

# GOVERNMENT OF ROMANIA

## Emergency Ordinance

### Regarding the verification function of the procedural aspects related to the awarding process of the public procurement contracts

Taking into account the need to adopt some urgent measures for establishing an ex-ante control system in the public procurement area, according to the commitments undertaken by Romania under Chapter 21 “Regional policy and coordination of structural instruments” and to the EC recommendations,

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

The Government of Romania enacts the present emergency ordinance.

**Art. 1** (1) The Ministry of Public Finance, as specialized body of the central public administration, is hereby designated to be responsible for fulfilling the verification function of the procedural aspects concerning the awarding process of the contracts that are regulated by the legal provisions regarding the award of the public procurement contracts.

(2) For the purpose of the provisions in paragraph (1), the verification applies to the procedural aspects concerning the awarding process of the following contracts:

- a) public works contracts and public works concession contracts with an estimated value, higher or equal to Euro 250,000 without VAT,
- b) services contracts and services concession contracts with an estimated value, higher or equal to Euro 40,000 without VAT,
- c) supply contracts with an estimated value, higher or equal to Euro 40,000 without VAT,

d) framework agreements concluded in view of awarding the contracts mentioned under a) to c).

(3) The verification shall cover the stages of the public procurement process, after the publication of the contract notice until the award and signing of the contract. In exceptional situations regulated by law, that allow the contract to be concluded without a prior publication of the contract notice, the verification shall cover the stages of the procurement process starting with sending the invitation for negotiations until award and signing of the contract.

**Art. 2** The Ministry of Public Finance, by means of its specialized bodies at a central and local level, performs the verification of the contract award process in a selective manner, based on a risk analysis.

**Art. 3** The objective of the verification function of public procurement is contributing to insuring that the procedures carried out in view of awarding the public procurement contracts, as well as the documents drawn up during these procedures are in compliance with the relevant legislation.

**Art. 4** The attributions of the Ministry of Public Finance in view of fulfilling the verification function are as follows:

- a) Keep track of the development of the procedures for the award of the contracts stipulated under article 1, paragraph (2);
- b) To analyse the documents prepared by the contracting authority for awarding the contracts stipulated under article 1, paragraph (2);
- c) To draw up activity reports for each awarding procedure of public procurement contracts that was submitted to verification;
- d) To issue notes with a consultative character */FR: avis consultative/* whenever non-compliances in applying the public procurement legislation are ascertained.

**Art. 5** (1) The date when awarding procedure for the contracts provided under art. 1, paragraph 2 was initiated, the contracting authorities have the obligation to inform the Ministry of Public Finance on the procedure that is to be applied.

(2) In order to fulfil the attributions provided under the present emergency ordinance, the specialized bodies within the Ministry of Public Finance will appoint observers, who will participate in the awarding process of the contracts selected according to the provisions of the article 2.

(3) In fulfilling their work duties, the observers draw up activity reports for each public procurement procedure they attended, which they will submitted to the contracting authority.

(4) Whenever, during exercising the verification function, nonconformities in applying the public procurement legislation are ascertained, the specialized bodies within the Ministry

of Public Finance have the right to consult the National Authority for Regulating and Monitoring Public Procurement (NARMPP) before issuing the consultative notes mentioned in art. 4, item d).

(5) The specialized bodies within the Ministry of Public Finance have the obligation to send the consultative notes to the contracting authority, NARMPP and, as the case may be, to the higher hierarchical body of the contracting authority.

(6) Based on the consultative notes issued by the specialized bodies within the Ministry of Public Finance, the contracting authority may dispose to suspend the process for awarding the public procurement contract, to modify, to cease, to revoke, or to cancel the legal documents in relation to which the consultative note was issued, as well as any other corrective measures to remedy the non-compliances detected by the observer, or it may decide to continue the award of the public procurement contract, case in which it will promptly inform the authorities mentioned in the paragraph 4 about it.

**Art. 6** The responsibility for the decisions rendered during the process of awarding the contracts that are subject of the legal provisions regulating the award of public procurement contracts, is borne by the contracting authority.

**Art. 7** For the projects financed out of European funds, the consultative notes and the activity reports are to be submitted also to the competent Managing Authority.

**Art. 8** The observers appointed in the verification process of the procedural aspects regarding the awarding process of the public procurement contracts are subject to the legal provisions regarding incompatibility situations or conflict of interests applicable to the persons involved in the verification process or evaluation of the candidates or tenderers, stipulated by the legal framework regarding the award of public procurement contracts.

**Art. 9** The observers who will verify the procedures for the awarding of the public procurement contracts benefit of an increase of 75% to the basic wages compared with the ones provided by the law.

**Art. 10** (1) The following deeds constitute contraventions and are sanctioned:

- a) the infringement of the provisions of the article 5, paragraph (1), with a fine between RON 3,000 and RON 5,000;
- b) failure to submit within three days the documents and information related to the awarding process of the contract that is subject to verification requested by the observers appointed according to the provisions of article 5 paragraph (2), with a fine between RON 5,000 and RON 7,000.

(2) The ascertaining and application of the sanctions are competencies of the observers appointed for verifying the procedural aspects regarding the award of the public procurement contract.

**Art. 11** The provisions of article 10 referring to contraventions are supplemented by the provisions of the Government Ordinance no. 2 / 2001 regarding the legal regime of

contraventions, approved with amendments and supplements by the Law no. 180 / 2002, with subsequent amendments and supplements.

**Art. 12** The Ministry of Public Finance shall draft applications norms of the present emergency ordinance which will to be submitted for approval to the Government within 60 days from the publishing date of the present emergency ordinance in the Official Gazette of Romania, Part I.

**Art. 13** Within 30 days from the publishing date of the present emergency ordinance in the Official Gazette of Romania, Part I, the Ministry of Public Finance shall submit for approval its proposal for amending the Government Decision no. 208 / 2005 regarding the organisation and functioning of the Ministry of Public Finance and National Agency for Fiscal Administration, with subsequent amendments and supplements.

**Art. 14** The present emergency ordinance enters into force on June 30<sup>th</sup>, 2006, except art. 1, paragraph (1) and articles 12 and 13 which will come into force on the date of publication in the Official Gazette of Romania, Part I.

PRIME- MINISTER

CĂLIN POPESCU-TĂRICEANU

Countersign:

p. Minister of Public Finances

Claudiu Doltu

Secretary of State

Minister of European Integration

Anca Daniela Boagiu

The President of the National Authority

For Regulating and Monitoring Public Procurement

Alexandru Stefan Cojocaru

Bucharest, April 12<sup>th</sup>, 2006

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