

**GOVERNMENT DECISION**

**On the approval of the application norms of the Government Emergency Ordinance no. 30/2006 regarding the verification function of the procedural aspects related to the awarding process of the public procurements contracts**

Based on article 108 of the republished Romanian Constitution and article 12 of the Government Emergency Ordinance No. 30/ 2006 regarding the verification function of the procedural aspects related to the awarding process of the public procurements contracts,

The Government of Romania enacts the present decision.

**Sole article** – The application norms of the Government Emergency Ordinance no. 30 regarding the verification function of the procedural aspects related to the awarding process of the public procurements contracts, provided in the Annex to the present decision are hereby approved.

**PRIME MINISTER**

**Calin POPESCU TARICEANU**

**Application norms of the Government Emergency Ordinance no. 30/2006  
regarding the verification function of the procedural aspects related to the awarding process of  
the public procurements contracts**

**Chapter I**  
General Provisions

**Art. 1** – (1) The Ministry of Public Finances is the specialized body of the central public administration responsible for carrying out the procedural verification function in the public procurement field, by observing the awarding manner of public procurement contracts, public works concession contracts and services concession contracts, financed out of public funds.

(2) The verification covers the public procurement stages after the publishing of the contract notice until the award and signing of the contract. If there is not a contract signed, the verification ends at the time of communication of the results regarding the awarding procedure.

(3) The procedural issues related to the awarding process for the contracts having the values indicated in art. 1 par. (2) of the GEO no. 30/2006 regarding the verification function of the procedural matters during the award of the public procurements contracts, hereinafter called *the Emergency Ordinance*, are subject to verification, as provided by par. (1) provisions.

(4) The procedural verification in the public procurement field is carried out through the Unit for Coordination and Verification of Public Procurement, hereinafter called U.C.V.P.P, and its subordinated bodies, within the local general directorates of public finance, hereinafter called the compartments for public procurement verification.

(5) The procedural verification is carried out through verification of the compliance of the tender documentation with the legislation for the award of public procurement contracts, public works concession contracts and services concession contracts, financed from public funds and by direct observation of the manner in which the contract procedure is carried out.

(6) By derogation from par. (1), in exceptional cases provided by law, which allow the contract to be concluded without a prior publication of a contract notice, the UCVPP verification shall cover the procurement stages starting from the transmission of the invitation for negotiations until the contract awarding and signing.

**Art. 2 (1)**– U.C.V.P.P through its central and local units verifies the manner in which the public procurement contracts, the public works concession contracts and the services concession contracts are awarded by the contracting authorities.

(2) The contracting authorities are defined under the art 8 of the GEO 34/2006 regarding the award of public procurement contracts, works concession contracts and services concession contracts.

**Art. 3** – (1) From an operational point of view, U.C.V.P.P. is functioning independently from the entities involved in the management and contracting of the public funds, as well as from the National Authority for Regulating and Monitoring of the Public Procurement, hereinafter referred to as N.A.R.M.P.P., and the National Council for Solving Complaints.

(2) U.C.V.P.P. is operating under the direct coordination of the minister of public finance, while its subordinated compartments for public procurement verification are operating under the local general directorates of public finance and are subordinated to U.C.V.P.P.

(3) The central structure of U.C.V.P.P. coordinates, from a methodological and procedural point of view, the whole activity of the local and central units.

(4) The local compartments for public procurement verification are carrying out the procedural verification function in the public procurement field, by following the awarding manner of public procurement contracts, based on the activity program provided by the U.C.V.P.P.

**Art. 4** – (1) The main tasks of the U.C.V.P.P. for performing the procedural verification are the following:

a) coordinates and guides the activity of its own body for the unitary application of the verification procedures in the public procurement field;

b) ensures the setting-up and application of a unitary framework for the elaboration and implementation of the verification procedures for the award of public procurement and concession contracts;

c) verifies and follows-up the carrying out of the awarding procedures for public procurement contracts, public works concession contracts and services concession contracts, financed out of public funds, in compliance with the relevant legislation.

d) analyses the documents drawn up by the contracting authority for the award of the public procurement contracts;

e) draws up intermediary notes, each time when non-compliances in applying the legislation in the public procurement field are detected during a public procurement procedure;

f) issues consultative notes (*FR: avis consultative*), based on intermediary notes, whenever non-compliances in applying the legislation in the public procurement field are noticed .

g) draws up activity reports for each public procurement contract awarding procedure subject to the verification;

(2) U.C.V.P.P promotes communication and proper collaboration with interested organizations and entities in public procurement aspects.

(3) While performing its attributions, U.C.V.P.P. collaborates with the N.A.R.M.P.P., National Council for Solving Complaints, management authorities and other control units and public institutions. For this purpose U.C.V.P.P. shall conclude agreements with the involved authorities and institutions.

**Art. 5** – (1) The procedural verification performed by U.C.V.P.P does not limit or harm in any way the duties and responsibilities of N.A.R.M.P.P. or National Council for Solving Complaints resulting from the application of the legal provisions in the public procurement field.

(2) The activities carried out by U.C.V.P.P. do not limit in any extent the contracting authorities responsibilities and obligations emerging from the enforcement of the public procurement legislation.

## **Chapter II** Special provisions

**Art. 6** – The procedural verification activity in the public procurement field is performed by U.C.V.P.P. and its subordinated units based on annual, quarterly and monthly programs approved by the minister of public finance.

**Art. 7** (1) The draft activity program for the entire structure of U.C.V.P.P. is prepared, as a first layout, by the end of the current year for the next year. This includes the procurement procedures selected for verification, the procedure programming, the estimated period for their verification and the estimation of resources needed to be allocated for the procedures.

(2) In drawing-up the draft of the activity program the following are to be taken into account: the information sent to the Ministry of Public Finance by the contracting authorities regarding the public procurement plans, the prior information notices or contract notices and the priorities agreed in cooperation with N.A.R.M.P.P.

**Art. 8** (1) The activity program may be periodically updated in case of changes to the plans or public procurement procedures operated by the contracting authorities.

(2) The activity plan sent to the public procurement verification units within the local general directorates of public finance resulted from the splitting of the activity plan of U.C.V.P.P., is to be updated whenever is necessary.

**Art. 9** - (1) The selection of the public procurement, public works and services concession procedures to be subject of the procedural verification is done using the risk analysis, based mainly on the following criteria:

- a) estimated value of the public procurement, works and services concession contract;
- b) the type and size of the contracting authority;
- c) financing source;
- d) the public procurement procedure to be used;
- e) the historical background and experience of the contracting authority in the public procurement field.

**Art. 10** (1) On the date of initiating the awarding procedure provided in art. 1, par. (2) of the Emergency Ordinance, respectively on the date of sending for publication of the prior information notice, contract notice or invitation for participation, as the case may be, the contracting authorities have the obligation to inform the U.C.V.P.P. on the procurement procedure to be carried out.

(2) The contracting authority shall submit to the U.C.V.P.P. headquarters a documentation that shall include: the contract notice or the invitation to participation, in case the procurement procedure does not involve the publication of such notice, and the presentation form according to the applicable standard format.

(3) The documentation stipulated in par. (2) may be sent by any of following means:

- a) by mail, with confirmation receipt
- b) by fax
- c) by electronic means
- d) in any combination of those stipulated under the above items a) – c).

(4) Any document must be registered by U.C.V.P.P. when it is received and respectively when it is sent.

**Art. 11** (1) For the procurement procedure selected to be verified, the manager of the U.C.V.P.P or of the local public procurement verification compartment has the obligation to issue the verification notice to the contracting authority, and to send it immediately to this.

(2) The verification notice for the contracting authority shall also include the name of the appointed observers and the request to submit the documentation related to the public procurement procedure.

**Art. 12** - The verification of the compliance of the awarding procedure with the legislation in force is done on the key elements that are to be followed in each procedural stage, based on its time schedule and type. All the verifications are made within the established period, based on the instructions from Operational Handbook for Verification and Observation Activity.

**Art. 13** – (1) During the verification of the awarding procedure of the public procurement contracts, the observers mentioned in art. 5 par. (2) of the Emergency Ordinance shall mainly focus on the following key elements:

- a) the compliance with the rules and principles for the award of public procurement contracts, public works concession contracts and services concession contracts;
- b) the manner in which the used procurement procedure is applied and observed;
- c) the legality of the documents subject to verification;
- d) the manner in which the contracting authorities apply the tenders selection and awarding criteria of the public procurement contracts, public works concession contracts and services concession contracts.

(2) In performing their tasks, the observers have the following obligations:

- a) to attend the meeting for bids/tenders opening, as well as the further meetings of the evaluation committee for the analysis, evaluation, the establishing of the successful tender.
- b) to verify the compliance with the legislation in force of the public procurement procedure chosen by the contracting authority, in what concerns: the observance of the publicity rules, observance of rules for the participation of the economic operators to the awarding procedure, the compliance of the documentation for public procurement awarding contract, as well as observance of the rules for avoiding conflict of interests.

(3) In performing their tasks, the observers have unrestricted access to all documents and information related to the procurement procedure. In justified cases, they may request to the persons responsible with the public procurement process within the contracting authority, supplementary written information in order to clarify procedural issues linked to the awarding process.

**Art. 14** – While performing their duties, the observers appointed for carrying out the procedural verification, shall draw up the following:

a) Intermediary note – immediately if non-compliances in applying the public procurement legislation during the public procurement procedure are noticed. The intermediary note includes also the recommendations for correction of non-compliances. This note is registered by the contracting authority, and shall be attached to the activity report.

b) The activity report - for each public procurement procedure which was verified, after completion of the verification activity, comprising the main findings, with all the intermediary notes attached and, if the case may be, the opinion. This is elaborated also in the case when the contract shall not be signed. The activity report is registered at U.C.V.P.P. structure where the observers are employed and is sent to the contracting authority in five working days after completion of the verification activity.

**Art. 15** – The consultative note provided in art. 5 par. (2) of the Emergency Ordinance is issued by the U.C.V.P.P. structure, when non-compliances in applying the public procurement legislation are noticed. The consultative note contains non-compliances in applying the public procurement legislation and is sent to the contracting authority in no more than three working days from established of selected tender.

**Art. 16** (1) U.C.V.P.P. has the obligation to send the consultative note to the National Authority for Regulating and Monitoring Public Procurements and to the contracting authority's higher hierarchic body if the case may be.

(2) 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. 17** - (1) Based on the intermediary notes issued by the observers and consultative note issued by the U.C.V.P.P. unit, the contracting authority may dispose:

- a) to suspend the process for awarding the public procurement contract, public works concession contracts and services concession contracts
- b) to modify, to cease, to revoke, or to cancel the legal documents in relation to which the consultative note was issued,
- c) any other corrective measures to remedy the non-compliances identified by the observers,
- d) to continue the process for awarding the public procurement contract, public works concession contracts and services concession contracts.

(2) The responsibility for any decision made during the process of contracts awarding that are subject of (fall under) the Law regarding the award of public procurement contracts, is borne by the contracting authority.

(3) The decision made by the contracting authority is to be immediately announced/sent to N.A.R.M.P.P. and U.C.V.P.P.

### **Chapter III** **The responsibility of the personnel**

**Art. 18** (1) The U.C.V.P.P. staff, hereinafter referred to as the observers, is responsible for performing the tasks assigned according to their public position as well as the duties that were delegated to them, according to law.

(2) The observers are responsible for the findings included in the intermediary notes, in the consultative note, as well as in the Activity Report, for each public procurement procedure which is verified, according to Law no. 188/1999 regarding the public servant statute, republished, with the subsequent amendments.

**Art. 19** The observers have the obligation to strictly observe the legal regime of the conflict of interests and incompatibilities, in accordance with the Law no. 161/2003 regarding some measures for ensuring the transparency in performing the public dignities, public functions and in the business environment, and for prevention and penalty the corruption, with the subsequent amendments.

**Art. 20** The observers have the obligation to maintain / keep the confidentiality regarding the actions, the information or documents to which they had access during the process for awarding the public procurement contracts, public works concession contracts and services concession contracts, according to the law, with the exception of public interest information. Immediately after their nomination as observers, they have the obligation to sign the statement of impartiality and confidentiality.

**Art. 21** (1) The observers have the obligation to attend the professional training programs organized by the School of Public Finance and Customs within the Ministry of Public Finance, on the request of U.C.V.P.P.

(2) The observers have the obligation to fulfil their tasks with responsibility, competence, efficiency and correctness.

**Art. 22** The observers have the obligation to have an impartial attitude, neutral to any political, economic, religious or of any other kind, in performing their public duties. They are forbidden to request or to accept, directly or indirectly, for themselves or for other persons, any advantage or benefit in consideration of their public position or to abuse in any way of their positions.

#### **Chapter IV** Final Provisions

**Art. 23** For the purpose of applying the present norms U.C.V.P.P. shall draft the Operational Handbook for Verification and Observation Activity for verification of the public procurement contracts, public works concession contracts and services concession contracts that will be approved through the minister of public finance order.

**Art. 24** – The local public procurement verification units will report to the U.C.V.P.P. about the public procurement procedures that were verified and their results, as follows:

- a) on the deadlines established in the program or in the Operational Handbook for Verification and Observation Activity;
- b) the Report on the manner of performing the activity program for the concluded quarter within 10 working days after the quarter is finished.

**Art. 25** – U.C.V.P.P. shall present to the minister of public finance the Annual Report on the verification activity performed by its central and local structures.