

ROMANIAN GOVERNMENT

DECISION

On the approval of the application norms of the Government Emergency Ordinance no. 34/2006 regarding the award of public procurement contracts, public works concession contracts and services concession contracts

Based on the article 108 of the Romanian Constitution, republished, and on article 303 paragraph (1) of Government Emergency Ordinance no. 34/2006 on awarding of public procurement contracts, works concession contracts and services concession contracts,

The Romanian Government enacts the following decision:

CHAPTER I General provisions

Article 1

The application norms of the Government Emergency Ordinance no. 34/2006 regarding the award of public procurement contracts, public works concession contracts and services concession contracts, hereinafter referred to as *emergency ordinance*, are hereby approved.

Article 2

- (1) When applying the awarding procedure for the public procurement contracts, any situation that is not explicitly regulated shall be interpreted with a view to the principles foreseen in article 2, paragraph (2) from the emergency ordinance.
- (2) For the contract award which is not regulated by the emergency ordinance, the contracting authority must ensure an efficient use of the funds during the awarding process, to promote competition between the economic operators, as well as to guarantee non discrimination, mutual recognition and equal treatment for the economic operators that participate to a contract awarding.
- (3) While applying the awarding procedure, the contracting authority has the obligation to take all necessary measures for avoiding any situation that could lead to a conflict of interests and/or unfair competition. If such situations emerge, as the ones stipulated by art. 67-70 of the emergency ordinance, the contracting authority shall eliminate the effects of such circumstances by adopting, by case according to its competences, the corrective measures to modify, to cease, to revoke, to cancel, or other similarities, the acts and decisions that have affected the correct application of the awarding procedure or related activities.

Article 3

(1) When applying the present norms, the contracting authority, by means of the *internal specialized compartment* for awarding public procurement contracts, organized according to the provisions of II.2.3 of the Action Plan for implementing the Reform

Strategy of the public procurement system from Annex 2 of Government Decision no. 901/2005 on the approval of the Reform Strategy of the public procurement system as well as of the Action Plan for implementing the Strategy during 2005-2007, has the following main attributions:

- a) to elaborate the annual public procurement programme, based on the necessities and priorities communicated by the other departments of the contracting authority
- b) to elaborate or ,by case, to coordinate the elaboration of the tender documentation or competition documentation, in case of a design contests ;
- c) to fulfil the publicity obligations, as the emergency ordinance stipulates;
- d) to apply and to complete the awarding procedures;
- e) to form and to keep the public procurement file.

(2) The other departments of the contracting authority have the obligation to support the activity of the public procurement unit, according to the tender documentation specific and the complexity of the problems to be solved during the application of the awarding procedure.

(3) The contracting authority has the right to purchase consultancy services, according to the emergency ordinance provisions, in order to elaborate the tender documentation and/or to apply the awarding procedure.

Article 4

(1) The contracting authority has the obligation of establishing the public procurement annual programme.

(2) The annual programme of the public procurement is elaborated, as a first draft, until end of the last yearly quarter and contains all the contracts/framework agreements which the contracting authority intends to award/conclude during the next year.

(3) The contracting authority has the obligation to take into consideration when establishes the annual programme of public procurement the following:

- a) the objectively necessities for products, works and services
- b) the priority degree of the necessities established at letter a);
- c) the forecasts regarding the funds that are to be allocated within the annual budget.

(4) The contracting authority has the obligation to complete its annual public procurement program, in accordance with the approved funds and the possibilities to reach other funds after the approval of its budget.

(5) The annual public procurement program must contain, at least, the following information:

- a) the object of the contract/framework agreement;
- b) the CPV code;
- c) the estimated value, without VAT, expressed in RON and EUR;
- d) the procedure that will be applied;
- e) the estimated date for the beginning of the procedure;
- f) the estimated date for completion of the procedure;
- g) the person responsible for awarding the contract.

(6) In case the contracting authority intends to initiate a dynamic purchasing system, it has the obligation to specify such an intention in the annual public procurement program.

(7) The annual public procurement program is approved by the head of the contracting authority, in conformity with his/her legal attributions, with approval of the financial-accounting department.

(8) The contracting authority has the right to modify or to complete the annual public procurement program. These amendments have to be approved according to the provisions of paragraph (7).

(9) When the amendments stipulated by paragraph (8) have the purpose to cover necessities that were not initially included in the annual public procurement program, their inclusion in the program is conditioned by ensuring the financial sources.

Article 5

(1) In conformity with the principle of assuming responsibility, the settlement of the framing circumstances according to the emergency ordinance for applying each procedure or for the direct purchase is the exclusive responsibility of the contracting authority.

(2) The internal specialized department, provided by article 3, paragraph (1) has the obligation to elaborate an explanatory note, in all the situations when the proposed awarding procedure is other than the ones established by article 20, paragraph (1) from the emergency ordinance, or, in the case of the sectorial contract award, by article 251, paragraph (1) from the emergency ordinance.

(3) The explanatory note is approved by the leader of the contracting authority according to its legal prerogatives, with the legal compartment consent and constitutes an essential element of the public procurement file.

(4) In case the procedure of request for tenders is applied, the explanatory note must contain only explanations regarding the result of the estimation of the value of the public procurement contract that is to be awarded, according to Chapter 2, Section 2 of the emergency ordinance provisions.

Article 6

(1) The contracting authority has the right to initiate the application of the awarding procedure, only if the following conditions are cumulatively fulfilled:

a) the products/services/works are included in the annual public procurement program, except the case when the need of awarding the contract is induced by a situation of force majeure or by fortuitous case ;

b) the financing sources for ensuring the necessary funds for carrying out the public procurement contract are identified;

c) the tender documentation is drawn up.

(2) Until its budget is approved, the contracting authority has the right to purchase new products and services that are necessary for current use, taking into account the level of financial sources that can be used for this purpose, according to the law, for that period.

(3) The contracting authority has the right to extend the duration of the regular supply contracts or services contracts concluded during the previous year, and whose

normal period of execution expires on the 31st of December, if the following conditions are cumulatively fulfilled:

a) in the tender documentation that was elaborated for the purpose of awarding the initial contract, the possibility to supplement the quantities of products and services already purchased, as well as the maximum level of increase, have been already established;

b) in the tender documentation , as well as in the contract there is a clause explicitly foreseen, which states that the competent authority's right to decide the supplementation of the quantities of products or services is conditioned by the existence of financial sources having this destination;

c) the estimated value of the initial contract was determined by taking into consideration the situation when the contracting authority decides the supplementation, up to the established maximum level, of the quantities of products or services;

d) the extension of the initial contract duration cannot exceed a period of 4 months since its initial period of accomplishment expired.

CHAPTER II

Qualification and selection criteria. Awarding criteria

SECTION 1

Establishment of the qualification and selection criteria

Article 7

The qualification and the selection criteria, as they are provided by article 176 of the emergency ordinance, are intended to demonstrate the technical, financial and organizational potential of each economic operator participant to the procedure, potential that must reflect the economic operator's concrete possibility to fulfil the contract and to solve eventual difficulties related to the fulfilment of the contract, in case the economic operator's tender shall be deemed successful.

Article 8

(1) The contracting authority does not have the right to limit the participation in the procedure of awarding the contract of public procurement by introducing minimum requirements that:

a) are not relevant in connection with the nature and the complexity of the public procurement contract that follows to be awarded; or

b) are not proportional in connection with the nature and complexity of the public procurement contract that is to be awarded.

(2) When it imposes minimum requirements regarding the economic and financial standing or technical and/or professional ability, as foreseen by article 178, paragraph (1) of the emergency ordinance, the contracting authority must be able to explain these requirements, by elaborating in this respect, an explanatory note that will be attached to the public procurement file.

Article 9

The contracting authority has the right to impose, as minimum requirement in relation with the economic and financial standing of the tenderers/candidates, a certain level of some economic or financial indicators, only if those indicators are concretely related with an eventual risk of non-accomplishment of the contract.

Article 10

(1) The contracting authority has the right to award the contract by lots by obeying the provisions of to art. 23 of the emergency ordinance and provided this fact is specified in the tender documentation.

(2) In the case provided by paragraph (1), the contracting authority has the right to require the fulfilment of one or more of the qualification criteria established in article 176 of the emergency ordinance, provided the set of minimal requirements that the tenderers/candidates must fulfil is established in connection with each lot, and not in connection with the entire contract.

Article 11

(1) When it requires the fulfilment of certain qualification criteria, the contracting authority must specify in the contract notice and in the tender documentation the information that the economic operators will present with this purpose, as well as the specific documents that can confirm that information.

(2) The required documents must not limit the tenderer/candidate's possibility to prove the fulfilment of the qualification criteria by other means also, insofar as those can be considered relevant by the contracting authority.

(3) When there are uncertainties on some of the presented documents, the contracting authority has the right to require supplementary details, clarifications or confirmations from the respective tenderer/candidate, as well as from the competent authorities that can provide information in this sense. In any situation, the contracting authority has the obligation to ensure a reasonable period of time for providing the solicited clarifications/confirmations.

(4) In order to prove the fulfilment of the obligations foreseen in article 181 letter c) of the emergency ordinance, the tenderer/candidate has the right to present, initially, a statement, signed by his/her legal representative, whereby he/she confirms the fact that he/she is not in the respective situation; the tenderer/candidate still has the obligation to present ascertaining certificates regarding the accomplishment of the obligations of paying the duties, taxes and social insurance contributions, to the extent that these documents are emitted in his/her country of origin or country of establishment, when he/she receives from the contracting authority a requirement in this sense, but not later than the adoption of the awarding decision.

Article 12

(1) In the first phase either of the restricted procedure, of the competitive dialogue, or of the negotiation with prior publication of a contract notice, the contracting authority has the right to use for selecting/ pre-selecting the candidates only the criteria stipulated at article 176, letter c) and d) of the emergency ordinance.

(2) The selection/ pre-selection of the candidates represent a distinct process that comes after the qualification process and has the purpose to reduce the number of qualified candidates that will submit tender or participate in the dialogue/negotiations. The selection/pre-selection is performed awarding to each candidate a score that must reflect his/her capacity to fulfil the contract that is to be awarded.

(3) The contracting authority must stipulate in the contract notice and in the tender documentation the method of awarding the score based on which the classification of the candidates will be done, whenever a selection/pre-selection is performed.

SECTION 2

Establishing the awarding criteria

Article 13

(1) If the awarding criterion is “the lowest price”, determining the winning tender, according to article 198, paragraph (1), letter b) of the emergency ordinance, the establishment of the winning tender will be performed only by comparing the prices presented in the admissible tenders, without quantifying other elements of technical nature or other advantages that might result from the proposed method of performing the contract by the economic operators taking part in the awarding procedure.

(2) The tender that is declared the winning one in this case must fulfil the minimum technical specification considered mandatory, as these were established in the tender book.

Article 14

(1) If the awarding criterion is “the most economically advantageous tender”, according to article 198, paragraph (1), letter a) of emergency ordinance, determining the winning tender is performed by applying a system of evaluation factors for which relative percentages or a specific calculation algorithm will be established.

(2) The calculation algorithm as well as the evaluation factors of the tenders that will be taken into account when applying “the most economically advantageous tender” are clearly and in detail specified within the tender documentation and will reflect the strict methodology of scoring the advantages that result from the technical and financial propositions presented by the tenderers.

Article 15

(1) The contracting authority does not have the right to use the qualification criteria as assessment factors of the tenders. By exception, when the object of the contract includes intellectual services as consultancy, designing or other the same, the assessment factors of the tenders can refer to experience and/or professional acknowledge of the specialized personnel/experts that will be essential in fulfilling the contract.

(2) When setting the evaluation criteria, the contracting authority does not have the right to use criteria that:

a) are not directly related with the nature and object of the public procurement contract that is to be awarded;

b) do not reflect a real and obvious advantage that the contracting authority can obtain by using that particular criterion.

(3) The weight established for each criterion should not distort the result of the awarding procedure of the public procurement contract. For each criterion the contracting authority has the obligation to set a weight that will fairly reflect:

a) the importance of the technical/ functional characteristics considered to represent a qualitative advantage that can be supplementary scored, or

b) the amount of the financial advantages that the tenderers can offer by assuming supplementary commitments in relation with the minimum requirements stipulated in the term of reference.

(4) When setting the evaluation criteria, the contracting authority must be able to explain the way in which the weight of each evaluation factor was set by elaborating an explanatory note that will be attached to the public procurement file.

CHAPTER III

Publishing the prior information notice, the contract notice and the contract award notice

SECTION I

Rules applicable until December 31st, 2006

Article 16

(1) Until December 31st, 2006, the contracting authority must send for publication the prior information notice, the contract notice and the contract award notice only to the “Official Journal of Romania”, for publishing them in the Official Journal of Romania, part VI, Public Procurements.

(2) Without infringement of paragraph (1), the contracting authority has the right to send for publication the prior information notice, the contract notice and the contract award notice to:

a) the Official Journal of European Union;

b) the SEAP operator, starting from September 30th, 2006.

Article 17

The notices stipulated by article 16, paragraph (1) must include at least the information presented in the examples from annex 1, but not more than 650 words, as a rule.

Article 18

(1) The transmission for publication of the notices provided by article 16, paragraph (1) to the SGA “Official Gazette of Romania” is done by a written request that must be signed by an authorized person of the contracting authority.

(2) The SGA “Official Gazette of Romania” must publish the notices in no more than 8 days from the moment it has registered them. In the case of the contract notice stipulated by article 114 of the emergency ordinance, the SGA “Official Journal of Romania” must publish the notice in no more than 3 days from the moment of registration.

Article 19

(1) The contracting authority will send for publication the notices to the Official Journal of the European Union until December 31st, 2006 directly through the Internet address: <http://simap.europa.eu>.

(2) The notices sent for publication in the Official Journal of the European Union will be drawn up by the contracting authority in one of the official languages of the European Community and must respect the standard form adopted by the European Commission available at the Internet address stipulated in paragraph (1).

Article 20

Sending the notices for publication to the SEAP operator is made only by electronic means, using the application available at the Internet address www.elicitatie.ro.

Article 21

Until the 31st of December 2006, in the case of contracts that have an estimated value higher than threshold provided by Article 55 paragraph 2 of the emergency ordinance, the period between the date of the transmission for publication in the Official Gazette of Romania, Part VI, Public Procurement and the deadline for submitting the tenders, is similar with the minimum period provided by the emergency ordinance between the date of transmission for publication in the Official Journal of the European Union and/or in SEAP and the date of the submission of tenders.

SECTION 2

Rules applicable after December 31st, 2006

Article 22

(1) After December 31st, 2006, the contracting authority must send for publication the prior information notice, the contract notice and the contract award notice, to the SEAP operator.

(2) Sending the notices for publication to the SEAP operator is only done by electronic means, using the application available at the Internet address www.elicitatie.ro.

Article 23

(1) The notices for which the emergency ordinance stipulates the obligation to be published in the Official Journal of the European Union are drawn up by the contracting authority in an official language of the European Union and must observe the form adopted through EC Regulation no. 1564/2005, which establishes the standard form of publication announcements for the awarding procedures foreseen in Directives 17/2004/EC and 18/2004/EC.

Article 24

(1) After transmitting the notices to the SEAP operator, The National Authority for Regulating and Monitoring Public Procurement has the obligation to verify these notices by verifying if the formal rules were respected, in no more than 2 working days from the moment the SEAP has received them.

(2) The National Authority for Regulating and Monitoring Public Procurement has the obligation to inform the SEAP operator if the notice is either approved or rejected in the term stipulated at paragraph (1).

Article 25

When the National Authority for Regulating and Monitoring Public Procurement observes, during the verification of the notice sent by the contracting authority to the SEAP operator, that in the form or in the content of it there are errors or omissions, it must:

- a) inform the SEAP operator about the rejection of the notice;
- b) inform the contracting authority about the decision to reject the publication of the notice, justifying its decision and indicating how the errors/omission can be repaired.

Article 26

The notices sent after repairing the errors/omissions are considered new notices and are the object of all the sending and verifying rules stipulated in this Section.

Article 27

(1) The SEAP operator does not have the right to publish the notice sent by the contracting authority or to send it for publication in the Official Journal of the European Union, until it has obtained the approval for publication given by the National Authority for Regulating and Monitoring Public Procurement.

(2) The SEAP operator has the obligation to ensure the sending of the notices for publication in the Official Journal of the European Union, in the standard format approved by the European Commission and in no more than one working day from the date of obtaining the publication approval.

(3) When setting the deadlines for submitting the tenders, the contracting authority must take into account the 3 working days margin, needed for verifying the notices by the National Authority for Regulating and Monitoring Public Procurement and for sending them to the Official Journal of the European Union and to the SEAP operator, as stipulated in article 49, paragraph (2) and (3) of the emergency ordinance.

Article 28

The SEAP operator must publish the notice in SEAP, in no more than 2 working days from the date of receiving the approval, but not before the date of sending it for publication in the Official Journal of the European Union, if the provisions of the emergency ordinance impose this obligation.

Article 29

In the case of the notices for which the emergency ordinance does not stipulate the obligation of publication in the Official Journal of the European Union, the contracting authority must include at least the information presented in the example form annex 1, but, as a rule, no more than 650 words.

Article 30

In no more than one working day after publishing the notice in SEAP, the contracting authority has also the obligation to send the notice for publication to the SGA “Official Gazette of Romania”.

CHAPTER IV Applying the awarding procedures

SECTION 1 Open procedure

Article 31

(1) The contracting authority must ensure for each economic operator the possibility to obtain the tender documentation, in the period between the date of publishing the contract notice and the deadline for submitting the tenders.

(2) The contracting authority must stipulate in the contract notice if the tender documentation will be obtained:

- a) after a request by each economic operator interested; or
- b) by direct and unrestricted access of an electronic file, available in SEAP.

(3) In the case stipulated in paragraph (2), letter a), the provisions of article 62 and 77 of the emergency ordinance will apply.

Article 32

(1) If the contracting authority receives requests for clarifications regarding the tender documentation, it must answer them by obeying the provisions of article 78, paragraph (2) and (3) of the emergency ordinance.

(2) If the tender documentation was provided to the economic operator by ensuring direct and unrestricted access to the electronic file available in SEAP, the contracting authority, in accordance with the provisions of Article 78 paragraph 2 of the emergency ordinance, must inform about the clarifications or modifications by creating a new electronic file with direct and unrestricted access, similar to the initial file.

Article 33

(1) The contracting authority has the obligation to open the tenders at the date, hour and location stipulated in the contract notice

(2) Any tenderer has the right to attend the opening tender procedure.

(3) During the opening of the tenders, no tender can be rejected, except those that fall amongst one of the following situations:

a) they were submitted after the deadline or at another address than the ones stipulated in the contract notice,

b) they are not accompanied by the participation guarantee as it was requested in the tender documentation .

(4) The opening session is completed by drawing up a minute, signed by the evaluation commission members, the co-opted experts and the representatives of the economic operators, that records the way in which the session was carried out, the formal aspects observed when opening the tenders, main features of every tender.

(5) The evaluation commission must transmit a copy of the opening minute to all economic operators that participate to procedure, regardless of whether these were present or not at the opening session.

(6) Any decision on qualification/selection of tenderers/candidates or, if applicable, regarding the evaluation of tenders must be adopted by the evaluation commission during subsequent meetings to the opening session.

Article 34

(1) If the tender documentation stipulates some minimum qualification requirements, the evaluation commission must verify the way these requests were met by each tender.

(2) The evaluation commission must analyse and verify each tender from the proposed technical elements point of view, as well as from the financial elements it implies point of view.

(3) The technical proposal must meet the minimum requirements stipulated in the tender book.

(4) The financial proposal must be lower than the limit of the funds that can be made available for the respective public procurement contract.

Article 35

During the analysis and verification of the documents presented by the tenderers, the evaluation commission may, at any time, request clarifications or completions of the documents presented by the tenderers in order to demonstrate the fulfilment of the minimum qualification requests or to demonstrate the conformity of the tender with the requirements.

Article 36

(1) The tender is considered being unacceptable in the following situations:

- a) it falls into one of the categories stipulated in article 33, paragraph (3);
- b) it was submitted by a tenderer that does not meet the minimum requirements for qualification;
- c) it is a variant, that cannot be taken into consideration because:
 - the possibility to submit variants is not stipulated explicitly in the contract notice, or
 - the variant does not meet the minimum requirements stipulated in the term of reference.
- d) does not respect the mandatory regulation regarding specific employment protection and working conditions, when this requirement

- is in accordance with the stipulation of article 34, paragraph (2) of the emergency ordinance;
- e) the price stipulated in the financial proposal, exceeds the available funds for the respective public procurement contract;
 - f) after verifications stipulated by art. 202 and 203 of the emergency ordinance, the tender has an abnormally low price as compared with what has to be supplied, made or provided.
- (2) The tender is considered irregular in any of the following situations:
- a) it does not meet the requirements of the tender book;
 - b) it contains proposals referring to contract clauses that are obviously disadvantageous to the contracting authority;
 - c) it contains prices as part of the financial proposal that are not a result of free competition and that cannot be justified.

Article 37

(1) The tenders that do not match any of the situations provided by article 36 are considered to be admissible.

(2) The successful tenders is chosen only from the admissible tenders, and only on the basis of the awarding criterion, which is stated in the contract notice and in the tender documentation .

Article 38

(1) Before establishing the successful tender, the contracting authority has the right to organise a final stage of electronic auction but only in the case it took this decision before the initiation of the awarding procedure and only if it has announced this decision in the contract notice, and the tender documentation contains all the provisions provided by article 164 of the emergency ordinance.

(2) Electronic auctions are held by SEAP in the conditions regulated by methodological norms approved according to article 303 paragraph 3 of the emergency ordinance.

(3) The contracting authority has the obligation to invite at the electronic auction stage only the tenderers that submitted admissible tenders.

(4) When setting up the final stage of electronic auction, the final classification is established on the basis of the result obtained in the successive tender process in that stage.

Article 39

(1) After the completion of the evaluation of the tenders, the evaluation commission has the obligation to issue according to the provisions of article 213 paragraph (2) of the emergency ordinance, a report on the awarding procedure that is sent forward to the internal compartment stipulated by art. 3 paragraph (1) and to the head of the contracting authority in order to conclude the contract.

(2) The internal compartment stipulated in article 3 paragraph (1) has the obligation to inform all tenderers on the result of the awarding procedure not later than 3 working days from receiving the awarding procedure report.

(3) The activity of the assessment commission ends after the elaboration of the awarding procedure report.

Article 40

The open procedure can be applied by using electronic means, by SEAP, in the terms of the methodological norms adopted according to the provisions of art. 303 paragraph (3) of the emergency ordinance.

SECTION 2

Restricted procedure

Article 41

In the period between the date of the publication of the contract notice and the deadline for the submission of the tenders, the contracting authority has the obligation to make sure that every economic operator has the possibility to obtain more information regarding the conditions to participate in the awarding procedure.

Article 42

After the deadline of the submission of the tenders expires, the evaluation commission has the obligation to establish the selected candidates, for this purpose applying only the selection criteria stipulated in the contract notice.

Article 43

(1) When the number of selected candidates, according to the article 85, paragraph 2 of the emergency ordinance, is below the minimum number stipulated in the contract notice, either because of the fact that an insufficient number of candidatures have been submitted or because part of the candidates did not meet the minimum qualifying requirements, the contracting authority has the right to pass to the second stage of the awarding procedure if the number of selected candidates is at least 3.

(2) After the phase of selection of the candidates is completed, the evaluation commission has the obligation to draft an intermediary report of the first stage of the awarding procedure, which is forwarded in view of approval to the head of the contracting authority.

(3) The internal department stipulated by article 3 paragraph (1) has the obligation to inform all candidates on the result of the setting up of the first stage of the procedure right after the approval stipulated at paragraph (2) is obtained.

Article 44

(1) The contracting authority has the obligation to send the invitation to participate in the second stage of the restricted procedure to all selected participants, by observing the provisions of article 87 to article 89 of the emergency ordinance.

(2) The selected candidates do not have the right to associate with each other for the purpose of submitting a common tender and the contracting authority does not have the right to accept such a tender.

(3) In the second stage of the restricted procedure, the provisions of article 31 to 39 are applied accordingly.

Article 45

The restricted procedure can be applied by using electronic means, by SEAP, in the terms of the methodological norms adopted according to the provisions of article 303, paragraph (3) of the emergency ordinance.

SECTION 3 Competitive dialogue

Article 46

Before initiating the competitive dialogue procedure, the contracting authority has the obligation to assess the correctness of the way article 94 of the emergency ordinance was applied. The checking result becomes concrete by drawing up the explanatory note provided in article 5, which becomes part of the public procurement file.

Article 47

(1) In the period between the date of publishing the contract notice and the deadline of application, the contracting authority has the obligation to ensure, for every economic operator, the possibility to obtain supplementary information regarding the conditions for participation to the awarding procedure.

Article 48

(1) When the number of admitted candidates is below the minimum number stipulated in the contract notice, either because of the fact that an insufficient number of candidatures have been submitted or because of the fact that part of the candidates did not meet the minimum qualifying requirements, the contracting authority has the right to pass to the second stage of the awarding procedure if the number of admitted candidates is at least 3.

(2) After the phase of pre-selection of the candidates is completed, the evaluation commission has the obligation to elaborate an intermediary report of the first phase of the awarding procedure, which is to be forwarded to the head of the contracting authority for approval.

(3) The internal specialised department mentioned in article 3, paragraph (1) has the obligation to inform all candidates in respect to the results of applying the first phase of the granting procedure, immediately after obtaining the approval stipulated in paragraph (2).

Article 49

(1) The second phase of the competitive dialogue procedure consists in organizing separate meetings with every accepted candidate, during which a dialogue takes place with the purpose to identify the solutions/options referring to the technical aspects, the financial arrangements, juridical problems or any other elements related to the future contract. At the end of every meeting, the evaluation commission has the obligation to record in writing the problems discussed and the aspects agreed upon, in a verbatim report of the meeting.

(2) The identification of the solutions/options should be structured depending on the necessities, the objectives and constraints of the contracting authority, such as outlined in the descriptive documentation.

(3) The contracting authority has the right to include in the descriptive documentation the possibility to grant premiums to the participants in the dialogue. The premiums are established within the limits of the available budget of the contracting authority and depending on the specific expenses involved in the participation to the dialogue on condition that the total amount of the premiums does not exceed 2% of the estimated value of the contract to be awarded.

(4) The economic operator whose tender will be declared winner does not benefit from such a premium.

Article 50

(1) The contracting authority has the right to resume the dialogue in successive stages insofar this fact was stipulated in tender documentation and the number of the participants to the dialogue is enough in order for the diminution of the participants not to affect the free competition.

(2) According to the provisions of paragraph (1), the contracting authority has the right to organize, after clarifying with each participant a series of aspects provided for in article 49, paragraph (1) one or more intermediary stages, during which the participants in the dialogue may present partial technical and/or financial proposals.

(3) The contracting authority has the obligation to announce all participants in the dialogue about the intermediary stage, as well as about the assessment factors in order to reduce the number of participants.

(4) After completion of an intermediary stage for diminution of the participant's number in the dialogue, the evaluation commission has the obligation to elaborate a report that will be forwarded to the head of the contracting authority for approval.

(5) The internal department stipulated in article 3, paragraph (1) has the obligation to inform all participants in the dialogue about the result of the intermediary stage immediately after the approval mentioned in paragraph (4) is obtained .

(6) The next round of dialogue will only take place with the participants selected during the intermediary stage organized previously.

Article 51

When the second phase of the competitive dialogue cannot be completed by identifying a viable solution, the contracting authority has the right to cancel the awarding procedure, as it can be inferred from it that the conditions stipulated in article 209, paragraph (1), letter b) of the emergency ordinance have been fulfilled.

Article 52

(1) During the last phase of the competitive dialogue the tenderers must submit tenders on the basis of a solution/s identified during the previous phase.

(2) The provisions of article 33 and 38 to 39 should be applied accordingly.

SECTION 4

The negotiated procedure with prior publication of a contract notice

Article 53

(1) The contracting authority must verify if the conditions provided by art. 110 of the emergency ordinance are met before the initiation of the negotiated procedure with prior publication of a contract notice. The verification result becomes concrete by drawing up the explanatory note provided by article 5, which becomes part of the public procurement file.

(2) If the contract that is to be awarded is a sectorial contract, the contracting authority does not have the obligation to verify the conditions stipulated by paragraph (1), in this case the provisions of article 251 of the emergency ordinance being applicable.

Article 54

(1) The contracting authority has the obligation to negotiate with each pre-selected candidate. At the conclusion of each meeting the evaluation commission has to record in a minute of the meeting all the issues discussed and the aspects agreed upon.

(2) Each participant to the negotiations has to present, according to the necessities, objectives and constraints of the contracting authorities, as they were emphasized in the descriptive documentation, a preliminary tender that will represent the starting point of the negotiations.

Article 55

The contracting authority has the right to negotiate in successive stages, according to a model similar to the one foreseen for the competitive dialogue, insofar this possibility is specified in the tender documentation and the number of the participants is big enough so that diminishing the number of participants would not affect the real competition.

Article 56

(1) The negotiations develop until each participant declares that the previous tender that it presented can no longer be improved.

(2) When, during the negotiations, the negotiation commission notices that no significant improvements of the previous tender as compared to the subsequent

stages/meetings are registered, it has the right to establish a final meeting, with each tenderer. Each participant has the obligation to present the final elements of the technical and financial proposal for which the assessing factors will be applied.

SECTION 5

The negotiated procedure without prior publication of a contract notice

Article 57

The contracting authority must verify if the conditions provided by art. 122 or, by case, by article 252 of the emergency ordinance are met before the initiation of the negotiated procedure without prior publication of a contract notice. The verification result becomes concrete by drawing up the explanatory note provided by article 5, which becomes part of the public procurement file.

Article 58

The negotiated procedure without prior publication of a contract notice is initiated by sending a participation invitation to negotiations to one or, any time this is possible, to more economic operators.

Article 59

(1) For the cases provided by article 122 letter f) and article 252 letter f) of the emergency ordinance, the contracting authority has the right to purchase only those categories of fungible products that are quoted as available on the commodity market; in this case the provisions of the article 58 are not applicable, the procedure being initiated by sending to the stock exchange the purchase order.

(2) Considering the provision of paragraph (1), fungible products mean the products generically established to be replaceable with each other when executing a contractual obligation.

(3) The winning tender is the one that at the end of the transaction during the commodity exchange presented the lowest price for the product in question.

Article 60

For the cases provided by article 122 letter g) and article 252, letter g) of the emergency ordinance, the contracting authority has the right to purchase products by participating to a specific procedure organized for this purpose on the economic operator that liquidates completely its business , according to law.

SECTION 6

Request for tenders

Article 61

(1) The request for tenders is initiated by sending a participation invitation to at least 3 economic operators.

(2) Starting with January 1st, 2007, the provisions of the paragraph (1) ceases its applicability, the contracting authority having the obligation to publish the participation invitation in SEAP.

Article 62

(1) Between the date of sending the invitation and the deadline for submitting the tenders, the contracting authority has the obligation to guarantee that any economic operator has the possibility to obtain the tender documentation.

2) The contracting authority has the obligation to specify in the participation invitation if the tender documentation will be obtained:

- a) due to a request submitted by any economic operator who is interested; or
- b) by direct and unrestrained access of a electronic file that will be available on SEAP.

(3) In the situation provided by paragraph (2) letter a), the provisions of articles 62 and 77 of emergency ordinance will apply.

Article 63

(1) After sending the invitation, the rules applicable to the request for tenders procedure are similar to the ones applicable to the open procedure, provided by articles 32 to 39.

(2) When applying the request for tenders by electronic means, the contracting authority has the right to request successive reductions of the prices included in the financial proposal.

Article 64

The request for tenders procedure can be applied by using electronic means, through SEAP, under the provisions stipulated by the norms adopted, according to article 303, paragraph (3) of the emergency ordinance.

CHAPTER V

Framework agreement

Article 65

In accordance with the provisions of article 143 of the emergency ordinance, the contracting authority:

- a) does not have the right to conclude framework agreements with a duration of over four years except for special cases that can be justified only by the specific object of the subsequent contracts that are assumed to be awarded according to the respective framework agreement;
- b) does not have the right to award subsequent contracts that have as object a conscription of any other nature than the ones stipulated by the framework agreement;
- c) does not have the right to conclude framework agreements which allow the awarding of subsequent contracts that are different from one another as type or nature;

d) does not have the right to conclude subsequent contracts with anyone except the economic operator/operators which signed the framework agreement and based only on the rules and conditions provided by the respective agreement;

e) does not have the right to conclude subsequent contracts in the name and for another contracting authority which is not part of the respective framework agreement unless it has the status of centralized procurement unit according to the provisions of article 22 of the emergency ordinance;

f) without infringing the provisions of paragraph 31 of the emergency ordinance, has the obligation to impose minimum qualification conditions that must refer at the most to the estimated value of the biggest subsequent contract to be awarded during the framework agreement.

Article 66

The tender documentation must contain, besides the elements provided in article 33, paragraph (2) of the emergency ordinance, a minimal package of specific information concerning:

a) the number or the range number of the economic operators that are to be part of the framework agreement that is to be concluded;

b) the option of awarding the subsequent contracts without or with resuming the competition, in case that the framework agreement would be concluded with more economic operators;

c) the awarding criteria/ assessing factors which are to be applied for awarding the subsequent contracts and any other relevant rules, in case that the awarding of the respective contracts would be completed by resuming the competition;

d) the estimated schedule of applying the procedure and the estimated awarding schedule for the subsequent contracts;

e) estimation of the minimum and the maximum quantities that could be required during the entire framework agreement;

f) estimation of the minimum and the maximum quantities that could be the object of one of the subsequent contracts those are to be awarded during the framework agreement.

Article 67

(1) By concluding a framework-agreement, the contracting authority takes, towards the economic operator/operators that is/are part of the agreement in question, the following main obligations:

a) not to initiate, during the framework-agreement, a new awarding procedure, when it intends to purchase the products/services/works that were the object of the framework-contract in question, unless the economic operator/operators that signed the agreement have not the capacity to answer the requests of the contracting authority;

b) to award contracts to the economic operator/operators that signed the agreement, any time they intend to purchase the products/services/works that belonged to the framework-agreement in question, observing the essential terms established when the contract was concluded.

(2) The economic operator/operators that signed the framework-agreement take as main obligation to the contracting authority, to supply products/ to provide services / to

execute works, as they were provided within the framework-agreement in question, any time the contracting authority requires it.

(3) The request of the contracting authority, addressed to the economic operator to provide/supply/execute, becomes concrete by concluding a contract subsequent to the framework-agreement.

Article 68

(1) The framework-agreement must stipulate, for the subsequent contracts that are to be awarded, the elements/clauses considered as essential which refer to:

a) the obligations that the economic operator/operators has assumed through the technical proposition presented during the awarding procedure, especially the ones regarding the technical features – functional and performance – of the products that are to be supplied, the description of the services that are to be provided and their qualitative level, the description of the works that are to be executed and their qualitative level, delivery, periods/terms of supplying, providing or executing, starting with the moment when the contract was concluded, the granted warranties, any other elements that were considered in the examination and verification of the technical propositions process;

b) the unit price/tariff or unit prices/tariffs and other financial or trading commitments that the economic operator/operators foresaw in the financial proposition;

c) specific terms and adjusting formulas of the prices, by case;

d) any other elements/clauses that the contracting authority considers necessary.

(2) When the framework agreement is concluded with several economic operators and the subsequent contracts will be awarded by resuming the competition, the framework agreements must contain:

a) the elements/ conditions that remains unchanged during the agreement period;

b) the elements/conditions that will be the object of the competition resuming.

Article 69

(1) When the framework-agreement is concluded with several economic operators and the subsequent contracts are to be awarded by resuming the competition, the contracting authority must, at any time it decides to purchase products/services/works that make the object of the agreement in question, to simultaneously send a participation invitation to re-tendering to all the economic operators that signed the framework-agreement.

(2) The invitation to re-tendering should contain at least the following:

a) information regarding the quantities and specific elements that will constitute the object of the contract to be awarded:

b) information on the elements that make the object of the re-tendering as well as the awarding criteria/ assessing factors that will be applied in order to establish the economic operator to whom the contract will be given, as it was stipulated in the tender documentation elaborated for concluding the framework agreement.

c) information on how the new tender will be submitted as well as the deadline for submitting the new tender by the economic operators.

(3) The elements that may be the object of the re-tendering may refer to price, supply/delivery/execution terms, technical characteristics, qualitative and performance

level and/or any other similar terms, insofar those terms were stipulated according to article 68, paragraph (2) letter b).

(4) The deadline to which the economic operators have the right to submit the new tender is established by the contracting authority, which has, in this respect, the obligation to take into account aspects such as the complexity of the object of the future contract and to ensure a reasonable period of time for elaborating and sending the new tender; the contracting authority also has the right to consult the economic operators regarding the possibility to elaborate the new tenders within the shortest possible period of time.

(5) The economic operators have the right, in re-tendering process, to modify the elements/conditions that will be object of the competition resuming only by improving them and without affecting the elements/conditions established as being unchanged, according with article 68, paragraph (2), letter a).

(6) When, after the re-tendering process, the contracting authority does not obtain improvements of the initial tenders, it has the obligation to award the contract to the first qualified tenderer in the procedure applied for concluding the framework-agreement by taking into account the conditions and elements provided for in its initial tender.

Article 70

(1) When the economic operator to whom the contracting authority sends its request for concluding a subsequent contract does not have the capacity to respond to this request because the quantity that makes the object of the contract exceeds the estimation provided at article 66, letter f), the contracting authority has the right to initiate a new procedure to award the contract for purchasing the quantitative difference which cannot be covered by the mentioned economic operator, only when:

a) the framework-agreement is concluded only with the mentioned economic operator;

b) although the framework agreement is concluded with other operators as well, they do not have the capacity to provide the quantitative difference either.

(2) When the economic operator to whom the contracting authority sends a request to conclude a subsequent contract does not have the capacity to respond to this request out of its own fault, the contracting authority has the right to initiate a new awarding procedure to purchase the entire necessary quantity.

(3) The culpable economic operator will suffer the consequences stated in the framework agreement for not fulfilling the incumbent obligations.

CHAPTER VI

Evaluation of tenders

Article 71

(1) The contracting authority has the obligation to establish, for every public procurement contract, the person/persons in charge with assessing the tenders, which will form an evaluation commission.

(2) The evaluation commission is nominated, as a rule, from the internal specialised department provided by art. 3 paragraph (1).

(3) The nomination of the responsible persons for evaluating the tenders can be made for the awarding of each contract but also for awarding more contracts if these contracts are of low complexity.

Article 72

(1) The person in charge with awarding the contract is at the same time the president of the evaluation commission.

(2) The functions of the evaluation commission are the following:

- a) opening the tenders and, by case, of the documents that accompany the tender;
- b) verifying if the qualification requirements are met by the tenderers /candidates, when those documents have been requested through the tender documentation ;
- c) performing the selection/ pre-selection of the candidates, if the case;
- d) carrying out the dialogue with the economic operators when the competitive dialogue procedure is applied;
- e) carrying out the negotiations with the economic operators when the negotiated procedure is applied;
- f) verifying the technical proposals presented by the tenderers, from the point of view of the way in which they correspond to the minimum requirements from the tender book or from the tender documentation;
- g) verifying the financial proposals presented by the tenderers from the point of view of limiting the funds that can be made available for fulfilling the public procurement contract, as well as for ensuring their compliance with the situation provided by article 202 of the emergency ordinance;
- h) establishing the unacceptable or irregular tenders, as well as the reasons that render these tenders unacceptable or irregular;
- i) establishing the admissible tenders;
- j) applying the awarding criteria in conformity with the conditions stipulated in the tender documentation and establishing the successful tenders/s;
- k) in cases that may be justified in accordance with article 209 of the emergency ordinance, the elaboration of cancelling proposal of the awarding procedure;
- l) elaborating the awarding procedure report, the way it is stipulated at article 213 paragraph (2) of the emergency ordinance.

(3) The contracting authority has the right to nominate reserve members for the evaluation commission.

(4) The contracting authority has the right to replace one member of the evaluation commission with a reserve member, only if the person that is to be replaced cannot, out of objective reasons, fulfil the tasks that result from the status of member of the evaluation commission. After the replacement, the status of member of the committee is taken over by the reserve member, who will exert its duties up to the completion of the awarding procedure.

Article 73

(1) The person responsible for the procurement has the right to make a proposal to the management of the contracting authority, regarding the inclusion within the

evaluation commission of experts from other departments of the contracting authority or external experts.

(2) The proposal mentioned in paragraph (1) must state the specific attributions and responsibilities of the experts to be included in the evaluation commission, and justify the necessity of their participation in the evaluation process.

(3) The functions and responsibilities of the external experts involved consist in, by case, the following:

a) verifying and evaluating the technical proposals;

b) analysis of the financial situation of the tenderer/candidates or the financial analysis of the effects that can be determined by certain elements of the tender or certain contract clauses included by the tenderer;

c) analysing the legal effects that can be determined by certain elements of the tender or certain contract provisions included by the tenderer;

(4) The experts involved can be nominated at the same time when the evaluation committee is appointed or subsequently, depending on problems that might require their expertise.

(5) The experts involved for reasons mentioned in paragraph (3) do not have the right to vote in the evaluation commission, but they have the obligation to elaborate a report regarding the technical, financial and legal aspects they are giving their opinion on.

(6) The specialized report mentioned by paragraph (5) is bound to facilitate the decision-making process for the evaluation commission in the process of analysing the tenders and establishing the successful tenders/tenders. The specialised report must be attached to the awarding report and becomes part of the public procurement file.

Article 74

(1) During the assessment process, the commission and, accordingly, the experts involved, have the obligation of confidentiality regarding the contents of the tender and any other information submitted by the candidates/tenderers, whose revealing might impede on their right to protect their intellectual property or commercial secrets.

(2) The infringement of the confidentiality agreements will be sanctioned according to the law, disciplinary or criminal.

(3) Except the opening session for the tenders, the meetings of the evaluation commission will only be attended by its members and the experts involved, by case.

(4) The regulations on conflict of interests, as referred to in Chapter II, Section 8 of the emergency ordinance, are equally applicable both to the evaluation commission and the experts involved.

Article 75

(1) The evaluation commission and the experts involved have the obligation to sign a declaration of confidentiality and impartiality, hereby committing to respect the provisions of art. 74, and confirming that they do not find themselves in a situation which involves a conflict of interests.

(2) The declaration provided in paragraph (1) must be signed before undertaking the responsibilities specific for the evaluation process.

(3) When one of the designated members of the evaluation commission or one of the experts involved finds himself in a situation of incompatibility, he has the obligation

to immediately require to be replaced in the committee by a different person. The incompatibility situations can also be signalled to the contracting authority by third parties.

(4) When such a situations are signalled, the contracting authority has the obligation to verify and, if necessary, to adopt the measures needed in order to avoid/correct any aspects that might lead to a conflict of interests.

Article 76

(1) The procedures of the evaluation commission is established by the president of the commission together with the members of the commission; in order to establish the schedule, the estimated calendar of application for the procedure and the requested period of availability for the tenders must be taken into consideration.

(2) Any decision of the evaluation commission must meet the votes of at least two thirds of its members.

(3) In case the successful tender is established on the basis of the score, the commission members' vote is reflected in the individual score granted for each tender.

(4) In case the provisions of paragraph (2) are not observed due to possible divergent opinions between the members of the evaluation commission, the president of the commission has the obligation to require a further analysis of the disagreement points, in order to finalise in due time the stage of assessing the tenders and assigning the successful tenders. In case the commission doesn't reach an agreement, the final decision will be adopted with simple majority.

(5) The members of the evaluation commission that do not approve the adopted decision, must present their point of view in written, drawing up an Individual Note attached to the Awarding Procedure Report.

Article 77

(1) When the commission observes that one or several candidates have omitted to submit certain documents which confirm the meeting of the requirements regarding their personal situation, the suitability to pursue the professional activity, their economical and financial standing and their technical and/or professional capacity, it will require of the tenderers/candidates to fill in the missing documents, allowing a reasonable term for this purpose, usually within the 72 hours from the moment of the request. The evaluation commission will adopt all the necessary measures to ensure that the request is transmitted in due time to the tenderers/ candidates.

(2) By exception to the provisions of paragraph (1), the evaluation commission does not have the right to allow and to require a tenderer/candidate to submit a missing document if:

a) the tender documentation specifies the fact that, in case the respective document is not submitted, the subsequent submission is not acceptable and that the absence of the respective document leads to the disqualification of the tenderer/candidate, or

b) the tenderer/candidate in the matter omitted to submit several documents required for the tender documentation, such absence reflecting the lack of serious commitment to the competition,

c) an advantage, as compared to the other tenderers/ candidates, is created by accepting the subsequent submission of the documents in the matter, thus impeding on the principle of equal treatment.

Article 78

The evaluation commission has the obligation to establish which clarifications and completions are formal or of confirmation, necessary for the evaluation of every tender, and the period of time granted for the transmission of the clarifications. The communication sent for this purpose to the tenderer, must be clear, precise and must define explicitly and in sufficient details the contents of the commission request

Article 79

(1) When the tenderer does not transmit the required clarifications/answers within the period of time established by the evaluation commission or in case the explanations submitted by the tenderer are not conclusive, the tender will be considered irregular.

(2) When the tenderer modifies, through the answers he presents, the contents of the technical proposition, its tender will be considered irregular.

(3) When the tenderer modifies, through the answers he presents, the contents of the financial proposition, its tender will be considered irregular, with the exception of the situation presented in Article 80, paragraph (2)

Article 80

(1) The evaluation commission has the right to correct the arithmetic errors only with the tenderer's consent. When the tenderer does not accept the correction of these errors, the tender will be considered irregular.

(2) The arithmetic errors shall be corrected as follows:

a) if there is a discrepancy between the price per unit and the total price, the price per unit shall be taken into account, and the total price will be corrected accordingly;

b) if there is a discrepancy between letters and figures, the values as expressed in letters shall be taken into consideration, and the value expressed in figures shall be corrected accordingly.

Article 81

The evaluation commission has the obligation to reject the unacceptable tenders and the irregular tenders

Article 82

(1) The evaluation commission has the obligation to establish the successful tenders, among the admissible tenders, according to article 200 of the emergency ordinance.

(2) In case the awarding of the public procurement contract is done based on the criterion "the economically most advantageous tender", the evaluation of the tenders shall be done by assigning a score, for each tender, as a result of applying the algorithm for calculation established in the tender documentation .

(3) In decreasing order of the score, the evaluation commission must elaborate the ranking, which constitutes the basis of establishing the successful tenders.

(4) In case the awarding of the public procurement contract is done based on the criterion: “the lowest price”, the evaluation of the tenders shall be done by comparing prices in RON, without VAT, for each tender and by elaborating a ranking in the decreasing order of the respective prices, which constitutes the basis of establishing the successful tenders.

Article 83

(1) After the evaluation of tenders is completed, the evaluation commission has the obligation to elaborate the report on the awarding procedure, which shall be signed by all the members of the evaluation commission, including its president.

(2) The report of the awarding procedure shall be forwarded to the head of the contracting authority for approval

CHAPTER VII

Guarantees

SECTION 1

The Participation Guarantee

Article 84

The tenderer shall constitute the participation guarantee in order to protect the contracting authority against the risk of its possible inappropriate behaviour, for the whole period until the closing date of the public procurement contract or of the framework-agreement.

Article 85

The contracting authority has the obligation to clearly state in the tender documentation if the tenderers have an obligation to constitute a participation guarantee for the participation in the procedure. When the tender documentation provides such an obligation, it must also contain the following information:

a) the quantum of the participation guarantee as a fixed amount, which shall not exceed 2% of the estimated value of the public procurement contract or the framework agreement;

b) the validity period of the participation guarantee shall be equal at least to the period of validity of the tender.

Article 86

(1) The participation guarantee shall be put up by means of a bank guarantee letter, which shall be submitted in original form with the amount and for the period provided by the tender documentation.

(2) The contracting authority does not have the right to impose a single bank to issue the participation guarantee, by specifically referring to it in the tender documentation.

(3) The participation guarantee can also be constituted by depositing at the cashier's office of the contracting authority of:

- a) a payment order or cheque, provided that they are endorsed by the issuing bank until the date of tenders opening;
 - b) an amount in cash, when the value of the participation guarantee is low;
- (4) In any case, the participation guarantee must be submitted no later than the moment of opening the tenders.

Article 87

(1) - The contracting authority has the right to retain the participation guarantee, thus the tenderer loses the deposited amount, whenever the last might find itself in any of the following circumstances:

- a) withdrawal of the tender during the period of validity;
- b) failure to constitute the good execution guarantee during the period of validity of the tender, once its tender has been declared successful and in any case, no later than 15 days since the contract has been signed;
- c) refusal to sign the public procurement contract/framework agreement during the period of validity of the tender, once its tender has been declared successful.

(2) – The paragraph (1), letter b) provisions shall not apply in case of a framework agreement.

Article 88

(1) The participation guarantee, constituted by the tenderer whose tender was declared successful shall be refunded by the contracting authority within 3 days since the constitution of the good execution guarantee.

(2) The participation guarantee put up by the tenderers whose tenders were not declared successful shall be refunded by the contracting authority once the contract of public procurement with the tenderer/tenderers whose tender was designated successful has been signed, but no later than 3 working days since the period validity of the tender has expired.

SECTION 2

Good performance guarantee

Article 89

(1) The good performance guarantee shall be constituted by the contractor with the purpose of guaranteeing towards the contracting authority the quantitative, qualitative and timely fulfilment of the contract.

(2) The contracting authority shall be obliged to establish in the tender documentation the way in which the good performance guarantee shall be constituted, as well as its total amount that is not to exceed by more than 10 % of the contract price, VAT not included.

(3) In the case when a supply or service contract – except the design services – the estimated value of which is less than the value stipulated by Article 124 of the emergency ordinance is awarded, as well as in the case of awarding a contract awarded through negotiation without prior publication of a contract notice, the contracting authority has the right not to require to contractor to constitute a good performance guarantee.

Article 90

(1) Usually, the good performance guarantee is constituted by a bank guarantee letter, which will be annexed to the contract, as a rule.

(2) When the value of the good performance guarantee is low, the contracting authority shall be entitled to accept its constitution through the deposit of cash at the pay office.

(3) When the parties so agree, the good performance guarantee can be constituted through successive instalments out of the amounts owed for partial invoices. In this case, the contractor shall have to open up a bank account at the contracting authority's disposal, with a bank mutually agreed upon. The initial amount deposited by the contractor in the respective account, shall not be less than 0.5% of the total price of the contract. During the execution of the contract, the contracting authority shall make successive deposits in the respective account by successive retains of the amounts owned until the total amount established as good performance guarantee within the tender documentation. The contracting authority shall request the bank to inform the contractor of the payment and its destination. The account thus opened carries an interest in favour of the contractor.

Article 91

The contracting authority has the right to formulate claims regarding the good performance guarantee, during the execution of the contract, with respect to the damage occurred, when the contractor does not fulfil its contract obligations. Prior to the claim regarding the good performance guarantee, the contracting authority has the obligation to notify the claim to the contractor, stating the obligations that were not fulfilled.

Article 92

(1) In the case of a supply contract, the contracting authority has the obligation to release/refund the good performance guarantee in no more than 14 days since the official receipt report of the products stipulated in the contract has been drawn up and/or the final invoice payment, provided that no claims have been issued.

(2) In the case of a services contract, the contracting authority has the obligation to release/refund the good performance guarantee in no more than 14 days since the contractor has fulfilled the obligations stipulated by contract, provided that no claims have been issued.

(3) In the case of design services contracts, the contracting authority shall be obliged to release/refund the good performance guarantee, as follows:

a) the value of the good performance guarantee afferent to the pre-feasibility and/or feasibility studies, within 14 days from the date of delivery and reception/approval of the respective technical economical documentation, provided that no claims have been issued.

b) the value of the good performance guarantee related to the technical project and/or execution details, within 14 days since the date the official reception report regarding the completion of the works performed on the respective project basis, provided that no claims have been issued.

(4) In the case of works contracts, the contracting authority has the obligation to release/refund the good performance guarantee, as follows:

a) 70% of the guarantee value within 14 days since the date of the official reception report regarding the completion of the works performed, provided that no claims have been issued and that the risk of hidden flaws is minimal;

b) the remaining 30% of the guarantee value at the end of the guarantee period for the performed works, on the basis of the final official reception report.

Final official reception reports can be drawn up for some parts of the works as well provided these are physically and functionally unconnected.

CHAPTER VIII Completion of the awarding procedure

Article 93

(1) The contracting authority has the obligation to complete the awarding procedure by concluding the public procurement contract or the framework-agreement.

(2) By exception to the provisions of paragraph (1), the contracting authority has the right to complete the procedure by annulling it, but only in circumstances provided by Article 209 of the emergency ordinance.

Article 94

(1) The department referred to in article 3 paragraph (1) has the obligation to communicate to all candidates/tenderers the result of the procedure, according to the provisions of articles 206 to 208 of the emergency ordinance.

(2) The communication to the tenderer/tenderers declared successful have to include the invitation to sign the contract or the framework-agreement, by case.

(3) The date of the invitation mentioned by paragraph (2) shall not precede the deadline provided by article 205 of the emergency ordinance.

Article 95

(1) The following documents shall constitute a minimal part of the public procurement contract:

- a) technical proposal and financial proposal;
- b) contract fulfilment schedule;
- c) payment schedule;
- d) good performance guarantee, if the case.

(2) When, during the execution of the contract, certain elements of the technical proposal are deemed inferior to or do not match the requirements in the tender book, the provisions of the tender book shall prevail.

Article 96

(1) In the case where parts of the public procurement contract are to be carried out by one or more subcontractors, the contracting authority shall be obliged to request the signed contracts between the future contractor and the nominated subcontractors at the time when the respective public procurement contract is signed. The contracts presented shall be in accordance with the tender and shall be annexed to the public procurement contract.

(2) During the execution of the contract, the contractor shall not be entitled to replace the subcontractors nominated in the tender without the agreement of the contracting authority and the eventual replacement of these shall not lead to the modification of the initial technical or financial proposals.

Article 97

(1) The price of the public procurement contract shall be firm, expressed in RON or in other currency.

(2) By exception to the provisions of paragraph (1), the public procurement contract's price can be adjusted only if circumstances arise that prove injurious to the parties' commercial interests and that, objectively, can not be foreseen at the date the contract or the framework-agreement is signed.

(3) To the meaning of the present Decision, the following can be considered as exceptional situations and can determine an adjustment of price:

a) legislative amendments or the issuance by local public authorities of administrative acts the result of which entails the rise/decrease of costs on the basis of which the contract price was substantiated;

b) the rise/decrease in the price of the tender elements having a significant influence the costs on the basis of which the contract price was substantiated.

(4) The exact manner in which the public procurement contract price is adjusted shall be established, if possible, before the initiation of the public procurement contract awarding procedure. The contracting authority shall specify the special information/clauses in the tender documentation, as well as in the contract. The lack of the said information/clauses determines the inapplicability of the provisions regarding the possibility of adjusting the price of the public procurement contract.

(5) The manner of adjusting the public procurement contract price shall not lead, in any way, to the alteration of the result of the awarding procedure through the annulment or decrease of the competition advantage on the basis of which the respective contractor was declared successful following the completion of the respective procedure.

(6) Any adjustment of price shall accurately reflect the influence exerted by the situation causing the possible adjustment. The justification consisting in a rise of resource prices shall be presented only on the basis of the evolution of relevant price indices, published by authorised institutions/organisms, such as the price indices published by the National Statistics Institute, stock exchange indices or the like.

Article 98 - No later than 48 days since the signing of the contract, the internal department provided by article 3 (1) shall be obliged to submit for publication, in accordance with the provisions of article 56 of the emergency ordinance, a contract awarding notice.

CHAPTER IX

Monitoring the award of the public procurement contracts

Article 99 - (1) The monitoring of the award of the public procurement contracts shall be carried out by the National Authority for Regulating and Monitoring of Public Procurement on the basis of information comprised in the contract notices and in the contract awarding notices.

(2) The contracting authorities have the obligation to submit an annual report regarding the contracts awarded in the previous year to the National Authority for Regulating and Monitoring of Public Procurement.

(3) The requested information shall be submitted in accordance with the model provided in Annex no. 2 in electronic format or, by way of exception, as hardcopy, no later than the 31st of March of each year.

Article 100

(1) The annual report in electronic format shall be transmitted to the following e-mail address: monitorizare@anrmap.ro.

(2) The annual report in hardcopy shall be submitted to the Registry of the National Authority for Regulating and Monitoring of Public Procurement; the contracting authority shall be obliged to request the registration number written on the witness copy.

(3) The failure to transmit the annual report or the transmission of an incomplete report or of one containing erroneous information shall be treated as provided by article 293, lett. m) of the emergency ordinance.

Article 101

The National Authority for Regulating and Monitoring of Public Procurement shall process the relevant information comprised in the contract notices and contract awarding notices, as well as in the annual reports received from the contracting authorities, building a statistical database which is utilised for:

- a) the timely presentation of reports requested by the European Commission;
- b) supplying all interested parties with information relating to the functioning of the public procurement system;
- c) supervising the manner in which public procurement contracts are awarded;
- d) preventing and, if necessary, ascertaining breaches of the legislation in the field.

Chapter X

Final and transitory provisions

Article 102 – To the meaning of article 298 of the emergency ordinance, the ‘ongoing awarding procedure’ reads as any procedure for which a contract notice has been

submitted or, according to the case, an invitation to participate, until the 29th of June 2006.

Article 103 - (1) Until the 31st of December 2006, the contracting authority shall be entitled to use for the purpose of statistical classification of products, services and works, the group and code system used in the Classification of products and services associated with activities (CPSA), or the common procurement vocabulary (CPV).

(2) Beginning with the 1st of January 2007, the contracting authority shall be obliged to use for the statistical classification of products, services and works only the Common procurement vocabulary (CPV).

Article 104 – The award of the public procurement contracts the value of which is lower than the threshold provided in article 19 of the emergency ordinance can be also performed through SEAP, starting with the 1st of January 2007.

Article 105 - The public IT system provided by article 58 (1) of the emergency ordinance shall be operated by the Agency for Governmental Strategies and shall be available at the www.publicitatepublica.ro web page.

Article 106 - The president of the National Authority for Regulating and Monitoring of Public Procurement shall be entitled to issue orders for:

- a) the approval of standard documentation used in the awarding procedures;
- b) the approval of specific forms used in the awarding procedures or in the monitoring process;
- c) the approval of interpretation notes, on general or particular issues, regarding the provisions of the emergency ordinance and/or the present Decision.

Article 107 - Annexes no. 1 and 2 are a constituent part of the present Decision.

PRIME – MINISTER
CALIN POPESCU-TARICEANU