

GOVERNMENT OF ROMANIA

GOVERNMENT DECISION no. 1660/2007

on the approval of the application norms of the legal provisions referring to the award of public procurement contracts by electronic means from Government Emergency Ordinance no. 34/2006 regarding the award of public procurement contracts, public works concession contracts and services concession contracts

Based on art. 108 of the republished Romanian Constitution, and on art. 303 paragraph (3) of the Government Emergency Ordinance no. 34/2006 regarding the award of the public procurement contracts, public works concession contracts and services concession contracts, approved with amendments and supplements by the Law no. 337/2006

Government of Romania enacts the present decision.

Sole article – The application norms of the legal provisions referring to the award of public procurement contracts by electronic means regulated under Government Emergency Ordinance No. 34/2006 regarding the award of the public procurement contracts, public works concession contracts and services concession contracts, approved with amendments and supplements by the Law no. 337/2006, which provide the specific technical and organizational framework, as well as the unitary methodology for the organization and conducting of procedures for awarding the public procurement contracts by electronic means, and which are provided in the Annex that constitutes integral part of the present Government Decision, are hereby approved.

**PRIME - MINISTER
CALIN POPESCU - TARICEANU**

Application norms of the legal provisions referring to the award of the public procurement contracts by electronic means

**CHAPTER I
General provisions**

Art. 1. – (1) In the application of the legal provisions of art. 21 paragraph (1) in the Government Emergency Ordinance NO. 34/2006, hereinafter referred to as *the emergency ordinance*, the electronic system of public procurement, hereinafter referred to the ESPP, shall provide the contracting authorities with technical facilities for:

a) the application, entirely by electronic means, of the open procedure, restricted procedure and request for tender procedure;

b) the application, in part by electronic means, of the procedures for the awarding of the public procurement contract provided in art. 18 of the emergency ordinance.

(2) ESPP provides the contracting authorities with technical facilities for the use of electronic auctions, as this special method for the award of the public procurement contract is provided by art. 161-169 of the emergency ordinance.

(3) ESPP provides the contracting authorities with the technical possibility to purchase directly, by means of an electronic catalogue, products, services or works which's procurement falls under the incidence of the provisions of art. 19 in the emergency ordinance.

Art. 2. – The transmission for publishing in ESPP of the prior information notices, contract notices and contract award notices, such as they are provided in art. 47 in the emergency ordinance, can only be realized by filling in the specific forms available in IT system and only by the contracting authorities that are registered in ESPP.

**CHAPTER II
Registration and renewal of registration in the ESPP**

*Section 1
General provisions*

Art. 3. – Any contracting authority, as well as any economic operator, are bound to request the registration and therefore the renewal of the registration in the ESPP, under the observance of the terms and procedures regulated under these norms.

Art. 4. – (1) The registration and the renewal of the registration in ESPP shall be performed by observing the electronic procedure implemented by the ESPP operator.

(2) The electronic procedure for the registration and the renewal of the registration, both for contracting authorities, and for economic operators, shall be published in the ESPP, within 5 working days as from the date of coming into effect of these norms in the Official Gazette of Romania, Part I.

Art. 5. – The contracting authorities and economic operators, which apply for registration or renewal of registration in ESPP, shall be liable for the accuracy of the data and information conveyed within the registration procedure and/or renewal of registration and shall be bound to

transmit to the ESPP operator any amendment which has arrived about such data and information within no more than 3 working days as from the occurrence of the respective modifications.

Section 2
Conditions and procedure of registration in ESPP

Art. 6. – (1) The registration procedure in ESPP of the contracting authorities contains the following stages:

a) on-line completion of the registration form available in the ESPP;

b) sending of an application for registration addressed to the ESPP operator, signed by the legal representative of the contracting authority or by the person expressly authorized to represent the authority in relations to third parties, event in which a certified copy of the authorization document shall be sent;

c) sending by the ESPP operator, by electronic means, of the digital registration certificate and its user instructions, after the finalization of the stages provided at letter a) and b).

(2) The registration procedure in ESPP of the economic operators contains the following stages:

a) on-line completion of the registration form available in the ESPP;

b) sending of an application for registration to the ESPP operator, signed by the legal representative of the economic operator or by the person expressly authorized to represent the authority in relations to third parties, event in which a certified copy of the authorization document shall be sent;

c) sending of conclusive documents to prove the registration type as authorized natural person or as legal person and, if applicable, the certification or professional membership;

d) sending by the ESPP operator, by electronic means, of the digital registration certificate and its user instructions, after the finalization of the stages provided at letter a), b) and c).

(3) Branches, agencies and any other secondary headquarters without legal personality of an economic operator cannot be registered in ESPP.

(4) Documents provided in paragraph (2) letter c) must be compliant with the legal provisions in the country where the economic operator is established.

Art. 7. – By completion of the application form, the contracting authority and economic operator undertake a confidentiality and information protection agreement of the information available within the ESPP, including the information which provides access to the system.

Art. 8. – (1) The application for registration provided in art. 6 paragraph (1) letter b) and paragraph (2) letter b) shall be filled in by using the form available within the ESPP and shall be sent in electronic form, signed by the extended electronic signature of the applicant, based on a qualified certificate, issued by an attested certification service supplier.

(2) Within 5 days, the ESPP operator shall send the applicant a confirmation of receipt in electronic form, signed by the electronic signature of the ESPP operator.

(3) In the case where the application cannot be sent in the terms provided in paragraph (1), this can be submitted to the headquarters of the ESPP operator or can be sent by post with confirmation for receipt. The application thus conveyed shall be registered with the registrar's office of the ESPP operator.

Art. 9. (1) The ESPP operator has the obligation to provide, by electronic means, the contracting authority and/or the economic operator with the digital registration certificate and its user instructions, within no more than 2 working days from the date of the receipt of the registration application insofar the registration form is accurately and completely filled in.

(2) In case where the information or, as the case may be, the documents, requested according to the provisions of art. 6 paragraph (1) and (2), are inaccurate and/or incomplete, the ESPP operator has the obligation to request to the contracting authority and/or to the economic operator the remediation thereof. The digital registration certificate and its usage instructions shall be sent within the period provided in paragraph (1), starting with the receiving date of the accurate and complete information and documents.

Section 3

Conditions and registration renewal procedure in the ESPP

Art. 10. – (1) The digital registration certificate in ESPP is valid for a period of 2 years from the date of its release, also in case of the contracting authority, and in the case of the economic operators.

(2) The registration certificate in ESPP shall be renewed every 2 years, observing the electronic procedure set forth by the ESPP operator.

(3) In the case where, due to technical reasons, prior to the expiration of the validity period, the registration certificate in ESPP cannot be further used, it will be renewed by observing the registration renewal procedure.

(4) In the event provided in paragraph (3), the ESPP operator has the obligation to inform in due time all the users of this system, both contracting authorities and economic operators, regarding the date until the certificate must be renewed.

Art. 11. – The renewal of registration procedure in ESPP, both of the contracting authorities and of the economic operators, contains the following stages:

a) sending an application for renewal of registration addressed to the ESPP operator, signed by the legal representative of the contracting authority and/or of the economic operator or by the person expressly authorized for representation in relations to third parties, event in which a copy of the authorization document shall be sent;

b) sending by the ESPP operator, by electronic means, of the digital certificate for renewal of registration and its user instructions, after the finalization of the first stage.

Art. 12. – (1) The application for renewal of registration provided in art. 11 letter a) shall contain explicit mentions regarding the possible modifications of data and information available in ESPP of the respective applicant, as well as the acceptance of validity prolongation for the confidentiality and information protection agreement undertaken by registering in ESPP.

(2) The provisions of art. 8 and 9 shall be duly implemented as well in the case of the renewal of registration procedure.

CHAPTER III

Application of the awarding procedures by electronic means

Section 1

Open tender procedure

Art. 13. – The open tender procedure conducted by electronic means is initiated by filling in the specific form provided in art. 2.

Art. 14. – (1) In the case where the contracting authority decides to use the option provided in art. 40 paragraph (2) letter a) from the emergency ordinance, then it shall also send for publication in the ESPP the tender documentation, in form of an electronic file.

(2) The ESPP operator has the obligation to provide to any economic operator registered in ESPP the free and unrestricted access to the electronic file containing the tender documentation.

Art. 15. – (1) After the publication date of the contract notice, in order to continue the implementation of the open procedure by electronic means, the contracting authority has the obligation to insert in ESPP the information automatically requested by the system in order to generate the procedure.

(2) In the case where the contracting authority requests the candidates to fulfil some qualification criteria, it has the obligation to insert in the ESPP the information referring to the form and conditions in which the fulfilment of those criteria is demonstrated by the economic operators, as well as the term in which it estimates to finalize the verification of the qualification criteria fulfilment.

(3) The contracting authority is not entitled to request the amendment and the ESPP operator is not entitled to modify the information that will affect the operation of the system, of those provided in paragraph (1), such as, without limitation to the following:

a) the qualification and selection criteria;

b) the award criteria and, by case, the evaluation factors and/or the calculation algorithm;

c) the amount of products, services or dimension of the works;

d) the CVP code;

(4) In the event where errors or omissions regarding the information provided in paragraph (3) are noticed, the contracting authority has the obligation to cancel (annulment) the awarding procedure considering, implicitly, that the conditions provided in art. 209 paragraph (1) letter d) in the emergency ordinance are fulfilled.

Art. 16. – Any economic operator registered with the ESPP is entitled to send a tender.

Art. 17. – (1) The economic operator has the right to send a tender only in electronic format and only until the time limit for submitting tenders as provided in the participation notice.

(2) Both the elements of the technical proposal of the tendered products, services or works and the elements of the financial proposal are transmitted in ESPP by the economic operator.

(3) In the case where, for conformity verification purpose of the technical proposal with the requirements contained in the specifications book (tender book) or for the purpose for verification of the financial proposal, the contracting authority requests the submission of certain documents, these have to be transmitted to ESPP, in electronic format, signed by electronic signature.

(4) In the case where, due to technical reasons, it is not possible to send certain documents in electronic format by means of ESPP, the respective documents shall be sent to the contracting authority in the form and by using the method of communication requested by it, by observing the provisions of the emergency ordinance regarding the communication and data transmission rules.

Art. 18. – The proof of constituting the participation guarantee, if requested, shall be made similarly to the provisions of art. 17 paragraph (3) and (4) referring to the sending of documents in electronic format.

Art. 19. – (1) In case where, under the tender documentation, it was requested that certain qualification criteria shall be fulfilled, the economic operators shall introduce in ESPP, together with the tender, also the information necessary to demonstrate the fulfilment of the qualification criteria, in the terms requested by the contracting authority.

(2) In the event where, the contracting authority has requested the submission of some documents in order to demonstrate the fulfilment of certain qualification criteria, the provisions of art. 17 paragraph (3) and (4) shall be applied accordingly.

(3) The contracting authority has the right to request products samples that are to be supplied during the fulfilment of the future contract, case in which it must specify, in the contents of the tender documentation, the method for presenting these.

Art. 20. – (1) The verification of the fulfilment manner of the qualification criteria by each tenderer and the responsibility for the outcome of this verification belongs to the evaluation committee established within the contracting authority.

(2) In the event where it is established that the deadline provided in art. 15 paragraph (2) cannot be observed, the contracting authority has the obligation to introduce in ESPP information regarding the extension of this deadline.

Art. 21. – (1) The evaluation committee has the obligation to review and verify the technical proposals submitted by tenderers.

(2) After the finalization of verifications provided at paragraph (1) and at art. 20 paragraph (1), the evaluation committee shall introduce in ESPP, using the technical facilities accessible under this system, the name of the tenderers which's tenders are admissible as well as tenderers which's tenders have been considered unacceptable or irregular.

(3) In the case where the awarding criterion of the public procurement contract is “the most economically advantageous tender”, the evaluation committee shall also introduce in ESPP the score obtained by each admissible tender, by application of the technical evaluation factors provided in the tender documentation.

Art. 22. – (1) The financial proposals transmitted by the tenderers in the ESPP are not accessible to the contracting authority until the verifications provided by art. 20 and 21 are finalised.

(2) After sending to ESPP the information provided in art. 21 paragraph (2) and, if applicable, the information provided in art. 21 paragraph (3), the system enables the automatic access of the contracting authority to information regarding:

- a) the financial proposals of the tenderers which's tenders have been considered admissible;
- b) the classification of tenderers which's tenders have been considered admissible.

Art. 23. – (1) In the case where the awarding criterion of the public procurement contract is “the lowest price”, the classification is realized by ordering the prices provided in the financial proposals from the lowest to the highest.

(2) In case the awarding criterion of the public procurement contract is “the most economically advantageous tender”, the classification is done by arranging the scores obtained starting with the highest and until the lowest.

Art. 24. – After visualizing the information provided at art. 22 paragraph (2), the responsibility of deciding the successful tender belongs to the contracting authority.

Art. 25. – (1) The contracting authority has the obligation to send in ESPP the outcome of the awarding procedure, within no more than 10 working days from the date when the system

enables the access of the contracting authority to the information provided in art. 22, paragraph (2).

(2) Based on the information introduced in ESPP by the contracting authority, the system shall automatically generate to all the tenderers participating to the open procedure by electronic means, notifications regarding the outcome of the procedure.

(3) The contracting authority has also the obligation to formulate the communications provided in Chapter V, Section 5, from the emergency ordinance.

Art. 26. – After concluding the public procurement contract, the contracting authority has the obligation to send for publication in ESPP a contract award notice, by observing the provisions of art. 56 in the emergency ordinance.

Section 2

Restricted tender procedure

Art. 27. – (1) The restricted procedure by electronic means is initiated by filling in the specific form provided in art. 2.

Art. 28. – After the publication date of the contract notice, in order to continue the application of the restricted procedure by electronic means, the contracting authority has the obligation to introduce in ESPP the information requested automatically by the system in order to generate the procedure.

Art. 29. – The contracting authority has the obligation to introduce in ESPP the information regarding the form and conditions in which the economic operators demonstrate the fulfilment of the selection criteria, as well as the term in which the contracting authority estimates to finalize the verification of the fulfilment of the respective criteria.

Art. 30. – (1) Any economic operator registered in ESPP has the right to submit its candidature for the first stage of the restricted tender procedure by electronic means.

(2) The candidates introduce in ESPP the information regarding the fulfilment of the selection criteria, in the terms requested by the contracting authority.

(3) In the event where, in order to demonstrate the fulfilment of certain selection criteria, the contracting authority has requested the submission of some documents, these shall be sent in ESPP, in electronic format, signed by electronic signature.

(4) In the case where, due to technical reasons, it is not possible to send certain documents in electronic format by means of the ESPP, the respective documents shall be sent to the contracting authority in the form and using the communication method requested by it, by observing the provisions of the emergency ordinance regarding the data communication and transmission rules.

(5) The contracting authority has the right to request products samples that are to be supplied during the fulfilment of the future contract, case in which it must specify, in the contents of the tender documentation, the method for presenting these.

Art. 31. – (1) The verification of the fulfilment of the qualification and selection criteria by each tenderer and the responsibility of the outcome of this verification belongs to the evaluation committee established within the contracting authority.

(2) In the event where it is noticed that the observation of the time – limit provided in art. 29 is not possible, the contracting authority has the obligation to introduce in ESPP information regarding the extension of this deadline.

Art. 32. – (1) Following the verification of the fulfilment manner of the selection criteria, the evaluation committee shall introduce in the ESPP, using the technical facilities accessible within this system, the designation/name of the selected and non-selected candidates, as well as the score obtained by each candidate by applying the selection criteria provided in the tender documentation.

(2) Based on the information inserted according to paragraph (1), the outcome of the selection stage is set forth automatically in ESPP by using the technical facilities available within this system.

(3) The system shall automatically generate to all the candidates participating in the restricted procedure by electronic means, notifications regarding the outcome of the selection stage.

(4) The contracting authority has also the obligation to formulate the communications provided in Chapter V, Section 5, from the emergency ordinance.

Art. 33. – The system allows only for the candidates that were selected in the previous stage to submit tenders within the second stage of the restricted tender procedure by electronic means.

Art. 34. – The provisions of art. 14, 17, 18 and of art. 21 – 26 shall be applied accordingly.

Section 3 ***Request for tenders***

Art. 35. – The request for tenders by electronic means is initiated by the contracting authority transmitting an invitation for participation in the awarding procedure that is to be published in ESPP.

Art. 36. – After sending the invitation for participation, the rules applicable to the request for tenders procedure by electronic means are similar to those provided in art. 14 – 25 for the application of the open procedure.

Art. 37. – Within 48 days from the date of transmitting by the contracting authority of the classification regarding the outcome of the tender request procedure by electronic means, the contracting authority has the obligation to send for publication in ESPP the information referring to the identity of the successful tenderer, to the products/services/works that represent the object matter of the public procurement contract and prices or range of prices that are to be paid.

CHAPTER IV **Electronic auction**

Art. 38. – (1) In case where the electronic auction represents the final stage of an awarding procedure which has been applied by using entirely electronic means, it can be initiated by the contracting authority only after the sending by the ESPP of the information provided in art. 22 paragraph (2).

(2) In case where the electronic auction represents the final stage of an awarding procedure which has been applied by using partially electronic means or when resuming the competition among the economic operators which signed a framework agreement, it can be initiated only

after introducing by the contracting authority in ESPP the information automatically requested by the system.

Art. 39. – The electronic auction can be organized only as far as the technical facilities available in ESPP allow the application of the calculation algorithm set forth by the contracting authority.

Art. 40. – The contracting authority has the obligation to introduce in ESPP the information regarding the number of rounds of the electronic auction which it organizes, the schedule of conducting these rounds, as well as the elements of the tender that will represent the object of the repetitive tendering process.

Art. 41. – (1) The duration of an electronic auction round is measured in days with a duration of minimum one day and between rounds there shall be set out intervals, also expressed in days, with a minimum duration of one day.

(2) If, during an electronic auction round, no further prices and/or new values of the elements representing the object of the repetitive tendering process are introduced, the contracting authority has the right to decide upon the finalization of the electronic auction without organizing the next rounds, but only if this is specified within the information provided in art. 40.

Art. 42. – Only the economic operators registered in ESPP, according to the provisions of art. 6 paragraph (2) and which have been invited by the contracting authority in order to participate to this stage, according to the provisions of art. 165 paragraph (2) from the emergency ordinance, have the right to participate at the electronic auction.

Art. 43. – (1) At any time during the electronic auctions, the system shall provide to the participants at the tendering repetitive process, the necessary information in order for them to determine their position in the classification.

(2) The system provides the participants in the tendering repetitive process the information referring to new prices or values presented in the electronic auction, as well as the number of the participants in the respective electronic auction, in the event where the contracting authority has provided at the initiation of this stage the possibility of such information to be communicated.

(3) During the electronic auctions, the system shall not disclose the identity of the participating tenderers.

(4) The tenders submitted within the electronic auction by the participating tenderers shall improve the tenders submitted prior to the organization of such a stage.

Art. 44. – (1) At the time of finalization of the electronic auction, the system shall make available to the contracting authority the classification resulted from conducting this stage, determined by taking into consideration the final tenders submitted by the participating tenderers and based upon the awarding criterion set forth according to the provisions of Chapter V, Section 3, from the emergency ordinance.

(2) In the case where the admitted and registered in ESPP tenderer fails to change, within the electronic auction stage the elements of the tender which represent the object matter of the repetitive processes, when setting up the final classification, it's prior submitted tender to this stage that was previously inserted in ESPP by the contracting authority shall be taken into account.

CHAPTER V

Electronic catalogue

Art. 45. – (1) The economic operators registered in ESPP have the possibility to publish a catalogue in the system containing the products, services or works they offer, with a role of optional working instrument for the application of the provisions of art. 19 from the emergency ordinance.

(2) In the case where such a catalogue is published, the economic operators have the obligation to mention details regarding the products, services or works they offer, including the price, as such the contracting authority shall have sufficient information to make a fair and objective choice.

Art. 46. – (1) The contracting authority, by accessing the catalogues published in the ESPP, has the right to choose between the products, services or works presented in these catalogues and to send for such purpose, by means of ESPP, notifications to the economic operators which offer them.

(2) Notifications provided in paragraph (1) must contain information referring to the:

- a) identification information regarding the requested products, services or works;
- b) requirements regarding the delivery, performance or execution;
- c) conditions in which the payment is to be made.

Art. 47. – (1) Within 2 days from the reception of the notification provided in art. 46 paragraph (2), the economic operator has the obligation to send, by means of ESPP, whether it accepts or not the terms imposed by the contracting authority. Failure to send a reply within this period of time is equal to the non-acceptance of the terms imposed by the contracting authority.

(2) In the case where the economic operator accepts the terms imposed by the contracting authority, it shall send to the contracting authority, by means of ESPP, the firm offer for supplying the products, for performing the services or for executing the works.

(3) The contracting authority shall send, by means of ESPP, whether it accepts the firm offer provided in paragraph (2), within no more than 5 days from the date of sending the firm offer by the economic operator.

CHAPTER VI Solving complaints

Art. 48. – The complaints formulated in relation to the awarding procedures and modalities applied by using electronic means shall be settled in accordance with Chapter IX from the emergency ordinance.

Art. 49. – In case of complaints referring to acts of the contracting authority in relation to an awarding procedure implemented entirely by electronic means, the contracting authority has the obligation to communicate in ESPP, by using the technical facilities made available by the system and no later than the term provided in art. 271 paragraph (3) from the emergency ordinance, the fact that the awarding procedure is rightfully suspended.

Art. 50. – (1) The responsibility of the decisions and measures taken during the application of the awarding procedure by electronic means belongs to the contracting authority.

(2) The responsibility for the accurate functioning of ESPP belongs to the operator of this system.

Art. 51. – In the case where the complaint is related to acts regarding an awarding procedure conducted entirely by electronic means, the contracting authority has the obligation to send to the ESPP operator all the Decisions rendered by the National Council for Solving Complaints regarding the respective complaint, as well as the rendered rulings of the Court in the event where law suits have been initiated according to the provisions of the emergency ordinance.

CHAPTER VII

Suspension of an economic operator's right to participate at the awarding procedures from ESPP

Art. 52. – The suspension of an economic operator's right to participate at the awarding procedures from ESPP shall be enforced in case where the economic operator registered in ESPP breaches the norms and procedures for the use and security of the public procurement electronic system, set forth by the operator of the system.

Art. 53. – (1) The ESPP operator shall decide upon the duration of the suspension from the electronic system, according to the effects of violating the norms and procedures for the use and security on the well functioning of the system, duration which cannot exceed 2 years.

(2) The ESPP operator has the obligation to issue the decision to suspend an economic operator within 2 working days from noticing the violation of the norms and procedures for the use and security of ESPP.

(3) The decision of suspension shall be published in the ESPP.

(4) The decisions of suspension rendered by the ESPP operator according to the provisions of this chapter can be attacked in court according to the according to the Law no. 554/2004 on administrative disputed claims, with the subsequent modifications.

Art. 54. – The norms and procedures for the use and security of ESPP shall be adopted by means of decision of the ESPP operator and shall be published in ESPP within no more than 20 days from the date of entering into force of the present norms.

CHAPTER VIII

Fees

Section 1

The participation fees

Art. 55. – No fees shall be levied for the following operations:

- a) registration and renewal of registration in ESPP, both for the economic operators and for the contracting authorities, as such is provided in Chapter II;
- b) providing the contracting authorities with the specific form as stipulated at art. 2, publication in ESPP, irrespective of the applied procedure, of prior information, contract and contract awarding notices, as well as sending by the ESPP operator of these notices to the Official Journal of the European Union;
- c) the consultation, by any economic operator, of the notices provided at letter b), as well as of the tender documentation published in ESPP according to the provisions of art. 40 paragraph (2) letter a) from the emergency ordinance.

Art. 56. – (1) To participate in an awarding procedure applied entirely by using electronic means or in an electronic auction as a final stage of an awarding procedure which has not been

organized entirely by electronic means, any economic operator registered in the ESPP is bound to pay a participation fee to the operator of this system.

(2) The participation fee is paid in advance, the economic operator having no right to participate in the respective procedure in case it fails to pay such fee.

Art. 57. – (1) The amount of the participation fee is maximum 20 RON for any type of awarding procedure implemented entirely by use of electronic means or for the electronic auction as a final stage of an awarding procedure which has not been organized entirely by electronic means.

(2) The value added tax shall be attached to the amount of the participation fee, according to the law.

(3) The participation fee shall become an income to the budget of the ESPP operator.

Art. 58. – (1) The effective quantum of the participation fee, outstanding by an economic operator, in accordance with the provisions of art. 56 paragraph (1) for the participation in an awarding procedure implemented entirely by using electronic means and/or in an electronic auction as a final stage of an awarding procedure which has not been organized entirely by electronic means shall be set forth under the decision of the ESPP operator, in accordance with the requirements of development, operation and management of the electronic system of public procurement and adequate requirements of security thereof, within the limit of the maximum value provide in art. 57 paragraph (1).

(2) The economic operator has the possibility to pay the participation fees adequate for several awarding procedures applied entirely by using the electronic means and/or several electronic auctions as final stages of some awarding procedures which have not been organized entirely by electronic means, in which the economic operator estimates to participate.

(3) The ESPP operator, under decision, can grant discounts of the participation fee in the event where the economic operator opts to participate in a determined number of awarding procedures by using electronic means and/or electronic auctions as final stages of public awarding procedures which have not been organized entirely by electronic means.

(4) The ESPP operator, under decision, can grant the possibility to the economic operators to participate, free of charge, in a determined number of awarding procedures implemented entirely by using electronic means and/or electronic auctions as final stages of public procurement procedures which have not been organized entirely by electronic means.

(5) The decisions under paragraph (1), (3), (4) are to be published in ESPP.

Art. 59. – (1) The economic operator has the right to participate to any awarding procedure implemented entirely by using electronic means or to any electronic auction, for which it has paid the participation fee, for the whole period when it is registered in ESPP.

(2) The economic operator does not have the right to ask for the reimbursement of the sums paid as participation fee related to the awarding procedures applied entirely by using the electronic means and/or of the electronic auction to which it does not intend to participate anymore.

Art. 60. – (1) In order to publish the products, services or works it offers according to the provisions of art. 45, any economic operator registered in ESPP is bound to pay to the operator of this IT system a participation fee for the publishing in the catalogue.

(2) The participation fee for the publishing in the catalogue is to be paid in advance.

(3) After paying the participation fee for being published in the catalogue, the ESPP operator offers to any economic operator an entry in the catalogue which will enable the economic operator to publish in the catalogue one product, service or work for a period of 2 years.

(4) The period under paragraph (3) is calculated from the date when the ESPP operator allows the economic operator to publish a product, service or work under an entry in the catalogue.

(5) At the expiration of the period provided in paragraph (3), in terms where the economic operator fails to pay a new participation fee for the publication in the catalogue, the respective position shall be automatically deleted.

Art. 61. – (1) The amount of the participation fee for publication in the catalogue is maximum 2 RON for a position in the catalogue.

(2) The value added tax shall be attached to the amount of the participation fee for publishing in the catalogue, according to the law.

(3) The economic operator has the possibility to pay the participation fees for publishing in the catalogue corresponding to several catalogue entries.

(4) The participation fee shall become an income to the budget of the ESPP operator.

Art. 62. – (1) The effective amount of the participation fee for publication in the catalogue, outstanding by an economic operator, shall be set forth under decision of the ESPP operator, in accordance with the requirements of development, operation and management of the electronic system for public procurement and the adequate security requirements thereof, within the limit of the maximum value provided in art. 61 paragraph (1).

(2) The ESPP operator, under decision, may grant the possibility to the economic operators to publish in the catalogue their products, services or works free of charge, within the limit of 50 positions in the catalogue.

(3) Decisions provided in paragraph (1) and (2) shall be published in the ESPP.

Art. 63. – The economic operator shall not be entitled to request the return of the amounts paid as a participation fee for publication in the catalogue related to the positions in which it did not publish or does not further intend to public products, services or works.

Section 2

Usage fee

Art. 64. – (1) Any contracting authority which has started an awarding procedure in the ESPP, applied entirely by using the electronic means or an electronic auction shall be bound to pay the ESPP operator a usage fee, the amount of which is set forth according to the number and type of the procedure conducted by electronic means in the ESPP. In case of procurement per lots, the fee shall be levied for one sole awarding procedure.

(2) According to the type of awarding procedure applied by using the electronic means started in the ESPP, any contracting authority shall owe:

a) 80 RON in case of an open tender procedure or restricted tender procedure, applied entirely by using electronic means, even if these include or do not include a final stage of electronic auction;

b) 50 RON in case of a request for tender procedure applied entirely by using electronic means, even if this includes or does not include a final stage of electronic auction;

(3) To organize an electronic auction as a final stage of an awarding procedure which has not been organized entirely by electronic means or when resuming the competition among the economic operators which signed a framework agreement, any contracting authority owes usage fee of 50 RON, the number of organized rounds having no relevance whatsoever as to the establishment of the respective fee.

(4) In case of procurement based on electronic catalogue by using electronic means, any contracting authority owes a usage fee of 5 RON.

(5) The value added tax shall be attached to the amount of use fee determined according to paragraph (2), (3) and (4), under the law.

(6) The events provided in paragraph (2), (3) and (4), even if these have been finalized or not by awarding public procurement contract, shall be had in view when customizing the usage fee.

(7) The usage fee shall become an income to the budget of the ESPP operator.

Art. 65. – (1) Payment of the fee for using ESPP shall be made on a half-annual basis pursuant to the decision evidence of indebtedness issued by the ESPP operator and the invoice attached thereto.

(2) The ESPP operator shall be bound to issue the decision evidence of indebtedness and the invoice for the usage fee outstanding for the procurements provided in art. 64 paragraph (2), (3) and (4), which have been initiated during the first half of the year, until August 15 of the on-going year, and for those initiated during the second half of the year, until the date of February 15 of the next year.

(3) Decisions and invoices provided in paragraph (2) shall be sent to the contracting authorities within 10 working days as from the issue thereof, by mail under registered letter with a confirmed receipt, or by other means which provide the sending of the text of the document and confirmation of the reception thereof.

(4) The contracting authorities are bound to pay the usage fee until September 20 of the on-going year for the usage fee related to the first half and until March 20 of the next year for the usage fee related to the second half, respectively.

Art. 66. – The ESPP operator is bound to make available to any contracting authority, at the request thereof, the statement regarding the number and type of awarding procedures applied by using electronic means, according to which the usage fee was customized.

CHAPTER IX Transitory and final provisions

Art. 67 – In the view of informing of all the interested persons, the ESPP operator is bound to publish the provisions of this Government Decision in the public procurement electronic system.

Art. 68 – (1) The operation of the ESPP is technically ensured by the ESPP operator, in different stages, as follows:

a) starting with the date of these norms' coming into effect, the procedures of registration and renewal of registration, provided in Chapter II, shall be available to any applicant, whether this is a contracting authority or an economic operator:

b) in no more than 30 days as from the date of these norms' coming into effect, the technical facilities shall be available for the publication of the prior information notice, contract notice, awarding notices and for providing direct and unrestricted access to any economic operator to the tender documentation, sent by the contracting authority to the ESPP in form of an electronic file,

c) within no more than 45 days as from the date of these norms' coming into effect, technical facilities shall be available for the implementation of the provisions of art. 49 paragraph (1), (2) and (3) in the emergency ordinance, for the application, entirely, by use of electronic means, of the request for tender procedure and for the direct procurement by any contracting authority, by means of the electronic catalogue;

(d) within no more than 90 days as from the date of these norms' coming into effect, technical facilities shall be available for using electronic auctions;

e) within no more than 120 days as from these norms' coming into effect, technical facilities shall be available for the implementation, entirely by using electronic means, of the open tender procedure and restricted tender procedure.

(2) Until June 1, 2007, the ESPP operator shall be bound to submit to the National Authority for Regulation and Monitoring Public Procurements and Ministry of Communications and Information Technology the technical project regarding the completion of the dynamic purchasing system, such as provided in Chapter IV, Section 2, of the emergency ordinance, for the purpose of enacting the specific application norms for implementing this special modality of awarding the public procurement contracts.

Art. 69. – (1) Starting with January 1, 2007, any contracting authority shall be bound to send for publication the prior information notice, contract notice and awarding notice to the ESPP operator.

(2) The contracting authority shall be entitled to send for publication an awarding notice in ESPP only in terms of previous publication in the ESPP of the participation notice for the corresponding awarding procedure.

Art. 70. – The ESPP operator shall be bound to observe the principles of non-discrimination and equal treatment when granting discounts and gratuities provided in art. 58 paragraph (3) and (4) and in art. 62 paragraph (2).

Art. 71. – (1) For the purpose of training the staff of the contracting authorities and economic operators in the field of organizing public procurement by electronic means and regarding the use of the ESPP, the operator of this system shall be entitled to organize training courses.

(2) The periods and conditions in which training courses are organized are published in the ESPP.

(3) Fees which will be levied for the organization of training course shall be set forth under decision of the ESPP operator and shall be published in the ESPP.

(4) Fees levied for the organization of training course shall become an income to the budget of the ESPP operator.

Art. 72. - (1) For electronic auctions initiated prior to the date of this emergency ordinance's coming into effect, fees will be levied for usage in accordance with the legal provisions in force on the date of their initiation.

(2) Participation fees paid by economic operators prior to the date of the emergency ordinance's coming into effect, without participating in the awarding procedures organized by electronic system, shall be returned by the ESPP operator at the request thereof.

Art. 73. – The provisions of these application norms shall be supplemented by the provisions of Government Decision No. 925/2006 for the approval of the norms of application of the provisions referring to the awarding of public procurement contracts in Government Emergency Ordinance No. 34/2006 regarding the awarding of public purchase contracts, of public works concession contract and service concession contracts, with subsequent amendments and supplements.

Art. 74. – (1) This Government Decision shall come into effect 5 days as from the date of its publication in the Official Gazette of Romania, Part I.

(2) Fees provided in the contents of Chapter VIII shall be levied as from January 1, 2007.

(3) Until January 1, 2007, economic operators are entitled to publish products, services and works in the catalogues provided in art. 45 within the limit of 50 catalogue positions.