

## **EMERGENCY ORDINANCE no. 94 on September 26<sup>th</sup>, 2007**

For amending and supplementing Government's Emergency Ordinance no. 34/2006 regarding the award of public procurement contracts works concession contracts and services concession contracts

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Taking into account the need for adopting certain emergency measures for perfecting and developing the public procurement system and taking into account the fact that not adopting such measures may result into a decrease of the spending degree of the allocated public funds, the worst consequence in this case being postponing/delaying the implementation of certain major investment projects which have social and economic impact, at national or local level, taking into account the fact that, in case the products and services which are necessary to the contracting authorities for their current activity are not purchased in due time, based on some procedures which shall ensure not only the compliance with the public procurement principles, but also a reasonable flexibility in application, the risk of inconsistency in these contracting authorities' activity, with implications in the quality of the public services which they ensure, is only obvious.

Based on art. 115, par. (4) of the republished Romanian Constitution,  
The Government of Romania enacts the present emergency ordinance.

### **Art. I**

The Government Emergency Ordinance no. 34/2006 regarding the award of the public procurement contracts, public works concession contracts and services concession contracts, published in the Official Gazette of Romania, Part I, no. 418 of May 15<sup>th</sup>, 2006, approved with amendments and supplements by Law 337/2006, with the subsequent amendments and supplements, is amended and supplemented as follows:

1. At article 3, a new letter shall be introduced after letter u), namely u<sup>1</sup>) with the following content:  
“u<sup>1</sup>) dynamic procurement system – an entirely electronic process, limited in time and opened throughout its entire period for any economic operator which fulfills the qualification and selection criteria and which has presented a draft tender in compliance with the requirements of the tender book.”
2. At art. 8, letter e) shall be modified and shall have the following content:

“e) any subject of law, other than the ones stipulated at letter a) – d), which conduct one or more of the activities stipulated at chapter VIII, section 1, based on a social or exclusive right, like it is defined at art. 3 let. k), given by a competent authority, when it’s awarding a public procurement contract or it concludes a framework agreement meant for conducting the respective activities.”

3. At article 9, letter c) shall be modified and shall have the following content:

“c) the award of works contract by an economic operator which does not have the quality of contracting authority, in case the following conditions are cumulatively fulfilled:

- 50% of the respective contract is directly subsidized by a contracting authority;
- the estimated value of the respective contract is larger than the equivalent in lei of Euro 2.500.000.”

4. At article 9, after letter c) a new letter shall be introduced , namely letter c<sup>1</sup>) with the following content:

“c<sup>1</sup>) the award of the services contract by an economic operator which doesn’t have the quality of contracting authority, in case the following conditions are cumulatively fulfilled:

- 50% of the respective contract is directly subsidized by a contracting authority;
- the estimated value of the respective contract is larger than the equivalent in lei of Euro 125.000.”

5. Article 10 shall be modified and shall have the following content:

“Art. 10 – (1) In the cases stipulated at art. 9 let. c) and c<sup>1</sup>), the contracting authority has the obligation to impose by the financing contract, the application of the provisions of the present emergency ordinance for awarding the respective public procurement contracts.

(2) In case of the award by an economic operator which does not have the quality of a contracting authority of a supply contract out of which more than 50% is directly subsidized by a contracting authority, the later has the obligation to impose by means of the financing contract, in order to award the respective contract:

- a) either the application of the provisions of the present ordinance
- b) or the application of a specific procedure established by means of internal norms, by the respective contracting authority, with the condition of ensuring the transmission of an invitation for participation to the respective procedure to at least 3 economic operators.

(3) the provisions of par. (2) are applicable also in the case of the award of the services and works contracts, out of which more than 50% is directly subsidized by a contracting authority, but which's estimative value is smaller or equal to the thresholds stipulated at art. 9 let c) and c<sup>1</sup>).”

6. At article 12, letter a) is modified and shall have the following content:

“a) the contract is included in the state secret information category, in compliance with the law in force regarding the protection of classified information.”

7. At article 14, paragraph (1) letter c) shall be modified and shall have the following content:

“c) the application of a procedure specific to certain international bodies and institutions.

8. Article 19 shall be modified and shall have the following content:

“Art. 19 – The contracting authority has the right to directly purchase goods, services or works, to the extent that the value of the procurement, estimated according to the provisions of section 2 of the present chapter, does not exceed the equivalent in lei of Euro 10.000 for each procurement of goods, services or works. The procurement is made based on a document in proof which, in this case, is considered to be a public procurement contract, and the obligation obeying the provisions of the present emergency ordinance is limited only to the provisions of art. 204 par. (2).”

9. At article 27 paragraph (5) letter a) shall be modified and shall have the following content:

“a) the estimated value, without VAT, of the respective lot is smaller or equal to the equivalent in lei of Euro 75.000.”

10. At article 28 paragraph (3), letter a) shall be modified and shall have the following content:

“a) the estimated value, without VAT, of the respective lot is smaller or equal to the equivalent in lei of Euro 75.000.”

11. At article 29 paragraph (3), letter a) shall be modified and shall have the following content:

“a) the estimated value, without VAT, of the respective lot is smaller or equal to the equivalent in lei of Euro 500.000.”

12. At article 46, paragraph (1) shall be modified and shall have the following content:

“Art. 46 – (1) The candidate/tenderer, within the same procedure, does not have the right, unless otherwise stipulated in the tender documentation:

- a) to submit two or more candidatures/individual and/or common tenders under the sanction of the exclusion out of the contest of all the candidatures/tenders in the matter;
- b) to submit a common/individual tender and to be nominated as subcontractor within another tender, under the sanction of the exclusion out of the contest of the individual tender or, by case, of the tender where the tenderer is associated .

13. At article 49, paragraph (5) and (7) shall be modified and shall have the following content:

“(5) In the case when, due to technical reasons, the ESPP operator does not have the possibility to send a certain notice for publication in the Official Journal of the European Union, the contracting authority has the responsibility to transmit for publication the respective notice by its own means. The ESPP operator has the obligation to inform the contracting authority regarding such a situation emerging, in maximum one day after the period stipulated at par. (3) let. a) expires.

.....  
(7) The Autonomous Administration “Official Gazette” publishes the notices sent for publication in maximum eight (8) days from their registration date. In the contract notice’s case stipulated at art. 114, the Autonomous Administration “Official Gazette” publishes the respective notice in maximum 3 days from the registration date.

14. At article 56 paragraph (1), letter a) shall be modified and shall have the following content:

“a) has finalized the awarding procedure – open tender, restricted tender, competitive dialogue, negotiation with/without prior publication of a contract notice, request for tenders – by awarding the public procurement contract or by concluding the framework agreement;”.

15. At article 79, paragraph (1) shall be modified and shall have the following content:

“(1) Without prejudice to the provisions of art. 78 par. (2), to the extent that the clarifications are requested in due time, the contracting authority’s answer to these requests must be sent no later than 6 days before the deadline set for submitting the tenders.

16. Article 80 shall be modified and shall have the following content:

“Art. 80 – The contracting authority has the obligation to open tenders at the date, hour and place indicated in the contract notice, to the extent that the declaration of the submission deadline hasn’t become necessary, in compliance with the provisions of art. 72 or as a result of a complaint submission.

17. At article 85, paragraph (2) shall be modified and shall have the following content:

“(2) In the stage stipulated at art. 81 par (1) let. a), the contracting authority has the right to limit the number of candidates which shall be selected to submit tenders, provided a sufficient number of available candidates exist. When it selects the candidates, the contracting authority has the obligation to apply objective and non-discriminating criteria, using for this purpose only the selection criteria stipulated in the contract notice.”

18. At article 88 paragraph (1), letters b) and e) shall be modified and shall have the following content:

“b) the deadline date and hour settled for submitting tenders;

.....

e) the address, date and hour for opening tenders;”.

19. At article 92, paragraph (1) shall be modified and shall have the following content:

“(1) Without prejudicing the provisions of art. 91 par. (2), to the extent that the clarifications are requested in due time, the contracting authority’s answer to these requests must be sent no later than 6 days before the deadline set for submitting tenders.”

20. Article 93 shall be modified and shall have the following content:

“Art. 93 – The contracting authority has the obligation to open tenders at the address, date and hour indicated in the invitation for participation, to the extent that the declaration of the submission deadline hasn’t become necessary, in compliance with the provisions of art. 72 or as a result of a complaint submission.

21. At article 101, paragraph (1) shall be modifies and shall have the following content:

“(1) When it pre-selects the candidates, the contracting authority has the obligation to apply objective and non-discriminating criteria, using for this purpose only the pre-selection criteria stipulated in the contract notice.”

22. At article 104 paragraph (1), letter b) shall be modified and shall have the following content:

“b) the address where the dialogue shall take place, as well as the date and hour of its launch;”.

23. At article 108, letters b) and e) shall be modified and shall have the following content:

“b) the deadline date and hour set for tenders submission;

.....  
e) the address, date and hour of opening tenders;”.

24. At article 110 paragraph (1), letter a) shall be modified and shall have the following content:

“a) when, as a result of applying the open tender, the restricted tender, the competitive dialogue or the request for tenders procedures, no tender has been submitted or only unacceptable or irregular tenders were submitted. The application of the negotiation procedure is possible in this case only after the annulment of the initial open tender, restricted tender, competitive dialogue or request for tenders procedure and only if the initial requirements stipulated in the tender documentation were not substantially modified.”

25. At article 116, paragraph (2) shall be modified and shall have the following content:

“(2) when it pre-selects the candidates, the contracting authority has the obligation to apply objective and non-discriminatory criteria, using for this purpose only the pre-selection criteria stipulated in the contract notice.”

26. At article 119, letter b) shall be modified and shall have the following content:

“b) the address where the negotiation shall take place, as well as the date and hour.”

27. At article 122, letters c) and f) shall be modified and shall have the following content:

“c) as a strictly necessary measure, when the application period of the open tender, restricted tender, negotiation with prior publication of a

contract notice, competitive dialogue or request for tenders procedure cannot be fulfilled due to extreme emergency reasons resulted from unpredictable events which are not due, on any account, to an action or inaction of the contracting authority. The contracting authority does not have the right to establish a contracting period larger than the necessary period, in order to face an emergency situation which determines the application of the negotiation procedure without prior publication of a contract notice;

.....  
f) for purchasing raw materials traded and transacted at the commodity exchange, their procurement being done as a result of the transactions on the commodity spot market.”

28. At article 122, the third dash of letter i) shall be modified and shall have the following content:  
“- the cumulative value of the contracts which shall be awarded or of the additional documents which shall be concluded for additional works and/or services does not exceed 50% of the initial contract value;”

29. Article 124 shall be modified and shall have the following content:  
“Art. 124 – The contracting authority has the right to apply the request for tenders procedure only in case the estimated value, without VAT, of the public procurement contract is smaller or equal to the equivalent in lei of the following thresholds:  
a) for the supply contract: Euro 75.000;  
b) for the services contract: Euro 75.000;  
c) for the works contract: Euro 500.000.

30. At article 125, paragraph (2), letter a) shall be modified and shall have the following content:  
“a) the deadline date and hour set for receiving tenders;”

31. At article 125 paragraph (2), after letter b) a new letter shall be introduced , namely letter b<sup>1</sup>), having the following content:  
“b<sup>1</sup>) the date and hour for opening tenders;”

32. Article 129 shall be modified and shall have the following content:  
“Art. 129 – The contracting authority has the obligation to open tenders at the address, date and hour stipulated in the invitation for participation, to the extent that the declaration of the term for submitting

tenders has not become necessary, according to the provisions of art. 72 or as a result of a complaint submission.”

33. Article 148 shall be modified and shall have the following content:

“Art. 148 – In case the contracting authority concludes the framework agreement with more economic operators, their number cannot be smaller than 3, to the extent that a sufficient number of economic operators which have fulfilled the qualification and selection criteria and which have presented admissible tenders exist.”

34. At article 158, paragraph (2) shall be modified and shall have the following content:

“(2) The contracting authority has the obligation to establish a deadline for submitting draft tenders which, as regarding the simplified contract notice publication date stipulated at par. (1), does not have to be sooner than:

- a) 15 days, in case the estimated value according to art. 32 is larger than the equivalent in lei of Euro 125.000;
- b) 5 days, in case the estimated value according to the provisions of art. 32 is equal or smaller than the equivalent in lei of Euro 125.000.”

35. At article 165, paragraph (2) shall be modified and shall have the following content:

“(2) The contracting authority has the obligation to invite all the tenderers which have submitted admissible tenders to present new prices and/or, by case, new values of the tender elements. The invitation shall be sent by electronic means, to all the respective tenders at once.”

36. At article 172, paragraph (1) shall have the following content:

“(1) The economic operator has the obligation to submit the tender at the address and until the submission deadline date and hour set in the contract notice or in the invitation for participation.”

37. At article 181, a new letter shall be introduced after letter c), namely letter c<sup>1</sup>) having the following content:

“c<sup>1</sup>) in the past 2 years it has not fulfilled or has not properly fulfilled its contractual obligations, due to reasons imputable to the tenderer in the matter, fact which has produced or by its nature shall produce serious prejudices to its beneficiaries.”.



38. At article 199, paragraph (3) shall be modified and shall have the following content:

“(3) Based on the provisions of par (1) the contracting authority has the obligation to state, clearly and detailed, in the tender documentation the evaluation factors of the tender with their relative ratios or the calculus algorithm, as well as the concrete advantages recognition methodology which shall result from the technical and financial proposals presented by the tenderers. The evaluation factors of the tender with their relative ratios or the calculus algorithm, as well as the concrete advantages recognition methodology must have an obvious connection to the specific of the contract, and after they have been established, cannot be changed during the entire awarding procedure application duration.”

39. At article 204, after par (1) a new paragraph shall be introduced, namely paragraph (1<sup>1</sup>), having the following content:

“(1<sup>1</sup>) In case the contracting authority cannot conclude the contract with the tenderer which's tender has been established as successful due to the fact that the tenderer in the matter is in a force majeure situation, it has the right to:

- a) either to declare as successful the tender on the second place;
- b) or to annul the application of the procedure for awarding the public procurement contract.”

40. Article 205 shall be modified and shall have the following content:

“Art. 205 – (1) The contracting authority has the right to conclude the public procurement contract/framework agreement only after the fulfillment of the terms of:

- a) 10 days as from the date of transmitting the communication regarding the result of applying the procedure, according to the provisions of art. 206 and 207, in case the estimated value according to the provisions of ch. II section 2 of the public procurement contract/framework agreement is larger than the thresholds stipulated at art 55 par (2);
- b) 5 days from the date of transmitting the communication regarding the result of applying the procedure, according to the provisions of art. 206 and 207, in case the estimated value according to the provisions of ch. II section 2 of the public procurement contract/framework agreement is smaller or equal to the threshold stipulated at art. 55 par. (2).

(2) The public procurement contract/framework agreement concluded before the fulfillment of the terms stipulated at par. (1) is considered null and void.

(3) The contracting authority does not have the obligation to comply with the terms stipulated at par. (1) in the following cases:

a) when the present emergency ordinance doesn't stipulate the obligation of publishing a contract notice or an invitation for participation in ESPP;

b) when the public procurement contract/framework agreement is to be concluded with an economic operator which has been the single tender to the respective awarding procedure;

c) when a contract subsequent to a framework agreement is awarded.

(4) The provisions of the present article are to be applied accordingly also in the case when using the dynamic procurement systems, as well as in the case when awarding the contracts stipulated at ch. VII."

41. At article 206, paragraph (3) shall be modified and shall have the following content:

"(3) In case the contracting authority doesn't transmit the communication regarding the result of applying the procedure also by fax or by electronic means, than the term stipulated at art. 205 par. (1) are increased by 5 days."

42. At article 207 paragraph (2), letters b) and c) shall be modified and shall have the following content:

"b) for each rejected tender, the concrete reasons that stand at the bottom of the rejection decision, the arguments based on which the tender has been considered unacceptable and/or irregular being detailed, especially the tender elements that have not complied with the functioning and performance requirements stipulated in the tender book;

c) for any tenderer which has presented an acceptable and regular tender, and therefore admissible but which hasn't been declared as successful, the relative characteristics and advantages of the successful tender/tenders related to its tender, the name of the tenderer that is to be awarded the public procurement contract or, by case, of the tenderers with which a framework agreement shall be concluded."

43. At article 207 paragraph (2), a new letter shall be introduced after letter c), namely letter d) with the following content:

“d) for any economic operator out of the ones stipulated at letter a)-c), the deadline until they can submit a complaint, taking into account the provisions of art. 272.”

44. At article 209 paragraph (1), letters b) and c) shall be modified and shall have the following content:

“b) only unacceptable and/or irregular tenders have been submitted;

c) no tender has been submitted or only tenders which, although they may be taken into consideration, cannot be compared due to the uneven way of dealing with the technical or financial solution, have been submitted;”.

45. Article 212 shall be modified and shall have the following content:

“Art. 212 – The public procurement file, as well as the tenders accompanied by the qualification and selection documents are kept by the contracting authority as long as the public procurement contract/framework agreement produces legal effects, but no less than 5 years from the date of finalizing of the respective contract. In the case of the awarding procedure annulment, the file is kept at least 5 years as from the date of the respective procedure annulment.”

46. At article 213, paragraph (1) shall be modified and shall have the following content:

“Art. 213 – (1) The public procurement file must include the documents drawn up/received by the contracting authority within the awarding procedure, like the following, but without limiting to these:

- a) the note regarding the settlement of the estimated value;
- b) the prior information notice and the proof of transmitting it for publication, if the case;
- c) the contract notice

47. At article 228 paragraph (2), letter c) shall be modified and shall have the following content:

“c) which, as the concessionaire, is under the dominant influence of another person. For the “dominant influence” term, the provisions of art. 3 let. m) shall apply accordingly.”

48. Article 241 shall be modified and shall have the following content:

“Art. 241 – For the purpose of the present emergency ordinance, are considered as relevant activities the activities which involve exploiting a geographical area in order to:

- a) prospecting or extracting rough oil, natural gases, coal or other solid fuels;
- b) providing the transporters which operate by air, sea or fluvial with airports, maritime/fluvial ports or with other transport network terminals.”

49. Article 245 shall be modified and shall have the following content:

“Art. 245 – The present emergency ordinance shall not apply for the contract which has as object the purchase of energy, of extractive industry energetic products or of other fuels meant for energy production, if it is awarded by a contracting authority which performs activities similar in nature with the ones stipulated at art. 235 and art. 241 let. a).”

50. At article 246, paragraph (2) shall be modified and shall have the following content:

“(2) The provisions of par. (1) shall apply in the case of:

- a) a supply contract, provided at least 80% of the average turnover in the product supply field, in the last 3 years, of the affiliated enterprise comes from furnishing such products to the enterprises with which it is affiliated;
- b) a services contract, provided at least 80% of the average turnover in the services field, in the last 3 years, of the affiliated enterprise comes from rendering such services for the enterprises with which it is affiliated;
- c) a works contract, provided at least 80% of the average turnover in the works field, in the last 3 years, of the affiliated enterprise comes from performing such works for the enterprises with which it is affiliated;

51. At article 246 paragraph (3), the second dash of letter c) shall be modified and shall have the following content:

“For the “dominant influence” term, the provisions of art. 3 let. m) shall apply accordingly.”

52. At article 246, 2 new paragraphs shall be introduced after paragraph (3), namely paragraph (4) and (5) with the following content:

“(4) Taking into account the setting up date of an affiliated enterprise or the date it has begun its activity, in case the turnover is not available for the past 3 years, it’s enough for the enterprise to show that the turnover stipulated at par (2), let. a), b) or c) is credible, this fact being proved based on a business plan.

(5) In case more than one affiliated enterprise to the contracting authority renders similar services, supplies similar products or performs similar works, the percentages stipulated at par. (2) shall be calculated taking into account the total turnover resulted from supplying products, rendering services or, by case, performing works, by the respective affiliated enterprises.”

53. At article 250, after paragraph (2), another paragraph shall be introduced , namely paragraph (3), which shall have the following content:

“(3) For the purpose of awarding the sectorial contracts, the contracting authority can also use the special awarding methods mentioned in Chapter IV, in compliance with the provisions of the present section”.

54. At article 252, letters a), c), and f) shall be modified and shall have the following content:

“a) given the situation when, after applying the open tender procedure, the restricted tender procedure, the negotiation with the prior publication of a contract notice or the request for tenders procedure, no tender has been presented or only irregular tenders have been presented due to the fact that these are completely irrelevant in relation with the contract’s object. In this case, the application of the negotiation’s procedure is possible only annulling the initial procedure and only if the initial requirements stipulated in the tender documentation are not substantially modified;

c) as a strictly necessary measure, when the application periods of the open tender procedure, restricted tender procedure, the negotiation with the prior publication of a contract notice or request for tenders, cannot be respected due to extreme emergency reasons, determined by unpredictable events that are not due on any account to an action or inaction of the contracting authority. The contracting authority has no right to establish the contract’s duration on a larger period of time than it’s necessary, in order to face the emergency situation that caused the

application of the negotiation procedure without prior publication of a contract notice;

f) in order to procure raw materials traded and transacted on the commodity exchange, its procurement shall be performed as a result of the market transactions on the commodity spot market”.

55. Article 256 shall have the following content:

“Art.256. For the purpose of solving of the complaints using the administrative-judicial approach, the injured part has the right to address The National Council for Solving Complaints in compliance with the provisions of Art.270 – 272.”

56. After Art.256, a new article shall be introduced , namely Art. 256 ^1 with the following content:

“Art.256^1. – (1) In the case of abusive exertion of the right to submit complaints using the administrative-judicial way, the National Council for Solving the Complaints can sanction the objector, at the contracting authority’s request and after rendering the solving complaint decision, with a fine between 10 000 lei and 35 000 lei, in accordance with the provisions of Art.280, par.(4).

(2) The abusive exertion of the right to submit complaints during the awarding procedure gives the contracting authority the right to remedy measures which, at the contracting authority’s request, may be given to it by the court.”

57. At Art.257, par.(2) shall be modified and shall have the following content:

“(2) The Council functions based on a regulation of organization and functioning, approved in conformity with Art.291.”

58. Par.(5) of Art. 257 shall be abrogated.

59. At Art.258, par.(1) – (3) shall be modified and shall have the following content:

“Art.258.- (1) The Council is managed by a President, elected from among its members.

(2) In order to apply the provisions of par.(1), the Council’s members elect the President by secret vote, with absolute majority.

(3)The President is elected for a 3 years mandate, with the possibility only one renewal of the mandate.”

60. At Art. 262, par. (1) and (2) shall be modified and shall have the following content:

“Art. 262 – (1) The Council’s members are civil servants with special statute, named counselors for solving public procurement complaints. From the point of view of remuneration, they are assimilated to the public function of deputy general secretary within the Government’s working apparatus.

(2) The Council’s members benefit of increased basic salaries up to 75% against those scheduled by the law.”

61. At Art.262, a new par. Shall be introduced after par.(2), namely par (2<sup>1</sup>), with the following content:

“(2<sup>1</sup>) The Council’s President also benefits of the management increase, corresponding to the general manager function.”.

62. Art.263 shall be modified and shall have the following content:

“Art.263 – (1) The main task of the Council’s members is to fulfill the Council’s attributions conferred by the present emergency ordinance.

(2) The Council’s activity and the personal performances of its members are evaluated by a college in the first term of every year, focused on the period between first of January and 31 of December of the preceding year.

(3) The College mentioned at par.(2) is composed of 5 members as it follows:

a) the President of the National Council for Solving Complaints;

b) the President of N.A.R.M.P.P.;

c) the representative of the Ministry of Justice;

d) two representatives of the Romanian Parliament, one senator and one deputy as well, designated by the Parliament’s two Chambers.

4) For the purpose of the provisions in par.(2), the College draws up an evaluating report which is forwarded to the Prime Minister. Based on the proposals emerged from the evaluation report, the Prime Minister can dispose, by decision, to relieve from function those counselors for solving complaints who did not obtain satisfactory evaluations.

(5) The evaluation procedure of the Council’s activity and of the individual professional performances of its members is established by the College’s regulation which is approved by order of the N.A.R.M.P.P.’s President and shall be published in the Official Gazette of Romania, Part 1.

(6) Excepting for the term mentioned in par.(2), in situations of exceptional circumstances, if necessary, the evaluation procedure can be performed any time necessary before that term.”

63. At Art.266, par.(1) shall be modified and shall have the following content:

“Art.266 – (1) The Council has the competence for solving the complaints formulated within the awarding procedure, before the conclusion of the contract, through specialized panels of judges constituted in compliance with the organization regulatory, Art.291.”

64. At Art 270, Par.(1), Let.d) shall be modified and shall have the following content:

“d) the object of the complaint, formulated in compliance with the provisions in Art.255, Par.(5);”

65. At Art 271, Par.(2) and (3) shall be modified and shall have the following content:

“(2) Together with the submission of the complaint or the next working day the latest, the complainer shall forward to the contracting authority, under the sanction of the complaint’s annulment, a copy of it and of the writings stipulated at par. (1), if available.

(3) In a 5 days term since the reception of the notification regarding the complaint, the contracting authority has the obligation to inform about this issue the others participants in the awarding procedure. The notification must also include a copy of that certain complaint.”

66. At Art.271, a new paragraph shall be introduced after par.(4), namely par.(5) with the following content:

“(5) Given the situation of non-fulfilling the obligations provided in par.(2), the provisions in Art.277, par.(1) are not applicable.”

67. At Art.272, the paragraphs (2) and (3) shall be modified and shall have the following content:

“(2) In case the estimated value, according to the provisions of ch. II, section 2, of the contract/framework agreement that is to be awarded/concluded is larger than the thresholds stipulated at art. 55, par. (2), the complaint may be submitted in a 10 days term since the date the complainer took knowledge, according to the present emergency ordinance, of a contracting authority’s act that it considered by him as illegal.”

(3) In case the estimated value, according to the provisions of ch. II, section 2, of the contract/framework agreement that is to be awarded/concluded is larger than the thresholds stipulated at art. 55, par. (2), the complaint may be submitted in a 10 days term since the date the complainer took knowledge, according to the present emergency



ordinance, of a contracting authority's act that it considered by him as illegal.”.

68. At Art.272, after par.(3), two new paragraphs shall be introduced , namely par (4) and par (5) with the following content:

“(4) If the tender documentation is published in ESPP, in compliance with Art 75 par.(5), Art.89, par.(4) and Art.127, par.(2), the acknowledgement date is considered to be the date of publishing the tender documentation.

(5) Excepting the provisions in par.(1), the complaint regarding the provisions of the tender documentation can be submitted only in the scheduled term for tender submission.”

69. At Art.274, par.(1) shall be modified and shall have the following content:

“Art.274 – (1) In a 5 days term from the reception of the complaint's copy, the contracting authority has the obligation to send its point of view regarding the complaint to the Council, together with any relevant documents as well as , under the sanction of a fine stipulated at art. 275 par (3), a copy of the public procurement folder. The absence of the contracting authority's point of view doesn't stop solving the complaint, to the extend that its communication has been proven.”

70. At Art 275, par (1)-(3) shall be modified and shall have the following content:

“Art. 275 -(1) For the purpose of solving the complaint, the Council has the right to ask for explanations from the parties, to administer proofs and to request any other documents/information to the extend that these are relevant in relation with the complaint's object. The Council also has right to ask for any necessary information from other legal/natural persons in order to solve the complaint.

(2) The application of the provisions in par (1) must not lead to the expiration of the solving complaint term, in compliance with art. 276.

(3) The contracting authority has the obligation to respond to any request of the Council and to send it any other documents that are relevant for solving the complaint, in no more than 5 days as from the reception of the request, under the sanction of a fine amounting to 10 000 lei, applied to the leader of the contracting authority.”

71. At Art.275, 2 new paragraphs shall be introduced after par (3), namely par (3<sup>1</sup>) and (3<sup>2</sup>), with the following content:

“(3<sup>1</sup>) The Council has the obligation to rend its decision regarding the fine the fifth day the latest as from the expiring term stipulated in par.(3).

(3<sup>2</sup>) The Council’s decision regarding to the fine, not contested in due time, constitutes writ of execution and shall be executed by the qualified bodies , in compliance with the legal provisions regarding the financial debts force of execution and with the procedure mentioned in these provisions.”

72. Art.276 shall be modified and shall have the following content:

“ Art. 276 – (1) The Council has the obligation to solve the complaint in no more than 30 days as from the reception of the public procurement folder from the contracting authority.

(2) Disobeying the complaint’s solving term mentioned in par (1) may start the evaluation procedure in conformity with the provisions in art.263, par. (6)”.

73.At Art. 277, par (3) and (4) shall be amended and shall have the following content:

“(3) In the situation of strongly motivated cases and if one part requests so, the Council may rend a decision whereby it disposes, as a temporary measure, stopping the suspension period of the awarding procedure, starting with the expiring term mentioned in par. (4). The Council has the obligation to rend its decision over that request in no more than 5 days as from its reception.

(4)The Council’s decision regarding the temporary measure can be attacked in court in no more than 10 days as from the communication, in compliance with the provisions in art.283.”

74. At Art.277, a new paragraph shall be introduced after par (4), namely par. (5), with the following content:

“(5) If the contracting authority wants to procure products, services or works divided in lots by awarding different procurement contracts, the provisions in par. (1) operate only over the lots that are mentioned in the complaint.”

75. At Art.278 par (4) shall be amended and shall have the following content:

“(4) If the Council approves the complaint and disposes a remedy measure for the attacked document, it shall specify the exertion term for the appeal which cannot be shorter than the exertion term of the mean of appeal against the Council’s decision as it is stipulated in art.280, par (5).

N.A.R.M.P.P. has the obligation to monitor the fulfillment of the remedy measure, and for this purpose, the Council shall transmit to it all its motivated decisions, in copies.”

76. At Art.279, par. (3) shall be amended and shall have the following content:

“(3) The Council’ decision, adopted in compliance with par (1), shall be motivated and communicated to the parties in written in a 5 days term as from the day it was ruled. Without its motivation, the decision shall be published on the Council’s web site, within the same term.”

77. At Art.279 a new paragraph shall be introduced after par (3), namely par.(4) with the following content:

“(4) The motivated decision shall be published on the Council’s web site, within the official gazette, with no reference to the identification data of the decision and of the parties and to personal data as well, in no more than 10 days as from the date of becoming definite and irrevocable.”

78. At Art 281, par (1) shall be amended and shall have the following content:

“Art 281 – (1) The complaint shall be forwarded to the Council, under the sanction of its nullity which shall send the folder to the competent court in no more than 3 days as from the expiring term of exercising the mean of appeal.”

79. At chapter IX, the 7 th section shall be abrogated.

80. At Art. 283, par (1) shall be modified and shall have the following content:

“(1) The Court with competences for solving the complaint against the Council’s decision is the appeal court, the contentious-administrative and fiscal section in the contracting authority’s location aria. The National Council for Solving the Complaints is not a party in the case.”

81. At Art 284, par (1) shall be amended and shall have the following content:

“Art.284 – (1) At request, the court can dispose the suspension of the awarding procedure and/or the Council’s decision, until the solving of the complaint against the Council’s decision.”

82. At Art 285, par (2) shall be amended and shall have the following content:

“(2) Given the situation when the Council has solved the cause on exception in a wrong way, the court shall cancel that decision and shall

transmit the cause to the Council in order to be solved in substance taking into account also the reasons that determined the decision's cancellation."

83. At Art 287, par (4) shall be abrogated.

84 Art 291 shall be amended and shall have the following content:

"Art 291 – In no more than 60 days as from the publication of the present Government's emergency Ordinance, the Government, by decision, approves the Council's organization and functioning regulation, at the Council's President's recommendation and with the N.A.R.M.P.P.'s notice."

85. At Art 292, par (2) shall be amended and shall have the following content:

"(2) The Government, as a result of the Council's President recommendation and with the N.A.R.M.P.P.'s notice, as a result of a big number of cases, can consent by decision the setting up of Council's local agencies in the appeal courts residence cities and/or supplementing the number of the Council's employees, in compliance with art 260, par (1)."

86. At Art. 293, let e) shall be amended and shall have the following content:

"e) the infringement of the publicity rules stipulated by the present emergency ordinance and/or non fulfilling the obligation of registration in ESPP by the contracting authorities, as it is provided in the public procurement's legislation."

87. At Art 293, a new letter shall be introduced after let.j), namely let.(j<sup>1</sup>) with the following content:

(j<sup>1</sup>) changing the awarding criteria stipulated in the tender documentation during the application of the awarding procedure."

88. At Art 293 let.m) shall be amended and shall have the following content:

"m) the refusal of transmitting to the N.A.R.M.P.P. the necessary data regarding the public procurement awarding contracts which it requests in order to fulfill its functions and attributions, or non-transmitting the data within the term provided in the present Emergency Ordinance, or, if the case, within the requested term."

89. At Art.293 new letters shall be introduced after let m),, namely let.n),o), q), r), s), t), u), v) with the following content:

"n) the infringement of the obligation provided in art.204, par.(1);

- o) the annulment of an awarding procedure in other cases than those provided in art. 209;
- p) the infringement of the provisions in art.204 par (1);
- q) the infringement of the provisions in art.204 par (1<sup>^1</sup>);
- r) the infringement of the provisions in art. 206-207;
- s) non-fulfilling within the provided term the Council's decision, in compliance with the present emergency Ordinance's conditions, after it becomes definitive and irrevocable;
- t) the infringement of the provisions in art. 211-213 regarding the drawing-up and keeping the public procurement folder;
- u) non-setting up the compartment provided in art. 304<sup>^1</sup>;
- v) any other violation of the present emergency ordinance's provisions or of the normative acts issued for its application, having as a result the infringement of the provisions in art 2."

90. Article 294 shall be modified and shall have the following content:

"Art. 294 – (1) The contraventions stipulated at art. 293 let. f), m), n), u) and v) shall be sanctioned with a fine between lei 10.000 and lei 35.000.

(2) The contraventions stipulated at art. 293 let. a), c), k), q), s) and t) shall be sanctioned with a fine between lei 35.000 and lei 70.000.

(3) The contraventions stipulated at art. 293 let. b), d), e), g), h), i), j), j<sup>^1</sup>), l), o), p) and r) shall be sanctioned with a fine between lei 70.000 and lei 100.000.

(4) The fines stipulated for the contraventions provided by art. 293 are applicable to legal persons as well as natural persons.

(5) The natural or legal person with performs a contravention has the right to pay in no more than 48 hours from the drawing up date of the official report or, by case, as from its communication date, half of the minimum of the fines stipulated at art. 294 (1) – (3)."

91. At article 295, paragraph (4) shall be modified and shall have the following content:

"(4) Any person has the right to notice the N.A.R.M.P.P. about the infringement of the public procurement legal provisions. For the purpose of exercising this right, the respective persons shall transmit together with the notification, also the relevant data/documents, as proofs, to the N.A.R.M.P.P..

92. A new article shall be introduced after article 296, namely art. 269<sup>^1</sup>, with the following content:

"Art. 296<sup>^1</sup>. – (1) Without prejudicing the provisions of art. 294, NAMRPP has the right to request in court the absolute nullity ascertainment of the contracts/framework agreements in the following cases:

- a) the respective contracts/framework agreements have been concluded without publishing the contract notices, if these actions have taken place in other circumstances than the ones allowed by the present emergency ordinance;
- b) in the situations stipulated at art. 205, par. (2), art. 277 par (1) and art. 284 par (2);
- c) the public procurement contract, the public works concession contract and the services concession contract which have been concluded without obeying the minimum requirements provided by the contracting authority in the tender book or, although the respective requirements have been fulfilled, the contract has been concluded in less favorable conditions than the ones provided in the technical and financial proposal which have constituted the tender declared as being successful.
- d) When the contracting authority aims to obtain the execution of a work, a service or a product, fact which would make the contract fall either under the public procurement contracts category, or under the public works concession contracts category, but the contracting authority concludes another type of contract than the here mentioned, without obeying the awarding procedures stipulated by the present emergency ordinance.

(2) The competent court for ascertaining the absolute nullity is the contentious-administrative and fiscal section of the court in which's competences area resides also the contracting authority.

93. At article 299, a new paragraph shall be introduced after paragraph (3), namely paragraph (4), with the following content:

“(4) Starting with January 1<sup>st</sup>, 2008, the publication of the notices stipulated by the present emergency ordinance in the Official Gazette of Romania shall not be compulsory.

94. Article 304<sup>^</sup>1 shall be modified and shall have the following content:

“Art. 304<sup>^</sup>1 – (1) In view of awarding the contracts the contracting authority has the obligation to set up an internal compartment specialized in public procurement until January 1<sup>st</sup>, 2008.

(2) In the case of the newly set up contracting authorities, the obligation stipulated by par (1) shall be fulfilled in no more than 3 months as from the setting up date of the contracting authority.

(3) To the extent that the organizational structure of the contracting authority does not allow setting up a separate compartment, the obligation stipulated at par. (1) and (2) shall be fulfilled by means of an administrative action of the contracting authority's manager whereby, by case, one or more persons within the respective contracting authority

are designated to fulfill the main attributions of the internal specialized compartment, as stipulated by the public procurement law. “

Art. II

The Government emergency Ordinance no. 34/2006 regarding the award of the public procurement contracts, public works concession contracts and services concession contracts, published in the Official Gazette of Romania, Part I, no. 418 of May 15<sup>th</sup>, 2006, approved with amendments and supplements by Law 337/2006, with the subsequent amendments and supplements, as well as with the ones brought by the present emergency ordinance, shall be republished in the Official Gazette of Romania, Part I, after approving it by law, the texts being given a new numeration.

PRIME MINISTER  
CĂLIN POPESCU TĂRICEANU