authority for Regulation and Supervision of Public  
Procurements

**Alexandru Stefan Cojocaru**

## ANNEX

### Guidelines for awarding public procurement contracts

Published in the Official Gazette No. 894 dated November 2, 2006

#### **GUIDELINES dated October 2, 2006, for awarding public procurement contracts**

##### INTRODUCTION

Government Emergency Ordinance No. 34/2006 regarding the awarding of public procurement contracts, of public works concession contracts and of the service concession contracts was enacted, as approved with amendments and supplements under Law No. 377/2006, in the context of the undertakings assumed by Romania to the European Union within Chapter I “Free movement of goods” and of the recommendations of the European Commission.

The purpose of the new legislation is:

- \* to promote competition between economic operators
- \* to guarantee equal and non-discriminatory treatment of the economic operators;
- \* to ensure transparency and integrity of the public procurement process;
- \* to ensure the efficient use of public funds for the implementation of the awarding procedures.

These Guidelines for implementation of the legislation regarding the awarding of public procurement contracts represent a supporting instrument for a correct implementation and in agreement with the proper European practice.

The abbreviations used in these guidelines:

**Ordinance** defines Government Emergency Ordinance No. 34/2006 regarding the awarding of public procurement contracts, of public works concession contracts and of the service concession contracts, approved with amendments and supplements under Law No. 377/2006.

**Resolution** defines Government Resolution No. 925/2006 regarding the approval of the norms for the implementation of the provisions referring to the awarding of public procurement contracts in Government Emergency Ordinance No. 34/2006 regarding the awarding of public procurement contracts, of public works concession contracts and of service concession contracts, with subsequent amendments.

#### **CHAPTER I: The public procurement system**

The public procurement system represents a part of the juridical-economic-technical realities of the Romanian society.

The general purpose of the public procurement system is dedicated to the satisfaction of public interest, development and improvement of the community’s living environment respectively.

Specific relationships for reaching the general purpose intervene between the component elements of the system.

In the system, the component elements interact among them, conditioning, patenting or annihilating each other.

The component elements of the system are:

- \* the regulatory authority;

- \* the contracting authorities;
- \* economic operators;
- \* system's supervisors.

Relationships which are established among the elements of the system are regularly:

- \* trade relationships, where one party requests to purchase products, services and works and the other to sell;
- \* support relationships, where one party requests support for the implementation of the rules of the game and the other offers it;
- \* supervision relationships, where one party applies the rules of the game and the other verifies the fair application thereof;
- \* relationships for achieving justice, where the encroached party turns into good account the right by filing a suit in court.

The rules of the game are created by the regulatory authority and consist in the norms applicable in the procedures for awarding the public procurement contract.

The system of public procurements designated the entirety of rules and actions referring to the spending of public money and where the demand issued by the public interest bodies meets the supply proposed by an economic operator.

### 1.1. The regulatory authority

The authority of regulation in the system of public procurement is represented by the **National Authority for Regulation and Supervision of Public Procurements**, hereinafter referred to ANRMAP.

ANRMAP is an independent public institution, having legal capacity, subordinated to the Government.

The fundamental role of the ANRMAP is the elaboration, promotion and implementation of policy in the field of public procurement.

### 1.2. Contracting authorities

In the public procurement system, public administration authorities and other legal person of private law which conduct activities in the field of utilities are called contracting authorities and pay the role of the purchaser. These, holding financial resources, try to meet the requirements of the community of products, services or public works by awarding contracts.

The following shall be a contracting authority:

- \* Any body of the State – public authority or public institution – which acts at central level or at regional or local level;

Example: Ministry of Administration and Interior, National Agency for Environment Protection, Alba County Council.

- \* any public law body, other than those above mentioned, having legal capacity, which was established to meet the requirements of general interest without commercial or industrial character and which is at least in one of the following events:

- it is financed, to the greatest extent, by another contracting authority;
- it is subordinated or it is subject to the control of a contracting authority;

- in the composition of the Council of directors/management body or supervision body, more than half of the number of members thereof are nominated by a contracting authority;

Example: The Romanian Radio Broadcasting Company, the Romanian Television Company, the Romanian Administration of Air Traffic Services.

\* any association composed of one or several contracting authorities;

Example: the association between the Prime-Minister's Chancery and ANRMAP, created for awarding a supply contract for 100 computers and printers.

\* any private companies which conducts one or several relevant activities, when this awards public procurement contracts or enters framework agreements intended for the performance of the respective activity;

Note: A public company is a person which conducts economic activities and upon which, directly or indirectly, the dominating influence of a contracting authority is exercised, following:

- some ownership rights; or
- financial interests; or
- Specific rules provided in the deed of foundation.

It is assumed that a dominating influence is exercised upon a public company by a contracting authority is the latter is, directly or indirectly, in at least one of the following events:

- it holds the majority of the subscribed capital;
- it holds control of majority of the votes in the management body;
- it can nominate in the composition of the Council of directors, of the managing body or supervision body more than half of the number of members thereof.

\* any subject of law, other than those indicate above, which conducts one or several relevant activities based on a special or exclusive right, conferred by a competent authority, when this awards public procurement contracts or enters framework agreements intended for the performance of the respective activities.

Example: The Electric and Thermal Energy Production Company Termoelectrica" - S.A., Bucharest Regie Autonome of Transport, Timișoara Regie Autonome of Water-Sewage, National Company for Transporation of Electric Energy "Transelectrica" - SA., National Company of Harbours Administration.

### **1.3. Economic operators**

Economic operators pay, within the public procurement system, the part:

\* of the vendor;

- \* of the provider;
- \* of the performer.

Economic operators are interested in entering contractual relationships with the State bodies to reach the purpose for which they have been established, namely, to conduct activities in terms of economic effectiveness, submitting thus one sole, clear, complete and serious tender.

An economic operator is any supplier, provider or performer which offers in a licit manner on the market products, services and/or performs works.

The capacity of economic operator can be held by:

- a natural person;
- a legal person;
- a group of such public law or private law persons.

**Note:** The public law legal person is that entity established by an administrative document issued by a State authority.

The legal person of private law is that entity established according to Company Law No. 31/1990, with subsequent amendments and supplements.

#### 1.4. System supervisors

Those who supervise the operation of the public procurement system are:

- ANRMAP;
- National Council for Opposition Settlement;
- Ministry of Public Works;
- Court of Audit.

ANRMAP is the authority for regulation in the field of public procurements, which, by the General Division of control, verifies and approves the intention, participation and awarding notices, verifies the evaluation reports, issues the approval for entering the public procurement contract in case where the completed control did not evidence violations or elusions of the laws applicable in the field of public procurements, imposes repairing steps, enforces sanctions and fines provide by the law for eluding or violation of the legal provisions in the field of awarding public procurement contracts.

The national Council for Opposition Settlement, hereinafter referred to as the Council, is an independent body which conducts an administrative-jurisdictional activity.

Ministry of Public Finances is a special body of the central public administration, in charge with the fulfilment of the position of verification of the procedural aspects related to the processes of awarding the public procurement contracts.

The Court of Audit is the public authority of the State exercising the external audit in the public sector in capacity of supreme institution of audit.

The Council has the following powers:

- to settle the oppositions filed within the awarding procedure before entering the contact; and
- to deliver a judgment on the legality of the procedures and operations conducted by the contracting authority in awarding a public procurement contract ; and
- to issue an opinion on the dispute deferred to court if the court requests this.

**Warning!** Referring to supervisions, one must not forget the role of the judicial control the

setting into movement of which can be performed by any person who considers his legitimate interest has been encroached throughout the implementation of a procedure for awarding a public procurement contract .

In fact, justice is the only power which holds supremacy in the supervision of the observation of law.

## **CHAPTER II: Principles in public procurement**

The Treaty for the establishment of the European Economic Community, entered on March 25, 1957, hereinafter referred to as the Treaty, establishes the four European freedoms, respectively: the free movement of goods, the free movement of services, the free movement of persons, the free movement of capital. These four freedoms did not remain just at a concept level, but were transposed in practice in form of principles. Thus, in the field of public procurements the four freedoms were reflected in several principles which were laid at the basis of awarding the public procurement contracts.

Throughout the entire public procurement process, when enacting any decision, the following principles must be taken into consideration:

- \* non-discrimination;
- \* equal treatment;
- \* mutual acknowledgement;
- \* transparency;
- \* proportionality;
- \* effectiveness of public funds employment;
- \* undertaking responsibility.

Non-discrimination means providing the conditions of manifestation of real competition for any economic operator, irrespective of the nationality thereof:

- \* to have the possibility to participate in the awarding procedure;
- \* to have chances to become a contract or.

Equal treatment shall mean the establishment and implementation, any time throughout the awarding procedure, of :

- \* rules;
- \* requirements;
- \* criteria

Identical for all the economic operators, so that these should benefit from equal chances to become contract ors.

Warning! No contracting authority is allowed to confer a preferential treatment to an economic operator for the mere fact that the economic operator is located in the same locality/zone/region/country or that the economic operator is a natural or legal person.

Mutual acknowledgement shall mean the acknowledgement of:

- products, services, works supplied in a licit manner on the European Union market;
- degrees, certificates, other documents, issued by the competent authorities of other states;
- technical specifications, equal to those required at national level.

Transparency shall mean to make the public aware of all information referring to the implementation of the awarding procedure.

Proportionality shall mean to ensure the correlation between:

- the necessity of the contracting authority;
- the object of the public procurement contract ;
- the requirements demanded to be met.

Effectiveness of using the public funds means the implementation of the procedure of competing awarding and employment of the criteria to reflect the economic advantages of the tenders in view of obtaining the optimal proportion between quality and price.

Note: If applicable, it is to take into consideration also the concrete effects purported to be obtained in the social field or in the field of environment protection and the promotion of durable development.

Public money is inexhaustible, so that it must be used judiciously to support the durable development. For this, the social, ethical and environment protection targets must be had in view.

Warning! Under the concept of a durable development, the lowest price shall not always represent the best value for the money.

Example: The difference of value is made when the contracting authorities:

- \* purchase:
  - regenerable energy;
  - effective computers in terms of energy;
  - natural food for canteens and hospitals etc.;
- \* pursue and insist upon the fact that economic operators should work under the observation of the employees' rights, working standards and collective bargaining agreements;
- \* stimulate the opportunities of employment for persons with disabilities or for the long-term employment;
- \* ensure that technical specifications are defined so that to correspond, as much as possible to the requirements or demands of any user, including persons with disabilities.

Undertaking responsibility shall mean the clear determination of tasks and responsibilities of the persons involved in the public procurement process, pursuant to ensure:

- professionalism;
- impartiality
- independence

Of the decisions enacted throughout conducting this process.

Pursued effects:

- \* Opening and development of the public procurement market;
- \* establishment of a framework based upon trust, fairness and impartiality;
- \* removal of the subjective elements which might influence decisions in the process of public procurement;
- \* elimination of preferential treatment conferred to local economic operators;
- \* ensuring of the “visibility” of the rules, opportunities, procedures and results;
- \* elimination of restrictive requirements;



- \* obtaining the best value for public funds, always deemed as being insufficient as compared to the requirements;
- \* supervision of costs of the public procurement process, understanding by that both the costs related to administration, and the costs attached to the tenderer;
- \* limitation of emergence of errors throughout conducting the public procurement process;
- \* reduction of fraud and corruption.

### **CHAPTER III: Scope of applicability**

Provisions of the ordinance and normative documents stipulated in the implementation thereof are mandatory for:

- \* awarding the public procurement contract ;
- \* entering the framework agreement;
- \* organization of the competition of solutions.

Warning! The contract , directly funded or subsidized more than 50%, by a contracting authority shall be deemed to be a public procurement contract and shall be awarded according to the provisions of the ordinance.

The same rule shall be valid in case where the respective contract is awarded in the name and for another natural or legal person.

In any event, the financing contract must contain, as a must, a clause regarding the observation of the ordinance for awarding the public procurement contract provided to be funded under the respective contract .

### **SUB-CHAPTER I: Exceptions from the applicability scope**

The following shall be exempted from the application of the ordinance's provisions:

- \* those public procurement contracts awarded by an authority in the field of national defence and security, if those would create circumstances which:
  - would lead to the disclosure of some information adverse to the essential interests of the country's security; or
  - involve the protection of some essential interests of the country's security and are in relation to the production or trading of weapons, ammunition and war material;

Note: Applicable circumstances and particular procedure for awarding these public procurement contracts can also be set forth under Government Resolution, so that these should not lead to the alteration of competition on the market of products which are not intended for specific military purposes.

- \* those public procurement contracts which were not adjudicated as having secret character by the authorities empowered in this respect;
- \* those public procurement contracts which require the imposing of particular steps of security for the protection of national interests;
- \* those public procurement contracts attributed following an international accord entered in accordance with the provisions of the Treaty, with one or several states which are not members of the European Union and which aim at the supply of products or completion of works, intended for the implementation or operation of a joint project of the signatory

states, and only if a particular procedure for the awarding of the respective contract was mentioned under the respective agreement;

\* those public procurement contracts awarded following an international agreement referring to the stationing of troops, and only if a specific procedure for the awarding of the respective contract was not provided under the respective agreement;

\* those public procurement contracts awarded following application of a procedure specific to those public procurement contracts, following the implementation of a specific procedure of an international organization.

Warning! The contracting authority is obligated to send the ANRMAP all the information referring to the international agreements entered in accordance with the provisions of the Treaty, with one or several third states as to the European Union, which aim at the supply of products or completion of works, intended for the implementation or operation of a joint project.

The following are exempted from the ordinance's provisions:

\* those service contracts having as object the purchaser or rental, by any financial means, of lands, actual buildings, other immovables or rights thereto;

Example: real estate agencies' services, notary public services.

Warning! Financial service contracts which are entered, irrespective of their form, in relation to the respective purchase or rental contract, shall be awarded according to the provisions of the ordinance.

Example: The credit for purchasing or rental of a land, building or of any other immovable shall be procured according to the ordinance.

\* those service contracts have as object the purchase, development, production or co-production of programmes intended for broadcasting to radio and television institutions;

\* those service contracts which have as object the performance of arbitration and conciliation services;

\* those service contracts which have as objects financial services in relation to issuing, purchase, sale or transfer of securities or of other financial instruments, especially operations of the contracting authority performed for the attraction of financial resources and/or capital, and performance of services specific to a central bank by the National Bank of Romania;

Warning! Credit contracts for financing a public procurement contract are awarded under the implementation of the negotiation procedure, subject to a prior notice of participation.

\* those service contracts which have as object the employment of manpower, entering employment agreements respectively;

\* those service contracts which have as object the performance of research-development services remunerated in total by the contracting authority and the results of which were not intended, exclusively, to the contracting authorities for its own benefit;

\* those service contracts of another contracting authority or an association of contracting authorities, if these benefit from an exclusive right for the performance of the respective

services, by virtue of law or of other documents with a normative character which are published, insofar as these are compatible with the provisions of the Treaty.

**SUB-CHAPTER II: Other particular exceptions from the applicability scope**

A subject of law to which a contracting authority, based on its legal powers, granted special or exclusive rights to perform a public service is obligated to observe only the principle of non-discrimination when this awards supply contracts to third parties.

Warning! The contracting authority is obligated to impose, under the authorization it issues, the observation of the principle of non-discrimination by that which benefits from special or exclusive rights, when this awards supply contracts to third parties.

If a service contract of the category 2B<sup>1)</sup> is awarded, then the obligation to apply the ordinance:

- exists only for those contracts the value of which exceeds EUR 125,000
- and
- is limited only to the provisions referring to the specifications' book (art. 35 – 38 in the ordinance) and to the provisions referring to the awarding notice.

If the 2B category contract also contains the performance of services of the 2A<sup>2)</sup> category, and the estimating value of which is lower than the value of services of the 2B category, then the obligation to apply the ordinance:

- exists only for those contracts the value of which exceeds EUR 125,000
- and
- is limited only to the provisions referring to the specifications' book (art. 35 – 38 in the ordinance) and the provisions referring to the awarding notice.

Warning! It is forbidden for the contracting authority to combine, within the same contract, service of the 2B category and service of the 2A category, for the purpose to benefit from the application of the provisions of art. 16 paragraph (1) in the ordinance when awarding the respective public procurement contract.

1) These services are provided in Annex 2 B to the ordinance.  
 2) These services are provided in Annex 2 A to the ordinance.

**CHAPTER IV: The process of public procurement**

The process of public procurement represents a succession of stages, after the completion of which the product or the right to use the product, service or work is obtained, following the awarding of a public procurement contract.

	Stage	Operation
1	Drafting of the public procurement annual programme	<ul style="list-style-type: none"> <li>- identification of the requirement</li> <li>- estimation of value</li> <li>- putting in correspondence with the CPV</li> <li>- hierarchy establishment</li> <li>- election of the procedure</li> <li>- identification of funds</li> </ul>

		<ul style="list-style-type: none"> <li>- elaboration of the schedule</li> <li>- finalisation and approval of the programme</li> <li>- if mandatory, elaboration and sending of the notice of intention</li> </ul>
2	Elaboration of the awarding documentation	<ul style="list-style-type: none"> <li>- establishment of technical specifications or of the descriptive documentation</li> <li>- establishment of the contractual terms</li> <li>- establishment of the minimum qualification requirements, if applicable, of the selection criteria</li> <li>- establishment of the awarding criterion</li> <li>- if applicable, requesting of a participation security</li> <li>- filling in the procurement date Record</li> <li>- establishment of forms and models</li> <li>- notice to the Ministry of Public Finances regarding the procedural verification</li> <li>- finalisation of the awarding documentation</li> </ul>
3	Calling to competition	<ul style="list-style-type: none"> <li>- publication of the participation notice</li> <li>- making available the awarding documentation</li> <li>- reply to the requests for clarifications</li> <li>- rules for participation and avoiding the conflict of interests</li> </ul>
4	Conducting the awarding procedure	<ul style="list-style-type: none"> <li>- if applicable, reception of candidacy and selection of candidates</li> <li>- if applicable, conducting the rounds of discussions</li> <li>- deadline for tender preparation</li> <li>- tenders' reception</li> <li>- tenders' Opening</li> <li>- tenders' review and evaluation</li> <li>- establishment of the successful tender</li> <li>- annulment of the procedure, if the case may be</li> </ul>
5	Awarding the public procurement contract or entering the framework agreement	<ul style="list-style-type: none"> <li>- notification of the outcome</li> <li>- waiting period</li> <li>- if the case may be, settlement of the oppositions</li> <li>- signing the contract or entering the framework agreement</li> <li>- sending an awarding notice for publication</li> </ul>
6	Conclusion of the public procurement dossier	<ul style="list-style-type: none"> <li>- finalisation of the public procurement dossier</li> </ul>
7	Conducting the framework agreement	<ul style="list-style-type: none"> <li>- if the case may be, establishment of the good execution bond</li> <li>- entering in effect</li> <li>- fulfilment of the undertaken obligations and</li> </ul>

		partial hand-over
8	Contract finalization	- final reception - if application, the release of the good execution bond
9	Process review	- conclusions - steps for improvement

### **SUB-CHAPTER I: Annual programme of public procurement (STAGE 1)**

The annual programme of public procurements is the document which contains:

- the public procurement contracts

and

- the framework agreements

intended to be awarded or entered throughout a budget year, as well as, if the case may be, the release of a dynamic system of procurement.

Annual programme of public procurement:

\* is drafted every year;

\* is elaborated in a first form during the last quarter of the previous year.

The annual programme const contain information about:

1. the object of the contract or the frame agreement;

2. CPV code;

3. estimated value without VAT (RON and EUR);

4. procedure that is to be applied;

5. date estimated for the commencement of the procedure;

6. estimated date for finalisation of the procedure;

7. entity in charge with the public procurement which is to be made.

The following shall be taken into account when elaborating the programme:

\* objective requirements of products, works and services;

\* priority of the requirements;

\* anticipations regarding the funds that are to be allocated under the annual budget;

\* pending public procurement contracts.

### **SECTION 1: Identification of requirements**

The entity in charge for the identification of the requirements it the internal compartment of public procurements.

The identification of the objective requirements is made by cumulating the requirement reports sent by each compartment of the contracting authority.

The requirement report contains the answers to the following questions:

\* What do we need?

- name of products, service and works.

\* For what do we need?

- accounting for the requirement of products, services and works.

Note: The account consists in highlighting the purpose for which the products, services or works are required.
--

Purpose can consist in:

- conducting the current activity;

- completion of a general interest project.
- \* When do we need?
  - to indicate the date forecast for procuring the required products, services and works se;
  - to complete a hierarchy of the requirements according to priority.
- \* How much does the required product, service or work cost?
  - to estimate the value of the product, service or work, as well as all the other costs related to the fulfilment of the contract .
- \* Which are the effects forecast to be obtained?
  - if possible, to indicate the benefits that are to be obtained.

## **SECTION 2: Estimation of the public procurement contract value**

### **SUB-SECTION 1:**

The purpose of estimation of the public procurement contract value is:

- \* to determine the financial resources necessary in view of identification potential financiers;
- \* to elect the procedures of awarding the respective contracts.

How do we estimate the consideration of contracts?

1. to identify all costs related to obtain the required products, services or works, including for those which are similar;
2. to sum up all the costs payable for the fulfilment of the respective contract, without VAT, expressed in RON and in EUR;
3. to take into consideration of the procurement method out of possible options;
4. to take into consideration possible increases of the contract price, following the acceptance of the adjustment thereof;
5. to take into consideration any possible supplements as to the initial objects;
6. if applicable, to also take into account the value of prizes or bonuses intended to be awarded.

When must the estimated consideration be established?

- \* before the initiation of the procedure for awarding the respective contract ;
- \* to be valid at the time of sending the participation notice or the participation invitation for publication.

What elements are taken into contract estimation?

- \* information obtained from market surveys;
- \* forecast duration of the contract ;
- \* costs related to the fulfilment of the contract ;
- \* possibility of emergence of accidental costs;
- \* possibility to opt for supplementing to the maximum provided level of the amount of products or services.

### **SUBSECTION 2: Methods to obtain the estimated value**

#### **A) Estimating the consideration of the supply contract**

1. In case where products that are to be purchased also require operations or works for set-up and putting into operation, then:

$$Ve = Vp + Vmipf,$$

where:

Ve = estimated value

Vp = products value = No. pcs x unitary price

Vmipf = manpower work, set-up and putting into operation value

**2.** In case where the method of procurement of the products, the call option, purchase in instalments, rental or leasing with or without call option, has not been established yet respectively, then:

$$Ve = Vpmax,$$

where:

Ve = estimated value

Vpmax = value of the most expensive method of procurement

**3.** In case where the method of procurement of products, purchase in instalments, by rental or leasing, with or without the call option, then:

\* if the duration of the contract is set forth and is lower or equal to 12 months, then:

$$Ve = Vr \times n,$$

where:

Ve = estimated value a contract

Vr = payable instalment value

n = No. de months  $\leq$  12 months

Note: No applied in case of purchasing by leasing.

\* if the contract period is set froth and is longer than 12 months, then:

$$Ve = (Vr \times N) + Vprez,$$

where:

Ve = estimated value

Vr = payable instalment value

N = number of months  $>$  12 months

Vprez = estimated residual value

Warning! Purchasing based on leasing presupposes the existence of a legal arrangement of at least two budget years.

\* if the contract is entered for an undetermined period of time or if the duration thereof cannot be determined at estimation date, then:

$$Ve = Vr \times 48 \text{ months},$$

where:

Ve = estimated value

Vr = payable instalment value

Warning! To obtain the approval of the main credit manager for entering a contract that is conducted for several budget years.

4. In case where it is intended to award a supply contract which must be renewed within a given period of time, then:

either  $V_e = V_{psa}$ ,

where:

$V_e$  = estimated value

$V_{psa}$  = adjusted value of similar supply contracts awarded during the last year

either  $V_e = V_{psv}$ ,

where:

$V_e$  = estimated value

$V_{psv}$  = value of similar supply contracts which are to be awarded in the following 12 months, commencing from the time of the first delivery

5. In case where it has been proposed to procure similar products, but broken down as per lots the purchase of which is made under the awarding of several distinct supply contracts, then:

$$V_e = V_l,$$

where:

$V_e$  = estimated value

$V_l$  = value of a lot

Warning! In case of a procurement per lots, irrespective whether one sole contract, with successive deliveries, or several contracts with immediate delivery is awarded, the estimated value is considered to be the cumulated value of all the lots.

If:  $V_l > \text{EUR } 40,000$ ,

then it is possible to apply the procedure by request of tenders only for the lots which meet, in a cumulating manner, the following terms:

\* estimated value of the respective lot is lower or equal to the equivalent in RON of EUR 40,000;

\* cumulated value of lots which applies to the procedure of offer request shall not exceed 20% of the aggregate value of products that are to be supplied.

Example: If the requirement of products is estimated to EUR 100,000 from which the contracting authority is positive about the financing of EUR 80,000, then, for awarding



the supply contract the value of which is up to the limit of EUR 80,000, the auction procedure is applied, and, according to the supplementing of the funds, to be entitled to apply the procedure of request of tenders for a value which does not exceed EUR 20,000

**B) Estimation of the service contract value**

**1.** In case where the contracting authority proposes to award a service contract for which it is not possible to anticipate the total price of the performance, but it is possible to estimate an average monthly tariff, then:

$$\text{either } V_e = V_{tm} \times N,$$

where:

$V_e$  = estimated value

$V_{tm}$  = value of the average monthly tariff  $N$  = number of months

If the contract duration is set forth and does not exceed 48 months

$$\text{Either } V_e = V_{tm} \times 48 \text{ months,}$$

where:

$V_e$  = estimated value

$V_{tm}$  = value of the average monthly tariff

If the contract duration cannot be determined or exceeds 48 months

**2.** In case where the contracting authority proposes to award a service contract which must be renewed in a given period of time, then:

$$\text{either } V_e = V_{ssa},$$

where:

$V_e$  = estimated value

$V_{ssa}$  = value of similar contracts awarded during the last 12 months, adjusted

$$\text{either } V_e = S V_{ssv},$$

where:

$V_e$  = estimated value

$V_{ssv}$  = value of similar service contracts which shall be awarded in the next 12 months

**3.** In case where the contracting authority proposes to purchase similar services, but broken down as per lots the procurement of which is the object of some distinct service contracts, then:

$$V_e = V_l,$$

where:

$V_e$  = estimated value

$V_l$  = value of a lot

Warning! In case of a procurement per lots, the estimated value is deemed to be the cumulated value of all the lots.

If:  $V_l > \text{EUR } 40,000$ ,

Then the procedure by request of tenders can be applied only for the lots which meet, in a cumulating manner, the following terms:

\* estimated value of the respective lot is smaller or equal to the equivalent in RON of EUR 40,000;

\* the cumulated value of lots for which the procedure of the request for tenders is applied does not exceed 20% of the aggregate value of services which are to be performed.

**4.** In case where the contracting authority proposes to procure insurance services, then:

$$V_e = P_a \times n,$$

where:

$V_e$  = estimated value

$P_a$  = insurance premium

$n$  = number of months

**5.** In case where the contracting authority proposes to procure bank services or other financial services, then:

$$V_e = T + C + D + A,$$

where:

$V_e$  = estimated value

$T$  = taxes

$C$  = fees

$D$  = interests

$A$  = other related remunerations

**6.** In case where the contracting authority proposes to procure design, urbanism, engineering and other technical services, then:

$$V_e = O + A,$$

where:

$V_e$  = estimated value

$O$  = retainers

$A$  = other related remunerations

### C) Estimation of the works contract value

1. In case where the contracting authority proposes to procure works for which it is to make available to the performer materials, outfits, technological equipment or other arrangements and supplies required for works' performance, then:

$$Ve = Cl + Vf,$$

where:

Ve = estimated value

Cl = work costs

Vf = value of the facilities made available by the contracting authority

2. In case where the object of the works' contract is an ensemble of works which presupposes, as applicable, also the supply of equipment, plants, outfits or other related supplies, then:

$$Ve = Vee + Vei + Veu + Ved,$$

where:

Ve = estimated value

Vee = estimated value of equipment

Vei = estimated value of plants

Ve = estimated value of outfits

Ved = estimated value of related supplies

3. In case where the work enables the execution per objects or lots, for which the contracting authority proposes to award to one or several performers distinct works contracts, then:

$$Ve = VI,$$

where:

Ve = estimated value

VI = value of a lot

$$\text{If: } VI > \text{EUR } 250,000,$$

Then the procedure by request of tenders can be applied only for lots which meet, in a cumulated manner, the following terms:

\* estimated value of the respective lot is lower or equal to the equivalent in RON of EUR 250,000;

\* cumulated value of lots for which the procedure of request for tenders is applied does not exceed 20% of the aggregate value of works.

### D) Estimation of the value in case of organization of a competition of solutions

In case where a competition of solutions is organized as an independent procedure, then :

$$V_e = V_p + V_{es},$$

where:

$V_e$  = estimated value

$V_p$  = value of a prize

$V_{es}$  = estimated value of the service contract which can be entered

**E)** Estimation of the value in case of entering a framework agreement:

$$V_e = V_{e \max},$$

where:

$V_e$  = estimated value

$V_{e \max}$  = maximum estimated value, without the VAT, of all the public procurement contracts which are anticipated to be awarded based on the respective framework agreement, for its entire period

**F)** Estimation of value in case where a dynamic system of procurement is used:

$$V_e - V_{e \max},$$

where:

$V_e$  = estimated value

$V_{e \max}$  = maximum estimated value, without VAT, of all the public procurement contracts which are anticipated to be awarded by using the respective dynamic system of procurement, for its entire period

If several products/services/works are intended for the same target or specific project, the value thereof must be taken into consideration when calculating the estimated value of the contract .

### **SUB-SECTION 3: Examples**

- 1.** In case where the contracting authority proposes to procure works for which the performer is to be made available outfits that are assembled, technological equipment or any other arrangements or supplies necessary for work execution, then the estimated value of the respective works contract must also include the estimated value of the mentioned facilities.
- 2.** Similar products are products with the same use or with a similar use which are grouped under the same code CPV, such as uniforms for men and uniforms for women. In this event the procedure is elected according to the cumulated de estimated value.
- 3.** If the works have the same code CPV, but are to be performed on various sites and for which different feasibility studies have been completed, then the estimated value is calculated for each work separately.
- 4.** Financial advice services cannot be considered services similar to those of technical consulting and, consequently, the awarding procedure shall be elected according to the estimated value for each contract separately.

### **SECTION 3: Putting in correspondence with the CPV**

Products, services and works which represent the object of the public procurement contracts are put in correspondence with the system of grouping and coding used in the Common Vocabulary of public procurement (CPV).

Correspondence of products, services and works with the system of grouping and coding CPV is provided when:

- \* the annual programme of public procurements is elaborated;
- \* the products, services or works that are to be procured are specified, in the intention notice and in the notice or invitation for participation;
- \* the awarding documentation is drafted;
- \* the products, services or works for which the public procurement contract was entered are specified in the awarding notice;
- \* information required for the supervision of the public procurement process are sent to the ANRMAP.

### **SECTION 4: Hierarchy establishment**

After the completion of the estimation, the specialised compartment, together with the head of the authority and the financial-accounting department shall set forth the priority of requirements, having in view:

- \* the importance of the contract for reaching the general purpose of the contracting authority;
- \* duration of the contract fulfilment;
- \* anticipation of the cash-flow.

Example: A water supply contract must have priority at financing.

### **SECTION 5: Election of the procedure**

When making the decision of selection of a certain public procurement procedure, the contracting authority shall have in view

- \* the complexity of the respective public procurement contract ;
- \* costs involved in the awarding of the respective contract ;
- \* level of development and competition on the market in the field where the procurement will be done, to elect between the open procedure and restricted procedure;
- \* constraints such as emergency, compatibility with products, services that already exist within the respective authority, existence of one sole supplier, provider or performer etc.

Open procedure and restricted procedure represent the rule of awarding any public procurement contract .

Warning! Exceptions from the rule of awarding: competitive dialogue, negotiation, request for tenders.

Warning! Open tender, restricted tender or negotiation with prior publication of a participation notice represent the rule of awarding any sector contract .

Note: in case of sector contracts, negotiation without the prior publication of a notice for participation and request for offers represent exceptions.

Warning! Election of the awarding procedures which represent exceptions from the rule are the exclusive liability of the contracting authority.

Recommendations:

Interior norms shall be elaborated for services contained in Annex 2B to the ordinance or those provided in art. 13 in the ordinance.

Public procurement contract can be awarded by open or restricted procedure, irrespective of the estimated value, irrespective of the estimated value thereof.

The tender request can also be applied for awarding public procurement contracts the estimated value of which is below the threshold of EUR 5,000.

Warning! It is prohibited to divide a contract in several contracts of a lower value for the purpose of avoiding the application of the open procedure or restricted procedure.

Warning! There are events in which the object of the contract contains products/services/works to which several CPV codes are associated. In such case, the awarding procedure is elected according to the cumulated value thereof.

Election of a procedure different from those provided by the rule shall be made based on an explanatory note

The explanatory note shall be approved by the head of the contracting authority, under the consent of the legal compartment, and represent an essential instrument of the public procurement dossier.

To apply the procedure of tender request, the explanatory note must contain only explanations regarding the outcome of estimation of the public procurement contract value which is to be awarded.

## **SUB-SECTION 1: Awarding procedures**

### **(1) Open procedure**

The open procedure represents the procedure for awarding the public procurement contract to which any interested economic operator is entitled to submit a tender.

The open tender is regularly conducted in one stage.

Warning! It is possible to decide upon the organization of additional stages of electronic auction, but only if this is specified in the participation notice and in the awarding documentation.

The open tender is initiated by sending for publication a participation notice whereby the economic operators are requested to submit tenders.

## (2) Restricted procedure

The restricted procedure represents the procedure whereby any economic operator is entitled to submit its candidacy, and only selected candidates will be entitled to submit a tender.

The restricted tender is conducted regularly in two stages:

- \* the candidate selection stage;
- \* the stage of evaluation of the tenders submitted by the selected candidates.

Warning! It is possible to decide upon the organization of an additional stage of electronic auction, but only if this is specified in the participation notice and in the awarding documentation.

The restricted procedure is initiated by sending for publication a participation notice whereby the economic operators are requested to submit candidacies.

The restricted procedure is used when the supply is excedentary.

## (3) Competitive dialogue

Competitive dialogue represents the procedure to which any economic operator is entitled to submit candidacy and whereby the contracting authority carries on a dialogue with the accepted candidates, for the purpose of identification of one or several solutions fit to meet its requirements, and, based on the identified solution/solutions, the selected candidate to elaborate the final tender.

Warning! The competitive dialogue is applied only when the terms are fulfilled, in a cumulating manner:

- the relevant contract is deemed to be highly complex;
- the application of the open procedure or restricted procedure would not allow the awarding of the relevant public procurement contract .

The highly complex contract is deemed to be that public procurement contract for which the contracting authority is not fairly in extent:

- \* to define the technical specifications capable to meet its requirements and demands; and/or
- \* to set forth the financing and/or the legal framework for project implementation.

The competitive dialogue procedure is conducted in three stages:

- \* candidates pre-selection stage;
- \* stage of dialogue with the candidates accepted following the pre-selection, for identification of the solution/solutions fit to meet the requirements of the contracting authority based upon which the candidates will elaborate and submit the final tender;
- \* the stage of evaluation of the final submitted tenders.

Competitive dialogue is initiated by sending for publication a participation notice whereby economic operators are requested to submit candidacies.

## (4) Negotiation

Negotiations is the procedure whereby the contracting authority carries on consulting with the selected candidates and negotiates the contractual terms, including the price, with one or several of these.

Negotiation can be:

- negotiation with the prior publication of a participation notice;
- negotiation without the prior publication of a participation notice.

### **I. Negotiation with the prior publication of a participation notice**

The procedure of negotiation with publication is regularly conducted in two stages:

- \* the stage of candidate selection;
- \* the stage of evaluation of the tenders submitted by the selected candidates.

Warning! It is possible to decide upon the organization of an additional stage, of electronic auction, but only if this is specified in the participation notice and in the descriptive documentation.

Negotiation with publication is initiated by sending for publication a participation notice whereby economic operators are requested to submit candidacies.

Negotiation with publication shall be applied when:

**1.** No tender has been submitted or only unacceptable or non-compliant tenders were submitted following the application of open procedure, restricted procedure or competitive dialogue.

Warning! The application of the procedure of negotiation in the case above is possible only after the annulment of the initial open procedure, restricted procedure or competitive dialogue and only if the initial requirements provide in the awarding documentation are not materially altered.

**2.** In exceptional events, seriously substantiated, when the nature of works/products/services or risks involved by the execution/ delivery/ performance thereof do not allow a global initial estimation of the price of the future public procurement price.

**3.** When services which are to be procured, particularly financial services, such as these are provided in category 6 in Annex No. 2 A to the ordinance, or intellectual services, such as those involving work design, are of such a nature that the specifications book cannot be elaborated with the accuracy imposed by the awarding of a public procurement contract by application of the open procedure or restricted procedure.

**4.** When works that are to be performed are required exclusively for the purpose of scientific research, experimenting or technological development, and only if these are not completed for obtaining profit and do not pursue the covering of the related costs either.

### **II. Negotiation without prior publication of a participation notice**

Negotiation without publication is applied when:

**1.** For technical, artistic reasons or for reasons related to the protection of some exclusiveness rights, the public procurement contract can be awarded only to a certain economic operator.



2. A strictly necessary step, when periods of application of the open procedure, restricted procedure or negotiation with prior publication of a participation notice cannot be observed for reasons of extreme emergency, determined by unforeseeable events and which are not due in any form to an action or non-action of the contracting authority.

Warning! The contracting authority is not entitled to set forth the duration of the contract for a period longer than that which is necessary to face the event of emergency which has determined the application of the negotiation procedure without the prior publication of a participation notice.

3. Products which are to be delivered are made exclusively for the purpose of scientific research, experimenting, studies or technological development, and only if these are not made for obtaining a profit and do not pursue to cover the related costs either.

Warning! The contracting authority is not entitled to set forth the duration of the contract for a period longer than necessary to face the emergency event which has determined the implementation of the negotiation procedure without the prior publication of a participation notice.

3. Products that are to be delivered are manufactured exclusively for the purpose of scientific research, experimenting, studies or technological development, and only if these are not made for obtaining profit and do not pursue the covering of the related **costs** either.

4. It is necessary to procure from the initial supplier an additional amount of products intended for the partial substitution or extension of the previously delivered equipment/plants and only if the change of the initial supplier would put the contracting authority in a situation to procure products which, due to the technical particulars which are different from those already existing, determine enhanced technical incompatibilities or difficulties of operation and maintenance.

Warning! The period in which such contracts can be awarded must not regularly exceed 3 years as from the awarding of the initial supply contract .

5. Products are rated at the commodities exchange, and the procurement thereof is made by operations on the market of available funds.

6. Products can be procured in particularly profitable conditions by an economic operator which settles its business definitely, by a judicial receiver which manages the business of an economic operator in a state of bankruptcy or winding-up, by a composition with the creditors of an economic operator in a state of bankruptcy or winding-up or by another procedure similar to the previous, regulated under the law.

7. Following a competition of solutions, the service contract must be awarded, according to the initially established rules, to the successful candidate or to one of the successful candidates of the respective competition, in the latter case the contracting authority being bound to send invitations to negotiation to all successful candidates.

8. It is necessary to purchase some additional or supplementary works or services, which were not included in the initial contract but which, due to unforeseeable circumstances, have become necessary for the fulfilment of the relevant contract, and only if the following terms are observed, in a cumulated manner:

- \* awarding should be made to the initial contract or;
- \* additional/supplementary works or services cannot be, technical and economically, separated from the initial contract without the appearance of some major events of inconvenience for the contracting authority or, although separable from the initial contract, they are strictly necessary in view of the fulfilment thereof;
- \* the cumulated value of the contracts awarded for additional/supplementary works and services does not exceed 50% of the initial contract value.

9. Subsequently to the awarding of a service or work contract, the contracting authority proposes to procure new works, new services respectively, which are similar to the works or services procured by awarding of the initial contract, and only if the following terms are observed, in a cumulated manner:

- \* the awarding is made to the initial contract or, and the new works, the new services respectively consisted in the repetition of some works or services similar to those provided in the initial contract and are compliant with the requirements provided in the specifications book elaborated on the occasion of awarding the respective contract;
- \* the initial work/service agreement was awarded by the open or restricted procedure;
- \* the estimated value of the initial work/service contract was determined by taking into consideration the similar works/services which can be subsequently procured;
- \* the fact that the contracting authority is entitled to opt for the subsequent procurement of new similar works, for new similar services respectively from the economic operator the tender of which will be adjudicated successful in the respective procedure has been specified in the notice for participation in the procedure applied for the awarding of the initial contract;
- \* the contracting authority is entitled to apply this procedure in an interval which cannot exceed 3 years as from the awarding of an initial contract.

#### (5) Tender request

The tender request represents the simplified procedure whereby the contracting authority requests tenders from several economic operators.

The tender request is applied only if the estimated value of the public procurement contract, without the VAT, is lower than the equal in RON of the following thresholds:

- \* for the supply contract : EUR 40,000 ;
- \* for the service contract : EUR 40,000 ;
- \* for the works contract : EUR 250,000 .

Until January 1, 2007, the tender request is initiated by sending an invitation for participation to at least 3 economic operators.

Warning! The tender request is initiated by publication, in the SEAP, of an invitation for participation in the awarding procedure, commencing from January 1, 2007.

Commencing from January 1, 2007, the contracting authority is entitled, in seriously substantiated cases, to request the ANRMAP to exempt from the obligation of publication of the invitation of participation in the SEAP.

Warning! The request cannot be issued for a period longer than 12 months as from the coming into effect of the ordinance.

ANRMAP is entitled to deny the request for derogation in case where the submitted reasons are not pertinent.

#### (6) Competition of solutions

The competition of solutions represents the procedure whereby there is the procurement, especially in the field of territory planning, urban and landscape design, architecture or data processing, of a plan or project, by selecting this based on a competition supervised by a Council, with or without prize award.

The competition of solution can be organized as:

- \* an independent procedure, in which the competitors can obtain participation prizes and/or bonuses; or
- \* part of another procedure leading to the awarding of a service contract.

The competition of solutions is initiated by publication of a participation notice whereby the interested economic operators are requested to submit projects.

#### (7) Direct purchase

Direct purchase is applied in case where products, services or works are purchased, the value of which (without VAT), cumulated throughout one year, does not exceed the equal in RON of EUR 5,000.

Direct purchase is made based on an evidencing document which is deemed to be the legal basis for payment.

Example: fiscal invoice.

### **SUBSECTION 2: Special methods of awarding the public procurement contracts**

#### Framework agreement

The framework agreements represents the written understanding entered between one or several contracting authorities and one or several economic operators, the purpose of which is to set forth the essential elements/conditions which will govern the public procurement contract which are to be awarded for a given period, especially with respect to the price and, as applicable, to the amounts taken into consideration.

Warning! The framework agreement does not represent the legal basis for undertaking

public funds.

Subsequent contracts are awarded based on the framework agreement, which represent the legal grounds for payment.

The contracting authority is obligated to enter a framework agreement, regularly by application of the open procedure or restricted procedure.

Warning! By exemption, it is possible to also apply other procedures only in the specific circumstances provided in the ordinance.

Warning! The framework agreement cannot be used abusively or improperly by the contracting authority, so that to obstruct, restrict or distort competition.

The contracting authority is not entitled:

- \* to enter a framework agreement with a duration longer than 4 years but in exceptional cases and which it can account for only by the specific object of the subsequent contracts which are to be awarded based on the respective framework agreement;
- \* to award subsequent contracts which have, as object, service of another nature than those set forth under the framework agreement;
- \* to enter framework agreements based on which it is possible to award subsequent contracts of different types or nature when compared one to another;
- \* to enter subsequent contracts only with the economic operators which signed the framework agreement and only based on rules and conditions provided in the respective agreement;
- \* to award subsequent contracts in the name and for another contracting authority which is not part of the respective framework agreement but in case where it has the capacity of centralized procurement unit.

Warning! The contracting authority is bound to impose minimum conditions of qualification which should refer at least to the estimated value of the largest subsequent contract which is anticipated to be awarded for the duration of the framework agreement.

## **SECTION 6: Funds' identification**

Funds' identification is the operation whereby it is pursued to provide the financing required for the fulfilment of the contract .

The following possible sources of financing are taken into consideration:

- \* State budget;
- \* local budget;
- \* community funds;
- \* funds obtained from international financial organizations;
- \* bank loans;
- \* non-reimbursable funds;
- \* other attracted sources.

Warning! The frequency of funds' allocation must be taken into consideration when establishing the duration of the contract .

### **SECTION 7: Schedule of the awarding procedure**

The schedule of the awarding procedure is only as a reference point.

The schedule of the awarding procedure is necessary for:

- planning the public procurement process;
- avoiding overlapping and delays;
- internal supervision of the procurement process.

When elaborating the schedule of the schedule of the awarding procedure the following shall be taken into consideration:

- the deadlines provided in the ordinance for publication of notices;
- the deadlines provided in the ordinance for the submission of candidacies/tenders;
- the forecast duration for the review and evaluation of candidacies/tenders;
- period of waiting;
- any other terms which can influence the procedure.

Warning! The public procurement procedure schedule is attached to the awarding documentation.

Model of the procedure schedule is presented in the forms No. 1 A-F "Schedule of the awarding schedule".

### **SECTION 8: Finalisation of the annual programme**

The annual programme of public procurements is finalized:

- \* after the approval of one's own budget;
- \* according to the consented funds;
- \* taking into consideration possible attraction of other funds. The annual programme of public procurements can be altered if:

1. the respective requirements have not been initially contained in the annual programme of public procurements; and

2. inserting thereof in the programme is subject to providing financing sources.

The annual programme of public procurements is approved by the head of the contacting authority under the prior consent of the financial-accounting compartment.

Warning! Modification of the annual programme requires the same approvals.

The annual programme of public procurements is filled in by using form No. 2 "Annual programme of public procurements".

### **SECTION 9: Elaboration and sending the intention notice, if the case may be**

The intention notice is sent for publication, as a must, when it is pursued to benefit from a reduction of the deadlines and if:

- \* the aggregate value estimated for the contracts or framework agreements which are to be awarded, entered respectively during the next 12 months for procuring products of the same CPV group, is equal or higher than the equal in RON of EUR 750,000 ;
- \* the aggregate value estimated for the contracts or framework agreements, which are to be awarded, entered respectively during the next 12 months for procuring services are of

the same category as those provided in Annex No. 2A to the ordinance, is equal or higher than the equal in RON of EUR lei 750,000;

\* the estimated value of work contracts or framework agreements, which are to be awarded, entered respectively during the next 12 months, is equal or higher than the equal in RON of EUR 5,000,000 euro.

Warning! In case of products and service contracts, the notice of intention is sent for publication as soon as possible after the date of the budget year commencement.

Warning! In case of work or framework agreements the notice of intention is sent for publication as soon as possible after the approval of the programme in which the respective work contract or framework agreement.

Warning! Publication of the notice of intention does not create for the contracting authority the obligation to perform the respective public procurement.

The notice of intention is published:

\* in the Official Journal of European Union;

Note: To be completed until January 1, 2007 directly by the contracting authority, using the internet address <http://simap.europa.eu>, in an official language of the European Union. From January 1, 2007 it shall be completed under the SEAP system.

\* in SEAP;

Note: The obligation of publication in the SEAP arises commencing from January 1, 2007. It is completed only by electronic means, using the dedicated application available on the internet address [www.e-licitatie.ro](http://www.e-licitatie.ro).

\*in the Official Gazette of Romania, Part VI- Public procurements;

Note: It is completed by sending a written request. Commencing from January 1, 2007, publication in the Official Gazette of Romania, Part VI, is completed at least one day from the publication in the SEAP.

or

\* only in the SEAP provided that, before publication, a simplified notice of prior information should have been sent to the European Commission.

Warning! In the latter case the notice of intonation must also contain the date of sending the simplified notice to the European Commission.

## **SUB-CHAPTER II: Awarding documentation (STAGE 2)**

The awarding documentation represents those documents containing the formal, technical and financial requirements, which enable the fair description of the object of the public procurement contract and based upon which the economic operator will elaborate its tender.

Warning! The awarding documentation must be clear, complete and unequivocal.

The awarding documentation is finalized by the concern of the internal compartment of the contracting authority, specialized in awarding the public procurement contracts.

Note: In case where the awarding documentation is elaborated by a consulting firm, the internal compartment must coordinate and supervise the respective activity.

The awarding documentation must be finalized before the sending:

- for publication of the participation notice; pr
- of the invitation for participation to the economic operators.

Note: The contracting authority is entitled to elect the method of sending the awarding documentation.

If the awarding documentation is made available on paper support and/or magnetic support, then the contracting authority is entitled to set forth a price, provide this does not exceed the cost of multiplication of the documentation, to which the postage can be added, if the case may be.

The awarding documentation is structured as follows:

- the specifications' book or, as applicable the descriptive documentation;
- mandatory contractual terms;
- procurement date record;
- forms and models;
- other information regarding taxation, environment protection, labour protection.

### **SECTION 1: Elaboration of the specifications book or of the descriptive documentation**

Warning! The specifications' book represents the starting point in the elaboration of the awarding documentation.

The specifications' book is drafted by the contracting authority for the open procedure, restricted procedure, tender request, by the specialized internal compartment or by specialists (advisors) employed for such purpose, subject to the observation of the legal provisions referring to competition and conflict of interests. The specifications' book represents the fair description of the products, services or works necessary for the contracting authority.

The specifications' book contains, as a must, technical specifications.

Technical specifications are generally those:

- requirements;
- prescriptions;
- technical particulars

By means of which products, services or works are described.

Warning! Technical specifications must enable free and equal access to the awarding procedure and must not contain elements which should have as effect the insertion of unreasonable obstacles of the nature to restrict competition.

Note: When possible, technical specifications are defined so that they should correspond the requirements or demands of any user, including persons with disabilities.

Technical specifications define, as the case may be:

- particulars referring to the quality, technical and performance level;
- requirements regarding the impact upon the environment;
- security in operation;
- dimensions, terminology, symbols, tests and methods of testing, packing, labelling, tagging and instructions to use the product, technology and methods of production;
- system of ensuring quality and conditions for certification of conformity with the relevant standards or other similar standards.

In case of works contracts, technical specifications may also refer to:

- designing and cost calculation prescriptions;
- verification, inspection and conditions for taking over the works; or
- verification, inspection and conditions for taking over the techniques, procedures and methods of execution;
- any other technical-like terms which the contracting authority is capable to describe, also according to miscellaneous legal documents and general or specific regulations, in relation to the finalized works and the materials or other component elements of these works.

Technical specifications are defined:

- either by reference, regularly, in the following order, to:
  1. national standards which enact European standards;
  2. European technical homologation;
  3. international standards;
  4. other technical-like reference elaborated by European standardization organizations;
  5. other national standards, homologations or technical regulations regarding the use of products or the design, calculation and execution of works;

Warning! Any such reference must be attached by the mention "or equal to".

- either by specifying the functional performances and/or requirements, which may also include environmental particulars;

Warning! If the technical specifications are defined by reference to functional performances and/or requirements, then these must be sufficiently accurately described so that to enable the economic operators to determine the object of the contract , and the contracting authority to award the respective contract .

- either by specification of the functional performances and/or requirements, supported by reference to common standards, technical homologations, technical specifications, as a means of presumption of conformity with the level of performance and/or functional requirements demanded;
- or in combined manner, by certain particulars respectively, specifying the functional performances and/or requirements, and for other particulars, by reference to technical standards or homologations;



Warning! If the technical specifications are defined by reference to technical standards or homologations, then no tender can be denied on the reason that the technical proposal is not conformant with the specifications referred to, if the tenderer demonstrates, by any adequate means, that its technical proposal satisfies in an equal manner the requirements of the contracting authority.

Warning! If the technical specifications are defined by specifications of functional performances and/or requirements, then no tender can be denied, if the tenderer demonstrates, by any adequate means, that its technical proposal provides the fulfilment of the demanded functional performances or requirements, as these are conformant with:

- a) a national standard enacting a European standard;
- b) a technical European homologation;
- c) a common technical specification used in the European Community;
- d) an international standard;
- e) other technical regulations elaborated by standardized European organizations.

Note: An adequate means to prove conformity with the technical specifications requested can be deemed:

- \* the technical dossier of the producer; or
- \* a trial/test report issued by a well-known organization, such as:
  - a neutral laboratory for trials and calibration; or
  - a body of certification and inspection providing the observation of the applicable European standards.

Warning! The contracting authority is bound to accept certificates issued by well-known organizations in any of the states members of the European Union.

- if the fulfilment of certain environmental characteristics is required, then it is possible to use, in total or in part, specifications defined by:

- \* European "ecological labels";
- \* (multi-)national "ecological labels";
- \* any other "ecological labels",

And only subject to the cumulating fulfilment of the following terms:

- \* specifications are adequate for defining the characteristics of the products or services the supply/performance of which represents the object of the public procurement contract ;
- \* requirements for "ecological label" were scientifically elaborated;
- \* "ecological label" was adopted under a specific procedure which enabled the involvement of all the interested parts – governmental bodies, consumers, producers, dealers, environmental organizations;
- \* "ecological label" is accessible or available to any interested person.

Note: The specifications' book can contain the specification that the offered products or services which contain a certain "ecological label" are deemed to fulfil implicitly the required technical specifications.

Warning! A technical proposal cannot be deemed to be non-compliant, for the sole reason

that the tendered products or services fail to hold the requested "ecological label" if the tenderer demonstrates, by any adequate means, that these correspond to the required technical specifications.

It is prohibited to define in the specifications' book technical specifications which indicate a certain origin, source, production, a special procedure, a factory mark or trademark, an invention patent, a manufacturing license, which have as effect the favouring or elimination of certain economic operators or of certain products.

Warning! Such a reference is allowed exceptionally in the event where a sufficiently accurate and intelligible description of the contract object is not possible and must be attached by the mention "or equal to".

Descriptive documentation is substituting the specifications' book in case of application of the negotiation procedure and competitive dialogue.

The descriptive documentation contains:

- a description of the requirements, targets and constraints of the contracting authority;
- any other information based upon which the dialogue for the identification of viable solutions will be conducted;
- in case of competitive dialogue, if it was decided otherwise, the bonuses which would be granted to the participants in the dialogue;
- the possibility to complete the dialogue or negotiation in successive rounds, for the purpose to cut down the number of discussed solutions or proposals of tenders.

## **SECTION 2: Establishment of contractual terms**

The public procurement contract represents the legal instrument whereby public organizations enter in commercial relationships with the economic operators to satisfy their requirements of products, services or works.

The public procurement contract is entered in written form, at least in two counterparts, following the awarding procedure or based upon a framework agreement.

The contract terms are set forth, to the greatest extent, by the contracting authority.

The public procurement contract terminates *de jure* at expiration of the period for which it has been entered.

Extension of the period of the public procurement contract is possible only in terms of the ordinance and without the alteration of the initially established terms.

Parties can also set forth other terms related to contract termination, without impairing the mandatory terms.

The type of contract must be established before setting forth the contractual terms.

Note: Qualification of the legal nature of the public procurement contract is given by the object prevailing as value, the public procurement contracts can be, respectively:

- supply contracts;
- service contracts;
- works contracts.

The public procurement contract is structured as follows:

- introduction;
- mandatory contractual terms;
- particular contractual terms.

The introduction represents the introductory part of the contract and contains information about;

- the designation of the contracting parties;
- applicable definitions;
- interpretation.

The mandatory contractual terms are those contractual provisions which any public procurement contract must contain referring to:

- main object of the contract ;
- contract price and payment methods;
- contract duration;
- sanctions for non-fulfilment of the obligations by fault;
- contract documents;
- main obligations of the parties.

Warning! When establishing the contractual terms, the contracting authority must specify which are imperative and which can be adjusted according to the specificity of the respective contract and according to the tender which has been adjudicated successful.

Note: Imperative contractual terms shall not be mistaken for mandatory contractual terms which any public procurement contract must contain.  
Outsourcing contracts must be constituted in schedules to the public procurement contract.

Particular contractual terms are those contractual terms particular to any public procurement contract which are regularly set forth under the parties' consent, according to the fair requirements of the contracting authority and the contents of the tender which has been adjudicated successful.

Warning! Particular contractual terms can be proposed both by the contracting authority and by the economic operator, if this is allowed under the awarding documentation.

Warning! Particular terms must not annihilate mandatory terms. Particular terms which impair mandatory terms do not produce any effect whatsoever.

Particular contractual terms can refer to:

- sub-contractors;
- good execution bond;
- quality bond;
- price adjustment method;
- deadlines for execution of the parties' obligations;
- hand-over, inspections, tests;
- packing, tagging, transportation;
- insurance;
- other terms for fulfilment of the contract , etc..

Forms No. 3 "Supply Contract ", No. 4 "Service Contract ", No. 5 "Works Contract " present the models of public procurement contracts.

Forms No. 6 "Supply framework Agreement", No. 7 "Service Framework Agreement", No. 8 "Works Framework Agreement" present the models of framework agreements.

Warning! Provisions referring to the designation of the parties, address, period of suspension as to the fulfilment of the obligations without impairing the provisions related to price can be altered under additional document to the contract .

Warning! As to the works/services additional to the initial contract or works/services similar to those in the initial contract , a new contract shall be awarded under the negotiation procedure without the prior publication of a participation notice.

Warning! If the tenderer that has been adjudicated successful refuses to sign the contract , the awarding procedure will be cancelled, and the contracting authority will resume the procedure.

### **SECTION 3: Establishment of the minimum requirements of qualification and, if applicable, of the selection criteria**

Warning! The awarding documentation must contain the same minimum requirements as in the participation notice.

In case where the requirements in the participation notice are not found in the awarding documentation, it is those in the notice which shall be applied, interpreting the documentation consequently.

Criteria, generally, are those minimum imposed terms and/or requirements, which must be fulfilled by the economic operator that wishes to become party to a public procurement contract .

Qualification and selection criteria refer only to:

- the personal status of the candidate or tenderer;
- the capacity to exercise the professional activity;
- the economic and financial standing;
- the technical and/or professional capacity;
- quality assurance standards;
- environment protection standards, if applicable.

The qualification and selection criteria once set forth cannot be changed throughout the implementation of the procedure.

Warning! If the fulfilment of minimum requirements referring to the economic and financial standing or to the technical and/or professional capacity is demanded, the contracting authority elaborates an explanatory note whereby the respective requirements are grounded.

Warning! The explanatory note is attached to the procurement dossier, if the case may be. Qualification and selection criteria are set forth according to the specific demands of the contract and always under the observation of the principle of proportionality.

To demonstrate the fulfilment of the minimum requirements of qualification and selection, economic operators will present:

\* either certificates issued by:

- the competent public authority;

or

- a public/private law organization which observes the European standards of certification;

\* or any other documents equal to the requested certifications to evidence the fulfilment of the requirements.

Warning! The contracting authority is not entitled to impose the candidates or tenderers the presentation of certain specific certifications; other equivalent documents shall also be taken into consideration.

Warning! It is prohibited to request the fulfilment of minimum requirements referring to:

- the economic and financial standing;

- the technical and/or professional capacity ,

That would lead to the limitation of participation in the awarding procedure.

Warning! It is prohibited to restrict participation in the awarding procedure by setting forth minimum requirements of qualification which:

\* are not relevant in relation to the nature and complexity of the public procurement contract ;

\* are not in proportion in relation to the nature and complexity of the public procurement contract .

### **SUB-SECTION 1: Requirements regarding the personal status of the economic operator**

The awarding documentation must contain all cases in which an economic operator is excluded.

To avoid exclusion from a procedure for awarding the public procurement contract , the economic operator must submit supporting document to prove that :

\* the economic operator was not sentenced during the last 5 years under final judicial ruling for:

- participation in activities of a criminal organization;

- corruption;

- fraud;

- money laundering;

\* is in one or several of the situations below and only if that requested expressly, respectively that:

- the economic operator is not in a status of bankruptcy or winding-up, its business are not managed by a judicial receiver;

- its commercial activities are not suspended or do not represent the object of a composition with the creditors;

Warning! Debt rescheduling does not represent a composition with the creditors.

- does not represent the object of a legal procedure for its adjudication in one of the events above;
- has fulfilled its payment obligations as to taxes, fees and social insurance contributions to the consolidated general budget;
- has not been sentenced, during the last 3 years, under final ruling, for a fact which has impaired professional ethics or for the commitment of professional mistakes;
- does not present false information or presents the information requested by the contracting authority.

Supporting documents shall be deemed:

- certificates;
- criminal record;
- other equal documents issued by competent authorities in the respective country.

Note: In case where such documents are not issued in the original country or in the country where the operator is settled, or these do not contain all events, then it is a must to accept:

- either an own responsibility statement;
- or an authentic statement given before a notary, of an administrative or judicial authority or of a professional association having powers in this respect.

Warning! The criminal record of the legal person is not issued presently in Romania.

Warning! If there are uncertainties referring to the personal status of an economic operator, the contracting authority can request information directly from the competent authorities.

### **SUB-SECTION 2: Requirements regarding the capacity to exercise the professional activity**

The awarding documentation specifies whether the capacity to exercise the professional capacity must be demonstrated.

To demonstrate the capacity to exercise the professional capacity the economic operator shall submit supporting documents to evidence:

- the form of registration as a natural or legal person and, if applicable,
- the professional certification or appurtenance, in accordance with the provisions in the country here the tenderer/candidate is settled.

### **SUB-SECTION 3: Requirements regarding the economic and financial standing**

The economic and financial standing represents a benchmark by the demonstration of which the economic operator is deemed qualified to fulfil the respective public procurement contract ..

The awarding documentation indicates the minimum requirements regarding the economic and financial capacity which the economic operator must fulfil to be deemed qualified.

Warning! It is prohibited to request the fulfilment of minimum requirements referring to the economic and financial status which would lead to the limitation of participation in the awarding procedure.

Warning! If the minimum requirements of qualification referring to the economic and financial status are imposed, then the contracting authority must account for this requirement under an accounting notice attached to the procurement dossier.

To demonstrate the economic and financial standing the economic operator will submit supporting documents such as:

- adequate bank statements or, as applicable, evidence regarding professional risk insurance;
- accounting balance sheet or excerpts from the accounting balance sheet, in case where publication of those balance sheets is provided by the laws of the country where the tenderer/candidate is settled;
- statements regarding the global turnover or, if applicable, regarding the turnover in the field of activity related to the object of the contract in a previous period aiming at the activity of at least the latest 3 years, insofar as the respective information is available;
- financial audit issued by authorized persons.

If, for fair, adequately accounted for reasons, the economic operator has no possibility to submit the requested documents, this is entitled to demonstrate its economic and financial standing also by submitting other documents to present a true image of the economic and financial standing.

The economic and financial capacity of the economic operator can also be sustained by another person, irrespective of the nature of the legal relationships existing between the economic operator and the respective person.

The economic operator which benefits from the sustenance of the economic and financial standing must evidence this by submitting a firm commitment of the person who sustains it.

The firm commitment of financial support represents a unilateral legal document whereby the person supporting the economic operator confirms the fact it will make available thereto the invoked financial resources.

The person who supports financially the economic operator must not be in any of the events which determine the exclusion from the awarding procedure.

Note: If a group of economic operators submits a joint tender or candidacy, then the economic and financial standing is demonstrated by taking into consideration the resources of all the group's members.

If the group of economic operators benefit from the financial support of a third person or third persons, then the economic and financial standing shall be demonstrated by submitting a firm commitment of the respective person or persons, whereby it is confirmed that the invoked financial resources will be made available.

Recommendations: For diminishing the risk of non-fulfilment of a contract because of absence of the financial capacity of the contract or, the qualification requirements can be requested as follows:

\* the annual average turnover for the last 3 years, in case where requested, to be 3 times higher than the estimated value of the contract which is to be awarded;

\* demonstration that the economic operator has access to or has actual available resources non-encumbered by debts, credit lines confirmed by bans or other financial means sufficient to complete the cash-flow of work execution for the imposed period.

#### **SUB-SECTION 4: Requirements regarding the technical and/or professional capacity**

The technical and/or professional capacity represents a benchmark by the demonstration of which the operator is deemed qualified to fulfil the respective public procurement contract .

The awarding documentation indicates the minimum requirements regarding the technical and/or professional capacity which the economic operator must fulfil to be deemed qualified.

Warning! It is forbidden to request the fulfilment of minimum requirements referring to the technical and/or professional capacity which would lead to the limitation of the participation in the awarding procedure.

Warning! If minimum requirements of qualification referring to the technical and professional capacity are imposed, the contracting authority must account for this requirement in an explanatory note attached to the procurement dossier.

The awarding documentation indicates the information which the economic operators are to present to demonstrate their technical and/or professional capacity.

The technical and/or professional capacity is appreciated according to:

- experience;
- skills;
- efficacy and proficiency of the tenderer/candidate.

Warning! Requesting any information referring to the demonstration of the technical and/or professional capacity is made according to the complexity of the object of the contract and only insofar as this information is relevant for the fulfilment of the respective contract .

The technical and/or professional capacity of the economic operator can also be sustained by another person, irrespective of the nature of the actual relationships existing between the economic operator and the respective person.

The economic operator which benefits from the support of its technical and/or professional capacity must evidence this by submitting a firm commitment of the respective person whereby that confirms the fact it will make available the invoked technical and professional resources to the economic operator.

The person providing the technical support must not be in an event which determines the exclusion from the awarding procedure.

Note: If a group of economic operators submits a joint tender or candidacy, then the technical and/or professional capacity is demonstrated by taking into consideration the resources of all the group members.



In case where the group of economic operators benefit from the technical and professional support of third person/persons, the technical and professional capacity is demonstrated by submitting a firm commitment of the supporter/supporters, whereby it is confirmed that this/these will make available the invoked resources.

Verification of the technical and/or professional capacity in case of a supply contract can be made by the request:

- of lists of the main deliveries of products made during the latest 3 years, containing values, periods of delivery, beneficiaries, irrespective whether the latter are contracting authorities or private customers;

Note: Demonstration of the deliveries of products are made by a written statement of the economic operator.

- a statement referring to the technical equipment and the steps applied in view of assuring quality, as well as, if applicable, the study and research resources;
- information referring to the special technical staff it would hold or the participation undertaking of which has been obtained, in particular for assuring quality control;
- certificates or other documents issued by organizations, to attest the conformity of the products, clearly identified by reference to relevant standards or specifications;
- samples, descriptions and/or photos/technical records/catalogues the authenticity of which must be demonstrated in case this is requested.

Warning! If the products have a complex character or are intended for a specific purpose, then the contracting authority is entitled to verify or control – directly or by means of a competent authority of the State where the economic operator is established and under the consent of this authority – the supplier’s capacities of production, the used methods of study and research, as well as the steps applied for quality control.

Verification of the technical and/or professional capacity in case of a service contract can be made by requesting:

- a list of the main services performed during the last 3 years, containing values, periods of performance, beneficiaries, irrespective whether the latter are contracting authorities or private customers.

Note: The confirmation of service performance is made by a written statement of the economic operator.

- a statement referring to the technical equipment and steps applied in view of quality assurance, as well as, if the case may be, the study and research resources;
- information referring to the special technical staff/organization it holds or the participation undertaking of which has been obtained by the candidate/tenderer, in particular for quality control assurance;
- information referring to studies, professional training and qualification of the managerial staff, as well as of the persons responsible for the fulfilment of the service contract ;
- a statement referring to the annual average number of the employed staff and of the managerial personnel during the last 3 years;
- if applicable, information referring to the steps of environment protection which the economic operator can apply during the fulfilment of the service contract ;

- information referring to the outfits, plants, technical equipment the economic operator can hold for the adequate fulfilment of the service contract ;
- information regarding the proportion in which the service contract is to be fulfilled by sub-contractors and special subject thereof.

Warning! If services have a complex character or are intended for a particular purpose, then the contracting authority is entitled to verify or control – directly or by means of a competent authority of the State where the economic operator is settled and under the consent of this authority – the technical capacity of the performer, the used methods of study and research, as well as the steps applied for quality control.

Verification of the technical and/or professional capacity in case of a works contract can be made by requesting :

- a list of works completed during the last 5 years, attached by good execution certifications for the most important works and which shall contain values, period and place of work execution, manner of fulfilment of the obligations, beneficiaries, irrespective whether these are contracting authorities or private customers;

Note: Confirmation of the works performed is made by a written statement of the economic operator.

- of information referring to the special technical staff/organization it holed or the participation undertaking of which has been obtained, in particular for quality control assurance;
- the information referring to studies, professional training and qualification of the managerial staff, as well as of the persons in charge for work execution;
- a statement referring to the annul average number of the employed staff and of the managerial personnel during the last 3 years;
- if the case may be, information regarding the steps of environment protection which the economic operator can apply during the fulfilment of the works' contract ;
- a statement referring to the outfits, plants, technical equipment which the economic operator can hold for the adequate fulfilment of the works' contract ;
- information regarding the proportion in which the works contract is to be fulfilled by sub-contractors and the special subject thereof.

Recommendation: It is possible to request, as a minimum requirement regarding the demonstration of the technical and/or professional capacity, the presentation of a list containing at least information:

- about a works/service/supply contract which, physically and in terms of value, should not represent more than 30% of the physical volume or value of the future contract ;
- about at mostly 3 works/service/supply contacts which, physically and/or in terms of value, should not represent more than 50% of the physical volume or value of the future contract .

#### **SUB-SECTION 5: Requirements regarding the presentation of quality assurance standards**

Warning! If the presentation of certificates to attest the observation of certain quality

assurance standards are requested, then this request must refer to the quality assurance systems based upon the relevant series of European standards, certified by organizations conformant with the series of European standards regarding certification.

#### **SUB-SECTION 6: Requirements regarding the presentation of environment protection standards**

If the presentation of certificates to attest the observation of certain environment protection standards is requested, then the authority must refer:

- either the Ecological Management and Audit Community System (EMAS);
- or to the ecological management standards based upon the series of European or international standards in the field, certified by organizations conformant with the community legislation or the European or international standards regarding certification.

Warning! In accordance with the principle of mutual acknowledgement, the authority is obligated to accept equal certificates issued by organizations set forth in other states of the European Union.

If the economic operator does not hold the requested quality certificate or the environment certificate then any other evidence or proofs presented by that are accepted, provided such evidence or proofs confirm the assurance of a corresponding level of environment quality/protection.

#### **SECTION 4: Establishment of the public procurement contract awarding criterion**

The criterion for awarding the public procurement contract can be:

- the best profitable tender from the economic point of view; or
- exclusively, the lowest price.

The criteria of awarding the public procurement contract is specified as a must in the participation notice and in the awarding documentation.

Once the criterion of awarding is set forth, it cannot be changed throughout the whole period of application of the awarding procedure.

Warning! If the awarding of the public procurement contract is made by application of the procedure of competitive dialogue, then the used criteria of awarding must be only the economically best profitable tender.

If the “economically best profitable tender” criteria of awarding was elected, then the tender established to be successful is the tender meeting the highest score resulted from the application of a system of evaluation factors.

The system of evaluation factors contains various objective factors, regarding only the tender, as well as the relative weights set forth for each of these or a specific calculation algorithm.

Tender evaluation factors can be, together with the price:

- characteristics regarding the quality, technical or functional level;
- environmental characteristics;
- operational costs;
- cost/yield ratio;

- post-sale and technical assistance services;
- delivery or execution deadline;
- other elements deemed significant for tender evaluation.

Warning! The tender evaluation factors, as well as the relative weight thereof or the calculation algorithm must be clearly defined in the awarding documentation. The evaluation factors must have substantial relation to the specificity of the contract . Evaluation factors cannot be altered throughout the entire period of application of the awarding procedure.

Warning! The weight for the evaluation factors regarding the tender price must be higher than that related to the other used factors of evaluation.

A weight for each evaluation factor must be established, which should reflect correctly:

- the importance of the technical or functional characteristics to represent a quality benefit in relation to the minimum requirements and which can be marked in addition to this minimum;

or

- the quantum of value of the financial benefits which tenderers can offer by undertaking additional commitments in relation to the minimum requirements provided in the specifications' book.

It is not possible to use evaluation factors which:

- have no direct relation to the nature and object of the public procurement contract which is to be awarded;
- fails to reflect an actual and obvious benefit which the contracting authority can obtain by using the respective evaluation factor.

Exception! If the contracting authorities, for seriously substantiated reason, is impossible to set forth accurately the relative weights for each evaluation factor, then it is bound to indicate, in the participation notice or in the awarding documentation, at least the decreasing order of the importance of the evaluation factors which are to be used.

Warning! It is prohibited to use requirements referring to qualification as tender evaluation factors.

Exception! Only if the object of the contract includes intellectual performance such as consulting, design and the like, then the tender evaluation factors can also refer to the experience and/or professional training of the special staff/experts who will have essential parts in the fulfilment of the contract .

In any event, the weight set forth for each evaluation factor must not lead to the distortion of the outcome of implementation of the procedure for awarding the public procurement contract .

In case the criterion of awarding "exclusively, the lowest price", then the tender set forth as being successful is that admissible tender the technical proposal of which meets all the requested mandatory minimum requirements and the financial proposal of which contains the lowest price.

Warning! When establishing the awarding criterion, an explanatory note is elaborated whereby the method in which the weight of the evaluation factors is set forth is substantiated. The explanatory note is attached to the procurement dossier.

Recommendation: In case of awarding the works contract , it is the criterion "exclusively, the lowest price" that shall be used.

In the event where a contract is awarded, having as object the design and execution of works, it is possible to use the criterion "the economically best profitable tender in which the total summed up weight of the evaluation factors, other than the price, must not exceed 30% of the total in order not to distort the outcome of application of the procedure.

### **SECTION 5: Filling in the procurement date record**

The procurement date record contains information and instructions regarding:

- the contracting authority, especially regarding the address – telephone, Facsimile, e-mail including – contact persons, means of communication etc.;
- address where it is possible to procure, download the awarding documentation;
- activity of the contracting authority;
- the fact that it is procured in the name of another authority (if the case may be);
- method of obtaining clarifications and other information;
- dispute settlement;
- National Council for Opposition Settlement, including address, telephone, facsimile, e-mail;
- object of the public procurement contract and duration thereof;
- manner in which the procedure will be finalized;
- as applicable, the framework agreement, duration thereof, number of operators, minimum and maximum value of a subsequent contract ;
- existence of lots and method of approach;
- acceptance/non-acceptance of alternative options;
- CPV code;
- products amount;
- securities;
- tender validity term;
- applied procedure and if this has the electronic auction as a final stage;
- minimum requirements of qualification, as well as documents that are to be submitted to evidence the fulfilment of the qualification and selection criteria, if requested;
- deadline submission date (time/day/month/year), place for submission and what other formalities must be fulfilled in relation to the participation in the awarding procedure;
- information regarding the elaboration and presentation of the technical and financial proposal;
- information regarding the elaboration and submission of the tender;
- detailed and complete information regarding the awarding criterion.

Model of the date record is provided in Form No. 9 "Procurement Date Record".

### **SECTION 6: Establishment of forms and models**

The awarding documentation contains the forms established by the contracting authority based on the models provided in these guidelines.

Models have a character of recommendation and cannot be adapted by the contracting authority.

The awarding documentation must contain the following forms:

- procurement date record;
- tender form;
- contract form;
- bank guarantee form, if requested;
- statements' form.

Note! The contracting authority is entitled to also conceive other models to be attached to the awarding documentation.

Models of the tender forms are provided in forms No. 10 A, B and C "Tender Form".

Model of the letter of participation security is provided in Form No. 11 "Bank guarantee letter".

Models of statements are provided in forms No. 12 A-I.

### **SECTION 7: Establishment of the participation security, if the case may be**

The participation security protects the contracting authority against the risk of a possible inadequate behaviour of the tenderer throughout the period until the entering of the public procurement contract .

Warning! The participation security is established only if the contracting authority expressly requests this under the awarding documentation.

Recommendation: Request the participation security in the procedures of awarding the contract which are rather complex or whenever you have signals that the respect product, service or works market is not stable yet.

#### **SUBSECTION 1: Amount of the participation security**

The participation security is set forth:

- in fixed amount;
- in amount of maximum 2 % of the estimated value of the public procurement contract .

Warning! In case where tenders are presented as per lots, the amount of the participation security must be correlated with the estimated value of each lot; in case of tenderers of the category of small and middle-sized companies (evidence in this respect being made by submission of the documents provided in Law No. **346/2004** regarding the stimulation of establishment and development of small and middle-sized companies, with subsequent amendments), the participation security is set forth 50% of the amount specified in the awarding documentation.

#### **SUBSECTION 2: Validity of the participation security**

Period of validity of the participation security will be at least equal to the period of validity of the tender.

Warning! A period of validity lower by up to 5 calendar days of the guarantee letter as

to the period of validity of the tender shall not represent a reason for the denial of the tender.

We recommend that the validity of the tender and of the security respectively should be specified by a deadline, and not in days.

### **SUBSECTION 3: Methods of establishment**

The contracting authority may opt in favour of one or several of the following methods of establishment:

\* bank guarantee letter;

\* submission to the cash desk of the contracting authority:

- a payment order or a cheque, attached by a document whereby the destination is specified;

- an amount of money.

Recommendation: Check for conformity the elements contained in the bank guarantee letter for participation.

The bank guarantee letter must:

1) be presented in original and attached/appended to the package with the tender;

2) refer expressly to the procedure organized by the contracting authority;

3) contain clearly the designation of the contracting authority in favour of which it has been established;

4) contain the value of the security which should correspond to the fixed amount requested under the awarding documentation;

5) have registered the validity for which it has been established, which must correspond to that registered in the documentation;

6) contain the legible seal of the issuing bank and/or the authorized signature;

7) be issued for the economic operator which has submitted the tender.

### **SUB-SECTION 4: Return of the participation security**

The participation security is returned:

- to the successful tenderer: in no more than 3 business days as from the date of establishing the good execution guarantee or after entering the framework agreement;

- to the unsuccessful tenderers: after signing the public procurement contract or after entering the framework agreement, but no later than 3 business days as from the date of expiration of the tender validity period.

### **SUB-SECTION 5: Withholding the participation security**

The tenderer shall lose the participation security if:

- it withdraws its tender during the period of validity thereof;

- its tender being established successful, it does not establish the good execution guarantee in the period of validity of the tender and anyway no later than 15 days as from the signing of the contract ;

- its tender being established successful, it refuses to sign the public procurement contract or to enter the framework agreement within the period of validity of the tender.

## **SECTION 8: Notification of the Ministry of Public Finances regarding the procedural verification**



The following are subject to procedural verification:

- works contracts the estimated value of which, without VAT, is higher or equal to EUR 250,000;
- service contracts the estimated value of which, without VAT, is higher or equal to EUR 40,000;
- supply contracts the estimated value of which, without VAT, is higher or equal to EUR 40,000;
- framework agreements entered in view of awarding contracts with values higher than the above mentioned thresholds.

Warning! The contracting authority has the obligation, whenever it awards a contract for which procedural verification is mandatory, to notify the Ministry of Public Finances regarding the awarding thereof.

### **SECTION 9: Finalization of the awarding documentation**

The awarding documentation is finalized by verification of clarity and truth of the information contained in the established documents and forms.

Warning! The awarding documentation must not contain contradictory information or information that are adverse to the specifications in the participation notice.

It is possible to specify in the awarding documentation the competent institutions wherefrom the economic operators can obtain information regarding the regulations referring to taxation, as well as those referring to environment protection.

Warning! Mandatory rules referring to working conditions and work protection which must be observed throughout the fulfilment of the works contract or service contract must be clearly specified in the awarding documentation.

This obligation of the contracting authority is deemed fulfilled also in case the competent institutions wherefrom economic operators can obtain detailed information regarding the respective regulations have been indicated.

The contracting authority is obliged to request the economic operators to indicate in the tender the fact that, at the elaboration thereof, they took into account the obligations referring the working conditions and work protection.

## **SUB-CHAPTER III: Calling to competition (Stage 3)**

### **SECTION 1: Elaboration and publication of the participation notice**

In view of providing transparency of awarding the public procurement contracts, the contracting authority, whenever it wishes to award a public procurement contract or enter a framework agreement, is bound to publish a participation notice.

The participation notice must be sent for publication when:

\* it initiates, for awarding the public procurement contract or for entering the framework agreement, the:

- open procedure;
- restricted procedure;
- competitive dialogue;



- negotiation with prior publication of a participation notice;
- \* initiation of the awarding of a public procurement contract by a dynamic system of procurements, in such case a simplified notice being published;
- \* a contest of solutions is organized

The participation notice must contain at least the information provided in Annex No. 1 to the resolution, but regularly no more than 650 words.

Note: If the estimated value of the public procurement contract which is to be awarded exceeds the thresholds for which the publication of the participation notice in the Official Journal of European Union is mandatory, then this must contain at least the information contained in Annex No. 3A to the ordinance, by using the standard forms enacted by the European Commission.

In case of application of the restricted procedure, competitive dialogue or negotiation, the notice for participation in the stage of candidates' selection/pre-selection must contain:

- the selection/ pre-selection criteria;
- applicable rules;
- minimum number of candidates which will be selected or pre-selected;
- maximum number of candidates which will be selected or pre-selected;
- deadline and place for submission of candidacies.

The participation notice shall be published in the:

- \* SEAP

Note: The obligation of publication in the SEAP emerges commencing from January 1, 2007. It is completed only by electronic means, using the dedicated application, available at the internet address [www.e-licitatie.ro](http://www.e-licitatie.ro).

- \* Official Gazette of Romania, Part VI-a - Public Procurements

Note: Publication only in the Official Gazette of Romania, Part VI, is mandatory until December 31, 2006. Commencing from January 1, 2007, the publication in the Official Gazette of Romania, Part VI, shall be made in at least one day as from the publication in the SEAP.

Commencing from January 1, 2007, publication in the Official Gazette of Romania, Part VI, shall be made in no more than one day as from the publication in the SEAP.

This is made by sending a written application.

Publication in the Official Gazette of Romania, Part IV, is made against a fee.

- \* Official Journal of the European Union, as the case may be.

Note: The obligation of publication in the JOUE arises commencing from January 1, 2007, in all events when:

- estimated value of the supply or service contract is higher than the equal in RON of EUR 125,000 - for the classic system;
- estimated value of the supply or service contract is higher than the equal in RON of EUR 420,000 - for the utilities' system;
- estimated value of the works contract is higher than the equal in RON of EUR 5,000,000.

This is made until January 1, 2007, directly to the contracting authority, using the internet address <http://simap.europa.eu>.  
From January 1, 2007 on this is made under the system of the SEAP.

### **SECTION 2: Making available the awarding documentation**

Any interested economic operator is entitled to apply for and to obtain the awarding documentation.

\* The awarding documentation can be obtained:

- following a request of each interested economic operator; or
- by direct and unrestricted access of an electronic file, which will be available in the SEAP and on its own internet page.

Note: To specify in the participation notice the manner in which the awarding documentation can be obtained.

Warning! Making available the awarding documentation at request must be completed within a period which must not exceed 4 days as from the reception of the application.

Warning! The interested economic operator must undertake the necessary efforts to that the above mentioned period should not lead to the making available of the awarding documentation less than 2 days before the deadline for the submission of the tender.

In case of restricted procedures, competitive dialogue and negotiation the awarding documentation related to the first stage contains complete information regarding the participation terms, as well as the detailed presentation of the modality of grading the score based upon which candidates will be selected, pre-selected respectively.

Warning! In case of a tender request procedure, the awarding documentation is sent once with the invitation for participation.

Warning! Economic operators which did not purchase directly the awarding documentation can also participate in the procedure.

### **SECTION 3: Reply to the requests for clarifications**

Any interested economic operator is entitled to request clarifications regarding the awarding/selection/pre-selection documentation.

Warning! In no more than 3 business days as from the reception of a request for clarifications the contracting authority is obligated to reply clearly, completely and without ambiguities.

Replies - attached by the related questions – are sent to all the economic operators which have obtained the awarding documentation.

Warning! Identity of the person having applied for clarifications must not be disclosed.  
The reply to clarifications is sent at least 6 days before the tender submission deadline.

Note: If the documentation is available in the SEAP, clarifications or modifications thereof shall be made known by creation of a new electronic file to which direct and unrestricted access will be provided.

Warning! To also reply to requests for clarifications which have not been sent in due time, but only if the period necessary for the elaboration and sending the reply renders possible the reception thereof by the economic operators before the tender submission deadline.

#### **SECTION 4: Communication and date sending rules**

Any communication, request, information, notification and the like must be sent in written form.

Warning! Integrity and confidentiality of information and date must be provided throughout communication, sending and storing.

Written documents can be sent by any of the following modalities:

- by mail;
- by facsimile;
- by electronic means;
- by any combination of those mentioned.

Warning! Methods of communication used throughout the procedure can be imposed under the awarding documentation, but these must not restrict access of the economic operators to the procedure.

Warning! Instruments used for electronic communication, as well as their technical characteristics must be easily available to any economic operator and must provide interoperability with the usual technologies of information and communication.

The documents sent by electronic means are under the application of the legal provisions regarding electronic signature.

\* The economic operator can send a request for participation:

**1. in written form:**

- by mail ;
- by facsimile ;
- by electronic means;
- by any combination of those above mentioned;

**2. by telephone.**

Warning! When participation is requested by telephone this must be confirmed in writing as soon as possible.

Warning! If the request for participation is sent by facsimile, it is possible to request the

confirmation thereof by letter sent by post or by electronic means, within a reasonable period of time.

## **SECTION 5: Rules of participation and avoidance of the conflict of interests**

### **SUB-SECTION 1: Participation**

Any economic operator, irrespective of the nationality thereof, is entitled to participation in the awarding procedure:

\* individually

or

\* in a group of operators.

Warning! Economic operator which, according to the law of the state where it is established, is authorized to perform a certain activity, for the sole reason that, in accordance with the national legislation, this type of activity can be performed only by legal persons or only by natural persons.

According to the stage in which it participates within the awarding procedure, economic operators can have the

- tenderer, if it submits a tender;

- candidate, if it submits the candidacy within a restricted procedure, negotiation or competitive dialogue;

- competitor, if it submits a project within a competition of solutions.

The participation of the economic operators in a group of operators can be made as:

- associate

Or

- sub-contract or.

### **SUBSECTION 2: Association**

Several economic operators are entitled to associate for the purpose of submitting a joint candidacy or tender, without the obligation of legalisation.

Legalization of the association can be applied for only if the joint tender is adjudicated successful and such a request represents a necessary condition for the fulfilment of the future contract .

### **SUBSECTION 3: Outsourcing**

The tenderer is entitled to include in the technical proposal the possibility to outsource part of the respective contract .

\* If requested, the tender is bound to specify:

- the part/parts of contract which it intends to outsource; and

- date for the acknowledgement of the sub-contract ors.

Note: The tenderer remains fully liable with respect to the fulfilment of the future public procurement contract .

Warning! An economic operator/association of economic operators is not entitled to submit several tenders within the same procedure.

Warning! An economic operator is not entitled to participate in a procedure of awarding both in capacity of tenderer, and in capacity of associate or in capacity of sub-contract or of another tenderer.

Example: If in a procedure for awarding a works contract an "X" economic operator submits a joint tender with another economic operator, "Y", and the same economic operator "X" also submits an individual tender, then the contracting authority is entitled to exclude from the procedure both the association composed of "X" and "Y" and the economic operator "X" having submitted the individual tender.

Warning! Companies affiliated in relation to a certain legal person are entitled to participate within the same procedure of awarding, but only in case where participation is not of the nature to distort the competition.

Example: If only within an awarding procedure there are submitted only tenders by a parent/company and, separated, by an affiliated thereof, then tenderers are excluded and implicitly the procedure shall be cancelled.

#### **SUB-SECTION 4: Tenders**

A tender means the legal act whereby the economic operator shows its will to undertake legally in a public procurement contract ; the tender contains the financial proposal and the technical proposal.

Note: The tender is elaborated in accordance with the provisions in the awarding documentation and contains the technical proposal and the financial proposal.

An alternative tender means that tender which can deviate, to a certain extent, from the requirements of the awarding documentation and which tenderers can submit only in case where the awarding criterion is "the economically best profitable tender".

Note: To specify, in the participation notice, explicitly, is the submission of alternative tenders is allowed. If this specification is absent, alternative tenders cannot be taken into consideration.

A joint tender means any tender submitted by several economic operators associated in view of participation in the awarding procedure.

Candidacy means the documents whereby a candidate demonstrates:

- the personal standing;
- the capacity to exercise the professional activity;
- the economic and financial standing;
- the technical and professional capacity

in view of obtaining the invitation for participation for the subsequent submission of the tender, in case of application of a restricted procedure, negotiation or competitive dialogue.

#### **SUBSECTION 5: Interdictions**

The economic operator is not entitled, within the same procedure:

- to participate in two or three associations;
- to submit an individual candidacy/tender and another joint candidacy/tender;
- to submit an individual tender and to be nominated as sub-contract or within another tender.

The economic operator cannot submit but one sole tender within the same procedure.

Warning! In case of the second stage of the restricted procedure or negotiations with a prior participation notice, the selected candidates are not entitled to become associated or participate as sub-contract ors.

A candidate which has not been selected cannot participate in capacity of sub-contract or associate in the second stage of the restricted procedure or negotiations with a prior participation notice either.

Recommendation: In case where two tenders are submitted within a procedure, of which one by an association composed of the firm "X" and "Y" and another by a firm "Z" having "Y" as sub-contract or, then the contracting authority is entitled to deny both tenders for immoral cause.

Warning! The natural or legal person which has participated in the drafting of the awarding documentation is entitled to be a tenderer an associate tenderer or sub-contract or in case where its involvement in the elaboration of the awarding documentation is not of the kind to distort competition.

#### **SUB-SECTION 6: Limitation of participation**

\* The contracting authority is entitled to impose that the participation in the awarding procedure should be allowed only for:

- some protected workshops
- those tenderers which undertake to fulfil the contract in context of some protected undertaking programmes, within which most of the involved employees are persons with disabilities which, by the nature or seriousness of their deficiencies, cannot exercise a professional activity in normal terms.

Note: The decision of limitation of the participation must be specified explicitly in the participation notice/invitation.

#### **SUB-SECTION 7: Conflict of interest**

A conflict of interests represents the situation in which the public employee has a personal interest which might have a negative influence upon the fulfilment of his office duties and obligations.

Conflicts of interests arise when employees of officials in the public sector are influence or seem to be influenced by personal interests when they conduct their activity.

Perception of an apparent conflict of interests can be as harmful as an actual conflict, for it undermines the public's trust in the integrity of the involved institution and the officers thereof.

The conflict of interests can be divided into types of interests:

- financial;
- non-financial.

The financial interests can involve real or potential earnings which can be obtained by means of a public officer, government official or of a person elected by vote or by means of a member of the families of these categories of persons, who hold real estate, own shares or another position in a company which participates in a public procurement procedure, accept gifts or other presents or receive an income from a second job.

The benefit does not necessarily represent an amount of money which goes from one hand to another hand, it can also mean an enhancement of the value of the real estate due to a favourable decision issued for such purpose or due to the election of a certain economic operator as winner of a public procurement procedure.

Non-financial interests, regularly, lead to the emergence of political power or of an enhanced control. They can appear from personal or family relationships or from the involvement in sporting, social or cultural activities.

The ordinance clearly specifies a few events which may lead to the emergence of the conflict of interests.

Thus, to avoid the involvement in a conflict of interest:

\* The natural or legal person having participated in the drafting of the awarding documentation has the right to be:

- a tenderer;
- an associate tenderer;
- a sub-contract or,

but only in case where the person is in extent to demonstrate that the involvement thereof in the elaboration of the awarding documentation is not of the kind to distort competition.

\* The natural or legal person which is directly involved in the process of verification or evaluation of candidacies, of tenders respectively, is not entitled to:

- candidate;
- tenderer;
- associate tenderer;
- sub-contract or,

subject to the sanction of being excluded from the awarding procedure.

### **SUB-SECTION 8: Incompatibilities**

The following persons shall not be entitled to be involved in the process of verification, of evaluation respectively of the candidacies, of the tenders, respectively:

- husband/wife, relation or kin, up to the fourth degree inclusively, with persons who are part of the Council of directors/managerial body or supervision committee of one of the tenderers/candidates;
- persons who hold social parts, ownership interests or shares in the subscribed capital of one of the tenderers/candidates;
- persons who are in an event which, objectively, brings about doubts regarding the assurance of impartiality throughout the process of verification/evaluation of candidacies/tenders.

The method of the confidentiality and impartiality statement is disclosed in form No. 13 "Confidentiality and Impartiality Statement".

Warning! Subject to the sanction of nullity for immoral cause, the contract or is not entitled to employ, throughout a period of at least 12 months as from the entering of the
---

contract , natural or legal persons that:

- participated in the drafting of the awarding documentation;
- were involved in the process of verification/evaluation of candidates/tenders submitted within the application of an awarding procedure.

It is not always easy to decide when personal interest and public duty are or might be in conflict one with the other

Everybody has personal interests, important for himself or for those who are closed to him.

The fact that there are such interests does not necessarily represent a problem, the most important thing is the manner in which these are dealt with.

The integrity of a public institution and the employees thereof will be protected and the risk of emergence of corruption will be downsized if the institution has policies and procedures for settlement of possible conflicts of interest.

**SUB-CHAPTER IV: Conducting the procedure of awarding the public procurement contracts (STAGE 4)**

**SECTION 1: Reception of candidacies and selection/pre-selection of candidates, if the case may be**

Candidacies are submitted only in case of application of the restricted procedure, competitive dialogue or negotiation.

**SUB-SECTION 1: Deadlines granted for candidacies submission**

A period of at least 37 days as from the date of sending for publication the participation notice is granted for the submission of candidacies.

**SUB-SECTION 2: Possibilities to shorten the deadlines**

In case of a restricted procedure, the period of time contained between the date of sending for publication the participation notice to the stage of the candidates' selection and the deadline for the submission of candidacies can be shortened as follows:

**1. If:**

\* estimated value of the contract is higher than the thresholds for publication in the Official Journal of European Union (art. 55 in the ordinance), then:

Minimum period which can be granted for the submission of candidacies - days -	Minimum period cannot be observed for reasons of emergency - days -	If sent by electronic means to JOUE - days -	If sent by electronic means to JOUE, and the minimum period cannot be observed for reasons of emergency - days -
37	15	30	10



**2. If:**

\* estimated value of the contract is equal or lower than the thresholds for publication in the Official Journal of European Union, then:

Minimum period which can be granted for the submission of candidacies, in case of sending in the SEAP - days -
16

**SUB-SECTION 3: Shortening the deadlines in case of the competitive dialogue**

The period of time contained between the date of sending for publication the notice for participation in Stage I of the procedure and the deadline for the submission of candidacies can be shortened as follows:

**1. If:**

\* estimated value of the contract is higher than the thresholds for publication in the Official Journal of European Union, then:

Minimum term which can be granted for the submission of candidacies - days -	In case of sending by electronic means to JOUE - days -
37	30

**2. If:**

\* estimated value of the contract is equal or lower than the thresholds for publication in the Official Journal of European Union, then:

Minimum term which can be granted for the submission of candidacies, if sent in the SEAP - days -
30

**SUB-SECTION 4: Shortening the deadlines in case of the negotiation with the prior participation notice:**

The period of time contained between the date of sending for publication the notice for participation in Stage I of the procedure and the deadline for the submission of candidacies can be shortened as follows:

**1. If:**

\* estimated value of the contract is higher than the thresholds for publication in the Official Journal of European Union, then:

Minimum term which	Minimum period	If sent by	If sent by electronic means to
--------------------	----------------	------------	--------------------------------

can be granted for the submission of candidacies - days -	cannot be observed for reasons of emergency - days -	electronic means to JOUE - days -	JOUE, and the minimum period cannot be observed for reasons of emergency - days -
37	15	30	10

**2. If:**

\* estimated value of the contract is equal or lower than the thresholds for publication in the Official Journal of European Union, then:

Minimum term which can be granted for the submission of candidacies, if sent in the SEAP - days -
12

Warning! Selection of candidates is completed by using fair and non-discriminatory criteria referring only to the technical and economic-financial capacity.

**SECTION 2: Conducting the rounds of discussions, if the case may be:**

The rounds of discussions are conducted in case of competitive dialogue and negotiation procedures.

These are initiated by sending an invitation for participation, concomitantly, to all the accepted candidates.

The invitations for participation must contain:

- reference regarding the published notice for participation;
- address to which discussions will be held;
- date of launching the sessions of discussions;
- language/languages in which the discussions will be conducted;
- specifications regarding the additional documents which must be submitted in view of verification of the given statements or supplement of the documents submitted in the first stage.

Warning! It is prohibited to invite in the second stage of competitive dialogue or negotiation an economic operator which has not submitted candidacy in the first stage or which has not fulfilled the pre-selection criteria.

**SECTION 3: Minimum deadlines for tender elaboration**

**SUB-SECTION 1: Open procedure**

A period of at least 52 days as from the date of sending for publication the participation notice is granted for the submission of tenders.

Shortening the deadlines:

Period of time contained between the date of sending for publication the participation notice and the deadline for the submission of tenders can be reduced as follows:

**1. If:**

\* estimated value of the contract is higher than the thresholds for publication in the Official Journal of European Union;

\* there was no notice of intention published, then:

Minimum period which can be granted for tender submission - days -	If sent by electronic means to JOUE - days -	If the documentation is accessible in the SEAP - days -	If sent by electronic means to JOUE, and the documentation is accessible in the SEAP - days -
52	45	47	40

**2. If:**

\* estimated value of the contract is higher than the thresholds for publication in the Official Journal of European Union;

\* a notice of intention was published,

then:

Minimum period which can be granted for tender submission - days -	If sent by electronic means to JOUE - days -	If the documentation is accessible in the SEAP - days -	If sent by electronic means to JOUE, and the documentation is accessible in the SEAP - days -
36	29	31	24

**3. If:**

\* estimated value of the contract is lower or equal to the thresholds for publication in the Official Journal of European Union;

\* there is only the obligation of publication of the participation notice in the SEAP, then:

Minimum period which can be granted for tender submission, if sent in the SEAP - days -	If the documentation is accessible in the SEAP - days -
28	23

**SUB-SECTION 2: Restricted procedure**

In case of a restricted procedure tenders are submitted in the II<sup>nd</sup> stage of this procedure, after having completed the selection of candidates in a first stage.

The tender evaluation stage is initiated by sending an invitation for participation to the economic operators selected in the first stage, attached by the awarding documentation.

The invitation for participation must be sent at least 40 days before the tender submission deadline.

Deadlines shortening:

The period of time contained between the date of sending the invitation for participation in the II<sup>nd</sup> stage of the procedure and the deadline for tender submission can be shortened as follows:

**1. If:**

- \* estimated value of the contract is higher than the thresholds for publication in the Official Journal of European Union;
- \* there was no notice of intention published, then:

Minimum period which can be granted for tender submission- days -	If the minimum period cannot be observed for reasons of emergency - days -	If the documentation is accessible in the SEAP - days -	If sent by electronic means to JOUE, and the minimum period cannot be observed for reasons of emergency - days -
40	12	35	12

**2. If:**

- \* estimated value of the contract is higher than the thresholds for publication in the Official Journal of European Union;
- \* a notice of intention was published, then:

Minimum period which can be granted for tender submission - days -	If the minimum period cannot be observed for reasons of emergency - days -
22	12

**3. If:**

- \* estimated value of the contract is equal or lower than the thresholds for publication in the Official Journal of European Union,
- then:

Minimum period which can be granted for tender submission - days -	If the documentation is accessible in the SEAP - days -	If the minimum period cannot be observed for reasons of emergency - days -
22	17	12

**SUB-SECTION 3: Competitive dialogue**

In case of application of the competitive dialogue procedure, the deadline for the submission of the final tenders is set forth under common consent with the pre-selected candidates, within the dialogue rounds.

An invitation for participation in the stage of final tenders evaluation is sent, which must contain:

- \* reference regarding the published notice for participation;
- \* deadline set forth for tender submission;

- \* address where tenders are sent;
- \* language/languages in which tenders must be elaborated;
- \* specifications referring to the presentation of additional documents.

**SUB-SECTION 4: Negotiation**

In case of application of the negotiation procedure, the final tender is submitted in the last session of negotiation set forth by the contracting authority.

**SUB-SECTION 5: Tender request**

The invitation for participation must be sent to the SEAP at least 10 days before the deadline for tender submission.

The period of time contained between the date of sending the invitation for participation and the deadline for tender submission can be altered as follows:

If the invitation for participation is sent to the economic operators - days -	If the invitation for participation is published in the SEAP - days -	If the documentation is accessible in the SEAP - days -
12	10	6

**SUB-SECTION 6: Competition of solutions**

For the submission of the tenders a period of at least 52 days as from the date of sending the participation notice for publication is granted.

Warning! The number of days between the date of publication of the notice for participation and the date of submission of the projects must be set forth so that the economic operators should benefit from a reasonable period for the elaboration thereof.

**SECTION 4: Tender reception**

Economic operators which have not procured directly the awarding documentation can also participate in the procedure:

- \* only by mail ;
- \* directly at the headquarters of the authority or at another specified address.

Warning! The tender can also be sent by electronic means if the contracting authority provides this.

Warning! Requests for participation and/or tenders can be sent by electronic means only if:

- the information referring to the specific possibilities of electronic sending, including encrypting, are available for any interested economic operator;
- the reception electronic devices warrant adequately the integrity and confidentiality of the received data ;
- economic operators must send the documents, certificates, statements and other requested documents, before the deadline for sending, in case these are not

available in electronic format.

By warranting the integrity and confidentiality of the received date it is understood that the electronic devices, by the technical characteristics they hold and/or by the specific procedures they use, enable the fulfilment, in a cumulating manner, of at least the following terms:

- it is possible to determine accurately the exact time of reception of the tenders or requests for participation, as well as, if applicable, of the plan/projects;
- before the deadline for date sending, no person has access to the sent date ;
- unauthorized access is clearly detectable;
- it is only authorized persons who are entitled to set forth or amend the visualisation date of the received date ;
- access to the received date is possible, in all stages of the process, only by a simultaneous action of at least two authorised persons or systems and only after the established visualisation date;
- after the date of visualisation of the received date , access to the respective date remains possible only for persons authorized to visualise the respective date .

#### **SECTION 5: Conducting the Opening session**

Tenders are opened on the date and place indicated in the participation notice and in the awarding documentation.

Any tenderer is entitled to attend the tender Opening session.

In a first stage of the restricted procedure, competitive dialogue and negotiation, the attendance of the candidates is not mandatory.

Warning! The evaluation committee is not entitled to deny a tender having as sole motivation the absence of the tenderer having submitted the respective tender from the Opening session.

In the tender Opening session, the evaluation committee checks the manner of observation of the formal rules as to the submission and presentation of tenders and documents attached thereto.

Note! The contracting authority is bound to send the verbal-minutes of the Opening session also to the other tenderers who participate in the procedure, but the representatives of which were not attendant at the Opening .

The envelops will be opened by the chairman of the evaluation committee, who is bound to notify the following information:

- designation (name) of the tenderers;
- amendments and withdrawals of the tenders;
- existence of the participation securities;
- main items of the financial proposals, price included;
- benchmark exchange rate which will be laid at the basis of comparison of prices when evaluating the tenders submitted in another currency;
- proposals of alternative tenders (if the case may be);
- any other details and specifications which the evaluation committee deems necessary.

Warning! No tender can be denied within the Opening session, except for deferred tenders and those which fail to evidence the establishment of the participation security.

Any decision regarding the qualification of the tenderers, of the candidates respectively, or, as applicable regarding the evaluation of the tenders will be made by the evaluation committee in a session subsequent to the session for Opening the tenders.

Model of the minutes regarding the session for Opening the tenders is found in Form No. 14 "Tender Opening session verbal-minutes".

## **SECTION 6: Method of work of the evaluation committee**

Warning! It is only the members of the evaluation committee who are entitled to the meetings thereof.

Members of the evaluation committee are regularly nominated within the internal procurement compartment.

The method of work of the evaluation committee is set forth by the chairman of the committee, under common consent with the members thereof.

The person responsible for the awarding of the contact is the chairman of the committee.

The estimating schedule for application of the procedure and the period requested for the validity of tenders will be had in view.

Warning! Any decision of the evaluation committee must meet the vote of at least 2/3 of the members thereof.

If the establishment of the successful tender is made based on a score, the vote of the members of the evaluation committee is reflected by the individual score awarded to each tender separately.

Warning! If there are divergences of opinions among the members of the evaluation committee and the decision fails to meet the vote of 2/3 of its members, then the chairman of the committee will request the re-view of the divergence points, for the purpose of finalisation in due time of the tender evaluation stage and establishment of the successful tender.

Warning! In case where the evaluation committee fails to reach an agreement, the final decision shall be enacted by a simple majority.

Members of the evaluation committee who do not agree upon the enacted decision shall be bound to submit their point of view in written form, elaborating in this respect an individual note which is attached to the Report of the awarding procedure.

## **SECTION 7: Tender review and evaluation**

The evaluation committee is bound to conduct the activities of review and evaluation only at the headquarters of the contracting authority.

### **SUB-SECTION 1: Requesting the submission of missing documents**

In case where it is established that one or several tenderers/candidates has omitted to submit certain documents whereby it is confirmed the fulfilment of the requirements regarding:

- the personal status;
- the capacity to exercise the professional activity;
- the economic and financial standing,

the evaluation committee shall request the respective tenderers/candidates to submit the documents which are missing.

Warning! A reasonable period of time, regularly within the limit of 72 hours as from the time of the request shall be granted for the presentation of the documents which are missing.

The evaluation committee shall take all necessary steps so that the request should arrive in due time to the tenderers/candidates.

Warning! The evaluation committee is not entitled to allow and request the presentation of a missing document, if:

- \* the awarding documentation mentioned expressly the fact that, in case of non-submission of the respective document, the subsequent supplement is not allowed, non-submission having as effect the disqualification of the tenderer/candidate;
- \* the respective tenderer/candidate, although having been aware of the requirements, omitted to submit more than 3 of the documents requested within the awarding documentation;
- \* by acceptance of the submission of the respective document, an obvious benefit would be created, in relation to the other tenderers/candidates, impairing thus the principle of equal treatment.

#### **SUB-SECTION 2: Correction of the form vices**

\* Form vices of documents and tenders submitted by the economic operator are remedied by the evaluation committee, but only subject to the consent thereof..

Note: If the economic operator fails to accept the remedy thereof, then the tender is deemed non-conformant.

A form vice means an error or omission within a document, the correction of which does not create an obvious benefit in relation to the other participants and does not alter the meaning and contents of the information initially existing in the respective document.

#### **SUB-SECTION 3: Clarifications regarding the technical proposal and qualification**

\* There is an establishment of what are:

- qualifications;
- formal supplements;
- necessary confirmations for the evaluation of each tender.

\* Period of time granted for sending clarifications is set forth.



Note: Communication to the tenderer regarding the necessary clarifications must be clear, accurate and must define explicitly and with sufficient details what would the request of the evaluation committee consist in.

Warning! If the tenderer fails to send, within the period set forth, the requested clarifications or in case where the explanations presented by the tenderer are not conclusive, the tender shall be deemed non-conformant.

Note: If the tenderer alters, by the replies the tenderer submits, the contents of the technical proposal, and these fail to materially meet the requirements in the specifications' book, tender thereof shall be deemed non-conformant.

Note: If the tenderer alters, by the replies the tenderer submits, the contents of the financial proposal, tender thereof shall be deemed non-conformant, except for the event regarding the correction of arithmetic errors.

#### **SUB-SECTION 4: Omissions or inconsistencies**

In case there are certain omission or inconsistencies established within the technical proposal, it shall be deemed that this meets materially the requirements provided in the specifications' book, only when the value estimation of the possible omission or inconsistencies represents less than 3 % of the value of the price tendered within the financial proposal.

If the existence of omissions or inconsistencies is established within the technical proposal, the value estimation of which represents less than 3% of the value of the price tendered within the financial proposal, it is requested to the tenderer to supplement or remedy those in accordance with the requirements provided in the specifications' book.

Recommendation: in case where the supplement ore remedy of these omissions is requested, this can be accepted only if the tenderer's rank in the top is altered, following the adding of the value of 3%.

Note: The tenderer is not entitled to condition the supplement or remedy of the omissions or inconsistencies upon the modification of the financial proposal.

Warning! If the tenderer fails to accept the supplement or remedy of omissions or conditions this upon the modification of the financial proposal, the tender thereof shall be deemed non-conformant.

Warning! If the tenderer alters by the replies the tenderer submits, the contents of the financial proposal, the tender thereof shall be deemed non-conformant, except for the event regarding the correction of arithmetic errors.

#### **SUB-SECTION 5: Correction of arithmetic errors**

Arithmetic errors can be corrected only subject to the consent of the tenderer.

In case where the tenderer fails to accept the correction of these errors, then the tender shall be deemed to be non-conformant.

Arithmetic errors are corrected as follows:

- if there is a discrepancy between the unitary price and total price, it is the unitary price which must be taken into consideration, and the total price will be duly corrected;
- if there is a discrepancy between letters and figures, it is the value expressed in letters that must be taken into cont, and the value expressed in figures will be duly corrected.

### **SUB-SECTION 6: Rejection of tenders**

Warning! Inadequate tenders, those which are, respectively:

- irrelevant as to the object of the contract ; or
  - unacceptable; or
  - non-conformant
- will be rejected.

Note: Tenders which, although materially satisfying the requirements provided in the specifications' books, the estimation of value of the omissions or inconsistencies established in relation to the requirements in the specifications' book represent a higher value that the difference between the price provided in the respective tender and the price provided in any other tender deemed admissible by the evaluation committee, shall also be rejected..

An unacceptable tender means the tender which:

- \* was submitted after the date and deadline for tender submission;
- \* was submitted at another address than the address set forth in the participation notice;
- \* was not attached by the participation security such as requested in the awarding documentation;
- \* was submitted by a tenderer which fails to meet the minimum qualification requirements;
- \* represents an alternative to the provisions in the specifications' book, alternative which cannot be taken into consideration for the following reasons:
  - the participation notice does not explicitly specify the possibility of submitting alternative tenders;
  - the respective alternative tender fails to satisfy the minimum requirements provided in the specifications' book;
- \* contains, in the financial proposal, a price which exceeds the value of the funds which can be rendered available for the fulfilment of the respective public procurement contract ;
- \* presents an unusually low price as to what is to be supplied, executed or performed, and the reasons received were not conclusive;
- \* fails to provide the observation of the mandatory regulations referring to the specific working and work protection conditions, if this was requested;

\* was submitted by a tenderer which, during the last 2 years, for reasons imputable thereto, failed to fulfil or fulfilled improperly the contractual obligations, fact which caused or can cause serious prejudice to the beneficiaries thereof.

Note! Manner of fulfilment of in the ordinance.

A non-conformant tender means the tender which:

- \* fails to satisfy the requirements contained in the specifications' book;
- \* contains proposals referring to contractual terms which are evidently unprofitable for the contracting authority;
- \* contains, within the financial proposal, prices which are not the outcome of free competition and which cannot be accounted for;
- \* contains form vices or arithmetic errors the remedy of which was not accepted by the tenderer;
- \* is revoked/alterd subsequently to the Opening , except for electronic auction.

An admissible tender means the tender which is adequate as far as the awarding documentation is concerned.

Warning! The successful tender shall be designated from among the admissible tenders.

#### **SECTION 8: Establishment of the successful tender**

The evaluation committee is obligated to set forth the successful tender from among the admissible tenders, based on the application of the criterion for awarding the public procurement contract .

If the used criterion was “the economically best profitable tender”, then the evaluation of tender is made by granting, for each tender separately, a score resulted following the application of the calculation algorithm set forth in the awarding documentation.

Note: The top is prepared in the decreasing order of the granted score. The score obtained by each tender represents the arithmetic mean of the scores granted by each member of the evaluation committee separately.

If the used criterion was “the lowest price”, then the evaluation of tenders is made by comparison of the price, without the VAT, of each tender separately and by preparation, in the decreasing order of the respective prices, of the top based upon which the successful tender is established.

Warning! If the criterion applied for awarding the public procurement contract is “the economically best profitable tender”, and the evaluation committee granted the same score for two or several tenders, then the contracting authority is bound to enter the public procurement contract with the tenderer the tender of which has the lowest price.

If the tendered prices are equal as well, the contracting authority is entitled:

- \* either to request the tenderers having offered the lowest price a new financial proposal in sealed envelope, case in which he contract will be awarded to the tenderer the new financial proposal of which has the lowest price;
- \* or to award the public procurement contract to one of the tenderers having offered the lowest price, based upon the application of some additional criteria, exclusively technical.

Warning! If the criterion applied for awarding the public procurement contract is “the lowest price”, and two or several tenders contain, in the financial proposal, the same price, the contracting authority shall be entitled:

- either to request the tenders having tendered the lowest price a new financial proposal in sealed envelope, case in which the contract will be awarded to the tenderer the new financial proposal of which has the lowest price;
- or to award the public procurement contract to one of the tenderers having offered the lowest price, based upon the application of some additional criteria, exclusively technical.

Recommendation: When choosing between two tenders having the same price, you can opt for the tender which contains, more than 50%, products the origin of which – determined according to the provisions of the Council Regulations (CEE) No. 2.913/92 of October 12, 1992, with subsequent amendments – is of the states members of the European Union or from third countries with which the European Community has entered bilateral or multilateral accords providing comparable access to companies in the members states on the markets of the respective countries, detrimental to a tender containing less than 50% of such products.

Warning! The tender which was set forth successful cannot be altered and constitutes integral part of the public procurement contract which is to be entered.

Warning! In case of entering a framework agreement with several economic operators by applying the criterion of “the economically best profitable tender”, the framework agreement is entered in decreasing order of the scored obtained. In case the criterion of “the lowest price” is applied, then the framework agreement is entered in the increasing order of prices.

Recommendation: If one sole adequate tender is submitted in the open procedure, then the contracting authority is entitled to award the contract to the respective tenderer only if the price represents the market’s reply.

Recommendation: If there is only one sole adequate tender submitted in the procedure of tender request the publicity or which has been made only through the SEAP, then the contracting authority is entitled to award the contract to the respective tenderer only if the price represents the market’s reply.

## **SECTION 9: Annulment of the public procurement procedure, if applicable**

Warning! The decision of annulment is regularly made before the date of sending the communication regarding the outcome of application of the awarding procedure and, anyway, before the date of entering the contract .

The procedure of awarding the contract is annulled when:

- \* the assurance of a satisfactory level of competition was not possible;

Note: A satisfactory level of competition is deemed to be the event where the number of economic operators is lower than the provided minimum number, for each procedure

separately.

An exception is the open procedure, case in which awarding can be completed even if one sole tenderer participated.

\* there were only unacceptable, non-conformant or inadequate tenders submitted;

Note: An inadequate tender is deemed to be the tender which is considered to be unacceptable and/or non-conformant and which is denied.

\* tenders were submitted which, although they can be taken into consideration, cannot be compared due to the non-uniform manner of approach of the technical and/or financial solutions;

\* serious deviations from the legislative provisions impair the awarding procedure or it is impossible to enter the contract .

Note: The awarding procedure is deemed affected in case where the following terms are fulfilled, in a cumulating manner:

- in case of the awarding documentation and/or errors or omissions are established in the manner of application of the awarding procedure having as effect the violation of the principles provided in the ordinance;
- The contracting authority is in impossibility to adopt corrective steps without these to lead, in their turn, to the violation of the principles provided in the ordinance.

### **SECTION 10: Elaboration of the report regarding the awarding procedure**

The report of the awarding procedure must contain:

- the designation and headquarters of the contracting authority;
- the object of the public procurement contract /framework agreement or the dynamic system of procurement;
- if applicable, the designation/name of the candidates which participate in the procedure;
- if applicable, the designation/name of the selected and non-selected candidates, as well as the reasons upon which the selection or non-selection of the respective candidates was based upon;
- the designation/name of the tenderers participating in the procedure;
- the designation/name of the tenderers that were rejected and the reasons upon which that decision was based;
- the designation/name of the tenderer/tenderers the tender/tenders of which was/were adjudicated successful and the reasons upon which that decision was based;
- in case of the successful tenderer/tenderers, the part of the contract which that/those declared to outsource, together with the designation/name of the sub/contract ors;
- if applicable, accounting for the decision to annul the awarding procedure.

Warning! The report of the awarding procedure is forwarded for approval to the head of the institution.

Model of the report of the awarding procedure is found in form No. 15 "Report of the awarding procedure".

Manner of conducting each procedure is found in forms No. 16 A-G - "Steps to follow".

## **SUB-CHAPTER V: Awarding the public procurement contract or entering the framework agreement (STAGE 5)**

### **SECTION 1: Notification of the outcome**

The contracting authority is bound to inform the candidates/tenderers about the decisions referring to:

- the awarding of the public procurement contract ;
- the entering of the framework agreement;
- the acceptance in a dynamic system of procurement;
- if the case may be, the annulment of the awarding procedure and possible subsequent initiation of a new procedure.

Note: The communication is made in written form and no later than 3 business days as from the issuing of the respective decisions.

Warning! Communication is also sent by facsimile or by electronic means. If this is not made also by facsimile or by electronic means, then the period of waiting before signing the contract is increased by 3 business days.

The successful tenderer/tenderers are informed on the acceptance of the submitted tender/tenders.

The tenderers/candidates that were rejected or the tender of which was not adjudicated successful are informed on the reasons upon which the respective decision was based, as follows:

- each rejected candidate is presented the substantial reasons upon which the decision of rejection of his candidature was based;
- for each rejected tender, the substantial reasons upon which the decision of rejection was based;

Note: Details are provided about the arguments pursuant to which the tender was considered unacceptable, non-conformant or inadequate, especially the items of the tender which did not meet the operation and performance requirements provided in the specifications' book.

- each tenderer having submitted an acceptable, conformant and adequate tender, but which was not adjudicated successful, the relative characteristics and benefits of the successful tender/tenders as compared to the tender thereof, name of the tenderer that is to be awarded the public procurement contract and, as the case may be, of the tenderers with which a framework agreement is to be entered.

Note: The contracting authority is entitled not to communicate certain information, but only in the event where the disclosure thereof;

- would lead to the non-application of this legal provision;

- would represent an obstacle on the way of application of the legal provisions;
- would be adverse to public interest;
- would prejudice the legitimate commercial interests of economic operations, public or private;
- would prejudice the loyal competition among these.

Warning! Communication to the tenderer/tenderers adjudicated successful must also contain the invitation to sign the contract or, as applicable, the framework agreement.

The model of communication of acceptance of the successful tender is found in form No. 17A, and the model of communication of the outcome of the awarding procedure is presented in form No. 17B.

### **SECTION 2: Period of waiting**

The public procurement contract is signed after a period of waiting. The period of waiting can be used by persons that consider themselves encroached by an act of the contracting authority, in relation to the public procurement procedure, in order to challenge it.

In case of contracts the value of which is higher or equal to the threshold provided in art. 124 in the ordinance, the period of waiting until the signing of the contract is 15 days as from the notification of the outcome.

In case of contracts the value of which is lower than the threshold provided in art. 124 in the ordinance, the period of waiting until the signing of the contract is 7 days as from the notification of the outcome.

### **SECTION 3: Settlement of oppositions**

Allowed situation: any act of the contracting authority which violates the legal provisions on public procurements can lead to dispute emergence.

\* An act of the contracting authority is:

- any administrative act,
  - absence of issuing an administrative act or any other act, denial to issue it;
  - any other act besides those mentioned above, which causes or may cause legal effects.
- The active subject – the person which considers it has been injured in its right or legitimate interest – can be any person that fulfils the following terms, in a cumulating manner:

- the person has a legitimate interest about a certain public procurement contract for the awarding of which the provisions of the ordinance are applied;
- the person has suffered, suffers or risks to suffer a prejudice, as a consequence of an act of the contracting authority, of the kind to cause legal effects.

\* Options of turning into good account the impaired legitimate right or interest are:

- the administrative – jurisdictional way by deferring to the Council, in terms of the ordinance;

Or

- in court, in terms of the administrative dispute law.

\* The object of the opposition consists in the substantial claim deferred to court for trial and can be, as applicable:

- the annulment of the act;

- the obligation of the contracting authority to issue an act;
- the obligation of the contracting authority to take any other steps necessary to remedy the acts which impair the awarding procedure.
- \* The power to settle the oppositions is given by the option of the injured party:
  - either to the Council ;
  - or to the trial court.
- \* The Council is competent:
  - to settle the oppositions filed within the awarding procedure, before entering the contract ;
  - to deliver judgement about the lawfulness of the procedures and operations conducted for the awarding of a public procurement contract ;
  - to issue an opinion on the dispute deferred for trial, if the trial court requests this.

Note: The Council , in the exercise of its attributions, enacts decisions.

- \* The trial court has the exclusive power to settle:
  - disputes regarding the granting of indemnities;
  - disputes emerged after the entering of the public procurement contract .

Warning! .

- \* The procedure of settling the oppositions is conducted under the observation of the principles of:
  - lawfulness;
  - celerity;
  - contradictionality;
  - right to defence

### **SUB-SECTION 1: Opposition**

The opposition is filed in written form by the party which considers it has been injured. The participants in the same awarding procedure can become associated in the opposition by an own petition which must contain all the items provided for opposition.

- \* The opposition must contain the following items:
  - name, domicile or resident of the opponent or, for legal persons, designation, headquarters and sole registration code. In case of legal persons, to also indicate the persons representing them and their capacity;
  - designation and headquarters of the contracting authority;
  - designation of the object of the public procurement contract and the applied procedure of awarding;
  - object of the opposition;
  - grounds of the petition, in fact and in law;
  - means for evidencing to sustain the opposition, insofar as this is possible;
  - signature of the party or of the representative of the legal person.

Model of opposition is provided in forms No. 19 A n B “Opposition”.

The opposition shall be attached by the copy of the challenged act, in case where this has been issued, as well as copies of other instruments, if these are available.

A copy of the opposition and of the instruments attached, if these are available, shall be sent by the opponent to the contracting authority.



Note: If the Council appreciates that the opposition does not contain all the required information, then this shall request the opponent, within 5 days as from notification, to supplement the opposition.

If the opponent fails to fulfil the obligation imposed by the Council, the opposition will be denied.

Participants in the awarding procedure must be notified by the contracting authority, within 5 days as from the reception of the notification regarding the opposition.

The opposition can be submitted in all stages of the awarding procedure and against any act of the contracting authority, within the period of submission provided by the ordinance.

The period for submitting the opposition is calculated as from the date when the opponent becomes aware of an act of the contracting authority which this deems illegal.

The period for the submission of the opposition is mostly:

\* 10 days, in case where the estimated value of the contract is higher than:

- EUR 40,000 for the supply contract and service contract ;

- EUR 250,000 for the works' contract ;

\* 5 days, in case where the estimated value of the contract is equal or lower than:

- EUR 40,000 for the supply contract and service contract ;

- EUR 250,000 for the works' contract ;

Note: The period shall be calculated as from the date when the opponent become aware of the act invoked as illegal.

Warning! Oppositions filed within the same awarding procedure will be connected by the Council .

The contracting authority is bound to send both the Council and the opponent its point of view as to the opposition, within 5 days as from the reception of the notification regarding the opposition.

Warning! The absence of the contracting authority's point of view shall not prevent the settlement of the opposition, insofar as the communication thereof has been supported by evidence.

The Council, following an opposition, can request the contracting authority to notify, within 5 days, all the documents in the dossier of the public procurement.

The contracting authority must take all steps to bring to fulfilment the action imposed by the Council, subject to the sanction of a fine, as per each day of delay, consisting in 20% of the monthly minimum salary per economy, enforced upon the head thereof.

Warning! The decision regarding the fine, not challenged in due time, represents a writ of execution and is enforced by the competent bodies, according to the stipulations regarding forced execution of fiscal debts and the procedure provided by these stipulations.

\* In settlement of the case, the Council can:

- request clarifications from the parties;

- submit evidence;
- request any necessary data for the establishment of the situation de facto also from other natural or legal persons.

Note: The Council can designate an independent expert to clarify certain technical or financial aspects. Duration of completion of the expert's report must match the period provided for the settlement of the oppositions.

Warning! Costs of this expert's report shall be borne by the party having filed the petition for the completion thereof.

- \* The procedure before the Council is written.
- \* The parties can be examined only if this is deemed necessary by the court which settles the opposition.
- \* The parties can be represented by solicitors.
- \* The parties can submit written conclusions during the procedure.
- \* The parties can request to submit verbal conclusions before the Council without this to affect the periods of solution.
- \* Period for the settlement of the opposition is 10 business days as from the date of receiving the dossier of public procurement from the contracting authority.
- \* Period for the settlement of the opposition can be renewed by another 20 days in seriously grounded cases.

## **SUB-SECTION 2: Temporary steps**

Warning! Submission of the opposition before the Council suspends de jure the awarding procedure until the date when the opposition is settled by the Council .

Warning! The contract entered in the period of suspension of the awarding procedure is stricken by absolute nullity.

The period of suspension incurs the adequate renewal of any period affected by suspension, except for periods provided for the exercise of the opposition ways.

Warning! The Council can order the awarding procedure to be resumed at the request of one of the parties and in seriously grounded cases.

The decision regarding the temporary steps can be challenged by filing a complaint to appeal court competent so settle the complaint against the opposition, within 5 days as from the communication of the decision.

The Council shall first of all issue a decision about the exceptions of procedure and *exception in rem*.

Warning! If it is established that the exceptions of procedure and *exceptio in rem* are grounded, the case shall not be further reviewed on the merits.

- \* After the review of the lawfulness and solidity of the case, the Council can deliver a decision whereby:
  - it annuls the challenged act, in total or in part;

- orders any other step necessary for the remedy of the acts which impair the awarding procedure.

Warning! If the Council appreciates that there are other violations of the legal provisions regarding the challenged act, besides those invoked by the opponent, it can order, ex officio, the remedy of the violation of legal provisions.

If the Council accepts the opposition and orders the taking of steps for the remedy of the challenged document, then it shall also specify the deadline within which this must be brought to fulfilment.

The obligation to supervise the fulfilment of the remedy steps ordered by the Council shall be incumbent upon the ANRMAP.

\* The opposition can be rejected by the Council :

- as being groundless
- as being ;
- as being without interest;
- as being objectless;
- as being filed by a person without capacity or unauthorized to file an opposition;
- because of any exception of procedure or exception in rem.

Warning! The Council shall decide upon the continuation or annulment of the public procurement awarding, according to the delivered settlement.

The Council can take act, any time during the settlement of the opposition, to the waiver by the opponent as to the opposition.

Warning! The Council can obligate, at request, the party at fault, to pay the costs incurred during the settlement of the opposition.

\* The decision of the Council :

- is adopted by a court composed of 3 members, of which at least the president has a university degree in law;
- will be grounded by the majority of the court members, these having no possibility to abstain;
- will be published on the Internet page of the Council ;
- can be challenged by a complaint, within 10 days from communication, both on grounds of lawfulness and because it is not substantiated.

After making the decision, the court will draft a minutes which will be singed by all the members of the court and shall be countersigned in a special registry kept by the Council

Warning! The decision whereby the Council cancels, in part or in total, the challenged act or obligates the contracting authority to issue an act or to order any other necessary step for the removal of the acts which impair the awarding procedure is a writ of execution.

Warning! The decision of the Council is mandatory for the parties.

Warning! The public procurement contract entered under the non-observation of the

decision of the Council is stricken by absolute nullity.

The decision regarding the fine, not challenged in due time, represents a writ of execution and shall be enforced by the competent bodies according to the legal stipulations regarding the forced execution of fiscal debts and subject to the procedure provided for such stipulations.

\*The complaint shall be filed in written form and grounded.

Note: The party filing the complaint is obligated to notify in due time a copy thereof, as well as of the supporting documents to the adverse party as well, submitting the evidence of communication before the court until the first trial hearing.

### **SUB-SECTION 3: Checking lawfulness**

The contracting authority is entitled to notify the Council for the purpose of delivering a decision about the lawfulness of the acts and operations conducted during the awarding procedure.

The Council can accept the notification and establish that the lawfulness of the acts drafted by the contracting authority, as well as to certify the accuracy of the operations and procedures conducted by that.

If the certification of the lawfulness of the operations conducted by the contracting authority requires a special expert's report, this shall be made in accordance with art. 275 paragraph (4) in the ordinance.

Art. 275 paragraph (4) in the ordinance provides: " The Council can designate an independent expert for the clarification of certain technical or financial aspects. The period of completion of the expert's report must match the deadline provided for the solution of the oppositions by the Council . The costs of the expert's report shall be borne by the party having filed the petition for the completion thereof".

In case irregularities are established within the procedures conducted by the contracting authority, then the Council shall order the notification thereof in view of taking the remedy steps provided by the law.

### **SUB-SECTION 4: Ways of opposition to the decisions of the Council**

\* The second appeal is the way of opposition against the decision of the Council .

\* The court competent to settle the complaint is the appeal court, the administrative and fiscal disputes compartment, in the jurisdiction of which the contracting authority is headquartered.

\* The complaint shall be settled by a panel of 3 judges.

\* The complaint filed against the decisions delivered by the Council shall be on trial with celerity and priority.

\* The party cannot request a postponement of the trial for the preparation of the defence or for becoming aware of the communicated petitions or instruments, if the writ of commons or the communication has been made in due time.

Exception! In case where the respondent is not represented by assisted by a solicitor, the president shall put in view, at the first day of the trial, to show the exceptions, evidence

and all his means of defence referred to in the conclusions of the session.  
The court shall grant, at request, a period for the preparation of the defence and submission of the counter-claim<sup>3)</sup>

3) - Art. 118 paragraph 3 in the Civil Procedure Code

- \* Except for the summoning at the first hearing of the trial, any of the parties can request the approval of the court to accomplish, by means of the judicial executor, the procedure of summoning or communication of the instruments to the other party.
- \* The procedure of settlement of the compliant is that of the second appeal, according to the provisions of art. 304<sup>1</sup> of the in the Civil Procedure Code.
- \* The Court can order the suspension of the awarding procedure until the settlement of the complaint filed against the decision of the COUNCIL .

Warning! The contract entered during the period of suspension is stricken by absolute nullity.

- \* The Court, accepting the complaint, changes the decision of the Council , orders, in view of remedy of the illegality or groundlessness aspects impairing the acts issued within the awarding procedure, as applicable:
  - the annulment in total or in part of the act of the contracting authority;
  - obligation to issue the act by the contracting authority;
  - fulfilment of an obligation by the contracting authority;
  - any other necessary steps.

Warning! If, erroneously, the Council has solved the case based on exception, the court shall annul with retaining and shall deliver judgement on the merits of the case.

- \* If the court, accepting the complaint, alters the decision of the Council and establishes that the act of the contracting authority violated the provisions of the laws about public procurement, and the contract was entered before the ordering of the suspension of the awarding procedure, the injured party is entitled to indemnities.
- \* The court can deny the complaint on the merits.

Warning! The ruling delivered by the court is final and irrevocable.

Solution of disputes in court regarding the granting of indemnities

The person requesting the payment of indemnities must prove that:

- the provisions of the ordinance were violated; and
- it would have had a real chance to be awarded the contract , and that was compromised following the violation of the provisions of the law.

Disputes regarding the granting of indemnities are settled according to the provisions of the Administrative Disputes Law No. 554/2004, with subsequent amendments.

The parties cannot address concomitantly to the Council and to the trial court.

In case where several parties address concomitantly to the Council and to the trial court, the court shall suspend the trial until the settlement of the case by administrative-jurisdictional way.

The origin court can request the Council the opinion on the existence of a violation of the laws in the field of public procurements.

The competence of settlement of the cases belongs to the Tribunal in the jurisdiction of which the contracting authority is headquartered.

The ruling delivered by the Tribunal is subject to second appeal to the appeal court.

Note: The stipulations of the ordinance shall be supplemented by the provisions of the Administrative Disputes Law No. 554/2004, with subsequent amendments, insofar as these are not adverse.

Warning! Any awarding documentation must contain information about the settlement of oppositions, as well as the contact date of the Council .

#### **SECTION 4: Signing the contract or entering the framework agreement**

The procedure of awarding of the contract is finalized by signing the public procurement contract or by entering the framework agreement.

Warning! The terms contained in the tender regarding:

- the technical proposal and the financial proposal;
- the contract fulfilment schedule;
- the payment schedule;
- the good execution bank security, if the case may be,

Become integral part of the contract , insofar as they do not impair the mandatory terms.

Warning! In case where, throughout the fulfilment of the contract , it is established that certain items of the technical proposal are inferior to the requirements provided in the specifications' book, it is the provisions of the specifications' book that shall prevail.

Note: If parts of the public procurement contract are to be fulfilled by one or several sub-contract ors, then the contracting authority must request, when entering the contract , the presentation of the contracts entered between the future contract or and the sub-contract ors nominated in the tender.

Warning! Outsourcing contracts must be concordant with the tender and shall constitute schedules to the public procurement contract .

#### **SECTION 5: Sending the awarding notice for publication**

##### **SUB-SECTION 1: When is the awarding notice published?**

The awarding notice is published in no more than 48 days, after:

\* the finalization of :

- the open procedure;
- the restricted procedure;
- the competitive dialogue;
- the negotiation,

by awarding the public procurement contract or by entering the framework agreement;

\* a competition of solutions was finalised, by establishing the successful competitor;

\* a public procurement contract was awarded under a dynamic system of procurements.

Warning! For the services included in Annex No. 2B to the ordinance, the obligation is applicable only to contracts the estimated value of which is higher than the threshold for publication in the JOUE.

### **SUB-SECTION 2: Contents of the awarding notice**

The awarding notice must contain at least the information provided in Annex No. 1 to the resolution, but regularly no more than 650 words.

If the estimated value of the public procurement contract which is to be awarded exceeds the thresholds for which the publication of the awarding notice in the Official Journal of the European Union is mandatory, then this must contain at least the information contained in Annex No. 3A to the ordinance by using the standard forms enacted by the European Commission.

### **SUB-SECTION 3: Where is the awarding notice published?**

The awarding notice is published in the:

\* SEAP

Note: The obligation of publication in the SEAP appears as commencing from January 1, 2007.

It is completed only by electronic means, using the dedicated application, available at the internet address [www.e-licitatie.ro](http://www.e-licitatie.ro)

\* Official Gazette of Romania, Part VI - Public Procurements

Note: Publication only in the Official Gazette of Romania, Part VI, is mandatory until December 31, 2006.

Commencing from January 1, 2007, publication in the Official Gazette of Romania, Part VI, is made in no more than one day from publication in the SEAP.

This is made by sending a written request.

publication in the Official Gazette of Romania, Part VI, is made against a fee.

\* Official Journal of European Union, if applicable

Note: The obligation of publication in the JOUE emerges as commencing from January 1, 2007, in all the events where:

- the estimated value of the supply or service contract is higher than the equal in RON of EUR 125,000 – for the classic system;

- the estimated value the supply or service contract is higher than the equal in RON of EUR 420,000 - for the system of utilities;

- the estimated value of the works contract is higher than the equal in RON of EUR 5,000,000 euro

This is made until January 1, 2007 directly by the contracting authority, using the internet address <http://simap.europa.eu>.

From January 12007 this is made in the SEAP system.



## **SUB-CHAPTER VI: Finalization of the public procurement dossier (STAGE 6)**

The public procurement dossier contains all the activities conducted within the awarding procedure, all the documents necessary for conducting the procedure respectively:

\* it is drafted by the contracting authority by the special internal compartment of public procurement;

\* it is drafted for each:

- awarded public procurement contract ; entered framework agreement;

- awarded concession contract ; launching of a dynamic system of procurement;

\* is kept as long as the public procurement contract or the framework agreement produces legal effects, at least 5 years as from the date of finalization thereof;

\* if requested, it can be made available to:

- any interested public authority for consulting, provided no information is disclosed if the disclosure thereof were adverse to the law, prevented the enforcement of the law, affected public interest, prejudiced the legitimate commercial interest of the parties or affected free competition;

- the bodies authorized to pick up documents which may serve to evidence frauds, contraventions or offences;

Recommendation: Do not forget the list of documents contained in the public procurement dossier.

Recommendation: Whenever the public procurement dossier is requested, a copy thereof is handed, and the original remains with the contracting authority.

In case where the original public procurement dossier is requested, the contracting authority makes a copy thereof.

The public procurement dossier is made available to the interested persons based on a remittance-hand-over report, which must contain the list of the contained documents, as well as the number of pages of each document.

\* it has the character of an official act [public document].

Note: Access of persons to this information is made subject to the observation of the terms and procedures provided by the legal regulations regarding free access to public interest information.

Access cannot be restricted but to the extent where this information is classified or protected by an intellectual property right, according to the law.

The dossier of public procurement must contain:

- the list of documents;

- the copy of the budget leaf or any other document evidencing the existence of funds;

- the note regarding the determination of the estimated value, without the VAT;

- records which prove the sending of the intention notice and the intention notice, if applicable;

- records which prove the sending of the participation notice and the participation notice and/or invitation for participation, as applicable;

- the awarding documentation;

- the explanatory note regarding the election of the selection criteria;

- the explanatory note regarding the election of the awarding criteria;



- the explanatory note regarding the election of the awarding procedure, in case where the awarding procedure was different from open procedure or restricted procedure;
- the explanatory note regarding the acceleration of the awarding procedure, if applicable;
- the tender Opening minutes;
- the report of the awarding procedure;
- the original successful tender;
- the public procurement contract /framework agreement, signed;
- the records proving the keeping of the good execution guarantee and of the good execution bond;
- verifying documents regarding the fulfilment of the contractual obligations.

Warning! Copies of tenders are not kept.

To remember! Throughout the fulfilment of the contract , the public procurement dossier can be supplemented by:

- the evidence of fulfilment of the contract object, preliminary and final hand-over reports;
- evidence of payments;
- evidence of recording the outcome of the fulfilment of the contract in accounting.

Warning! Check the succession of activities in the fulfilment of the procedure, such as these are presented in the public procurement dossier, and avoid the registration by "bis".

## **SUB-CHAPTER VII: Fulfilment of the contract /framework agreement (STAGE 7)**

### **SECTION 1: Establishment of the good execution bond, if applicable**

The good execution guarantee of the contract ensures the contracting authority the fulfilment, in terms of quantity and quality and within the convened period, of the contract .

The good execution guarantee of the contract can be established in several forms.

The contracting authority is entitled not to request the tenderers to establish the good execution bond:

- in case of awarding a supply or service contract , except design services, the estimated value of which is lower than the value of EUR 40,000;
- as well as for the contract awarded following the application of the negotiation without prior publication of a participation notice.
- For the framework agreement, the good execution guarantee is established for each subsequent contract .

The good execution guarantee is established in the period preliminary to signing the contract or subsequent to the signing thereof, within a deadline convened by the parties and registered in the contract .

The date of establishing the good execution guarantee represents the date when the public procurement contract comes into effect, the order of commencement of the contract fulfilment respectively.

Warning! The establishment of the good execution guarantee is an obligation of the contractor. The amount of the good execution guarantee shall not exceed 10% of the contract price, VAT excluded.

**SUB-SECTION 1: The amount of the good execution guarantee shall not exceed 10% of the contract price, VAT excluded**

Warning! In case of tenderers that are included in the category of small and middle-sized companies (making the evidence in this respect by submission of documents provided in Law No. **346/2004** regarding the stimulation of establishment and development of small and average companies, with subsequent amendments and completions), the good execution guarantee is established 50% of the amount specified in the awarding documentation.

**SUB-SECTION 2: Validity of the good execution bond**

Period of validity of the good execution guarantee of the contract is at least equal to the contract duration.

Methods to establish the good execution bond

The good execution guarantee is established by one of the following forms:

- by bank guarantee letter, this constituting annex to the contract ;
- by depositing, at the cash desk, an amount of money for the execution bonds with a low value;
- by successive withholdings from the amounts outstanding for partial invoices (only subject to the parties' consent).

Note: In this case the contractor is bound to open an account for the disposal of the contracting authority, at a bank convened by both parties, and the initial amount which is deposited must not be lower than 0,5% of the contract price.

Warning! Check for conformity the items contained in good execution bank guarantee letter of the contract .

Do not forget! The good execution guarantee letter must be:

- submitted in original;
- contain in clear the designation of the contracting authority in favour of which this has been established;
- have marked the validity for which it has been established, which must match the validity marked in the documentation ;
- contain the legible seal of the issuing bank and/or the authorized signature.

Model of the good execution guarantee letter is provided in form No. 19 "Good execution guarantee letter"

**SECTION 2: Coming into effect of the contract**

The contract shall come into effect:

- either after the establishment of the good execution bond, if this has been requested;
- or at the term convened by the parties.

If it is established, throughout the contract, that certain items of the technical proposal are inferior or fail to meet the requirements provided in the specifications' book, the cancellation of the contract and the undertaking of contractual liability will be requested. Throughout the fulfilment of the contract, the contractor has no right to substitute the subcontractors nominated in the tender without the consent of the contracting authority. The possible substitution thereof must not lead to the modification of the initial technical or financial proposal.

### **SECTION 3: Fulfilment of the framework agreement**

Based on the framework agreement it is possible to enter subsequent agreements with economic operator/operators, signatory/signatories of the respective framework agreement only pursuant to the rules and conditions provided in this agreement.

Warning! It is not possible to award subsequent contracts which have as object service performance of another kind than those set forth under the framework agreement or types or nature different ones from the others.

The framework agreement must provide, for subsequent contracts which are to be awarded, the elements/terms deemed essential, which refer to:

- the obligations which the economic operator/operators undertook under the technical proposal presented during the awarding procedure, especially with respect to the technical- functional and performance characteristics of the products which are to be supplied, description of the services which are to be performed and the quality level thereof, description of the works which are to be executed and the quality level thereof, the duration/deadlines for delivery, performance or execution commencing from the time of entering the contract, the granted securities and any other items which were taken into consideration in the review and evaluation of the technical proposals;
- unitary price/tariff or unitary prices/tariffs, of the financial or commercial undertakings, which the economic operator/operators provided in the financial proposal;
- particular conditions and adjustment formulae for prices, as applicable;
- any other items which the contracting authority deems necessary.

If the framework agreement is entered with several economic operators, and the subsequent contracts are to be awarded by resuming the competition, the framework agreement must provide:

- items/terms which remain unchangeable throughout the entire duration of the respective agreement;
- items/terms which will be the object of resuming the competition for awarding subsequent contracts.

In case where the framework agreement is entered with several economic operators, and the subsequent contracts are to be awarded by resuming competition, the contracting authority is obligated, whenever it decides upon the procurement of the products/services/works which represent the object of the respective agreement, to send, concomitantly, an invitation for participation in the re-tendering to all the framework agreement signatory economic operators.

The invitation to re-tendering must contain at least the following:

- information regarding the specific amounts and items which will represent the object of the contract that is to be awarded;

- information regarding the items/terms which represent the object of resuming the competition and the criterion of awarding/factors of evaluation that are to be applied for the establishment of the economic operator that will be awarded the contact, such as provided in the awarding documentation elaborated for entering the framework agreement;
  - information regarding the manner in which the new tender is submitted/sent and the deadline until which the economic operators are entitled to submit/send the new tender.
- Elements which can represent the object of re-tendering can refer to:
- price;
  - delivery/performance/execution deadlines;
  - technical characteristics, quality and performance level;
  - any of such date , insofar as they were provided.

Warning! The deadline until the economic operators are entitled to submit/send a new tender is set forth by the contracting authority.

When establishing the deadline:

- the complexity of the object of the future contract ;
  - the providing of a reasonable period for the elaboration of the new tender and sending thereof
- must be taken into cont.

Economic operators can be consulted regarding the possibility thereof to elaborate the new tenders in a period of time as short as possible.

Warning! Economic operators are entitled, in the process of re-tendering, to change the items/terms which represent the object of resuming competition only for the purpose of improvement thereof and without impairing the items/terms set forth as being unchangeable.

If, following the process of re-tendering the contracting authority fails to obtain improvements of the items/terms which represent the object of resuming the competition, this shall be obligated to award the contact to the tenderer ranked the first within the procedure applied for entering the framework agreement, by taking into consideration the terms and elements provided in the initial tender thereof.

Warning! If the economic operator to which the contracting authority .sends a request for entering a subsequent contract has no capacity to reply to this request as the amount which represents the object of the contract exceeds the estimation, then a new procedure of awarding can be initiated by procuring the balance which cannot be covered if:

- the framework agreement is entered only with the respective economic operator;
- or
- although the framework agreement is entered with other economic operators as well, these, in their turn, have no capacity to cover the respective balance either.

Warning! If the economic operator to which the contracting authority sends a request for entering a subsequent contract which has no capacity to reply to this request for its own fault, the contracting authority is entitled to initiate a new awarding procedure for

procuring the entire necessary amount.

The economic operator at fault shall suffer the consequences provided in the framework agreement for failure to fulfil the obligations incumbent thereupon.

#### **SECTION 4: Fulfilment of obligations undertaken under contract**

The parties must fulfil, in good faith, the obligations undertaken in terms of quantity and quality, at the deadline set in the contract .

Warning! In principle, assignment of the contract is not allowed.

### **SUB-CHAPTER VIII: Contract finalization (STAGE 8)**

#### **SECTION 1: Final hand-over**

The final hand-over represents the operation whereby the contracting authority expresses its acceptance regarding the products/services/works resulted following a public procurement contract and based upon which the final payment is made:

- will have the qualities stated by that in the contract ;
- will be compliant with the technical regulations in force; and
- will not be affected by vices which would diminish or cancel the value or possibility of use, according to the normal conditions of use or those specified in the contract .

Note: At works where trials are made, the quality of the sample is considered accomplished if the results are within the limits of tolerance admitted by the technical regulations in force.

Warning! The performer is responsible for maintaining in a good condition the works, materials, equipment and plants that are to be brought into operation, as from the date of receiving the order to commence the work until the date of signing the hand-over minutes related to that.

The performer shall be liable, according to the obligations that are incumbent thereupon, for the concealed vices of the construction, emerged in an interval of time set forth under contract from the reception of the work until the completion of this term, throughout the entire duration of existence of the construction, for the vices of the resistance structure, following the failure to observe the designs and details of execution related to work execution.

Warning! Materials must be of the quality provided in the execution documentation. Verifications and testing of the material used at work execution, as well as the conditions of passing the temporary hand-over and final (quality) hand-over will be described in the annex/annexes to the contract .

At finalization of works, the performer is obligated to notify in written form the procurer that the hand-over terms are fulfilled, requesting thereto to call the hand-over committee. Based upon the status of works performed and confirmed and of the established conclusions made on the spot the procurer shall appreciate if the terms to call the hand-over committee are met.

In case where it establishes that there are shortcomings or deficiencies, these will be notified to the performer, also establishing the deadlines for remedy and finalization.

After establishing the remedy of all the shortcomings and deficiencies, at a new request by the performer, the procurer will call the hand-over committee

The hand-over committee is obligated to establish the stage of fulfilment of the contract by correlation of the provisions thereof with the execution documentation and the regulations in force.

According to the established conclusions, the procurer is entitled to approve or deny the hand-over.

Note: The hand-over can also be made for parts of the work, distinct physically and functionally.

Period of warranty granted to the works

The period of warranty runs from the hand-over date at work termination, per ensemble or per parts of the work, physically and functionally distinct, until the final hand-over.

In the warranty period the performer is obligated, following the order given by the procurer, to perform all the works of alteration, reconstruction and remedy of vices, contract ions and other shortcomings the cause of which is the failure to observe the contractual terms.

Warning! The contract shall not be deemed terminated until the final hand-over report is not signed by the hand-over committee.

Final hand-over reports can also be drafted for parts of work, if these are physically and functionally distinct.

Final hand-over will be made, according to the legal provisions, after the expiration of the warranty period.

Payment of the last amounts outstanding to the performer for the performed works shall not be subject to the release of the final hand-over certificate.

SERVICES – Hand-over and verifications

The procurer is entitled to check the performance of services to set forth their conformity with the provisions in the technical proposal and in the specifications' book.

Verifications will be made in accordance with the provisions in the contract .

The procurer is obligated to notify in written form the performer the identity of its representatives authorized for such purpose.

PRODUCTS – Hand-over, inspections, tests

The procurer or the representative thereof is entitled to inspect and/or test the products to verify their conformity with the specifications in the annex/annexes to the contract .

Note: Inspections and testing to which products will be submitted, as well as the terms for passing the temporary hand-over and the final (quality) hand-over shall be described in the annex/annexes to the contract .

The procurer is obligated to notify in written form the supplier the identity of its representatives authorized to perform the hand-over, testing and inspections.

Inspections and tests within the temporary hand-over and final (quality) hand-over shall be made at the final destination of products.

Warning! If any of the inspected or tested products fail to meet the specifications, the procurer is entitled to deny it, and the supplier is obligated, without altering the contract price:

- to substitute the denied products; or
- to make all necessary amendments for the products to meet their technical specifications.

Note: The procurer's right to inspect, test and, if necessary deny shall not be limited or put off due to the fact that the products were inspected and tested by the supplier, with or without the participation of a representative of the procurer, prior to the delivery thereof to the final destination.

Certification by the procurer of the fact that products were delivered in part or in total is made after setting-up and after reception, by signing for reception by the authorized representative thereof, on the documents issued by the supplier for delivery.

## **SECTION 2: Discharge of the good execution bond**

The discharge of the good execution guarantee is made according to the contractual terms and if there were no claims about it.

\* In case of the supply contract :

- in no more than 14 days from the date of drafting the hand-over report related to the products which represent the object of the contract and/or from the payment of the final invoice.

\* In case of the supply contract based on leasing:

- in no more than 14 days from the date of drafting the hand-over report related to the products which represent the object of the contract and/or from the payment of the final invoice.

\* In case of the service contract :

- in no more than 14 days as from the date of fulfilment by the contract or of the obligations undertaken under contract .

\* In case of the design service contracts:

- within 14 days as from the date of approval of the documentation related to the pre-feasibility and/or feasibility studies;

- within 14 days as from the date of conclusion of the hand-over report at termination of the works performed based on the technical project and/or execution details.

Warning! If, by the fault of the contracting authority the technical project is not brought into operation, then the good execution guarantee is discharge within 14 days as from the date of conclusion of the report whereby the execution of the respective works is waived.

\* In case of work contracts:

- 70% of the value of the bond, within 14 days as from the date of conclusion of the hand-over report at work termination, and the risk for concealed vices is minimum ;

- the balance of 30% of the guarantee value, at expiration of the warranty period related to the performed works, based on the final hand-over report.

Warning! At entering the contracts which were adequately fulfilled, at the time of



returning the original good execution bank guarantee letter, be assured you kept a copy of the guarantee letter to be able to evidence the existence thereof, being attached to the contract.

When is the good execution guarantee withheld?

The contracting authority is entitled to issue claims on the good execution bond, up to the created prejudice, if the contract or fails to fulfil the obligations undertaken under contract, subject to the obligation to notify the claim, specifying the obligations which were not observed.

The verifying documents are:

- primary verifying document;
- final verifying document.

The primary verifying document is released within 14 days as from the date of:

- hand-over of the products which represent the object in case of the supply contracts;
- termination of the service performance which represent the object of the service contract ;
- termination of the service performance which represent the object of design service contract ;
- entering the final hand-over report related to the works, drafted at expiration of the period of warranty of the respective works.

The final verifying document is released in 14 days as from the date of:

- expiration of the products warranty period;
- conclusion of the hand-over report at termination of the designed works;
- conclusion of the final hand-over report related to the works, drafted at expiration of the relevant works warranty period.

The verifying documents are drafted in 3 counterparts, of which:

- one counterpart is attached to the public procurement dossier;
- one counterpart is sent to the ANRMAP in no more than 3 business days as from issuing date; and
- a counterpart is issued to the contract or.

#### **SUB-CHAPTER IX: Process review (STAGE 9)**

The person in charge with the completion of a public procurement reviews the manner in which the respective contract has been fulfilled, the extent in which the needs of the contracting authority have been satisfied, the strong points and weak points of the procedure of awarding the public procurement contract and proposes steps for the improvement of the public procurement process for the future.

#### **ANNEX No. 1<sup>A</sup>: Form No. 1 A - SCHEDULE OF THE AWARDING PROCEDURE - OPEN PROCEDURE**

Crt. No.	Steps to follow	Forecast date
1.	If applicable, sending the notice of intention for publication	
2.	Fulfilment of the procedure launching terms : a) identification of the procedure in the annual programme of public procurements	



	b) drafting the awarding documentation c) identification of funds necessary for the fulfilment of the contract d) request of an observer attached to the evaluation committee at the Ministry of Public Finances, if applicable	
3.	Sending the participation notice for publication	
4.	Making available the awarding documentation	
5.	Reception of clarifications regarding the awarding documentation and reply to these	
6.	Nomination of the evaluation committee	
7.	Tender reception	
8.	Opening tenders and drafting the Opening report	
9.	Verification of the minimum qualification requirements	
10.	Establishment of clarifications to the documents submitted by tenderers reception of the replies to the requests for clarifications, as well as of the requested documents	
11.	Establishment of the qualified economic operators	
12.	Tender verification	
13.	Establishment of clarifications regarding the submitted tenders as well as reception of replies to these	
14.	Establishment of unacceptable, non-conformant tenders, as well as of the admissible tenders	
15.	If applicable, conducting the additional electronic auction stage	
16.	Establishment of the successful tender/tenders or, as applicable, annulment of the procedure	
17.	Notification regarding the outcome of procedure application	
18.	Contract signing	
19.	Sending the awarding notice for publication	
20.	Elaboration of the public procurement dossier	

**ANNEX No. 1<sup>B</sup>: Form No. 1 B - SCHEDULE OF THE AWARDING PROCEDURE - RESTRICTED PROCEDURE**

Crt. No.	Steps to follow	Forecast date
1.	If applicable, sending the notice of intention for publication	
2.	Fulfilment of the procedure launching terms : a) identification of the procedure in the annual programme of public procurements b) drafting the awarding documentation c) identification of funds necessary for the fulfilment of the contract	

	d) request of an observer attached to the evaluation committee at the Ministry of Public Finances, if applicable	
I.	STAGE I	
3.	Sending the participation notice for publication	
4.	Making available the awarding documentation	
5.	Reception of clarifications regarding the awarding documentation and reply to these	
6.	Nomination of the evaluation committee	
7.	Candidacies reception	
8.	Candidacies review	
9.	Establishment of clarifications to the documents submitted by tenderers reception of the replies to the requests for clarifications, as well as of the requested documents to be filled in	
10.	Establishment of the selected economic operators	
11.	Information of the candidates regarding the outcome of the first stage	
II.	STAGE II	
12.	Sending the invitation for participation to the selected candidates	
13.	Tender reception	
14.	Tender Opening and Opening report drafting	
15.	Tender verification	
16.	Establishment of clarifications regarding the submitted tenders as well as reception of replies to these	
17.	Establishment of unacceptable, non-conformant tenders, as well as of the admissible tenders	
18.	If applicable, conducting the additional electronic auction stage	
19.	Establishment of the successful tender/tenders or, as applicable, annulment of the procedure	
20.	Notification regarding the outcome of procedure application	
21.	Contract signing	
22.	Sending the awarding notice for publication	
23.	Elaboration of the public procurement dossier	

**ANNEX No. 1<sup>C</sup>: Form No. 1 C - SCHEDULE OF THE AWARDING PROCEDURE - COMPETITIVE DIALOGUE**

Crt. No.	Steps to follow	Forecast date
1.	If applicable, sending the notice of intention for publication	
2.	Fulfilment of the procedure launching terms : a) identification of the procedure in the annual programme of public procurements b) drafting the awarding documentation	

	c) identification of funds necessary for the fulfilment of the contract d) request of an observer attached to the evaluation committee at the Ministry of Public Finances, if applicable	
I.	STAGE I - Candidacies reception	
3.	Sending the participation notice for publication	
4.	Making available the descriptive documentation	
5.	Reception of requests for clarifications regarding the descriptive documentation and reply thereto	
6.	Nomination of the evaluation committee	
7.	Candidacies reception	
8.	Candidacies review	
9.	Establishment of clarifications to the documents submitted by tenderers reception of the replies to the requests for clarifications, as well as of the requested documents to be filled in	
10.	Establishment of the selected economic operators	
11.	Information of the candidates regarding the outcome of the first stage	
II.	STAGE II – Dialogue	
12.	Sending the invitation for participation and of the awarding documentation to the selected candidates	
13.	Reception of solutions on behalf of the invited economic operators	
14.	Conducting the rounds of discussions with every candidate separately	
15.	Identification of the solution or of the viable solutions	
16.	Closing the period of dialogue	
III.	STAGE III - Tender submission	
17.	Notification of the participants regarding the outcome of the dialogue stage, attached by the invitation for participation in the final tenders evaluation stage	
18.	Opening tenders and drafting the Opening report	
19.	Tender verification	
20.	Establishment of unacceptable, non-conformant tenders, as well as of the admissible tenders	
21.	Establishment of the successful tender/tenders or, as applicable, annulment of the procedure	
22.	Notification regarding the outcome of procedure application	
23.	Contract signing	
24.	Sending the awarding notice for publication	
25.	Elaboration of the public procurement dossier	

**ANNEX No. 1<sup>D</sup>: Form No. 1 D - SCHEDULE OF THE AWARDING PROCEDURE - TENDER REQUEST**

Crt. No.	Steps to follow	Forecast date
1.	Fulfilment of the procedure launching terms : a) identification of the procedure in the annual programme of public procurements b) drafting the awarding documentation c) identification of funds necessary for the fulfilment of the contract	
2.	Sending the invitation for participation	
3.	Making available the awarding documentation	
4.	Reception of clarifications regarding the awarding documentation and reply to these	
5.	Nomination of the evaluation committee	
6.	Tender reception	
7.	Opening tenders and drafting the Opening report	
8.	Verification of the minimum qualification requirements	
9.	Establishment of clarifications to the documents submitted by tenderers reception of the replies to the requests for clarifications, as well as of the requested documents to be filled in	
10.	Establishment of the qualified economic operators	
11.	Tender verification	
12.	Establishment of clarifications regarding the submitted tenders as well as reception of replies to these	
13.	Establishment of unacceptable, non-conformant tenders, as well as of the admissible tenders	
14.	If applicable, conducting the additional electronic auction stage	
15.	Establishment of the successful tender/tenders or, as applicable, annulment of the procedure	
16.	Notification regarding the outcome of procedure application	
17.	Contract signing	
18.	Elaboration of the public procurement dossier	

**ANNEX No. 1<sup>E</sup>: Form No. 1 E - SCHEDULE OF THE AWARDING PROCEDURE – NEGOTIATION WITH PRIOR PUBLICATION OF A PARTICIPATION NOTICE**

Crt. No.	Steps to follow	Forecast date
1.	If applicable, sending the notice of intention for publication	
2.	Fulfilment of the procedure launching terms : a) identification of the procedure in the annual programme of public procurements b) drafting the awarding documentation	

	c) identification of funds necessary for the fulfilment of the contract d) request of an observer attached to the evaluation committee at the Ministry of Public Finances, if applicable	
I.	STAGE I - Candidacies reception	
3.	Sending the participation notice for publication	
4.	Making available the documentation in view of selection of candidacies	
5.	Reception of requests for clarifications regarding the documentation	
6.	Nomination of the evaluation committee	
7.	Candidacies reception	
8.	Candidacies review	
9.	Establishment of clarifications to the documents submitted by tenderers reception of the replies to the requests for clarifications, as well as of the requested documents to be filled in	
10.	Establishment of the selected candidates	
11.	Information of the candidates regarding the outcome of the first stage	
II.	STAGE II - Negotiation and establishment of the successful tender	
12.	Sending the invitation for participation and of the awarding documentation to the selected candidates	
13.	Reception of preliminary tenders on behalf of the invited economic operators	
14.	Conducting the rounds of negotiation with each candidate separately until this declares or the contracting authority establishes that the tender cannot be further materially improved	
15.	Establishment of the final meeting and submission of the final bids	
16.	Opening tenders and drafting the Opening report	
17.	Tender verification	
18.	Establishment of unacceptable, non-conformant tenders, as well as of the admissible tenders	
19.	If applicable, conducting the additional electronic auction stage	
20.	Establishment of the successful tender/tenders or, as applicable, annulment of the procedure	
21.	Notification regarding the outcome of procedure application	
22.	Contract signing	
23.	Sending the awarding notice for publication	
24.	Elaboration of the public procurement dossier	

**ANNEX No. 1<sup>F</sup>: Form No. 1 F - SCHEDULE OF THE AWARDING PROCEDURE – COMPETITION OF SOLUTIONS**

Crt. No.	Steps to follow	Forecast date
1.	If applicable, sending the notice of intention for publication	
2.	Fulfilment of the procedure launching terms : a) identification of the procedure in the annual programme of public procurements b) drafting the documentation for competition c) identification of funds necessary for the fulfilment of the contract d) request of an observer attached to the evaluation committee at the Ministry of Public Finances, if applicable	
3.	Sending the participation notice for publication	
4.	Making available the documentation for competition	
5.	Reception of clarifications regarding the documentation for competition and the reply to these	
6.	Board nomination	
7.	Reception of solutions	
8.	Opening solutions and drafting the opening report	
9.	Verification of solutions	
10.	Establishment of clarifications regarding the presented solutions, as well as the reception of the replies thereto	
11.	Establishing the top of solutions or, as applicable, cancellation of the procedure	
12.	Notification regarding the outcome of procedure application	
13.	Contract signing	
14.	Sending the awarding notice for publication	
15.	Elaboration of the public procurement dossier	

**ANNEX No. 2: Form No. 2 - ANNUAL PROGRAMME OF PUBLIC PROCUREMENTS**

Contracting Authority

APPROVED, Head of the contracting authority								
Crt. No.	Object of the contract /framework Agreement	CPV Code	Estimated value without VAT (RON and	Notice of intention (if applicable) (if the case may be)	Implemented procedure	Estimated date for commencement of the procedure	Estimated date for finalization of the procedure	Person in charge with the procedure

			EURO)					
1.								
2.								
...								

Approved  
Financial-accounting compartment

Drafted,  
Public procurement specialized compartment

**ANNEX No. 3: Form No. 3 - SUPPLY CONTRACT**  
SUPPLY CONTRACT No. .... date .....

**PART 1:**

1. Pursuant to Government Emergency Ordinance No. 34/2006 regarding the awarding of the public procurement contracts, of the public works concession contracts and of the service concession contracts, approved with amendments and supplements under Law No. 337/2006, this hereby product supply contract was entered, between

..... (designation of the contracting authority), address ....., telephone/facsimile ....., incorporation number ....., fiscal code ....., treasury cont ....., represented by ....., (name of the head), title ....., in capacity of procurer, firstly, and

..... (designation of the economic operator), address ....., telephone/facsimile ....., incorporation number ....., fiscal code ....., account (treasury, bank) ....., represented by ....., (name of the head), title ....., in capacity of supplier, secondly.

**2. Definitions**

**2.1.-** In this hereby contract the following terms will be interpreted as follows:

- a) contract - this hereby contract and all the annexes thereof;
- b) procurer and supplier - the contracting parties, such as these are nominated in this contract;
- c) contract price - price payable to the supplier by the procurer, based on the contract, for the total and adequate fulfilment of all the obligations undertaken under contract;
- d) products – equipment, machines, outfits, any other goods, contained in the annex/annexes to this contract, which the supplier undertakes to supply to the procurer, under contract;
- e) services – services related to the delivery of products, activities related to the supply of products respectively, such as transportation, insurance, setting-up, putting into operation,

technical assistance during the warranty period and any other similar obligations that are incumbent upon the supplier under contract;

**f)** origin – place where products were made, manufactured. Products are manufactured when a new product results, by the manufacturing process, major and essential processing or assembling of the components, commercial acknowledged, which is different, by its basic characteristics, by purpose or by utility, from the components thereof. The origin of products and services can be distinct from the supplier’s nationality;

**g)** final destination – place where the supplier is bound to supply the products;

**h)** the commercial terms of delivery shall be construed according to INCOTERMS 2000 – International Chamber of Commerce (CIC);

**i)** force majeure – an event that is above the parties’ control, which is not due to the mistake or fault thereof, which could not have been foreseen at the time of entering the contract and which renders impossible the performance and the fulfilment of the contract respectively; such events are deemed to be: wars, revolutions, arsons, floods or any other natural catastrophe, restrictions emerged following quarantine, embargo, the listing being non-exhaustive, but just an enumeration. An event similar to those above which, without creating an impossibility of execution, makes extremely costly the fulfilment of the obligations of any of the parties shall not be deemed a force majeure event;

**j)** day – calendar day; year- 365 days/

(To add other terms which the parties understand to defined for the contract.)

### **3. Interpretation**

**3.1.-** In this contract, except for a contrary provision, the works at singular shall include the plural and vice versa, where this is allowed under context.

**3.2.-** The term “day” or “days” or any reference to days represents calendar days unless specified differently.

## **PART 2: Mandatory terms**

### **4. Main object of the contract**

**4.1.-** The supplier undertakes to supply, to sell, deliver and, as applicable, to set up and maintain respectively ..... (Designation of products and quantity), in the convened period/periods, the products defined in this contract.

**4.2.-** The procurer undertakes to procure, to purchase and pay the price convened in this contract respectively.

### **5. Contract price**

**5.1.-** The contract price, the price of the delivered products and of the accessory services performed respectively, is RON .....or, as applicable, EUR ....., to which the VAT ..... is added.

### **6. Contract period**

**6.1.-** Contract period is .....months, commencing from ..... (To insert the period and the date).



**6.2.-** This hereby contract terminates to produce effects from .....(to insert the date wherefrom the contract terminates)

**7. Contract execution**

**7.1.-** Contract execution commences after the establishment of the good execution guarantee, on .....(To insert the date when the contract comes into effect.)

**8. Documents of the contract**

**8.1.-** Documents of the contract are: (To list the documents whereby the parties understand as being the documents of the contract.)

**9. Main obligations of the supplier**

**9.1.-** The supplier undertakes to supply products at the standards and/or performances presented in the technical proposal.

**9.2.-** The supplier undertakes to supply products in the delivery schedule submitted in the technical proposal, annex to the contract.

**9.3.-** The supplier undertakes to indemnify the procurer against any:

i) complaints and lawsuits in court, resulting from the violation of some intellectual property rights (patents, names, registered trademarks etc), related to the equipment, materials, plants or outfits used for or in relation to the procured products; and

ii) damages, costs, fees and expenses of any nature, related, except for the event when such a violation results from the observation of the specifications' book drafted by the procurer.

**10. Main obligations of the procurer**

**10.1.-** The procurer undertakes to receive the products within the convened period of time.

**10.2.-** The procurer undertakes to pay the price of products to the supplier within the period convened from the issuing of the invoices by that. Payments in hard currency shall be made under the observation of the legal provisions.

(To specify the payment term as from the reception of the invoice and, as applicable, the payment schedule.)

**10.3.-** If the procurer fails to pay the invoices within 14 days as from the expiration of the convened period, then the supplier shall be entitled to cease the delivery of the products and to benefit from the adjustment of the payment amount at the corresponding level of the payment making date. Promptly after the procurer honours the obligations thereof, the supplier shall resume the delivery of products as soon as possible.

**11. Sanctions for the faulty non-fulfilment of the obligations**

**11.1. -** In case where, by its exclusive fault, the supplier does not succeed in fulfilling the undertaken obligations, then the procurer is entitled to deduct from the contract price, as penalties, an amount equal to a percentage of the contract price.

(To specify the percentage for each day/week of delay, until the effective fulfilment of the obligations.)

**11.2.-** In case where the procurer honours its obligations within 28 days as from the expiration of the convened period, then this shall have the obligation to pay, as penalties, an amount equal to a percentage of the outstanding payment.)

**11.3.-** Failure to observe the obligations undertaken under this contract by one of the parties, by fault and repeatedly, confers the right to the encroached party to deem the contract terminated de jure and to claim payment of damages.

**11.4.-** The procurer reserves the right to waive the contract, under a written notice addressed to the supplier, without any compensation, if the latter goes bankrupt, subject to this annulment not to prejudice or impair the right to lawsuit or indemnity for the supplier. In such case, the supplier is entitled to claim only the payment corresponding for the part of the contract which has been fulfilled until the date of unilateral denouncement of the contract.

### **PART 3: Specific terms**

#### **12. The contract good execution guarantee**

**12.1.-** The supplier is bound to establish the contract good execution guarantee, in amount of....., for the period ..... and, anyway, until the coming into effect of the contract.

(To specify the manner of establishment, amount and period of establishment of the good execution guarantee).

**12.2.-** The procurer undertakes to discharge the participation guarantee and to issue the order of contract commencement only after the supplier has submitted the evidence of having established the good execution guarantee.

**12.3.-** The procurer is entitled to make claims on the good execution guarantee, up to the amount of the created prejudice, if the supplier fails to fulfil, fails to execute, executes with delay or executes inadequately the obligations undertaken under this contract. Prior to the making of claims regarding the good execution guarantee, the procurer is bound to notify this to the supplier, specifying, at the same time, the obligations which have not been observed.

**12.4.-** The procurer undertakes to return the good execution guarantee..... within a period of ..... from the fulfilment of the undertaken obligations.

(To specify the method of return and the period.)

**12.5.-** The warranty of products is distinct from the contract good execution guarantee.

#### **13. Hand-over, inspections and tests**

**13.1.** The procurer or the representative thereof is entitled to inspect and/or to test the products in order to check their conformity with the specifications in the annex/annexes to the contract.

#### **13.2.-**

**(1)** Inspections and testing to which products will be submitted, as well as the conditions for the fulfilment of the temporary hand-over and of the final (quality) hand-over are described in the annex/annexes to this contract.

**(2)** The procurer is bound to notify in written form the supplier on the identity of its representatives, authorized to perform the hand-over, tests and inspections.

**13.3.** Inspections and tests within the temporary hand-over and final (quality) hand-over shall be made at the final destination of products. (To specify the final destination of products).

**13.4.** If any of the inspected or tested products fails to meet the specifications, the procurer is entitled to reject it, and the supplier is bound, without the modification of the contract price:

**a)** to substitute the rejected products; or

**b)** to make all the alterations necessary for the products to meet their technical specifications.

**13.5.-** The procurer's right to inspect, test and, if necessary, to reject, shall not be limited or put off due to the fact that products have been inspected and tested by the supplier, with or without the participation of a representative of the procurer, prior to the delivery thereof to the final destination.

**13.6.-** Provisions of covenants 13.1-13.4 shall not exonerate the supplier from the obligation of undertaking warranties or other obligations provided in the contract.

#### **14. Packing and tagging**

##### **14.1.-**

**(1)** The supplier is bound to pack the products for these to face, without any limitation, the rough handling during transportation, transit and exposure to extreme temperatures, in the sun and in rain which might appear throughout transportation and storage in the open, so that these should reach in a good condition to the final destination.

**(2)** In case of packing the weights and volumes in boxes, the supplier shall take into consideration, where applicable, the long distance until the final destination of the products and the absence of the heavy handling facilities in all the transit points.

**14.2-** Packing, tagging and documentation inside or outside the packages will strictly observe the requirements which will be particularly provided in the contract, including the additional requirements.

(To specify these requirements, including the additional requirements and any other subsequent instructions demanded by the procurer.)

**14.3-** All materials for packing the products, as well as all material necessary for the protection of containers (wood pallets, protection sheets etc) remain within the ownership of the procurer.

#### **15. Delivery and documents attached to the products**

**15.1-** The supplier is bound to deliver the products at the final destination indicated by the procurer, observing:

**a)** the data in the delivery schedule; and

**b)** the commercial period set forth, after the reception of the commencement order.

##### **15.2-**

**(1)** When shipping the products, the supplier is bound to notify, in written form, both the procurer and, as applicable, the insurance company the shipping information, contract number, products' description, quantity, place of loading and place of unloading.

**(2)** The supplier shall send the procurer the documents that are attached to the products.  
(To specify the documents that shall be attached to products.)

**15.3-** Certification by the procurer of the fact that products were delivered in part or in total is made after setting-up and hand-over, by signing for the reception by the authorized representative of the procurer on the documents issued by the supplier for the delivery.

**15.4-** Products' delivery shall be deemed terminated at the time when the provisions of the products' hand-over covenants are fulfilled.

## **16. Insurances**

**16.1.-** The supplier is bound to insure in full the products supplied under contract against loss or deterioration unforeseeable at manufacturing, transportation, storage and delivery, according to the convened commercial period of delivery. (To specify the commercial period of delivery.)

## **17. Services**

**17.1.-** Besides the effective supply of products, the supplier is bound to also perform services accessory to products' supply, without altering the contract price.

**17.2.-** The supplier is bound to perform the services, for the convened period of time, provided these services do not exonerate the supplier of any obligation of guarantee undertaken under contract.

(To specify the period of time convened for service performance.)

## **18. Warranty period granted to the products**

**18.1.-** The supplier is bound to warrant that the products supplied under contract are new, unused, of the latest generation and include all the recent improvements as to designing and structure of the materials. The supplier is also bound to warrant that all the products supplied under contract will not have any flaw whatsoever following the project, materials or manual work (except for the case when the project and/or the material are expressly required by the procurer) or any other action or omission of the supplier and that these will work in normal conditions of operation.

**18.2.- (1)** The period of warranty granted to products by the supplier is the period declared in the technical proposal.

(To specify the period of warranty granted to products.)

**(2)** The period of warranty of the products commences on the date of the hand-over completed after the delivery and setting-up thereof at the final destination.

**18.3.-** The procurer is entitled to notify the supplier in written form any complaint or dissatisfaction emerging in accordance with this warranty.

**18.4.-** At reception of such notification, the supplier is bound to remedy the shortcoming or substitute the product within the convened period, without additional costs for the procurer. Products which, during the warranty period, substitute those that are defective shall benefit from a new period of warranty which runs from the date of product substitution).

(To specify the period of remedy of flaws or product substitution.)

**18.5.-** If the supplier, after having been notified, fails to remedy the flaw within the convened period, the procurer is entitled to take remedy steps at the risk and costs of the

supplier and without bringing any prejudice to any rights which the procurer may have to the supplier under contract.

#### **19. Adjustment of the contract price**

**19.1.-** For the delivered products and for the performed services, payments outstanding by the procurer to the supplier are those declared in the financial proposal, annex to the contract.

**19.2.-** The contract price is adjusted by using the convened formula. (To specify the adjustment formula.)

#### **20. Amendments**

**20.1.-** The contracting parties are entitled, throughout the fulfilment of the contract, to convene upon the modification of the contract's terms, under additional document, only in case of emergence of some circumstances which encroach the legitimate commercial interests thereof and which could not have been foreseen on contract entering date.

#### **21. Sub-contractors**

**21.1. –** The supplier is bound, in case it outsources parts of the contract, to enter contracts with the designated sub-contractors, in the same conditions in which the supplier signed the contract with the procurer.

**21.2. (1)** The supplier is bound to present, when entering the contract, all the contracts entered with the designated sub-contractors.

**(2)** The list of sub-contractors, with the list of acknowledgement thereof, as well as the contracts entered with these shall represent schedules to the contract.

**21.3.-(1)** The supplier shall be fully liable before the procurer for the manner in which the supplier fulfils the contract.

**(2)** The sub-contractors shall be fully liable before the supplier for the manner in which the sub-contractors fulfils its part of the contract.

**(3)** The supplier is entitled to claim damages from sub-contractors if these fail to fulfil their part of the contract.

**21.4.-** The supplier can replace any sub-contractor only if this has failed to fulfil its part of the contract. The replacement of the sub-contractor shall not change the contract part and shall be notified to the procurer.

#### **22. Delays in the fulfilment of the contract**

**22.1.-** The supplier is bound to fulfil the supply contract within the period/periods inscribed in the delivery schedule.

**22.2.-** if throughout the fulfilment of the contract the supplier fails to observe the delivery or service performance schedule, this is bound to notify, in due time, the procurer; the modification of the date/periods of supply undertaking in the delivery schedule shall be made subject to the parties' consent, under additional document.

**22.3.-** Except for the case when the procurer consents upon a renewal of the period of execution, any delay in the fulfilment of the contract confers the right to the procurer to request penalties from the supplier.

#### **23. Assignment**

**23.1.-** The supplier undertakes not to transfer, in total or in part, the obligations undertaken under contract, without obtaining, in prior, the written consent of the procurer.

**23.2.-** The assignment shall not exonerate the supplier from any responsibility regarding the warranty or any other obligations undertaken under contract.

**24. Force majeure**

**24.1.-** Force majeure is established by a competent authority.

**24.2.-** Force majeure exonerates the contracting parties from the fulfilment of the obligations undertaken under this contract, throughout the whole period in which this acts.

**24.3.-** The fulfilment of the contract should be suspended during the period of force majeure action, but without prejudicing the rights that were due to the parties until the emergence thereof.

**24.4.-** The contracting party invoking the force majeure is obligated to notify the other party, promptly and completely, about the production thereof and to take any steps at its disposal in view of limiting the consequences.

**24.5.-** If the force majeure is acting or is estimated to act for a period longer than 6 months, each party will have the right to notify the other party the termination de jure of this contract, without any of the parties to be allowed to claim damages from the other.

**25. Dispute settlement**

**25.1.-** The procurer and the supplier shall make all efforts to settle amiably, by direct negotiations, any disagreements or dispute which may emerge between them within or in relation to the fulfilment of the contract.

**25.2.-** If, after 15 days from the commencement of these negotiations, the procurer and the supplier fails to reach an amiable settlement as to a contractual divergence, each can request for the dispute to be settled either by arbitration at the Chamber of Commerce and Industry of Romania, or by the courts in Romania. (To specify the method of dispute settlement).

**26. The language applied to the contract**

**26.1.-** The language applied to the contract is the Romanian language.

**27. Communications**

**27.1.-**

(1) Any communication between parties, referring to the fulfilment of this contract, must be sent in written form.

(2) Any written document must be registered both at sending time, and at reception time.

**27.2.-** Communications between parties can also be made by telephone, telegramme, telex, facsimile or e-mail, provided the reception of communication is confirmed in written form.

**28. Contract applicable law**

**28.1.-** The contract shall be interpreted according to the law in Romania.

\*\*\*\*\*

The parties understood to enter this day, ....., this hereby contract in two counterparts, one for each party. (To specify the date of signing by the parties).

Procurer,  
.....  
(authorized signature)  
SP

Supplier,  
.....  
(authorized signature)  
SP

**ANNEX No. 4: Form No. 4 – SERVICE CONTRACT**

SERVICE CONTRACT No. .... date .....

**PART 1:**

1. Pursuant to Government Emergency Ordinance No. 34/2006 regarding the awarding of the public procurement contracts, of the public works concession contracts and of the service concession contracts, approved with amendments and supplements under Law No. 337/2006, this hereby service contract was entered, between

..... (designation of the contracting authority), address ....., telephone/facsimile ....., incorporation number ....., fiscal code ....., treasury account ....., represented by ....., (name of the head), title ....., in capacity of procurer, firstly, and

..... (designation of the economic operator), address ....., telephone/facsimile ....., incorporation number ....., fiscal code ....., account (treasury, bank) ....., represented by ....., (name of the head), title ....., in capacity of provider , secondly.

**2. Definitions**

2.1.- In this hereby contract the following terms will be interpreted as follows:

- a) contract - this hereby contract and all the schedules thereof;
  - b) procurer and provider - the contracting parties, ;
  - c) contract price – price payable to the provider by the procurer, based on the contract, for the total and adequate fulfilment of all the obligations undertaken under contract;
  - d) services – activities the providing of which represents the object of the contract;
  - e) products – equipment, machines, outfits, spare parts and any other goods contained in the annex/annexes to this contract and which the provider is bound to supply in relation to the services provided according to the contract;
  - f) force majeure – an event that is above the parties’ control, which is not due to the mistake or fault thereof, which could not have been foreseen at the time of entering the contract and which renders impossible the providing and the fulfilment of the contract respectively; such events are deemed to be: wars, revolutions, arsons, floods or any other natural catastrophe, restrictions emerged following quarantine, embargo, the listing being non-exhaustive, but just an enumeration. An event similar to those above which, without creating an impossibility of execution, makes extremely costly the fulfilment of the obligations of any of the parties shall not be deemed a force majeure event;
  - g) day – calendar day; year- 365 days/
- (To add other terms which the parties understand to defined for the contract.)

### 3. Interpretation

**3.1.-** In this contract, except for a contrary provision, the works at singular shall include the plural and vice versa, where this is allowed under context.

**3.2.-** The term “day” or “days” or any reference to days represents calendar days unless specified differently.

## **PART 2: Mandatory terms**

### 4. Main object of the contract

**4.1.-** The provider undertakes to provide ..... (designation of services), in the convened period/periods and in accordance with the obligations undertaken under this contract.

**4.2.-** The procurer undertakes to pay the price convened under this contract for the provided services.

### 5. Contract price

Contract price

**5.1.-** The price convened for the fulfilment of the contract, payable to the provider by the procurer, according to the payment schedule, is RON .....or, as applicable, EUR ....., to which the VAT ..... is added.

### 6. Contract period

**6.1.-** Contract period is .....months, commencing from ..... (To insert the period and the date).

**6.2.-** This hereby contract terminates to produce effects from .....(to insert the date wherefrom the contract terminates)

### 7. Contract execution

**7.1.-** Contract execution commences after the establishment of the good execution guarantee, on .....(To insert the date when the contract comes into effect.)

### 8. Documents of the contract

**8.1.-** Documents of the contract are: (To list the documents whereby the parties understand as being the documents of the contract.)

### 9. Main obligations of the provider

**9.1.-** The provider undertakes to provide services at the standards and/or providing presented in the technical proposal, annex to the contract.

**9.2.-** The provider undertakes to provide services according to the providing schedule submitted in the technical proposal.

**9.3.-** The provider undertakes to indemnify the procurer against any:

i) complaints and lawsuits in court, resulting from the violation of some intellectual property rights (patents, names, registered trademarks etc), related to the equipment, materials, plants or outfits used for or in relation to the procured products; and



ii) damages, costs, fees and expenses of any nature, related, except for the event when such a violation results from the observation of the specifications' book drafted by the procurer.

#### **10. Main obligations of the procurer**

**10.1.-** The procurer undertakes to receive, according to covenant 13, the services provided within the convened period of time.

**10.2.-** The procurer undertakes to pay the price to the provider within the period convened from the issuing of the invoices by that. Payments in hard currency shall be made under the observation of the legal provisions.

(To specify the payment term as from the reception of the invoice and, as applicable, the payment schedule.)

**10.3.-** If the procurer fails to pay the invoices within 14 days as from the expiration of the convened period, then the provider shall be entitled to cease the service providing and to benefit from the adjustment of the payment amount at the corresponding level of the payment making date. Promptly after the procurer honours the obligations thereof, the provider shall resume the service providing as soon as possible.

#### **11. Sanctions for the faulty non-fulfilment of the obligations**

**11.1.-** In case where, by its exclusive fault, the provider does not succeed in fulfilling the undertaken obligations, then the procurer is entitled to deduct from the contract price, as penalties, an amount equal to a percentage of the contract price.

(To specify the percentage for each day/week of delay, until the effective fulfilment of the obligations.)

**11.2.-** In case where the procurer honours its obligations within 28 days as from the expiration of the convened period, then this shall have the obligation to pay, as penalties, an amount equal to a percentage of the outstanding payment.)

**11.3.-** Failure to observe the obligations undertaken under this contract by one of the parties, by fault and repeatedly, confers the right to the encroached party to deem the contract terminated de jure and to claim payment of damages.

**11.4.-** The procurer reserves the right to waive the contract, under a written notice addressed to the provider, without any compensation, if the latter goes bankrupt, subject to this annulment not to prejudice or impair the right to lawsuit or indemnity for the provider. In such case, the provider is entitled to claim only the payment corresponding for the part of the contract which has been fulfilled until the date of unilateral denouncement of the contract.

### **PART 3: Specific terms**

#### **12. The contract good execution guarantee**

**12.1.-** The provider is bound to establish the contract good execution guarantee, in amount of....., for the period ..... and, anyway, until the coming into effect of the contract.

(To specify the manner of establishment, amount and period of establishment of the good execution guarantee).

**12.2.-** The procurer undertakes to discharge the participation guarantee and to issue the order of contract commencement only after the provider has submitted the evidence of having established the good execution guarantee.

**12.3.-** The procurer is entitled to make claims on the good execution guarantee, up to the amount of the created prejudice, if the provider fails to fulfil, fails to execute, executes with delay or executes inadequately the obligations undertaken under this contract. Prior to the making of claims regarding the good execution guarantee, the procurer is bound to notify this to the provider, specifying, at the same time, the obligations which have not been observed.

**12.4.-** The procurer undertakes to return the good execution guarantee ..... within a period of .... from the fulfilment of the undertaken obligations.  
(To specify the method of return and the period.)

**12.5.-** The technical warranty is distinct from the contract good execution guarantee.

### 13. Other responsibilities of the provider

(1) The provider is bound to provide the services provide in the contract in a professional and prompt manner, due to the undertaken commitment and in accordance with its technical proposal.

(2) The provider undertakes to supervise the providing of services, to provide the human, material resources, plants, equipment and any of he like, temporary or final, required by and for he contract, insofar as the requirement of providing thereof is stipulated under contract or can be reasonably derived from the contract.

13.2. – The provider is fully liable for the providing of services in accordance with the convened providing schedule. At the same time, the provider is liable both for the security of all operations and methods used for providing, and for the qualification of the staff used throughout the entire period of the contract.

(To specify the exhibit containing the providing schedule).

### 14. Other responsibilities of the procurer

14.1. – the procurer undertakes to make available to the provider any facilities and/or information which the provider has required in the technical proposal and which it deems necessary for the fulfilment of the contract.

### 15. Hand-over and verifications

15.1 The procurer is entitled to verify the manner of service providing in order to establish the conformity with the specifications in the technical proposal and in the specifications' book.

15.2. Verifications will be made in accordance with the provisions of this contract. The procurer is bound to notify in written form to the provider the identity of its representatives, authorized for such purpose.

(To specify the schedule containing the manner of verification and hand-over of the services).

### 16. Commencement, finalization, delays, cessation

#### 16.1

(1) The provider is bound to commence the providing of services as soon as possible from the reception of the order to commence the contract.

(To specify the maximum date of issuing the contract commencement order).

(2) In case where the provider suffers delays and/or bears additional costs, exclusively due to the provider, the parties shall set forth under common consent:

- a) the renewal of the period for the providing of the service; and
- b) the total of the related costs, if applicable, which shall be added to the contract price.

16.2.

(1) The service provided based on contract or, if applicable, any phase thereof provided to be terminated in a period set forth in the providing schedule must be finalized in the period convened by the parties, period which is calculated as from the date of commencing the service providing.

(2) In case where:

- i) any reasons of delay, which are not outstanding to the provider; or
- ii) other unusual circumstances, susceptible to arrive other than by the breach of contract by the provider, entitle the provider to request the renewal of the period of service providing or of any stage thereof, when the parties will revise, under common consent, the period of providing and will sign an additional document.

16.3. – If, throughout the fulfilment of the contract the provider fails to observe the providing schedule, this is bound to notify this, in due time, to the procurer.

Modification of the date/periods of providing undertaken in the providing schedule shall be made subject to the parties' consent, by additional document.

16.4. – Except for the case in which the provider consents upon a renewal of the period of execution, any delay in the fulfilment of the contract confers the right to the procurer to request penalties from the provider.

17. Contract price adjustment

17.1. – For the provided services, payments outstanding by the procurer to the provider are the tariffs stated in the financial proposal, annex to the contract.

17.2. – The contract price is adjusted by using the convened formula. (To specify the adjustment formula).

18. Amendments

18.1. – The contracting parties are entitled, throughout the fulfilment of the contract, to convene upon the modification of the contractual terms, under additional document, only in case of emergence of circumstances which encroach the legitimate commercial interests thereof and which could not have been foreseen on contract entering date.

**18. Amendments**

**18.1.-** The contracting parties are entitled, throughout the fulfilment of the contract, to convene upon the modification of the contract's terms, under additional document, only in case of emergence of some circumstances which encroach the legitimate commercial interests thereof and which could not have been foreseen on contract entering date.

**19. Sub-contractors**

19.1. – The provider is bound, in case it outsources parts of the contract, to enter contracts with the designated sub-contractors, in the same conditions in which the provider signed the contract with the procurer.

**19.2. (1)** The provider is bound to present, when entering the contract, all the contracts entered with the designated sub-contractors.

**(2)** The list of sub-contractors, with the list of acknowledgement thereof, as well as the contracts entered with these shall represent schedules to the contract.

**19.3.-(1)** The provider shall be fully liable before the procurer for the manner in which the provider fulfils the contract.

**(2)** The sub-contractors shall be fully liable before the provider for the manner in which the sub-contractors fulfils its part of the contract.

**(3)** The provider is entitled to claim damages from sub-contractors if these fail to fulfil their part of the contract.

**19.4.-** The provider can replace any sub-contractor only if this has failed to fulfil its part of the contract. The replacement of the sub-contractor shall not change the contract part and shall be notified to the procurer.

## **20. Assignment**

**20.1.-** The provider undertakes not to transfer, in total or in part, the obligations undertaken under contract, without obtaining, in prior, the written consent of the procurer.

**20.2.-** The assignment shall not exonerate the provider from any responsibility regarding the warranty or any other obligations undertaken under contract.

## **21. Force majeure**

**21.1.-** Force majeure is established by a competent authority.

**21.2.-** Force majeure exonerates the contracting parties from the fulfilment of the obligations undertaken under this contract, throughout the whole period in which this acts.

**21.3.-** The fulfilment of the contract should be suspended during the period of force majeure action, but without prejudicing the rights that were due to the parties until the emergence thereof.

**21.4.-** The contracting party invoking the force majeure is obligated to notify the other party, promptly and completely, about the production thereof and to take any steps at its disposal in view of limiting the consequences.

**21.5.-** If the force majeure is acting or is estimated to act for a period longer than 6 months, each party will have the right to notify the other party the termination de jure of this contract, without any of the parties to be allowed to claim damages from the other.

## **22. Dispute settlement**

**22.1.-** The procurer and the provider shall make all efforts to settle amiably, by direct negotiations, any disagreements or dispute which may emerge between them within or in relation to the fulfilment of the contract.

**22.2.-** If, after 15 days from the commencement of these negotiations, the procurer and the provider fails to reach an amiable settlement as to a contractual divergence, each can request for the dispute to be settled either by arbitration at the Chamber of Commerce and Industry of Romania, or by the courts in Romania. (To specify the method of dispute settlement).

## **23. The language applied to the contract**

**23.1.-** The language applied to the contract is the Romanian language.

## **24. Communications**

### **24.1.-**

**(1)** Any communication between parties, referring to the fulfilment of this contract, must be sent in written form.

**(2)** Any written document must be registered both at sending time, and at reception time.

**24.2.-** Communications between parties can also be made by telephone, telegramme, telex, facsimile or e-mail, provided the reception of communication is confirmed in written form.

**25.** Contract applicable law

**25.1.-** The contract shall be interpreted according to the law in Romania.

The parties understood to enter this day, ....., this hereby contract in two counterparts, one for each party. (To specify the date of signing by the parties).

Procurer,  
.....  
(authorized signature)  
SP

Provider,  
.....  
(authorized signature)  
SP

**ANNEX No. 5: Form No. 5 - WORKS CONTRACT**  
WORKS CONTRACT No. .... date .....

**PART 1:**

**1.** Pursuant to Government Emergency Ordinance No. 34/2006 regarding the awarding of the public procurement contracts, of the public works concession contracts and of the service concession contracts, approved with amendments and supplements under Law No. 337/2006, this hereby works contract was entered, between

..... (designation of the contracting authority), address. ...., telephone/facsimile ....., incorporation number ....., fiscal code ....., treasury account ....., represented by ....., (name of the head), title ....., in capacity of procurer, firstly,  
And ..... (designation of the economic operator), address ....., telephone/facsimile ....., incorporation number ....., fiscal code ....., cont (treasury, bank) ....., represented by ....., (name of the head), title ....., in capacity of performer, secondly.

**2. Definitions**

**2.1.-** In this hereby contract the following terms will be interpreted as follows:  
**a)** contract - this hereby contract and all the schedules thereof;  
**b)** procurer and performer – the contracting parties, such as these are nominated in this contract;

- c) contract price – the price payable to the performer by the procurer, based on the contract, for the total and adequate fulfilment of all the obligations thereof, undertaken under contract;
- d) work site – place where the performer completes the work;
- e) force majeure – an event that is above the parties’ control, which is not due to the mistake or fault thereof, which could not have been foreseen at the time of entering the contract and which renders impossible the providing and the fulfilment of the contract respectively; such events are deemed to be: wars, revolutions, arsons, floods or any other natural catastrophe, restrictions emerged following quarantine, embargo, the listing being non-exhaustive, but just an enumeration. An event similar to those above which, without creating an impossibility of execution, makes extremely costly the fulfilment of the obligations of any of the parties shall not be deemed a force majeure event;
- f) day – calendar day; year- 365 days.

(To add other terms which the parties understand to defined for the contract.)

### 3. Interpretation

- 3.1.- In this contract, except for a contrary provision, the works at singular shall include the plural and vice versa, where this is allowed under context.
- 3.2.- The term “day” or “days” or any reference to days represents calendar days unless specified differently.

## PART 2: Mandatory terms

### 4. Main object of the contract

- 4.1.- The performer undertakes to perform, finalize and maintain ..... (designation of the work), in accordance with the obligations undertaken under this contract.
- 4.2.- The procurer undertakes to pay the performer the price of ..... thousand RON, for the performance, finalization and maintenance .....(work designation).

### 5. Contract price

- 5.1.- The price convened for the fulfilment of the contract, payable to the performer by the procurer, according to the payment schedule, is..... thousand RON, as applicable, ..... EUR, to which VAT of ..... thousand RON will be added.

### 6. Contract period

- 6.1.- Contract period is .....months, commencing from ..... (To insert the period and the date).
- 6.2.- This hereby contract terminates to produce effects from .....(to insert the date wherefrom the contract terminates)

### 7. Contract execution

- 7.1.- Contract execution commences after the establishment of the good execution guarantee, on .....(To insert the date when the contract comes into effect.)

### 8. Documents of the contract

**8.1.-** Documents of the contract are: (To list the documents whereby the parties understand as being the documents of the contract.)

**9. Protection of the national cultural patrimony**

**9.1.-** All fossils, coins, valuable objects or any kind of vestiges or objects of archaeological interest disclosed on the site of the work are deemed, in the relationships between parties, as being the absolute property of the procurer..

**9.2.-** The performer is bound to take all the necessary caution steps for the workers thereof or any other persons should not remove or deteriorate the objects provided in covenant 9.1, and promptly after the discovery and before the removal thereof, to notify the procurer about this discovery and to fulfil the orders received from the procurer regarding the removal thereof. If by cause of such orders the performers suffers delays and or incurs additional costs, then the parties shall set forth, under consulting:

**a)** any renewal of the period of performance to which the performer is entitled;

**b)** the aggregate additional costs, which shall be added to the contract price.

**9.3.-** The procurer shall be bound, forthwith after the procurer has become aware of the discovery of the objects provided in covenant 9.1, to notify in this respect the police bodies and the historical monuments commission.

**10. Main obligations of the performer**

**10.1.\_**

**(1)** The performer is bound to perform and finalize the works, as well as to remedy the concealed vices, with the due care and promptness, in accordance with the obligations undertaken under contract, including to design, within the limits provided by this contract.

**(2)** The performer is bound to supervise the works, to provide the manpower, materials equipment and all the other objects, temporary or final, required by and for the contract, insofar as the requirement of providing thereof is stipulated in the contract or can be derived reasonably from the contract.

**10.2.-** The performer is bound to present the procurer, before the commencement of the works' execution, for approval, the payment schedule required for work execution, in the technological order of execution.

**10.3.\_**

**(1)** The performer is fully liable for the conformity, stability and safety of all the operations performed on the building site, as well as for the used procedures of execution, under the observation of the provisions and regulations of Law No. **10/1995** regarding quality in constructions, with subsequent amendments.

**(2)** A copy of the documentation delivered by the procurer to the performer shall be kept by this in view of consulting by the State Inspection in Constructions, public Works, Urbanism and Territory Planning, as well as by the persons authorized by the procurer, at the request of such persons.

**(3)** The performer shall not be liable for the design and specifications' book which have not been drafted by the performer. If, however, the contract explicitly provides that part of the permanent works to be designed by the performer, this shall be fully liable for that part of the works.

**(4)** The performer is bound to make available to the procurer, at the deadlines specified in the contract's annexes, the measurement books (attachments) and, as applicable, in the

covenanted events, the drawings, calculations, verifications of calculations and any other documents which the performer must draft or which are requested by the procurer.

**10.4.-**

(1) The performer is bound to observe and execute the orders of the procurer in any issue, whether mentioned in the contract or not, referring to the works. In case where the performer considers that the orders of the procurer are unreasonable or inopportune, this is entitled to raise objections, in written form, without the respective objections to exonerate it of the obligation to execute the received orders, except for the case in which these are adverse to the legal provisions.

(2) In case where the observation and execution of the orders provided in paragraph (i) determine difficulties in execution which generate additional costs, then these costs will be covered at the expenses of the procurer.

**10.5.-**

(1) The performer is liable for the correct outlining of the works as to the benchmarks given by the procurer, as well as for the supply of all equipment, instruments, devices and human resources necessary for the fulfilment of the respective responsibilities.

(2) In case where, through work execution, an error emerges about the position, quotas, sizes or line of any part of the works, the performer is bound to rectify the established error, at the costs thereof, except for the event in which the respective error is the outcome of the data inaccurately supplied in written form by the designer. For verification of outlining by the designer, the performer is bound to protect and keep carefully all the benchmarks, signs or other objects used when outlining the works.

**10.6.-** Throughout the execution of works and remedy of the concealed vices, the performer is obligated:

i) to take all the steps to provide to all persons the attendance of the building site of which is authorized and to maintain the building site (as long as this is under the control thereof) and the works (as long as these are not finalised and occupied by the procurer) in a state of order, necessary to avoid any danger for the respective persons;

ii) to obtain and maintain, at its costs, all the devices for illumination, protection, enclosure, alarm and security, when and where necessary or when and where these have been requested by the procurer or by other competent authorities, for the purpose of protecting the works or providing the comfort of the riparians;

iii) to take all steps reasonably necessary to protect the environment inside and outside the building site and to avoid any damage or shortcoming caused to persons, public properties or others, resulted from pollution, noise or other factors generated by its working methods.

**10.7.-** The performer is liable for maintaining in good condition the works, materials, equipments and plants that are to be brought into operation, as from the date of reception of the order to commence the works and until the date of signing the work hand-over report.

**10.8.-**

(1) Throughout the execution of works and remedy of the concealed vices, the performer is bound, insofar as this is allowed by the observation of the contract's provisions, not to disturb uselessly or abusively:

a) the comfort of the riparians; or



b) the ways of access, by using and occupation of the public or private roads and ways which serve the properties that are in possession of the procurer or of any other person.

(2) The performer shall indemnify the procurer against all complaints, lawsuits, damages, costs, fees and expenses, irrespective of the nature thereof, resulting from or in relation to the obligation provided in paragraph (i), for which the liability shall be incumbent upon the performer.

#### **10.9.**

(1) The performer is bound to reasonably use the roads and bridges which are connected to or are on the route of the building site and to prevent the deterioration or destruction thereof by its own traffic or by the traffic of any of the sub-contractors thereof; the performer shall select the routes, shall choose and use the vehicles, shall limit and allocate the loads, so that the additional traffic which will unavoidably result from the movement of the materials, equipment, plants or the like, from and on the building site, to be limited, insofar as this is possible, so that this should not cause deterioration or destruction of the respective roads and bridges.

(2) In case where the nature of works imposes the use by the performer of water transportation, then the provisions of paragraph (i) shall be interpreted in the manner in which by "road" one shall understand, inclusively, sluice, dock, dam or any other structure related to the water way and by "vehicle" one shall understand any ship, and the respective provisions shall be consequently applied.

(3) In case where there are deteriorations or destructions of any bridge or road which connects with or is on the route of the building site, due to the transportation of materials, equipment, plants or the like, the performer is bound to indemnify the procurer against all complaints regarding the damaging of the respective bridges or roads.

(4) Except for some adverse covenants provided in the contract, the performer shall also be liable and shall pay for the reinforcement, alteration or improvement, for the purpose to facilitate the transportation of materials, equipments, plants or the like, of any roads or bridges which are connected to or are on the route of the building site.

#### **10.10.**

(1) Throughout the works' execution, the performer shall be bound:

I) to avoid, as much as possible, the accumulation of useless obstacle on the building site;

II) to store or remove any outfits, equipment, plants, surplus of materials;

III) to collect and remove from the building site the wreckage, debris or temporary works of any kind, which are no further required.

(2) The performer is entitled to withhold on the building site, until the end of the warranty period, only those materials, equipment, plants or temporary works, which are necessary for the purpose of fulfilment of its obligations in the warranty period.

**10.11.-** The performer shall be liable, according to the obligations that are incumbent thereupon, for the concealed vices of the construction, arrived within an interval of ....(To specify the number of years) as from the hand-over of the works and, after the completion of this period, throughout the entire lifetime of the construction, for the vices of the resistance structure, following the failure to observe the designs and details of execution related to the work execution.

**10.12.-** The performer undertakes to indemnify the procurer against any:

- i) complaints and lawsuits in court, resulting from the violation of some intellectual property rights (patents, names, registered trademarks etc), related to the equipment, materials, plants or outfits used for or in relation to the procured products; and
- ii) damages, costs, fees and expenses of any nature, related, except for the event when such a violation results from the observation of the specifications' book drafted by the procurer

#### **11. Obligations of the procurer**

**11.1.-** At the commencement of works, the procurer is bound to obtain all the authorizations and permits necessary for works' execution.

#### **11.2. \_**

**(1)** The procurer is bound to make available to the performer, free of charge, unless consented otherwise, the following:

- a)** the site for the works, free of any encumbrance;
- b)** the land surfaces necessary for storage and for organization of the building site;
- c)** route access and railway connections;
- d)** branching for utilities (water, gas, energy, sewage etc.), up to the limit of the building site.

**(2)** Costs for the consumption of utilities, as well as that of the meters or of other metering devices shall be borne by the performer.

**11.3.-** The procurer is bound to make available to the performer the entire documentation necessary for the execution of the contracted works, free of charge, in four counterparts, at the deadline set forth under the work execution schedule.

**11.4.-** The procurer is liable for outlining the main axes, the benchmarks, the traffic ways and the limits of the land made available to the performer, as well as for the substantiation of the level quotas in the close vicinity of the land.

**11.5.-** The procurer is bound to review and measure the works which become concealed in no more than 5 days from the notification of the performer.

**11.6.-** The performer is fully liable for the accuracy of the documents and of any information supplied to the performer, as well as for the orders and deliveries thereof.

#### **12. Sanctions for faulty non-fulfilment of the obligations**

**12.1. -** In case where, by its exclusive fault, the performer does not succeed in fulfilling the undertaken obligations, then the procurer is entitled to deduct from the contract price, as penalties, an amount equal to a percentage of the contract price.

(To specify the percentage for each day/week of delay, until the effective fulfilment of the obligations.)

**12.2.-** In case where the procurer honours its obligations within 28 days as from the expiration of the convened period, then this shall have the obligation to pay, as penalties, an amount equal to a percentage of the outstanding payment.)

**12.3. -** Failure to observe the obligations undertaken under this contract by one of the parties, by fault and repeatedly, confers the right to the encroached party to deem the contract terminated de jure and to claim payment of damages.

**12.4. -** The procurer reserves the right to waive the contract, under a written notice addressed to the performer, without any compensation, if the latter goes bankrupt, subject to this annulment not to prejudice or impair the right to lawsuit or indemnity for the performer. In such case, the performer is entitled to claim only the payment

corresponding for the part of the contract which has been fulfilled until the date of unilateral denouncement of the contract.

### **PART 3: Specific terms**

#### **13. The contract good execution guarantee**

The contract good execution guarantee

**13.1.-** The performer is bound to establish the contract good execution guarantee, in amount of....., for the period ..... and, anyway, until the coming into effect of the contract.

(To specify the manner of establishment, amount and period of establishment of the good execution guarantee).

**13.2. -** The procurer undertakes to discharge the participation guarantee and to issue the order of contract commencement only after the performer has submitted the evidence of having established the good execution guarantee.

**13.3. -** The procurer is entitled to make claims on the good execution guarantee, up to the amount of the created prejudice, if the performer fails to fulfil, fails to execute, executes with delay or executes inadequately the obligations undertaken under this contract. Prior to the making of claims regarding the good execution guarantee, the procurer is bound to notify this to the performer, specifying, at the same time, the obligations which have not been observed.

**13.4. -** The procurer undertakes to return the good execution guarantee..... within a period of ..... from the fulfilment of the undertaken obligations.

(To specify the method of return and the period.)

**13.5. -** The technical warranty is distinct from the contract good execution guarantee.

#### **14. Works commencement and execution**

##### **14.1.**

(1) The performer is bound to commence the works as soon as possible from the reception of the order in this respect on behalf of the procurer.

(To specify the deadline for issuing the order related to the commencement of works' execution.)

(2) The performer must notify the procurer and State Inspection in Constructions, public Works, Urbanism and Territory Planning on the effective date of works' commencement.

##### **14.2.-**

(1) Works must be conducted according to the general schedule of execution and be finalised on the established date. Intermediary dates, provided in the execution schedules, are deemed contractual dates.

(To specify the intermediary dates, if the case may be.)

(2) The performer shall present, at the procurer's request, after signing the contract, the detailed execution schedule, composed in chronological order of execution. In case where, according to the opinion of the procurer, throughout their progress, the works are not concordant with the general schedule of works' execution, at the request of the procurer, the performer will present a revised schedule, in view of finalization of the works on the date provided in the contract. The revised schedule shall not exonerate the performer from any of the duties undertaken under contract.

(3) In case where the performer delays the commencement of works, the finalization of preparations or if the performer fails to fulfil the duties provided at section 11.1

paragraph (2), the procurer is entitled to fix the performer a deadline until the activity should go back to normal and to caution the performer that, in case of non-compliance, its contract will be terminated at the expiration of the set forth deadline.

#### **14.3.**

(1) The procurer is entitled to supervise the conducting of the works' execution and to establish their conformity with the specifications in the schedules to the contract. The contracting parties are bound to notify, in written form, one to the other, the identity of their representatives, professionally certified for such purpose and namely, the technical representative in charge with the execution on behalf of the performer and the building site overseer or, if applicable, another natural or legal person certified according to the law, on behalf of the procurer.

(2) The performer is bound to provide access to the representative of the procurer to the work site, in work shops, warehouses and anywhere it conducts activities related to the fulfilment of the obligations undertaken under contract, including for the verification of the concealed works.

#### **14.4.-**

(1) Materials must be of the quality provided in the execution documentation; verifications and testing of the materials used for work execution, as well as the conditions for passing the temporary hand-over and the final (quality) hand-over are described in the annex/annexes to the contract.

(2) The performer is bound to provide the instruments, outfits and materials necessary for the verification, measuring and testing of the works. Costs of samples and trials, including the manual work related thereof, shall be borne by the performer.

(3) Unforeseen trials ordered by the procurer for the verification of works or materials brought into operation shall be borne by the performer, if it is proved that the materials are not compliant, in terms of quality, or that the manual work is not in accordance with the provisions of the contract. Otherwise, the procurer shall bear such costs.

#### **14.5.-**

(1) The performer is bound not to cover the works which become concealed, without the procurer's consent.

(2) The performer is bound to notify the procurer, whenever such works, including the foundations, are finalised, to be examined and measured.

(3) The performer is bound to uncover any part or parts of the work, at the order of the procurer, and to remake this part or parts of the work, if applicable.

(4) In case where it is established that works are of an adequate quality and have been performed according to the execution documentation, then the costs regarding the uncovering and remaking thereof shall be borne by the procurer, and otherwise, by the performer.

### **15. Works delay or cessation**

#### **15.1 – In case where:**

- i) the amount or nature of unforeseen works; or
- ii) exceptionally unfavourable climate conditions; or
- iii) any other reason of delay which is not due to the performer and has not emerged by the breach of contract by that entitle the performer to request the renewal of the work execution period or of any part thereof, when, under consulting, the parties shall establish:

- (1) any renewal of the period of execution to which the performer is entitled;
- (2) aggregate additional costs, which shall be added to the contract price.

**15.2.-** Without prejudicing the performer's right provided in covenant 12.2, this is entitled to cease the works or diminish the pace of execution if the procurer fails to pay within 28 days from the expiration of the period provided in covenant 18.2; in such case, it shall notify this fact to the procurer in written form

#### **16. Works' finalization**

**16.1. -** The ensemble of works, or, if applicable, any part thereof, provided to be finalized within a period of time set forth under the execution schedule, must be finalized within the convened period of time, period which is calculated as from works commencement date.

#### **16.2. -**

(1) At finalization of the works, the performer is bound to notify, in written form, the procurer that the reception conditions are fulfilled, requesting thereto to call the reception.

(2) Based on the situation of the confirmed performed works and of the findings made on the spot, the procurer shall appreciate whether the conditions to call the hand-over committee are met. In case where shortcomings or deficiencies are established, these shall be notified to the performer, also establishing the deadlines for remedy and finalization. After the establishment of remedy of all the shortcomings and deficiencies, at a new request of the performer, the procurer will call the hand-over committee.

**16.3. –** The hand-over committee is obligated to establish the stage of fulfilment the contract by correlation of the provisions thereof with the execution documentation and with the regulations in force. According to the findings made, the purchaser has the right to approve or reject the reception.

**16.4. –** The hand-over can also be made for parts of the work, physically and functionally distinct.

#### **17. Warranty period granted to the works**

**17.1.-** The warranty period runs from the date of hand-over at Works finalization and until the final hand-over.

#### **17.2.-**

(1) In the period of warranty, the performer is bound, following the order given by the procurer, to perform all the works of alteration, reconstruction and remedy of the vices and of other flaws the cause of which is the failure to observe the contractual clauses.

(2) The performer is bound to perform all the activities provide in paragraph (i), at its own costs, in case they are necessary due to:

i) use of materials, plants or manual work non-compliant with the provisions of the contract; or

ii) a conception vice, where the performer is responsible for designing part of the works; or

iii) the negligence or failure to fulfil by the performer of any of the explicit or implicit obligations that are incumbent based upon the contract.

(3) In case where the deficiencies are not due to the performer, the works being executed by that according to the provisions of the contract, the cost of remedies will be evaluated and paid as additional works.

**17.3.-** In case where the performer fails to perform the works provided in covenant 16.2 paragraphs (2), the procurer is entitled to undertake and to pay other persons to execute them. The costs related to these works will be recovered by the procurer from the performer or withheld from the amounts due thereto.

**18. Payment methods**

**18.1.-** The purchaser is bound to make the payment to the performer within the deadline convened from issuing the invoice by that. Payments in hard currency will be made under the observation of the legal provisions.

(To specify the payment period from the issuing of the invoice and, as applicable, the payment schedule.)

**18.2.-** If the procurer fails to pay the invoices within 14 days as from the expiration of the convened period, then the performer is entitled to cease the performance of works or to slow down the pace of execution and benefit from the readjustment of the payment amount at the corresponding level of the payment making date. Promptly after the procurer honours its outstanding payments, the performer shall resume the execution of works within the shortest possible period of time.

**18.3.-** The procurer is entitled to grant an advance payment to the performer, if this requests, only against a letter of return of the advance payment and only up to the limit of value provided by the law.

(To specify the amount of the advance payment.)

**18.4.-**

(1) Partial payments made be made, at the request of the performer (contractor).

(2) Temporary payment events shall be confirmed at the established deadline (To specify the deadline).

(3) Partial payments are regularly made on a monthly basis, but they do not influence the liability and good execution guarantee of the performer, they are not deemed as a hand-over of the performed works by the procurer.

**18.5.-** Payment of the final invoice is made promptly after the verification and acceptance of the final event of payment by the procurer. If the verification is extended for various reasons, but, in particular, due to possible litigations, the consideration of the works that are not under litigation shall be paid forthwith.

**18.6.-** The contract will not be deemed terminated until the final hand-over report is not signed by the hand-over commission, which confirms that the works have been executed according to the contract. The final hand-over will be made according to the legal provisions, after the expiration of the warranty period. Payment of the last amounts outstanding to the performer for the executed works will not be subject to the release of the final hand-over certificate.

**19. Adjustment of the contract price**

**19.1.-** For the executed works, payments outstanding by the procurer to the performer are those stated in the financial proposal, annex to the contract.

**19.2.-** The contract price is adjusted by using the convened formula. (To specify the adjustment formula.)

**20. Insurance**

**20.1.-**

(1) The performer is bound to enter, before work commencement, an insurance which will include all risks which might arise regarding the executed works, outfits, working plants, equipment, stock materials, its own staff and representatives authorized to verify, to test and hand-over the works, as well as the damages or prejudices brought to third natural or legal persons.

(2) The insurance policy will be entered with an insurance company. The consideration of the insurance premia will be borne by the performer in Chapter "Indirect costs".

(3) The performer is bound to submit the procurer, whenever required, the insurance policy or policies and the receipts for the payment of the current (updated) premia.

(4) The performer is bound to get assured that the sub-contractors have entered insurance policies for all the persons employed by them. The performer will request the sub-contractors to submit the procurer, at request, the insurance premia and the receipts for the payment of the current (updated) premia.

**20.2.-** The procurer will not be liable for any kind of damages, compensations exigible under the law, about or following an accident or prejudice brought to a worker or another person employed by the performer, except for an accident or prejudice resulting from the fault of the procurer, of the agent or employees thereof.

## **21. Amendments**

**21.1.-** The contracting parties are entitled, throughout the fulfilment of the contract, to convene upon the amendment of the contract terms, under additional document, only in case of emergence of some circumstances which encroach the legitimate commercial interests thereof and which could not have been foreseen on contract entering date.

## **22. Sub-contractors**

**22.1.-** The performer is bound to enter contracts with the designated sub-contractors, in the same terms in which the performer has signed the contract with the procurer.

### **22.2.-**

(1) The performer is bound to submit, at contract termination, all the contracts entered with the designated sub-contractors.

(2) The list of sub-contractors, containing the acknowledgement data thereof, as well as the contracts entered with these constitutes schedules to the contract.

### **22.3.-**

(1) The performer is fully liable to the procurer for the manner in which the performer fulfils the contract.

(2) The sub-contractor is fully liable to the performer for the manner in which the sub-contractors fulfils its part of the contract.

(3) The performer is entitled to claim damages to sub-contractors, if these fail to fulfil their part of the contract.

**22.4.-** The performer can substitute any sub-contractor only if this has failed to fulfil its part of the contract. The substitution of the sub-contractor shall not modify the contract price and shall be notified to the procurer.

## **23. Assignment**

**23.1.-** The performer is bound not to transfer, in total or in part, its obligations undertaken under contract, without obtaining, in prior, the written consent of the procurer.

**23.2.-** Assignment shall not exonerate the performer from any liability regarding the guarantee or any other obligations undertaken under contract.

**24.1.-** Force majeure is established by a competent authority.

**24.2.-** Force majeure exonerates the contracting parties from the fulfilment of the obligations undertaken under this contract, throughout the whole period in which this acts.

**24.3.-** The fulfilment of the contract should be suspended during the period of force majeure action, but without prejudicing the rights that were due to the parties until the emergence thereof.

**24.4.-** The contracting party invoking the force majeure is obligated to notify the other party, promptly and completely, about the production thereof and to take any steps at its disposal in view of limiting the consequences.

**24.5.-** If the force majeure is acting or is estimated to act for a period longer than 6 months, each party will have the right to notify the other party the termination de jure of this contract, without any of the parties to be allowed to claim damages from the other.

**25. Dispute settlement**

**25.1.-** The procurer and the supplier shall make all efforts to settle amiably, by direct negotiations, any disagreements or dispute which may emerge between them within or in relation to the fulfilment of the contract.

**25.2.-** If, after 15 days from the commencement of these negotiations, the procurer and the supplier fails to reach an amiable settlement as to a contractual divergence, each can request for the dispute to be settled either by arbitration at the Chamber of Commerce and Industry of Romania, or by the courts in Romania. (To specify the method of dispute settlement).

**26. The language applied to the contract**

**26.1.-** The language applied to the contract is the Romanian language.

**27. Communications**

**27.1.-**

(1) Any communication between parties, referring to the fulfilment of this contract, must be sent in written form.

(2) Any written document must be registered both at sending time, and at reception time.

**27.2.-** Communications between parties can also be made by telephone, telegramme, telex, facsimile or e-mail, provided the reception of communication is confirmed in written form.

**28. Contract applicable law**

**28.1.-** The contract shall be interpreted according to the law in Romania.

\*\*\*\*\*

The parties understood to enter this day, ....., this hereby contract in two counterparts, one for each party. (To specify the date of signing by the parties).

Procurer,  
.....  
(authorized signature)

Contractor,  
.....  
(authorized signature)



PS

**ANNEX No. 6: Form No. 6 – SUPPLY FRAMEWORK AGREEMENT**  
SUPPLY FRAMEWORK AGREEMENT No. .... date .....

1. Pursuant to Government Emergency Ordinance No. 34/2006 regarding the awarding of the public procurement contracts, of the public works concession contracts and of the service concession contracts, approved with amendments and supplements under Law No. 337/2006, between

.....(designation of the contracting authority), address ....., telephone/facsimile ....., incorporation number ....., fiscal code ....., treasury cont ....., represented by ....., (name of the head), title ....., in capacity of promitent-procurer, firstly, and

..... (designation of the economic operator), address ....., telephone/facsimile ....., incorporation number ....., fiscal code ....., account (treasury, bank) ....., represented by ....., (name of the head), title ....., in capacity of promitent-supplier, secondly

this framework agreement was made in terms where the promitent parties remain unchanged throughout its whole period of fulfilment.

**2. Obligations of the promitent-supplier**

**2.1.-** The promitent-supplier undertakes, based on the subsequent contracts entered with the promitent-procurer, to supply the products..... in terms convened under this framework agreement.

(To specify the designation and forecast amounts of the products, as well as the CPV code.)

**2.2.-** The promitent-supplier undertakes that the supplied products should respect at least the quality provided in the technical proposal, annex to this framework agreement.

**2.3.-** The promitent-supplier undertakes not to transfer, in total or in part, the obligations undertaken under this framework agreement.

**3. Obligations of the promitent-procurer**

**3.1.-** The promitent-procurer undertakes, pursuant to the subsequent contracts awarded to the promitent-supplier, to procure the products.....in terms convened under this framework agreement.

( To specify the designation and forecast amounts of the products, as well as the CPV code.)

**3.2.-** The promitent-procurer undertakes not to initiate, through this framework agreement, a new awarding procedure, when it intends to procure products which represent the object of this hereby framework agreement, except for the case in which the promitent-supplier declares it has no further capacity to supply them.

**4.-** Products' unitary price

**4.1.-** The unitary price of products is RON.....or, as applicable, EUR ..... to which the VAT..... will be added.

**5.** Forecast amount

**5.1.-** The forecast amount of products which will be supplied based on the subsequent contracts is.....

(To specify the minimum amount for each subsequent contract.)

**6.** Frame agreement period

**6.1.-** The period of this framework agreement is..... months, commencing from.....  
(To insert the period and date.)

**6.2.-** This framework agreement terminates to produce effects from ....(To insert the date where the framework agreement terminates.)

**7.** Price adjustment

**7.1.-** The price is adjusted by using the convened adjustment formula, which will be inserted in the subsequent contract.

(If applicable, to specify the adjustment formula.)

**8.** Communications

**8.1.-**

**(1)** Any communication between parties, referring to the fulfilment of this framework agreement, must be sent in written form.

**(2)** Any written document just be registered both at the time of sending it and at the time of receiving it.

**8.2.-** Communications between parties can be made by telephone, telegramme, telex, facsimile or e-mail, subject to the written confirmation of the reception of the communication. Parties understood to enter this present framework agreement this day of ..... in two counterparts, one counterpart for each party.

(To specify the signing date by the parties and the number of counterparts.)

Promitent-procurer,  
.....  
(authorized signature)  
PS

Promitent-supplier,  
.....  
(authorized signature)  
PS

**ANNEX No. 7: Form No. 7 – SERVICE FRAMEWORK AGREEMENT**  
SERVICE FRAMEWORK AGREEMENT No. .... date

1. Pursuant to Government Emergency Ordinance No. **34/2006** regarding the awarding of the public procurement contracts, of the public works concession contracts and of the service concession contracts, approved with amendments and supplements under Law No. **337/2006**,

between

....., (designation of the contracting authority), address ....., telephone/facsimile ....., incorporation number ....., fiscal code ....., treasury cont ....., represented by ....., (name of the head), title ....., in capacity of promitent-procurer, firstly,

and

.....(designation of the economic operator), address ....., telephone/facsimile ....., incorporation number ....., fiscal code ....., account (treasury, bank) ....., represented by ....., (name of the head), title ....., in capacity of promitent-provider, secondly,

this hereby agreement was entered in terms where the promitent parties remain unchanged throughout the whole period of its fulfilment.

**2. Obligations of the promitent provider**

**2.1.-** The promitent-provider undertakes that, based on the subsequent contracts entered with the promitent-procurer, to provider the services..... in terms convened under this framework agreement.

(To specify the designation and the forecast amounts of services, as well as the CPV code.)

**2.2.-** The promitent-provider undertakes that the provided services should respect at least the quality provided in the technical proposal, attached to this framework agreement.

**2.3.-** The promitent-provider undertakes not to transfer in total or in part the obligations undertaken under this framework agreement.

**3. Obligations of the promitent procurer**

**3.1.-** The promitent-procurer undertakes, based on the subsequent contracts awarded to the promitent-provider, to procure the services.....in terms convened under this framework agreement.

(To specify the designation and the forecast amounts of services, as well as the CPV code.)

**3.2.-** The promitent-procurer undertakes not to initiate, through this framework agreement, a new awarding procedure, when it intends to procure services which represent the object of this except for the case where the promitent-provider declares it has no further capacity to provide them.

**4.-** Unitary price of services

**4.1.-** The unitary price of services is RON.....or, as applicable, EUR ..... to which the VAT..... will be added.

**5.** Forecast amount

**5.1.-** The forecast amount of services which will be provided based on the subsequent contracts is.....

(To specify the minimum amount for each subsequent contract.)

**6.** Frame agreement period

**6.1.-** The period of this framework agreement is..... months, commencing from.....

(To insert the period and date.)

**6.2.-** This framework agreement terminates to produce effects from ....(To insert the date where the framework agreement terminates.)

**7.** Price adjustment

**7.1.-** The price is adjusted by using the convened adjustment formula, which will be inserted in the subsequent contract.

(If applicable, to specify the adjustment formula.)

**8.** Communications

**8.1.-**

**(1)** Any communication between parties, referring to the fulfilment of this framework agreement, must be sent in written form.

**(2)** Any written document just be registered both at the time of sending it and at the time of receiving it.

**8.2.-** Communications between parties can be made by telephone, telegramme, telex, facsimile or e-mail, subject to the written confirmation of the reception of the communication. Parties understood to enter this present framework agreement this day of ..... in two counterparts, one counterpart for each party.

(To specify the signing date by the parties and the number of counterparts.)

Promitent-procurer,  
.....  
(authorized signature)  
PS

Promitent-provider,  
.....  
(authorized signature)  
PS

**ANNEX No. 8: Form No. 8 - FRAMEWORK WORK AGREEMENT**  
FRAMEWORK WORK AGREEMENT No. .... date .....

1. Pursuant to Government Emergency Ordinance No. 34/2006 regarding the awarding of the public procurement contracts, of the public works concession contracts and of the service concession contracts, approved with amendments and supplements under Law No. 337/2006,  
between

.....(designation of the contracting authority), address ....., telephone/facsimile ....., incorporation number ....., fiscal code ....., treasury cont ....., represented by ....., (name of the head), title ....., in capacity of promitent-procurer, firstly,  
and

..... (designation of the economic operator), address ....., telephone/facsimile ....., incorporation number ....., fiscal code ....., account (treasury, bank). ....., represented by ....., (name of the head), title ....., in capacity of promitent-performer, secondly,

this framework agreement was entered in terms where the promitent parties remain unchanged throughout its whole period of fulfilment.

**2. Obligations of the promitent-performer**

**2.1.-** The promitent-performer undertakes that, based on the subsequent contracts entered with the promitent-procurer, to perform the works .....in terms convened under this framework agreement.

(To specify the designation and the forecast amounts of works, as well as the CPV code.)

**2.2.-** The promitent-performer undertakes that the performed works should respect at least the quality provided in the technical proposal, attached to this framework agreement.

**2.3.-** The promitent-performer undertakes not to transfer in total or in part the obligations undertaken under this framework agreement.

**3. Obligations of the promitent-procurer**

**3.1.-** The promitent-procurer undertakes that, based on the subsequent contracts entered with the promitent-performer, to procure the works.....in terms convened under this framework agreement.

( To specify the designation and the forecast amounts of works, as well as the CPV code.)

**3.2.-** The promitent-procurer undertakes not to initiate, throughout the period of this framework agreement, a new awarding procedure, when it intends to procure works

which represent the object of this framework agreement, except for the case in which the promitent-performer declares it has no further capacity to perform them.

**4.- Unitary price of the works**

**4.1.-** The unitary price of the works is RON.....or, as applicable, EUR ..... to which the VAT..... will be added.

**5. Forecast amount**

**5.1.-** The forecast amount of the works which will be provided based on the subsequent contracts is.....

(To specify the minimum amount for each subsequent contract.)

**6. Frame agreement period**

**6.1.-** The period of this framework agreement is..... months, commencing from.....  
(To insert the period and date.)

**6.2.-** This framework agreement terminates to produce effects from ...(To insert the date where the framework agreement terminates.)

**7. Price adjustment**

**7.1.-** The price is adjusted by using the convened adjustment formula, which will be inserted in the subsequent contract.

(If applicable, to specify the adjustment formula.)

**8. Communications**

**8.1.-**

(1)Any communication between parties, referring to the fulfilment of this framework agreement, must be sent in written form.

(2)Any written document just be registered both at the time of sending it and at the time of receiving it.

**8.2.-** Communications between parties can be made by telephone, telegramme, telex, facsimile or e-mail, subject to the written confirmation of the reception of the communication. Parties understood to enter this present framework agreement this day of ..... in two counterparts, one counterpart for each party.

(To specify the signing date by the parties and the number of counterparts.)

Promitent-procurer,  
.....  
(authorized signature)  
PS

Promitent-performer,  
.....  
(authorized signature)  
PS

**ANNEX No. 9: Form No. 9 – DATA PROCUREMENT RECORD**

**I.\_**

**a. Contracting authority**

Designation:		
Address:		
Locality:	Zip code:	Country:
Contact person Attn.....	Telephone:	
E-mail:	Facsimile:	
Internet address/addresses (if applicable): Contracting authority address:		

**b. Main activity or activities of the contracting authority**

* ministries or other central public authorities, including those subordinated at regional or local level	? central public services
* national agencies	* defence
* local authorities	* public order/national security
* other institutions governed by public law	* environment
* European institution/international organization	* economic-financial business
* others (to specify)	* health
	* constructions and territory planning
	* social protection
	* leisure, culture and religion
	* education
	* relevant activities
	- energy
	- water
	- post
	- transportation
	* others (to specify)
The contracting authority procures in the name of other contracting authorities yes <input type="checkbox"/> no <input type="checkbox"/>	

Other information and/or clarifications can be obtained.:	
	* at the address mentioned above * others: (address/facsimile/hours)
Deadlines for receiving requests of clarifications Date ...../time...../address	

Deadlines for sending the replies to clarifications
---

**c. Opposition ways**

Possible oppositions can be filed to:

- the National Council for Opposition Settlement;
- the contracting authority and then the competent court.

Designation: National Council for Opposition Settlement	
Address:	
Locality:	Zip code: Country:
E-mail:	Telephone:
Address internet:	Facsimile:

Designation: competent court	
Address:	
Locality:	Zip code: Country:
E-mail:	Telephone:
Address internet:	Facsimile:

**d. Financing source:**

To specify the financing sources of the contract that is to be awarded	As applicable, project/programme financed from communitary funds yes <input type="checkbox"/> no <input type="checkbox"/> If the answer is YES, refer to the project/programme
--	---

**II. OBJECT OF THE CONTRACT**

**1. Description**

II. 1.1) Designation of contract :		
II. 1.2) Designation of contract and location of the work, place of delivery or performance (To choose one sole category – works, products or services – which corresponds, to the greatest extent, the object of the contract or the procurement.)		
(a) Works <input type="checkbox"/>	(b) Products <input type="checkbox"/>	(c) Services <input type="checkbox"/>
Execution <input type="checkbox"/> Designing and Execution <input type="checkbox"/> Completion by any means corresponding to the requirements specified by the	Purchase <input type="checkbox"/> Leasing <input type="checkbox"/> Rental <input type="checkbox"/> Purchase instalments <input type="checkbox"/>	Service category 2A <input type="checkbox"/> 2B <input type="checkbox"/> (to which category of services the contract's object belongs:



contracting authority <input type="checkbox"/>		either from Annex 2A, or from Annex 2B.)
Main location of Works ..... CPV Code  _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	Main delivery place ..... CPV Code  _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	Main performance place ..... CPV Code  _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _
II.1.3) The procedure shall be finalized by: Public procurement contract: <input type="checkbox"/> Entering a framework agreement: <input type="checkbox"/>		
II. 1.4) Public procurement contract period years  _ _  months  _ _  days  _ _  from contract awarding or commencing from  _ _  /  _ _  /  _ _ _ _ _  (dd/mm/yyyy)		
II.1.5) Information regarding the framework agreement (if applicable)		
Framework agreement with several operators No.  _ _ _ _  or, if the case may be , No.  _ _ _ _  maxim of the participants in the referred to framework agreement	Framework agreement with one sole operator <input type="checkbox"/>	
Framework agreement period: Period in years  _ _  or months  _ _ _ _		
Possibility to resume the competition with the signatories of the framework agreement Yes <input type="checkbox"/> No <input type="checkbox"/>		
II.1.6) Division per lots Yes <input type="checkbox"/> No <input type="checkbox"/> Tenders shall be submitted for: <input type="checkbox"/> one exclusive lot <input type="checkbox"/> several lots <input type="checkbox"/> all lots Other information referring to the lots: .....		
II.1.7) Alternative tenders are accepted Yes <input type="checkbox"/> No <input type="checkbox"/>		

## 2. Amount and purpose of the contract

II.2.1) Total Services /Works performance/amounts (To include possible supplements and options, if there are.) (To specify the Annex which contains information regarding the min. - max./ amounts and purpose of the contract.) II.2.2) Options yes <input type="checkbox"/> no <input type="checkbox"/> If there are, description of the se options
--

## III. Specific conditions of the contract

III.1. Other special conditions referring to the contract (as applicable )	yes <input type="checkbox"/>	no <input type="checkbox"/>
III.1.1. Reserved contract (if YES, brief description)	yes <input type="checkbox"/>	no <input type="checkbox"/>
III.1.2. Others (if YES, please describe)		

#### IV.PROCEDURA

IV. 1) Selected procedure	
Open procedure <input type="checkbox"/>	Negotiation with participation notice <input type="checkbox"/>
Restricted procedure <input type="checkbox"/>	Negotiation without participation notice <input type="checkbox"/>
Restricted accelerated procedure <input type="checkbox"/>	Tender request <input type="checkbox"/>
Competitive dialogue <input type="checkbox"/>	Competition of solutions <input type="checkbox"/>
IV. 2) Final stage of electronic auction yes <input type="checkbox"/> no <input type="checkbox"/>	
If YES, additional information about the electronic auction ..... .....	
IV.3) Applied legislation (to be completed by the legislation in force regarding public procurements – Government Emergency Ordinance No. <u>34/2006</u> , Government Resolution No. <u>925/2006</u> , as applicable , other legal documents (see www.anrmap.ro)	

#### V. QUALIFICATION AND/OR SELECTION CRITERIA

V.1) Personal status of the candidate/tenderer	
Statement of eligibility	Mandatory requirement: (To request the forms which must be submitted.)
Statement regarding the non-classification under the provisions of art. 181 in the ordinance Requested <input type="checkbox"/> Non-requested <input type="checkbox"/>	Mandatory requirement: (To specify if the confirmation regarding the payment of the taxes and duties to the general consolidated budget is requested.)
V.2) Capacity of exercising the professional activity (registration)	
Romanian legal/natural persons	Mandatory requirement: verification certificate issued by the commercial registry office/business permit/ Others equal
Foreign legal/natural persons	Mandatory requirement: documents that prove 0 form of registration/ certification or appurtenance, professionally
V. 3) Economic – financial statement	
Information regarding the financial-account statement Requested <input type="checkbox"/> Non-requested <input type="checkbox"/>	If requested, to specify what information must be disclosed regarding: the outcome of the financial statements of the latest 3 years, stating the turnover of the last 3 years and insurance against professional risk
V.4) The technical and/or professional capacity	

Information regarding the technical capacity Requested <input type="checkbox"/> Non-requested <input type="checkbox"/>	If requested, to specify what information must be disclosed regarding: Examples: List of the main deliveries/services/works of the last 3 year/5 years in case of work Requested <input type="checkbox"/> Non-requested <input type="checkbox"/> (To request the forms which must be submitted.)
Information regarding the sub-contractors	To request, as applicable, the completion of form D by the names of subcontractors and specialization thereof
V.5). If applicable, manner of selection/pre-selection	- To clearly specify the manner of selection/pre-selection. - To provide details on the selection/pre-selection criteria.

Remark: Mark by a tick the boxes in the table adapting the qualification and/or selection criteria in correlation with the specificity/complexity/ implicit risks which derive from the object of the contract which is to be awarded, as well as according to the Selected procedure.

## VI. PRESENTATION OF THE TENDER

VI.1) Language in which the tender is drafted	To specify the Romanian language and/or an international language.
VI.2) Period of validity of the tender	To specify a period of validity estimated as being sufficient for the finalization within a reasonable period necessary for evaluation and signing the contract.
VI.3) Participation guarantee Requested <input type="checkbox"/> Non-requested <input type="checkbox"/>	If requested, to specify: - the amount of the participation guarantee - a fix amount equal to maximum 2 % of the estimated value of the contract which is to be awarded; - periods of validity of the participation guarantee which must be at least equal to the period of validity of the tender; - form of establishment of the participation guarantee which will be accepted, in case of the bank guarantee letter, to specify the completion thereof according to Form No. 11.
VI.4) Manner of presentation of the technical proposal	To indicate the forms that must be completed so that the information contained in the technical proposal should enable the easy identification of correspondence with the minimum technical specifications in the specifications' book Note: In the event where the awarding criterion

	is "the economically best profitable tender ", the elements of the technical proposal shall be presented thoroughly and completely in correlation with the evaluation factors, described by the calculation algorithm. It is possible to request the completion of a table containing technical characteristics/ specifications, other requirements to fulfil, specifying the related Form
VI.5) Manner of presentation of the financial proposal	To specify the payment deadlines, as well as any other elements required for the elaboration of the financial proposal. To indicate the Forms which must be completed and/or other Forms which contain details on the cost items which compose the financial proposal. Forms are elaborated so that to enable the adequate calculation of the score attached to the financial proposal.
VI.6) Manner of presentation of the tender	To specify Contracting authority's address, designation of the compartment/office which makes the registration (room, person in charge). To specify the deadline for tender submission, the day/month/year respectively – deadline hour. To provide details on the manner of presentation/ packing/ sealing/ tagging of the envelopes containing documents, as well as of the samples/ sketches, as applicable .
VI.7) Deadline for tender submission	dd/mm/year/time
VI.8) Possibility of withdrawal and modification of the tender	To specify the conditions of modification and withdrawal of the tender in correlation with the tender submission deadline. To specify the circumstances in which the tenders are adjudicated delayed (submission at another address/submission after the deadline-time and time, specified at section VI.7)
VI.9) Description of the tenders	Date, time and place of opening the tenders. Conditions for the participants in the opening session.

## VII. AWARDING CRITERIA

VII.1) The lowest price  _
VII.2) The most profitable economic tender  _

Evaluation factor	Weight	Evaluation factor	Weight.....
1.....	.....	6.....	.....
2.....	.....	7.....	.....
3.....	.....	8.....	.....
4.....	.....	9.....	.....
5.....	.....	10.....	.....

Details regarding the application of the calculation algorithm.....

.....

.....

.....

### VIII. AWARDING THE CONTRAT/ENTERING THE FRAMEWORK AGREEMENT

VIII.1) Contract price adjustment yes <input type="checkbox"/> no <input type="checkbox"/>	If YES, to specify the manner of adjustment of the contract price
VIII.2). The contract good execution guarantee yes <input type="checkbox"/> no <input type="checkbox"/>	If YES, to specify: - the amount of the good execution guarantee expressed in percentage and no more than 10%; - manner of establishment of the good performance guarantee.

#### ANNEX No. 10<sup>A</sup>: Form No. 10 A – TENDER FORM

Economic operator

.....

(Designation/name)

To..... (designation of the contracting authority and complete address)

Sirs,

1. Reviewing the awarding documentation, the underwritten, representatives of the tenderer .....(Designation/name of the tenderer), hereby offer that, in accordance with the provisions and requirements contained in the above mentioned documentation, to supply/rent/supply in leasing with a call option/ to supply in leasing without a call option (to remove the inapplicable options) ..... (products designation), for the amount of .....(amount in letters and figures, as well as the currency of the tender ), payable after hand-over of the Products in monthly or quarterly instalments (to remove the inapplicable options), to which the value added tax is attached, in amount of..... (amount in letters and in figures.)

2. We undertake, in case where our tender is established successful, to supply the products within the time schedule attached.

3. We undertake to maintain this tender valid for a duration of..... days, (duration in letters and figures), until the date of .....(day/month/year) respectively, and

it will remain mandatory for us and can be accepted any time before the expiration of the validity period.

4. Until the signing of the public procurement contract, together with the communication sent by you, whereby our tender has been established successful, shall represent a binding contract between us.

5. We specify that:

we hereby submit an alternative tender, the details of which are submitted in a separate tender Form, clearly marked as "alternative";

we do not submit an alternative tender.

(To mark by a tick the corresponding option.)

6. We understand and consent that, in case where our tender is established as being successful, to establish the good execution guarantee in accordance with the provisions contained in the awarding documentation.

7. We understand that you are not obligated to accept the tender with the lowest price or any other tender which you can receive.

Date \_\_/\_\_/\_\_\_\_

....., (signature), in capacity of .....duly authorized to sign the tender for and in the name of .....(Designation/name of the economic operator)

**ANNEX No. 10<sup>B</sup>: Form No. 10B – TENDER FORM**

Economic operator

.....

(Designation/name)

To..... (designation of the contracting authority and complete address)

Sirs,

1. Reviewing the awarding documentation, the underwritten, representatives of the tenderer .....(Designation/name of the tenderer), hereby offer that, in accordance with the provisions and requirements contained in the above mentioned documentation, to provide the services..... (designation of the services), for the amount of .....(amount in letters and figures, as well as the currency of the tender ), payable after hand-over of the service to which the value added tax is attached, in amount of..... (amount in letters and in figures.)

2. We undertake, in case where our tender is established successful, to provide the services within the time schedule attached.

3. We undertake to maintain this tender valid for a duration of..... days, (duration in letters and figures), until the date of .....(day/month/year) respectively, and it will remain mandatory for us and can be accepted any time before the expiration of the validity period.

4. Until the signing of the public procurement contract, together with the communication sent by you, whereby our tender has been established successful, shall represent a binding contract between us.

5. We specify that:

we hereby submit an alternative tender, the details of which are submitted in a separate tender Form, clearly marked as "alternative";

we do not submit an alternative tender.

(To mark by a tick the corresponding option.)

6. We understand and consent that, in case where our tender is established as being successful, to establish the good execution guarantee in accordance with the provisions contained in the awarding documentation.

7. We understand that you are not obligated to accept the tender with the lowest price or any other tender which you can receive.

Date    /    /   

....., (signature), in capacity of .....duly authorized to sign the tender for and in the name of .....(Designation/name of the economic operator)

**ANNEX No. 10<sup>C</sup>: Form No. 10C - TENDER FORM**

Economic operator

.....  
(Designation/name)

To ..... (designation of the contracting authority and complete address)

Sirs,

1. Reviewing the awarding documentation, the underwritten, representatives of the tenderer .....(Designation/name of the tenderer), hereby offer that, in accordance with the provisions and requirements contained in the above mentioned documentation, to execute the works..... (designation of the works), for the amount of .....(amount in letters and figures, as well as the currency of the tender), payable after hand-over of the works to which the value added tax is attached, in amount of..... (amount in letters and in figures.)

2. We undertake, in case where our tender is established successful, to commence the works as soon as possible after the reception of the commencement order and to finalize the works in accordance with the time schedule attached.

3. We undertake to maintain this tender valid for a duration of..... days, (duration in letters and figures), until the date of ..... (day/month/year) respectively, and it will remain mandatory for us and can be accepted any time before the expiration of the validity period.

4. Until the signing of the public procurement contract, together with the communication sent by you, whereby our tender has been established successful, shall represent a binding contract between us.

5. We specify that:

we hereby submit an alternative tender, the details of which are submitted in a separate tender Form, clearly marked as "alternative";

we do not submit an alternative tender.

(To mark by a tick the corresponding option.)

6. We understand and consent that, in case where our tender is established as being successful, to establish the good execution guarantee in accordance with the provisions contained in the awarding documentation.

7. We understand that you are not obligated to accept the tender with the lowest price or any other tender which you can receive.

Date \_\_\_/\_\_\_/\_\_\_

....., (signature), in capacity of .....duly authorized to sign the tender for and in the name of .....(Designation/name of the economic operator)

**ANNEX No. 11: Form No. 11 – BANK GUARANTEE LETTER for participation with a tender in the procedure of awarding the public procurement contract**

BANK

.....  
(Designation)

To ..... (designation of the contracting authority and complete address)

Regarding the procedure for awarding the contract i ..... (Designation of the public procurement contract), the underwritten ..... (Bank designation),headquartered in ..... (Bank address), undertake to..... (designation of the contracting authority) to pay the amount of .....(in letters and in figures ), at the submission of its first written application and without this to be obligated to substantiate its respective application, provided that, in its application the contracting authority should specify that the amount requested by it and outstanding thereto is because of the existence of one or several of the following events:

- a) the tenderer ..... (Designation/name) has withdrawn its tender within the period of its validity;
- b) its tender having been established successful, the tenderer ..... (Designation/name) has not established the good execution guarantee within the period of the tender's validity;
- c) its tender having been established successful, the tenderer..... (Designation/name) denied signing the public procurement contract within the period of validity of the tender.

This guarantee is valid until \.....

Sealed by the bank ..... (authorized signature) on ..... month ..... year .....

**ANNEX No. 12<sup>A</sup>: Form No. 12A – STATEMENT OF ELIGIBILITY**

Economic operator

.....  
(Designation/name)

The underwritten, authorized representative of ..... (Designation/name and headquarters/address of the economic operator), hereby declare on my own liability, subject to the sanction of exclusion from the procedure and subject to the sanctions enforced upon the act of forgery in public documents, that I am not in the event provided



in art. 180 in Government Emergency Ordinance No. **34/2006** regarding the awarding of the public procurement contracts, of the public works concession contracts and of the service concession contracts, approved with amendments and supplements under Law No. **337/2006**, I have not been, during the last 5 years, sentenced under final judicial ruling of a court for having participated in activities of criminal organizations, for corruption fraud and/or money laundering respectively.

The underwritten hereby declare that the information supplied are complete and accurate in every detail and understand that the contracting authority is entitled to request, for the purpose of verification and confirmation of the statements, any supporting documents which I hold.

Date of completion.....

Economic operator,

.....  
(authorized signature)

**ANNEX No. 12<sup>B</sup>: Form No. 12 B – STATEMENT regarding the non-classification in the events provided in art. 181 in Government Emergency Ordinance No. 34/2006**

Economic operator

.....  
(Designation/name)

The underwritten (a) .....(Designation/name of the economic operators), in capacity of tenderer/candidate/competitor in the procedure (to mention the procedure) for awarding the public procurement contract having as object..... (designation of product/service/work and CPV code),on .....(day/month/year), organized by ..... (designation by a judicial receiver on of the contracting authority), hereby declare on my own liability:

a) that I am not under bankruptcy or winding-up, that my business is not run by a judicial receiver or my commercial activities are not suspended and do not represent the object of a composition with the creditor. Also, I am not in a situation similar to the previous, regulated under the law;

b) I am not the object of a legal procedure for being adjudicated in one of the events provided in letter. a);

c) I fulfilled the payment obligations related to taxes, duties and social insurance contributions to the component budgets of the consolidated general budget, in accordance with the legal provisions in force in Romania or in the country where I have been settled until the requested date.....;

d) I have not been sentenced, during the last 3 years, under final ruling of a court, for an act which prejudiced professional ethics or for having committed professional mistakes.

The underwritten hereby declare that the information supplied is complete and accurate in every detail and I understand that the contracting authority is entitled to request, for the purpose of verification and confirmation of statements, any supporting documents I hold. I understand that I in case this statement is not conformant to the facts I am liable for the violation of the provisions of criminal legislation regarding false statements.

Economic operator

.....  
(authorized signature)

**ANNEX No. 12<sup>C</sup>: Form No. 12C – STATEMENT REGARDING THE CAPACITY OF PARTICIPANT IN THE PROCEDURE**

Economic operator

.....  
(Designation/name)

**1.** The underwritten, authorized representative of .....  
(designation of the economic operator), hereby state on my own liability, subject to the sanction enforced for the act of forgery in public documents, that, at the procedure for the awarding of the public procurement contract ..... (to mention the procedure), having as object..... (designation of the product/service or work and CPV code), on.....(day/month/year), organized by ..... (designation of the contracting authority), hereby participate and submit the tender:

- in my own name;
- as associate with an association.....;
- as a sub-contractor of.....;

(To mark the corresponding option by a tick.)

**2.** The underwritten declare that:

- I am not a member of any group or network of economic operators;
- I am a member in the group or network the list with acknowledgement data I hereby present in annex.

( To mark the corresponding option by a tick.)

**3.** The underwritten hereby declare I shall promptly inform the contracting authority if modifications will arrive about any point throughout the progress of the procedure of awarding the public procurement contract or, in case we shall be designated successful, throughout the progress of the public procurement contract.

**4.** I also declare that the information supplied is accurate and complete in every detail and that I understand that the contracting authority is entitled to request, for the purpose of verification and confirmation of the declarations, statements and documents attached to the tender, any additional information for the purpose of verification of the data in this statement.

**5.** The underwritten hereby authorize any institution, trade company, bank, and other legal persons to supply information to the authorized representatives of ..... (designation and address of the contracting authorities) regarding any technical or financial aspects related to our activity.

Economic operator

.....  
(authorized signature)

**ANNEX No. 12<sup>D</sup>: Form No. 12 D - STATEMENT REGARDING THE LIST OF THE MAIN DELIVERIES OF PRODUCTS DURING THE LAST 3 YEARS**

Economic operator

.....

(Designation/name)

The underwritten, authorized representative of .....

(Designation/name and headquarters/address of the candidate/tenderer), declare on my own liability, subject to the sanctions enforced upon the act of forger in public documents, that the data presented in the table attached are true.

The underwritten declare that the information supplied is accurate and complete in every detail and that I understand that the contracting authority is entitled to request, for the purpose of verification and confirmation of the declarations, statements and documents attached to the tender, any additional information for the purpose of verification of the data in this statement.

The underwritten hereby authorize any institution, trade company, bank, and other legal persons to supply information to the authorized representatives of ..... (designation and address of the contracting authorities) regarding any technical or financial aspects related to our activity

Economic operator

.....

(authorized signature)

Crt No.	Contract object	CPV Code	Designation/name of the beneficiary/customer Address	Capacity of the supplier <sup>*)</sup>	Total price of the contract	Percentage fulfilled by the supplier (%)	Amount (U.M.)	Contract fulfilment period <sup>**)</sup>
	1	2	3	4	5	6	7	8
1								
2								
.....								

Economic operator

.....

(authorized signature)

<sup>\*)</sup> To specify the capacity in which it participated in the fulfilment of the contact, which can be: sole contractor or head contractor (head of association); associate contractor, sub-contractor.

<sup>\*\*)</sup> To specify the date of commencement and date of finalization of the contract.

**ANNEX No. 12<sup>E</sup>: Form No. 12 E - STATEMENT REGARDING THE LIST OF THE MAIN SERVICE PROVIDINGS DURING THE LAST 3 YEARS**

Economic operator

.....

(Designation/name)

The underwritten, authorized representative of .....

(Designation/name and headquarters/address of the candidate/tenderer), declare on my own liability, subject to the sanctions enforced upon the act of forger in public documents, that the data presented in the table attached are true.

The underwritten declare that the information supplied is accurate and complete in every detail and that I understand that the contracting authority is entitled to request, for the purpose of verification and confirmation of the declarations, statements and documents attached to the tender, any additional information for the purpose of verification of the data in this statement.

The underwritten hereby authorize any institution, trade company, bank, and other legal persons to supply information to the authorized representatives of ..... (designation and address of the contracting authorities) regarding any technical or financial aspects related to our activity.

Economic operator

.....  
(authorized signature)

Crt. No.	Contract object	CPV Code	Designation/name of the beneficiary/customer Address	Capacity of the provider <sup>*)</sup>	Total price of the contract	Percentage fulfilled by the provider (%)	Quantity (U.M.)	Contract fulfilment period <sup>**)</sup>
	1	2	3	4	5	6	7	8
1								
2								
.....								

Economic operator

.....  
(authorized signature)

<sup>\*)</sup> To specify the capacity in which it participated in the fulfilment of the contact, which can be: sole contractor or head contractor (head of association); associate contractor, sub-contractor.

<sup>\*\*)</sup> To specify the date of commencement and date of finalization of providing the service.

**ANNEX No. 12<sup>F</sup>: Form No. 12 F - STATEMENT REGARDING THE LIST OF THE MAIN WORKS EXECUTED DURING THE LAST 3 YEARS**

Economic operator

.....

(Designation/name)

The underwritten, authorized representative of .....

(Designation/name and headquarters/address of the candidate/tenderer), declare on my own liability, subject to the sanctions enforced upon the act of forger in public documents, that the data presented in the table attached are true.

The underwritten declare that the information supplied is accurate and complete in every detail and that I understand that the contracting authority is entitled to request, for the purpose of verification and confirmation of the declarations, statements and documents attached to the tender, any additional information for the purpose of verification of the data in this statement.

The underwritten hereby authorize any institution, trade company, bank, and other legal persons to supply information to the authorized representatives of ..... (designation and address of the contracting authorities) regarding any technical or financial aspects related to our activity.

Economic operator

.....

(authorized signature)

Crt. No.	Contract object	CPV Code	Designation/name of the beneficiary/customer Address	Capacity of the performer <sup>*)</sup>	Total price of the contract	Executed percentage (%)	Quantity (U.M.)	Contract fulfilment period <sup>**)</sup>
	1	2	3	4	5	6	7	8
1								
2								
.....								

Economic operator

.....

(authorized signature)

<sup>\*)</sup> To specify the capacity in which it participated in the fulfilment of the contact, which can be: sole contractor or head contractor (head of association); associate contractor, sub-contractor.

<sup>\*\*)</sup> To specify the date of commencement and date of finalization of the works.

**ANNEX No. 12<sup>G</sup>: Form No. 12 G – STATEMENT REGARDING THE PART /PARTS OF THE CONTRACT WHICH ARE FULFILLED BY SUBCONTRACTORS AND THE SPECIALIZATION THEREOF**

Economic operator

.....  
(Designation/name)

The underwritten, authorized representative of .....

(Designation/name and headquarters/address of the candidate/tenderer), declare on my own liability, subject to the sanctions enforced upon the act of forger in public documents, that the data presented in the table attached are true.

The underwritten declare that the information supplied is accurate and complete in every detail and that I understand that the contracting authority is entitled to request, for the purpose of verification and confirmation of the declarations, statements and documents attached to the tender, any additional information for the purpose of verification of the data in this statement.

The underwritten hereby authorize any institution, trade company, bank, and other legal persons to supply information to the authorized representatives of

..... (designation and address of the contracting authorities) regarding any technical or financial aspects related to our activity.

Economic operator

.....  
(authorized signature)

Crt. No.	Designation of the subcontractor	Part /parties of the contract that are to be outsourced	Accord sub-contractor or under specimen of signature

Economic operator

.....  
(authorized signature)

**ANNEX No. 12<sup>H</sup>: Form No. 12 H – STATEMENT REGARDING THE OUTFITS, PLANTS, TECHNICAL EQUIPMENT WHICH THE ECONOMIC OPERATOR HOLDS FOR THE ADEQUATE FULFILMENT OF THE WORK CONTRACT**

Economic operator

.....  
(Designation/name)

The underwritten, authorized representative of .....

(Designation/name and headquarters/address of the candidate/tenderer), declare on my own liability, subject to the sanctions enforced upon the act of forger in public documents, that the data presented in the table attached are true.

The underwritten declare that the information supplied is accurate and complete in every detail and that I understand that the contracting authority is entitled to request, for the purpose of verification and confirmation of the declarations, statements and documents attached to the tender, any additional information for the purpose of verification of the data in this statement.

The underwritten hereby authorize any institution, trade company, bank, and other legal persons to supply information to the authorized representatives of ..... (designation and address of the contracting authorities) regarding any technical or financial aspects related to our activity.

Economic operator

.....  
(authorized signature)

LIST containing the quantities of outfits, plants and technical equipment

Crt. No.	Designation outfit/plant/equipment	U.M.	Quantity	Form of holding	
				Ownership	Under rent
1.					
2.					

Economic operator

.....  
(authorized signature)

**ANNEX No. 12<sup>1</sup>: Form No. 12 I – STATEMENT REGARDING THE ANNUAL AVERAGE EMPLOYED STAFF AND OF THE MANAGERIAL STAFF**

Economic operator

.....  
(Designation/name)

The underwritten, authorized representative of .....  
(Designation/name and headquarters/address of the candidate/tenderer), declare on my own liability, subject to the sanctions enforced upon the act of forger in public documents, that the data presented in the table attached are true.

The underwritten declare that the information supplied is accurate and complete in every detail and that I understand that the contracting authority is entitled to request, for the purpose of verification and confirmation of the declarations, statements and documents attached to the tender, any additional information for the purpose of verification of the data in this statement.

The underwritten hereby authorize any institution, trade company, bank, and other legal persons to supply information to the authorized representatives of ..... (designation and address of the contracting authorities) regarding any technical or financial aspects related to our activity.

	Year 1	Year 2	Year 3
Employed staff			
Of which the managerial staff			

(In case of request)

I hereby attach to the statement the CVs of the managerial staff, as well as those of the personnel in charge with the fulfilment of the public procurement contract.

Fill-in date.....

Economic operator

.....  
(authorized signature)

**ANNEX No. 13: Form No. 13 - STATEMENT of confidentiality and impartiality**

The underwritten ....., member/expert co-opted in the in the evaluation commission/board for the awarding of..... (product name, service or works and CPV Code ).....,in the procedure..... (Designation of the procedure/modality of awarding the public procurement contract), organized by.....(designation of the contracting authority),

pursuant to art. 75 in Government Resolution No. 925/2006 for the approval of the norms of implementation of the provisions referring to the awarding of the public procurement contract Government Emergency Ordinance No. 34/2006 regarding the awarding of the public procurement contracts, of the public works concession contracts and of the service concession contracts, approved with amendments and supplements under Law No. 337/2006, hereby declare on my own liability, subject to the sanction of forgery in statements, the following:

- a) I do not hold social parts, ownership interests, shares in the subscribed capital of one of the tenderers/ competitors/ candidates or subcontractors;
- b) I am not part of the board of directors/body of management or supervision of any of the tenderers/competitors/candidates or subcontractors;
- c) I have no capacity of husband/wife, relation or kin, up to the fourth degree inclusively, with persons who are part of the board of directors/body of management or supervision of any of the tenderers/competitors/candidates or subcontractors;

**d)** I have no interest whatsoever to impair the impartiality throughout the process of verification/evaluation of candidacies/tenders.

At the same time, I hereby undertake to keep confidentiality on the contents of the tenders/candidacies, as well as on other information presented by economic operators, the disclosure of which might impair the right thereof to protect their intellectual property or trade secrets, as well as upon the works of the evaluation committee/board.

I understand that in case I shall disclose such information I am liable for the violation of the provisions of Government Emergency Ordinance No. 34/2006, approved with amendments and supplements under Law No. 337/2006, of civil and criminal legislation\.



Member of the evaluation committee,  
 .....  
 (authorized signature)

Warning! The statement shall be filled in on the day of opening the tenders/candidacies by the members of the committee.  
 In case where a member of the committee/board is in one of the events in incompatibility provided at letter a)-d), then this shall be self-notified in written form, the contracting authority being bound to substitute him forthwith.

**ANNEX No. 14: Form No. 14 – MINUTES of the tender opening meeting**

Entered this day of ....., on the occasion of opening the tenders submitted in view of:

- awarding the public procurement contract
  - entering the framework agreement
- (to mark the applicable option by a tick)

having as object .....

CPV Code .....

The evaluation committee nominated under .....No. ....of .....,  
 composed of:

- ....., chairman
- ....., member
- ....., member

proceeded this day of ....., time ....., at the headquarters of the contracting authority, at the opening of the submitted bids.

The chairman of the evaluation committee declares the tender opening meeting open and reads the composition of the committee.

Chairman of the evaluation committee specifies that, in accordance with the provisions of art. .... in Government Emergency Ordinance No. **34/2006** regarding the awarding of the public procurement contracts, of the public works concession contracts and of the service concession contracts, approved with amendments and supplements under Law No. **337/2006**, was elected the procedure of "....."

Designation/name of the candidates/tenderers:

- 1.S.C. ....
- 2.S.C. ....
- 3.S.C. ....

Submitted alternative tenders, if that was permitted:

- 1.S.C. ....
- 2.S.C. ....
- 3.S.C. ....

Designation of economic operators the tender of which was rejected at the opening:

Crt. No.	Designation of Economic operator	Reason of the rejection	
		Delayed tender	Absence of the participation guarantee

1.			
2.			
3.			

The chairman of the evaluation committee declares the benchmark rate which will serve for comparison basis of prices when evaluating the tenders submitted in another currency, as being .....

The chairman of the evaluation committee opens the envelopes which contain:

- the qualification documents
- the technical proposal
- the financial proposal

Prices of offers are:

Crt. No.	Designation of the tenderer	Price of the tender
1.		
2.		
3-		

Documents of qualification presented by tenderers:

TENDERERS Documents	S.C.	S.C.	S.C.	S.C.	S.C.	S.C.	S.C.	S.C.	S.C.	S.C.	S.C.	S.C.	S.C.

The chairman of the evaluation committee declares the works of the tender opening meeting closed, and the members of the commission will review in details the tenders submitted in accordance with the provisions of the awarding documentation and set forth the successful tender.

**EVALUATION COMMITTEE**

.....chairman ..... (signature)  
 ..... member ..... (signature)  
 ..... member ..... (signature)

**REPRESENTATIVES OF THE TENDERERS**

S.C..... / ..... (signature)  
 S.C..... / ..... (signature)  
 S.C..... / ..... (signature)  
 S.C..... / ..... (signature)  
 S.C..... / ..... (signature)

**ANNEX No. 15: Form No. 15**  
 (Designation and headquarters of the contracting authority)

**REPORT ON THE PROCEDURE**

for the awarding of the public procurement contract

for entering the framework agreement

(to mark the applicable option by a tick)

having as object .....

CPV Code .....

Financing source.....

A Notice of intention was published (if applicable)

Yes

No

The notice for participation was published on ..... in.....

The invitation of participation was sent on ..... To \ to the following economic operators

1.....

2.....

3.....

The evaluation committee, nominated under....., (administrative act of nomination) composed of :

....., chairman

....., member

....., member

proceeded on....., at .....hrs, to open the candidacies/tenders.

A:

candidacy

tender

was submitted by the following economic operators:

1.S.C. ....

2.S.C. ....

3.S.C. ....

Following the evaluation of candidacies:

Designation/name of non-selected candidates (if applicable):

Crt. No.	Designation of non-selected candidates	Reason of non-selection
1.		
2.		
3.		

Designation of the selected candidates:

Crt. No.	Designation of the selected candidates
1.	
2.	

3.	
----	--

Alternative tenders were received from:

- 1.S.C. ....
- 2.S.C. ....
- 3.S.C. ....

The following economic operators were rejected in the tender opening meeting:

Crt. No.	Designation of the economic operator	Reason of the rejection	
		Delayed tender	Absence of the participation guarantee
1.			
2.			
3.			

The benchmark rate based upon which prices were compared for evaluation of tenders submitted in another currency was .....

Prices read in the tender opening meeting :

Crt. No.	Designation of the tenderer	Price of the tender
1.		
2.		
3-		

Following the review of tenders, the following were revealed:

Designation/name of the rejected tenderers and reasons upon which this decision was based:

Crt. No.	Designation of tenderers	Decision	
		Accepted	Rejected
1.			
2.			
3.			

Material reasons for which one or several tenders were rejected following the consideration of price presented as being unusually low (if applicable).

Following the evaluation of the tenders the following were revealed:

Crt. No.	Designation of the tender	Qualified as	Decision (to be filled in by accepted/rejected)
1.	Tender submitted by S.C. .....		
2.			
3.			

(For "qualified as" it is to mention the non-conformant/unacceptable/admissible tender.)  
 The following outcome was obtained after the application of the awarding criteria:

Crt. No.	Designation of the tender	Hierarchy
1.	Tender submitted by S.C. .....	
2.		
3.		

Seeing those above mentioned, the Evaluation Committee  
**DECIDES**

In accordance with Government Emergency Ordinance No. **34/2006** regarding the awarding of the public procurement contracts, of the public works concession contracts and of the service concession contracts, approved with amendments and supplements under Law No. **337/2006**,

the successful tender is. ....,with a tender of RON....., EUR..... respectively, VAT excluded, and with a period of ..... calendar days.

Of applicable, the part of the contract which this/these declared to outsource together with ..... (Designation/ name of the subcontractors) will be specified.

Therefore, this present Report on the awarding procedure was concluded in 2 (two) counterparts this day of ....., at the headquarters of the contacting authority.

If applicable, the substantiation of the decision of annulment of the awarding procedure: ..... (reasons)

**EVALUATION COMMITTEE,**

..... (first and last name) chairman..... (signature)

..... (first and last name) member..... (signature)

..... (first and last name) member..... (signature)

**ANNEX No. 16<sup>A</sup>: Form No. 16 A - OPEN PROCEDURE**

Steps to follow

**1. Identification of the requirements and of the necessary funds**

Evidence:

- Report on the requirements
- Budget leaf/ credit obtaining approval

**2. Choosing the open procedure**

Evidence:

- Report on the requirements which contains the estimation of the contract value
- Position in the annual programme of public procurements

**3. Sending the notice of intention for publication, if applicable**

Evidence:

- Application for publication of the notice
- Excerpt from the Official Gazette/SEAP/JOUE containing the published notice

**4. Elaboration of the awarding documentation:**

- elaboration of the specifications' book;
- elaboration of the contractual terms;
- establishment of the minimum requirements of qualification referring to the economic and financial statement or to the technical and/or professional capacity and elaboration of the explanatory note;
- establishment of the criterion for awarding and elaboration of the explanatory note regarding this;
- 

Evidence:

- Explanatory note for the establishment of the minimum requirements of qualification referring to the economic and financial statement or to the technical and/or professional capacity
- Explanatory note for the establishment of the awarding criterion
- Approved documentation for awarding

Warning! Do not forget the request addressed for the Unit for Coordination and Verification of Public Procurements within the Ministry of Public Finances, according to the provisions of the Government Emergency Ordinance No. **30/2006!**

**5. Sending the participation notice for publication**

Evidence:

- Application for publication of the notice
- Excerpt from the Official Gazette/SEAP/JOUE containing the published notice

**6. Nomination of the evaluation committee**

Evidence:

- Administrative document for nomination of the evaluation committee
- Explanatory note regarding the co-option of independent experts, if applicable

**7. Making available the awarding documentation to the economic operators**

**8. Period of waiting:**

- receipt of requests for clarifications and sending the replies;

Evidence:

- notes regarding the registered requests for clarifications
- notes regarding the replies to the requests for clarifications
- elaboration of tenders;
- reception of oppositions, if applicable;

Evidence:

- Submitted opposition, with a registration number
- CNSC Decision or, as applicable, substantiated resolution
- tender submission;

Evidence:

- List containing the tenderers, tender registration number, date and time of registration
- filling in the statements regarding confidentiality and conflict of interests.

Evidence:

- Statements filled in by the members of the evaluation committee and co-opted independent experts

**9.** In case of emergence of a conflict of interest, decision is made as to the modification of the evaluation committee and the legal documentation for the nomination thereof shall be amended.

Evidence:

- Statements filled in by the members of the evaluation committee
- Amended legal document for the nomination of the evaluation committee

**10.** Conducting the opening meeting:

- drafting the tender opening report.

Evidence:

-

**11.** Review and evaluation of tenders:

- verification of the conditions of :
  - eligibility;
  - qualification;
  - technical and financial correspondence;
- request for clarifications regarding the tender, if applicable ;
- application of the awarding criterion;
- establishment of the successful tender;
- elaboration of the report and approval thereof.

Evidence:

- If applicable, the intermediary evaluation report
- Tender evaluation report

**12.** Transmission of communications regarding the outcome of the awarding procedure

Warning! Communication regarding the outcome of the awarding procedure to tenderers the tender of which was adjudicated unsuccessful must substantiate this decision and indicate the name of the successful tenderer.

In case of tenders declared admissible, the respective communication must also indicate the characteristics and advantages referring to the successful tender as compared to the tender of the respective tenderer.

Evidence:

- Communications to tenderers

**13.** Period of waiting:

- reception of oppositions, if applicable.

Evidence:

- Submitted opposition, with a registration number
- CNSC Decision or, as applicable, substantiated resolution

#### **14. Contract signing**

Evidence:

- Original signed contract

#### **15. Sending the awarding notice for publication**

Evidence:

- Application for publication of the notice
  - Excerpt from the Official Gazette/SEAP/JOUR containing the published notice
- Recommendation: Documents representing evidence of completion of each step of the procedure represent leaves of the public procurement dossier.

Warning! Each document must have a registration number in the chronological number of drafting.

### **ANNEX No. 16<sup>B</sup>: Form No. 16B - RESTRICTED PROCEDURE**

Steps to follow

#### **1. Identification of the requirements and of the necessary funds**

Evidence:

- Report on the requirements
- Budget leaf/ credit obtaining approval

#### **2. Choosing the restricted procedure**

Evidence:

- Report on the requirements which contains the estimation of the contract value
- Position in the annual programme of public procurements

#### **3. Sending the notice of intention for publication, if applicable**

Evidence:

- Application for publication of the notice
- Excerpt from the Official Gazette/SEAP/JOUR containing the published notice

#### **4. Elaboration of the awarding documentation and setting forth the selection criteria:**

- setting forth the selection criteria;

Warning! Selection criteria can refer only to the economic and financial statement and/or to the technical and/or professional capacity .

- elaboration of the specifications' book;
- elaboration of the contractual terms;
- establishment of the minimum requirements of qualification referring to the economic and financial statement or to the technical and/or professional capacity and elaboration of the explanatory note;



- establishment of the criterion for awarding and elaboration of the explanatory note regarding this;
- finalization of the procurement data record.

Evidence:

- Explanatory note for the establishment of the minimum requirements of qualification referring to the economic and financial statement or to the technical and/or professional capacity
- Explanatory note for the establishment of the awarding criterion
- Approved documentation for awarding

Warning! Do not forget the request addressed for the Unit for Coordination and Verification of Public Procurements within the Ministry of Public Finances, according to the provisions of the Government Emergency Ordinance No. **30/2006!**

**5.** Sending the participation notice for publication which contains the criteria for the selection of candidates and minimum number of candidates which will be selected

Warning! Minimum number of selected candidates cannot be lower than 5.

Evidence:

- Application for publication of the notice
- Excerpt from the Official Gazette/ SEAP/JOUE containing the published notice

**6.** Nomination of the evaluation committee

Evidence:

- Administrative document for nomination of the evaluation committee
- Explanatory note regarding the co-option of independent experts, if applicable

**7.** Period of waiting:

- receipt of requests for clarifications and sending the replies;

Evidence:

- Notes regarding the registered requests for clarifications
- Notes regarding the replies to the requests for clarifications
- reception of oppositions, if applicable;

Evidence:

- Submitted opposition, with a registration number
- CNSC Decision or, as applicable, substantiated resolution
- candidacy submission;

Evidence:

- List with the candidates, number of registration of candidacies, date and time of registration
- filling in the statements regarding confidentiality and conflict of interests by the members of the evaluation committee, including by the co-opted experts

Evidence:

- Statements filled in by the members of the evaluation committee and co-opted independent experts

**8.** In case of emergence of a conflict of interest, decision is made as to the modification of the evaluation committee and the legal documentation for the nomination thereof shall be amended.

Evidence:

- Statements filled in by the members of the evaluation committee
- Amended legal document for the nomination of the evaluation committee

**9.** Candidacies review:

\*verification of the conditions of :

- eligibility;
- qualification;
- \* application of the selection score;
- \* request for clarifications regarding the submitted candidacies;
- \* candidates selection;

Warning! Number of selected candidates must be at least equal to the minimum number indicated in the participation notice.

Warning! If the minimum number of selected candidates is lower than the minimum number indicated in the participation notice, then the contracting authority is entitled:

- to annul the procedure;
- to continue the procedure only with the pre-selected candidates, if the number thereof is lower than 3.

\* elaboration of the report regarding the selection of candidates by the evaluation committee and forwarded for approval to the head of the unit.

Evidence:

- If applicable, the intermediary evaluation report
- Report regarding the candidates selection, approved

**10.** Information of the candidates regarding the outcome of the first stage

Warning! Non-selected candidates shall be communicated the reasons for rejection of their candidacy.

Evidence:

- Communications to candidates

**11.** Sending the invitation for participation and of the awarding documentation to the selected candidates

Evidence:

- Invitations of participation to the selected candidates

**12.** Period of waiting:

- receipt of requests for clarifications and sending the replies;

Evidence:

- Notes regarding the registered requests for clarifications

- Notes regarding the replies to the requests for clarifications
- Elaboration of tenders;
- reception of oppositions, if applicable;

Evidence:

- Submitted opposition, with a registration number
- CNSC Decision or, as applicable, substantiated resolution
- tender submission.

Evidence:

- List containing the tenderers, tender registration number, date and time of registration

**13. Conducting the opening meeting:**

- drafting the tender opening report.

Evidence:

- Tender opening report

**14- Review and evaluation of tenders**

- verification of technical and financial correspondence;
- request for clarifications regarding the tender, if applicable ;
- application of the awarding criterion;
- establishment of the successful tender;
- elaboration of the report and approval thereof.

Evidence:

- If applicable, the intermediary evaluation report
- Tender evaluation report

**15. Transmission of communications regarding the outcome of the awarding procedure**

**Warning!**

Communication regarding the outcome of the procedure of awarding to the tenderers the tender of which was declared unsuccessful must substantiate this decision and indicate the name of the successful tenderer.

In case of tenders declared admissible, the respective communication must also indicate the relative characteristics and benefits of the successful tender as compared to the tender of the respective tenderer.

Evidence:

- Communications to tenderers

**16. Period of waiting:**

- reception of oppositions, if applicable.

Evidence:

- Submitted opposition, with a registration number
- CNSC Decision or, as applicable, substantiated resolution

**17. Contract signing**

Evidence:

- Original signed contract

### **18. Sending the awarding notice for publication**

Evidence:

- Application for publication of the notice
- Excerpt from the Official Gazette/SEAP/JOUR containing the published notice

Recommendation: Documents representing evidence of completion of each step of the procedure represent leaves of the public procurement dossier.

Warning! Each document must have a registration number in the chronological number of drafting.

### **ANNEX No. 16<sup>C</sup>: Form No. 16 C - COMPETITIVE DIALOGUE**

Steps to follow

#### **1. Identification of the requirements and funds that can be made available**

Evidence:

- Report on the requirements
- Budget leaf/ credit obtaining approval

#### **2. Choosing the competitive dialogue**

Evidence:

- Report on the requirements which contains the estimation of the contract value
- Position in the annual programme of public procurements
- Explanatory note regarding the application of the procedure of competitive dialogue
- obtaining the approval for the application of the procedure by competitive dialogue.

Evidence:

- Explanatory note regarding the application of the procedure of competitive dialogue approved

#### **3. Sending the notice of intention for publication, if applicable**

Evidence:

- Application for publication of the notice
- Excerpt from the Official Gazette/SEAP/JOUR containing the published notice

#### **4. Elaboration of the awarding documentation containing the descriptive documentation:**

- elaboration of the descriptive documentation;
- elaboration of the contractual terms;
- establishment of the minimum requirements of qualification referring to the economic and financial statement or to the technical and/or professional capacity and elaboration of the explanatory note;
- establishment of the criterion for awarding and elaboration of the explanatory note regarding this;
- finalization of the procurement data record.

Evidence:

- Explanatory note for the establishment of the minimum requirements of qualification referring to the economic and financial statement or to the technical and/or professional capacity
- Explanatory note for the establishment of the awarding criterion
- Approved documentation for awarding

Warning! Do not forget the request addressed for the Unit for Coordination and Verification of Public Procurements within the Ministry of Public Finances, according to the provisions of the Government Emergency Ordinance No. **30/2006!**

**5.** Sending the participation notice for publication which contains the criteria for the pre-selection of the candidates and minimum number of candidates which will be pre-selected

Warning! Minimum number of candidates which will be pre-selected cannot be lower than 3.

Evidence:

- Application for publication of the notice
- Excerpt from the Official Gazette/SEAP/JOUR containing the published notice

**6.** Nomination of the evaluation committee

Evidence:

- Administrative document for the nomination of the evaluation committee
- Explanatory note regarding the co-option of independent experts, if applicable

**7.** Period of waiting:

- receipt of requests for clarifications and sending the replies;

Evidence:

- Notes regarding the registered requests for clarifications
- Notes regarding the replies to the requests for clarifications
- reception of oppositions, if applicable;

Evidence:

- Submitted opposition, with a registration number
- CNSC Decision or, as applicable, substantiated resolution
- candidacy submission;

Evidence:

- List with the candidates, number of registration of candidacies, date and time of registration
- filling in the statements regarding confidentiality and conflict of interests by the members of the evaluation committee, including by the co-opted experts

Evidence:

- Statements filled in by the members of the evaluation committee and co-opted independent experts

**8.** In case of emergence of a conflict of interest, decision is made as to the modification of the evaluation committee and the legal documentation for the nomination thereof shall be amended.

Evidence:

- Statements filled in by the members of the evaluation committee
- Amended legal document for the nomination of the evaluation committee

**9. Candidacies review:**

- \* verification of the conditions of :
  - eligibility;
  - qualification;
- \* application of the pre-selection score;
- \* request for clarifications regarding the submitted candidacies;
- \* pre-selection of candidates;

Warning! Number of pre-selected candidates must be at least equal to the minimum number indicated in the participation notice.

Warning! If the minimum number of pre-selected candidates is lower than the minimum number indicated in the participation notice, then the contracting authority is entitled:

- to annul the procedure;
- to continue the procedure only with the pre-selected candidates, if the number thereof is lower than 3.

- \* elaboration of the intermediary report of the first stage of the procedure of awarding by the evaluation committee and forwarding thereof for approval to the head of the unit.

Evidence:

- Report regarding the pre-selection of candidates, approved

**10. Notification of all the candidates regarding the outcome of the first stage of the procedure**

Warning! Non-pre-selected candidates are communicated the reasons of rejection of their candidacy.

Evidence:

-

**11. Sending the invitation for participation and the awarding documentation to the pre-selected candidates**

Evidence:

- Invitations for participation to pre-selected candidates

Warning! If the awarding documentation is published in the SEAP, then the invitation for participation must contain information regarding the manner of accessing the respective documentation.

**12. Periods of waiting:**

- elaboration of solutions;
- submission of the solutions.

Evidence:

- List containing those which submit solutions, number of registration of the solutions, date and time of registration

**13. Conducting discussions with each candidate separately:**

- at the end of each meeting, the evaluation committee marks the discussed issues and aspects convened upon in a minutes of the meeting;

Warning! It is possible to provide, within the descriptive documentation, the possibility to complete the dialogue in successive rounds for the purpose to downsize the number of discussed solutions. Successive reduction of the solutions is made only based on the evaluation factors which were set forth in the awarding documentation.

Warning! To organize one or several intermediary stages where the participants in the dialogue are to submit partial technical or financial proposals. To notify all the participants regarding:

- the conducting of the intermediary phase;
- evaluation factors;
- application thereof.

After finalization of an intermediary phase the evaluation committee elaborates a report and forwards it for approval to the head of the authority.

To inform all participants regarding the outcome of the intermediary phase.

Evidence:

- The minutes of the meeting at the end of each gathering
- Reports approved regarding the intermediary phases, if applicable
- Communications to the participants regarding the outcome of the intermediary phase
- Identification of the solution or of the viable solutions;

Warning! If no viable solutions can be identified, the procedure can be annulled.

-the dialogue stage is declared closed.

Evidence:

- Report regarding the dialogue stage

**14. Notification of the participants regarding the outcome of the dialogue stage, attached by the invitation for participation in the final tender evaluation stage, which also contains deadlines for the submission thereof**

Evidence:

- Communications regarding the outcome of the dialogue stage
- Invitations for participation in the tender evaluation stage

**15. Conducting the opening meeting:**

- drafting the tender opening report.

Evidence:

- Tender opening report

**16. Review and evaluation of tenders:**

- verification of technical and financial correspondence;
- request for clarifications regarding the tender, if applicable ;

Warning! The contracting authority is entitled to request clarifications, details and differentiations of the final tender.

- application of the awarding criterion;
- establishment of the economically best profitable tender;
- request of reconfirmation of some items of the tender or of certain undertakings assumed by the tender identified to have submitted the economically best profitable tender;

Evidence:

- Request for reconfirmation of certain items of the tender
- Reply to the request
- elaboration of the report and approval thereof.

Evidence:

- If applicable, the intermediary evaluation report
- Tender evaluation report

**17. Transmission of communications regarding the outcome of the awarding procedure**

Warning! Communication regarding the outcome of the awarding procedure to tenderers the tender of which was declared unsuccessful must substantiate this decision and indicate the name of the successful tenderer.

In case the tenders declared admissible the respective communication must also indicate the relative characteristics and benefits of the successful tender as compared to the tender of the respective tenderer.

Evidence:

- Communication regarding the outcome of the procedure

**18. Period of waiting:**

- reception of oppositions, if applicable.

Evidence:

- Submitted opposition, with a registration number
- CNSC Decision or, as applicable, substantiated resolution

**19. Contract signing**

Evidence:

- Original signed contract

**20. Sending the awarding notice for publication**

Evidence:

- Application for publication of the notice
- Excerpt from the Official Gazette/SEAP/JOUR containing the published notice

Recommendation: Documents representing evidence of completion of each step of the



procedure represent leaves of the public procurement dossier.

Warning! Each document must have a registration number in the chronological number of drafting.

## **ANNEX No. 16<sup>D</sup>: Form No. 16 D – NEGOTIATION WITH THE PRIOR PUBLICATION OF A PARTICIPATION NOTICE**

Steps to follow

### **1. Identification of the requirements and of the necessary funds**

Evidence:

- Report on the requirements
- Budget leaf/ credit obtaining approval

### **2. Choosing the negotiation with prior publication of a participation notice:**

Evidence:

- Report on the requirements care contains the estimation of the contract value
- Position in the annual programme of public procurements
- Explanatory note regarding the application of the procedure of negotiation with prior publication of a participation notice
- obtaining the approval of application of the procedure of negotiation with prior publication of a participation notice.

Evidence:

- Explanatory note regarding the application of the procedure of negotiation with the prior publication of an approved notice for participation

### **3. Sending the notice of intention for publication, if applicable**

Evidence:

- Application for publication of the notice
- Excerpt from the Official Gazette/SEAP/JOUR containing the published notice

**4. Elaboration of the awarding documentation which contains the descriptive documentation:**

- elaboration of the descriptive documentation;
- elaboration of the contractual terms;
- establishment of the minimum requirements of qualification referring to the economic and financial statement or to the technical and/or professional capacity and elaboration of the explanatory note;
- establishment of the criterion for awarding and elaboration of the explanatory note regarding this;
- finalization of the procurement data record.

Evidence:

- Explanatory note for the establishment of the minimum requirements of qualification referring to the economic and financial statement or to the technical and/or professional capacity
- Explanatory note for the establishment of the awarding criterion

- Approved documentation for awarding

Warning! Do not forget the request addressed for the Unit for Coordination and Verification of Public Procurements within the Ministry of Public Finances, according to the provisions of the Government Emergency Ordinance No. **30/2006!**

**5.** Sending the participation notice for publication which contains the pre-selection criteria, as well as the minimum number of candidates which will be pre-selected

Warning! Minimum number of candidates which will be pre-selected cannot be lower than 3.

Evidence:

- Application for publication of the notice
- Excerpt from the Official Gazette/SEAP/JOUR containing the published notice

**6.** Nomination of the evaluation committee

Evidence:

- Administrative document for the nomination of the evaluation committee
  - Explanatory note regarding the co-option of independent experts, if applicable
- 7.** Making available the descriptive documentation to the economic operators

**8.** Period of waiting :

- receipt of requests for clarifications and sending the replies;

Evidence:

- Notes regarding the registered requests for clarifications
- Notes regarding the replies to the requests for clarifications
- reception of oppositions, if applicable;

Evidence:

- Submitted opposition, with a registration number
- CNSC Decision or, as applicable, substantiated resolution
- candidacy submission;

Evidence:

- List with the candidates, number of registration of candidacies, date and time of registration
- filling in the statements regarding confidentiality and conflict of interests by the members of the evaluation committee, including by the co-opted experts

Evidence:

- Statements filled in by the members of the evaluation committee and co-opted independent experts

**9.** In case of emergence of a conflict of interest, decision is made as to the modification of the evaluation committee and the legal documentation for the nomination thereof shall be amended.

Evidence:

- Statements filled in by the members of the evaluation committee
- Amended legal document for the nomination of the evaluation committee

**10. Candidacies review:**

- \* verification of the conditions of :
  - eligibility;
  - qualification;
- \* application of the pre-selection score;
- \* request for clarifications regarding the submitted candidacies;
- \* pre-selection of candidates.

Warning! Number of pre-selected candidates must be at least equal to the minimum number indicated in the participation notice.

Warning! If the minimum number of pre-selected candidates is lower than the minimum number indicated in the participation notice, then the contracting authority is entitled:

- to annul the procedure;
- to continue the procedure only with the pre-selected candidates, if the number thereof is lower than 3.
- elaboration of the intermediary report of the first stage of the procedure of awarding by the evaluation committee and forwarding thereof for approval to the head of the unit.

Evidence:

- Report regarding the pre-selection of candidates, approved

**11. Notification of all the candidates regarding the outcome of the first stage of the procedure**

Warning! Non-pre-selected candidates are communicated the reasons of rejection of their candidacy.

Evidence:

- Report regarding the pre-selection of candidates, approved

**12. Sending the invitation for participation of pre-selected candidates**

Warning! If the awarding documentation is published in the SEAP, then the invitation for participation must contain information regarding the manner of accessing the respective documentation.

Evidence:

- Invitations of participation to pre-selected candidates

**13. Period of waiting:**

- elaboration of the preliminary tender;
- preliminary tender submission.

Evidence:

- List with the pre-selected candidates which submitted preliminary tenders, registration number of the preliminary tenders, date and time of registration

**14.** Conducting negotiations with each candidate separately until this declares or the contracting authority establishes that the tender cannot be materially improved any further:

- at the end of each meeting, the evaluation committee marks the discussed issues and aspects convened upon in a minutes of the meeting;

Evidence:

- Minutes of the negotiation meetings.
- Establishment of the final meeting and submission of the final tenders.

Evidence:

- Minute of the final meeting

Recommendation: In view of providing transparency of the procedure of negotiation with the prior publication of a participation notice, we recommend the organization of a final tender opening meeting.

**15.** Application of the tender evaluation factors:

- verification of the technical and financial correspondence;
- application of the awarding criterion;
- establishment of the successful tender;
- elaboration of the report and approval thereof.

Evidence:

- Report regarding the tender evaluation

**16.** Transmission of communications regarding the outcome of the awarding procedure

Warning! Communication regarding the outcome of the awarding procedure to tenderers the tender of which was declared unsuccessful must substantiate this decision and indicate the name of the successful tenderer.

In case of tenders declared admissible, the respective communication must also indicate the relative characteristics and benefits of the successful tender as compared to the tender of the respective tenderer.

Evidence:

- Communication regarding the outcome of the procedure

**17.** Period of waiting :

- reception of oppositions, if applicable

Evidence:

- Submitted opposition, with a registration number
- CNSC Decision or, as applicable, substantiated resolution

**18.** Contract signing

Evidence:

- Original signed contract

### 19. Sending the awarding notice for publication

Evidence:

- Application for publication of the notice
- Excerpt from the Official Gazette/SEAP/JOUR containing the published notice

Recommendation: Documents representing evidence of completion of each step of the procedure represent leaves of the public procurement dossier.

Warning! Each document must have a registration number in the chronological number of drafting.

### **ANNEX No. 16<sup>E</sup>: Form No. 16 E – NEGOTIATION WITHOUT THE PRIOR PUBLICATION OF THE PARTICIPATION NOTICE**

Steps to follow

#### 1. Identification of the requirements and of the necessary funds

Evidence:

- Report on the requirements
- Budget leaf/ credit obtaining approval

#### 2. Choosing the negotiation without the prior publication of a participation notice:

Evidence:

- Report on the requirements containing the estimation of the contract value
- Position in the annual programme of public procurements
- Explanatory note regarding the application of the procedure of negotiation without the prior publication of a participation notice
- obtaining the approval of application of the procedure of negotiation without the prior publication of a participation notice.

Evidence:

- Explanatory note regarding the application of the procedure of negotiation without the prior publication of a participation notice approved

#### 3. Elaboration of the awarding documentation which also contains the descriptive documentation:

- elaboration of the descriptive documentation;
- elaboration of the contractual terms;
- establishment of the criterion for awarding and elaboration of the explanatory note regarding this;
- finalization of the procurement data record.

Evidence:

- Explanatory note for the establishment of the awarding criterion
- Approved documentation for awarding

Warning! Do not forget the request addressed for the Unit for Coordination and Verification of Public Procurements within the Ministry of Public Finances, according to

**4.** Sending the invitation for participation To one or several economic operators as well as of the descriptive documentation

Evidence:

- Invitation/Invitations for participation which has/have been sent

**5.** Nomination of the evaluation committee

Evidence:

- Administrative document for the nomination of the evaluation committee
- Explanatory note regarding the co-option of independent experts, if applicable

**6.** Period of waiting :

- preliminary tender submission;

Evidence:

- List with the tenderers, registration number of preliminary tenders, date and time of registration
- filling in the statements regarding confidentiality and conflict of interests by the members of the evaluation committee, including by the co-opted experts

Evidence:

- Statements filled in by the members of the evaluation committee and co-opted independent experts.

**7.** In case of emergence of a conflict of interest, decision is made as to the modification of the evaluation committee and the legal documentation for the nomination thereof shall be amended.

Evidence:

- Statements filled in by the members of the evaluation committee
- Amended legal document for the nomination of the evaluation committee

**8.** Examination of the preliminary tenders:

- verification of correspondence with the descriptive documentation;
- at the end of each meeting, the evaluation committee marks the discussed issues and aspects convened upon in a minutes of the meeting.

Evidence:

- Minutes of the negotiation meetings
- Establishment of the final meeting and submission of the final tenders

As applicable:

- application of tender evaluation factors;
- tender establishment;
- elaboration of the report and approval thereof.

Evidence:

- Minutes regarding the final tender or
- Tender evaluation report

**9.** Transmission of communications regarding the outcome of the awarding procedure

**Warning!**

Communication regarding the outcome of the awarding procedure to tenderers the tender of which was adjudicated unsuccessful must substantiate this decision and indicate the name of the successful tenderer.

In case of tenders declared admissible, the respective communication must also indicate the characteristics and advantages referring to the successful tender as compared to the tender of the respective tenderer.

Evidence:

- Communications to tenderers, if several have been invited to participate

**10. Period of waiting :**

- reception of oppositions, if applicable.

Evidence:

- Submitted opposition, with a registration number
- CNSC Decision or, as applicable, substantiated resolution

**11. Contract signing**

Evidence:

- Original signed contract

**12. Sending the awarding notice for publication**

Evidence:

- Application for publication of the notice
- Excerpt from the Official Gazette/SEAP/JOUR containing the published notice

Recommendation: Documents representing evidence of completion of each step of the procedure represent leaves of the public procurement dossier.

**Warning!** Each document must have a registration number in the chronological number of drafting.

**ANNEX No. 16<sup>F</sup>: Form No. 16F – TENDER REQUEST**

Steps to follow

**1. Identification of the requirements and of the necessary funds**

Evidence:

- Report on the requirements
- Budget leaf/ credit obtaining approval

**2. Choosing the tender request:**

Evidence:

- Report on the requirements which contains the estimation of the contract value
- Position in the annual programme of public procurements
- Explanatory note regarding the application of the procedure of tender request
- obtaining the approval of application of the procedure of tender request.

Evidence:

- Explanatory note regarding the application of the procedure of tender request

### 3. Elaboration of the awarding documentation:

- elaboration of the specifications' book;
- elaboration of the contractual terms;
- establishment of the minimum requirements of qualification referring to the economic and financial statement or to the technical and/or professional capacity and elaboration of the explanatory note;
- establishment of the criterion for awarding and elaboration of the explanatory note regarding this;
- finalization of the procurement data record.

Evidence:

- Explanatory note for the establishment of the minimum requirements of qualification referring to the economic and financial statement or to the technical and/or professional capacity
- Explanatory note for the establishment of the awarding criterion
- Approved documentation for awarding

### 4. Sending the invitation for participation and the awarding documentation

Warning! Sending the invitation for participation and of the awarding documentation is made to at least 3 economic operators, and from January 1, 2007, to SEAP.

Evidence:

- Invitations for participation

### 5. Nomination of the evaluation committee

Evidence:

- Administrative document for nomination of the evaluation committee
- Explanatory note regarding the co-option of independent experts, if applicable

### 6. Period of waiting :

- receipt of requests for clarifications and sending the replies;

Evidence:

- Notes regarding the registered requests for clarifications
- Notes regarding the replies to the requests for clarifications
- Elaboration of tenders;
- reception of oppositions, if applicable;

Evidence:

- Submitted opposition, with a registration number
- CNSC Decision or, as applicable, substantiated resolution
- tender submission;

Evidence:

- List containing the tenderers, tender registration number, date and time of registration
- filling in the statements regarding confidentiality and conflict of interests.

Evidence:



- Statements filled in by the members of the evaluation committee and co-opted independent experts

**7.** In case of emergence of a conflict of interest, decision is made as to the modification of the evaluation committee and the legal documentation for the nomination thereof shall be amended.

Evidence:

- Statements filled in by the members of the evaluation committee
- Amended legal document for the nomination of the evaluation committee

**8.** Conducting the opening meeting:

- drafting the tender opening report.

Evidence:

- Tender opening report

**9.** Review and evaluation of tenders:

\* verification of the conditions of :

- eligibility;
- qualification;
- \* technical and financial correspondence;
- \* request for clarifications regarding the tender, if applicable ;
- \* application of the awarding criterion;
- \* establishment of the successful tender;
- \* elaboration of the report and approval thereof.

Evidence:

- If applicable, the intermediary evaluation report
- Tender evaluation report

**10.** Transmission of communications regarding the outcome of the awarding procedure

Warning!

Communication regarding the outcome of the awarding procedure to tenderers the tender of which was adjudicated unsuccessful must substantiate this decision and indicate the name of the successful tenderer.

In case of tenders declared admissible, the respective communication must also indicate the characteristics and advantages referring to the successful tender as compared to the tender of the respective tenderer

Evidence:

- Communications to tenderers, if several were invited to participate

**11.** Period of waiting :

- reception of oppositions, if applicable.

Evidence:

- Submitted opposition, with a registration number
- CNSC Decision or, as applicable, substantiated resolution

## **12. Contract signing**

Evidence:

- Original signed contract

Recommendation: Documents representing evidence of completion of each step of the procedure represent leaves of the public procurement dossier.

## **ANNEX No. 16<sup>G</sup>: Form No. 16 G – COMPETITION OF SOLUTIONS**

Steps to follow

### **1. Identification of requirements and of the necessary funds**

Evidence:

- Requirements report
- Budget leaf/credit obtaining approval

### **2. Election of the procedure of competition of solutions:**

Evidence:

- Requirements report which contains the estimation of the contract value
- Position in the annual programme of public procurements
- Explanatory note regarding the application of the procedure of competition of solutions
- obtaining the approval for application of the procedure of competition of solutions

Evidence:

- Explanatory note regarding the application of the procedure of competition of solutions

### **3. Sending the notice of intention for publication, if the case may be**

Evidence:

- Application for publication of the notice of intention
- Excerpt in the Official Gazette /SEAP/JOUE containing the published notice

### **4. Elaboration of the documentation for the competition**

Evidence:

- Approved competition documentation

### **5. Sending the intention notice for publication**

Evidence:

- Application for publication of the notice of intention
- Excerpt in the Official Gazette /SEAP/JOUE containing the published notice

### **6. Nomination of the Council**

Evidence:

- Administrative document for the nomination of the Council
- Explanatory note regarding the co-opting of independent experts, if the case may be

### **7. Making available the competition documentation to the economic operators**

**8. Period of waiting:**

- reception of the requests for clarifications and sending the replies;

Evidence:

- Notes regarding the registered requests for clarifications
- Notes regarding the replies to the requests for clarifications
- project elaboration
- reception of oppositions, if the case may be;

Evidence:

- Submitted opposition, with the registration number
- Decision of the CNSC or, as applicable, the substantiated resolution
- project submission

Evidence:

- Project registration number, date and time of submission

**9. Review and evaluation of the submitted projects:**

- request for clarifications regarding projects, if the case may be;
- establishment of the successful project;
- elaboration of the report and approval thereof.

Evidence:

- Project evaluation report

**10. Period of waiting:**

- reception of oppositions, if applicable.

Evidence:

- Submitted opposition, with the registration number
- CNSC Decision or, as applicable, the substantiated resolution

**11. Signing of the contract**

Evidence:

- Original signed contract

**12. Sending the awarding notice for publication**

Evidence:

- Application for publication of the notice
  - Excerpt from the Official Gazette/SEAP/JOUE containing the published notice
- Recommendation: Documents which represent evidence of the completion of each step of the procedure represent leaves of the public procurement dossier.

Warning! Each document must have a registration number in chronological order of drafting.

**ANNEX No. 17<sup>A</sup>: Form No. 17 A – COMMUNICATION OF ACCEPTANCE OF THE SUCCESSFUL TENDER**

Contracting Authority

.....

To

S.C. ....  
Mr/Mrs .....

We hereby inform you that, following the evaluation of the tenders submitted for the procedure of awarding the public procurement contract .....

CPV code....., your tender was accepted, being considered successful, at the price of RON..... (If the case may be, to also specify the obtained score).

We hereby invite you on ..... time ....., at the headquarters of....., for the signing of the public procurement contract .

Please request other information at ....., contact: person..... (first name, last name, telephone number)

With consideration,

.....  
(authorized signature)

**ANNEX No. 17<sup>B</sup>: Form No. 17 B – COMMUNICATION OF THE OUTCOME OF THE PROCEDURE**

Contracting Authority.....

To

S.C. ....  
S.C. ....

We hereby inform you that, following the evaluation of the tenders submitted for the procedure of awarding the public procurement contract .....

CPV code ....., your tender was not adjudicated successful, because.....

.....(reasons)

The tender adjudicated successful was that one submitted by S.C. ...., satisfactory in terms of the requirements of the awarding documentation and the price of which is RON..... .

Thank you for participation and we hope in a future collaboration,

.....  
(authorized signature)

**ANNEX No. 18<sup>A</sup>: Form No. 18 A – OPPOSITION - Form for legal persons**

Header/opponent

.....  
The ..... underwritten. ....,headquartered in.....,exclusive registration code.....,duly represented by....., in capacity of tenderer/candidate in the procedure for

awarding the....., contract organized by the contracting authority.....,headquartered in .....,  
I hereby challenge the decision of the contracting authority....., which I consider illegal.

The reasons upon which the opposition is based are:

- in fact .....
- in law .....

To support the opposition, I hereby submit the following evidence:

.....  
.....

Legal representative (first/last name in clear)

.....  
(authorized signature)

**ANNEX No. 18<sup>B</sup>: Form No. 18 B - OPPOSITION- Form for natural persons**

The underwritten ....., domiciled in ....., in capacity of tenderer/candidate in the procedure for awarding the....., contract organized by the contracting authority.....,headquartered in....., I hereby challenge the decision of the contracting authority ....., which I consider illegal.

The reasons upon which the opposition is based are:

- in fact .....
- in law .....

To support the opposition, I hereby submit the following evidence:

.....  
.....

Authorized signature

**ANNEX No. 19: Form No. 19 – GOOD EXECUTION BANK GUARANTEE LETTER**

Bank

.....  
(designation)

To .....  
(designation of the contracting authority and complete address)

Regarding the public procurement contract ..... (contract designation),entered between....., in capacity of contract or, and....., in capacity of procurer, we hereby undertake to pay in favour of the procurer, up to the limit of the amount of....., representing .....% of the value of the respective contract , any amount demanded by that at its first application attached by a statement regarding the failure of fulfilment of the obligations that are incumbent upon the contract or, such as these are provided in the above mentioned public procurement contract .

Payment will be made within the period referred to in the application, without any further formalities on behalf of the procurement or of the contract or .

This hereby guarantee is valid until the date of .....

In case where the contracting parties agree upon the renewal of the guarantee validity period or upon the amendment of certain contractual provisions having effect upon the bank's undertaking, our prior consent will be obtained, otherwise, this hereby guarantee letter shall lose validity.

Sealed by the Bank .....on.....month ..... year .....

(authorized signature)

#### **ANNEX No. 20: OTHER LEGAL DOCUMENTS RELEVANT FOR PUBLIC PROCUREMENTS**

\* Government Emergency Ordinance No. 30/2006 regarding the function of verification of the procedural aspects for awarding public procurement contracts

\* Government Resolution No. 942/2006 for the approval of the Norms of implementation of Government Emergency Ordinance No. 30/2006 regarding the function of verification of the procedural aspects for awarding public procurement contracts

\* Government Resolution No. 782/2006 for the approval of the Regulations of organization and functioning of the National Council for Opposition Settlement

\* Administrative Disputes Law No. 554/2004, with subsequent amendments

\* Local Public Administration Law No. 215/2001, with subsequent amendments and supplements

\* Law No. 500/2002 regarding public finances, with subsequent amendments and supplements

\* Government Emergency Ordinance No. 45/2003 regarding local public finances, approved with amendments under Law No. 108/2004, with subsequent amendments and supplements

\* Order of the minister of public finances No. 1.792/2002 for the approval of the Methodological Norms regarding the undertaking, settlement, ordering and payment of costs of the public institutions, as well as organization, records and reporting the budget and legal undertakings

\* Government Resolution No. 264/2003 regarding the establishment of actions and categories of costs, criteria, procedures and limits for making advance pre-payments from public funds, republished, with subsequent amendments and supplements.

Published in the Official Gazette of Romania, No. 894bis of November 2, 2006.