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GOVERNMENT ORDINANCE
No. 60 of 24/04/2001

Published in "Monitorul Oficial", Part I, no. 241 of 11/05/2001

Regarding Public Purchase

Pursuant provisions of Article 114, paragraph (4) in the Constitution of Romania,

The Government of Romania approves this Ordinance,

CHAPTER I

Overview

Section 1

Scope. Principles

Art.1. The scope of this Ordinance is for settling the principles, framework and procedures for the award of the public purchase contract, as well as complaints against the documents issued or decisions taken of the contracting authority when applying one of the procedures for the award of the public purchase contract.

Art.2. The principles lying at the basis of the public purchase contract award are, as follows:

- a) free competition, i.e. enabling all Suppliers, Service Providers, or Contractors, whatever their nationality, to have the right to be awarded a public purchase contract, according to the legal provisions in this respect;
- b) efficiency of public funds' usage, i.e. awarding public purchase contracts by using the competition system and economic criteria;
- c) transparency, i.e. placing at the disposal of all parties interested the information regarding the procedures adopted for the award of a public purchase contract;
- d) equal treatment, i.e. applying non discriminatingly the selection criteria and the public purchase contract award criteria in such way to give equal chances to any Supplier, Contractor or Service Provider to be awarded the respective contract;
- e) confidentiality, i.e. guaranteeing non-disclosure of commercial secrecy and intellectual properties of the bidder.

Section 2

Definitions

Art.3. Under this Government Ordinance, the following words have the following meanings:

- a) public purchase – temporary or final acquisition, by a legal entity referred to as “the contracting authority” of goods, works or services, through the award of a public purchase contract;
- b) public purchase contract – binding contract, in writing, concluded between the Contractor and the contracting authority;
- c) Contractor – the bidder who was awarded the public purchase contract as a result of applying one of the procedures indicated in this Government Ordinance;
- d) Supply Contract – public purchase contract having as a purpose the supply of one or several goods, as they might be described in the official statistical classifications, on the basis of purchase, purchase by instalments, hiring or leasing with or without buying option;
- e) Services Contract – public purchase contract having as a purpose providing one or several services, as they might be described in the official statistical classifications;
- f) Works Contract – public purchase contract having as a purpose, as applicable, the execution, or both the design and the execution, of one or several Civil Works, as they might be described in the official statistical classifications, or of any combination of such Civil Works, which could lead or not to a result meant to perform by itself a technical-economic function;
- g) contracting association – association constituted by civil agreement, between two or several contracting authorities, without creating a new legal entity, in the aim of awarding, jointly, a public purchase contract;
- h) public funds – funds allotted from the State budget, social security budget, health insurance budget, special funds budget, State treasury budget, local budgets, budgets of public institutions financed from extra budgetary funds, external grants for Romania or for Romanian public institutions, external loans contracted or guaranteed by the State or local public administration authorities, or internal loans contracted by local public administration authorities;
- i) candidate – any Supplier, Service Provider or Contractor, whether individual or legal entity, requesting an inviting bids letter for a restricted bidding or competitive negotiation;
- j) bidder – any Supplier, Contractor or Service Provider, whether individual or legal entity, having submitted a Tender;
- k) contestant – any Service Provider, individual or legal entity, having submitted a solution for a solutions' contest;
- l) Tender – documentation including the technical proposal and the financial proposal;
- m) Technical proposal – document of the Tender, prepared on the basis of the requirements in the Technical Specifications, established by the contracting authority;
- n) Financial proposal – document of the Tender, providing the information required by the documentation for the preparation and submission of tenders with regard to price, fees, other financial and commercial conditions;
- o) Technical Specifications – requirements of technical nature issued by the contracting authority and defining the characteristics of a set of goods, services or Works, which allow to each product, service or work to be objectively described in such manner to comply with the exact necessity intended by the contracting authority;
- p) Bid Bond – deposits, credit securities or other types of guarantees accepted by the contracting authority and placed at the contracting authority's disposal by the bidder, prior to opening of Tenders;

- q) Performance Security – deposits, credit securities or other types of guarantees accepted by the contracting authority, placed at the contracting authority’s disposal by the bidder invited to sign the public purchase contract
- r) transport system – system supporting the providing of transportation services under operation conditions settled by the competent authorities, and implying routes, transportation capacities and frequency of transportation services
- s) public telecom network – public telecommunications infrastructure, ensuring transport of signals between different network terminal points by microwaves, optics fibres or other electromagnetic equipment;
- t) network terminal point – ensemble of physical connections and technical access specifications, making part of the public telecommunications network and required in order to ensure network access and to achieve efficient communication;
- u) telecom – services consisting, mainly or entirely, of issuing and directing signals through the public telecommunications network, by telecommunication procedures, radio and television excepted;
- v) public telecom services – telecommunications services to be provided by one or several legal entities provided in article 6, paragraph (1), f) and directly entrusted by the competent authorities explicitly and specifically.
- w) attack – objections and appeals, against documents or decisions considered illegal, and aiming at:
 - i) suspension, correction, countermanding, modification or cancellation of a document issued, decision taken or procedure applied by the contracting authority
 - ii) liquidated damages applicable further to a document issued, decision taken or procedure applied by the contracting authority.

Section 3 Applicability

Art.4. (1) The provisions herein are applicable for the award of any public purchase contract.

(2) Any contracting authority financing public purchase contracts to be awarded by another legal entity shall enforce, by the financing agreement, the procedures herein for the award of the respective contract.

Art.5. Under this Government Ordinance, “contracting authority” should be interpreted as:

- a) any public authority, as they might be defined in the Constitution of Romania, including legal courts;
- b) any public institution, whether of local or general interest, independent, subordinated to or controlled by a public authority;
- c) the Romanian Academy and its subordinated institutions ;
- d) any legal entities carrying out relevant activities in one of the public utilities sector – water, electricity, transport and telecommunications – holding exclusive or special rights for carrying out such activities, meaning that they have no competitors in that domain, due to their monopoly position or to the effect of a normative or administrative document.

(2) The contracting association should also be construed as a contracting authority; in this event, through a civil agreement, the parties shall designate a legal entity among them to represent, as sole purchaser, the interests of the association in their relationships with the Supplier, Contractors or Service Providers.

(3) Other legal entities could be designated, by Government Decision, to carry out public purchases according to the provisions herein, should their activities be carried out on a market with no competition, due to the effect of a normative or administrative documents, or due to the existence of a monopoly position.

Art.6. (1) Pursuant to provisions of art. 5, paragraph (1), d) the following are considered as relevant activities:

- a) providing or operating fixed networks destined to provide, for the benefit of the population, activities in the field of production, transport or distribution of drinking water, electricity, gas fuels, heat energy, and hot water, as well as supply of drinking water, electricity, gas fuels, heat energy and hot water to these networks;
- b) sewage disposal, or wastewater treatment ;
- c) exploitation of a geographic area in the aim of carrying out activities connected to prospecting and extraction of crude oil, gas, coal or other compact fuel ;
- d) exploitation of a geographic area in the aim of providing to the carriers for air, sea or fluvial transport, airports, sea/fluvial ports or other transport terminals;
- e) providing and operating transport networks meant to ensure the providing of scheduled services for public passenger road transport or rail transport
- f) providing and operating public telecommunications networks or providing one or several telecommunications services for the population’s use.

(2) The activities described at paragraph (1) above shall not be considered as relevant activities in case that:

- a) for drinking water and electricity:
 - the drinking water or electricity production is meant for other activities than those described at paragraph (1);
 - the water supply of the public networks depends on the Supplier’s consumption, and the quantity supplied to the network did not exceed 30% of the total production of drinking water or electricity, considering the average of the last three years, including the current year;
- b) for gas fuels, heat energy and hot water:
 - the production of gas fuels, heat energy or hot water is the result of other activities than those provided in paragraph (1)
 - the supply of the public network is only performed in the aim of exploiting the production, and the turnover resulted from the supply of the network did not exceed 20% from the total turnover achieved, considering the average of the last 3 years, including the current year.

(3) Providing transport services by bus is not to be considered as relevant activity if other legal entities are also entitled to carry out the same type of services within the same geographic area and under the same conditions.

(4) The contracting authority is not bound to enforce provisions herein for public purchase of goods, services and works exclusively destined for providing one or several types of telecommunications services, in the event that other legal entities are also entitled to carry out similar telecom services, within the same geographic are and under the same conditions.

Art.7. (1) A contracting authority in the domain of public defence, public order, national safety and security is bound to apply provisions herein, unless they purchase goods and services connected to the weapons, ammunition, and armaments production or trade, war ammunition or armaments, or unless the award of the services or supply contract could lead to disclosure of information which could endanger the national security and defence interests.

(2) The list of the goods and services described in paragraph (1) above, as well as the procedures for the award of the public purchase contract shall be established by Government Decision.

Art.8. (1) The contracting authority is not bound to apply provisions of this Government Ordinance when awarding public purchase contracts under the hereinafter circumstances:

- a) the contract is confidential or its performance implies special security measures, according to the legal provisions in respect of national defence, public order, national safety and security,
- b) the procedures for the award of the public purchase contracts were settled as a result of:
 - an international treaty or agreement aiming at the implementation or operation of a project, jointly with one or several foreign partners
 - an international treaty, agreement or any other similar documents with respect to stationing of troops
 - application of specific procedures issued by international financial organisations or by other donors or creditors
- c) the contract in question is a services contract and is to be awarded to a legal entity which is itself a contracting authority and provides this services on the basis of exclusive rights granted according to the legal provisions;
- d) the contract's purpose is for the purchase of above-ground and underground water;
- e) the contract's purpose is for the purchase of energy, of energy products coming from the mining industry, or of other fuels in the aim of:
 - carrying out activities connected to the production, transport or distribution of drinking water, electricity, gas fuels, heat energy or hot water;
 - carrying out activities connected to prospecting and extraction of crude oil, gas, coal or other compact fuel ;
- f) the purpose of the contract is for:
 - the purchase or lease, by whatever financial means, of land/buildings/other real estate assets or property deeds on the aforesaid;
 - purchase, development, production or co production of programmes by the radio and television stations, as well as purchase of broadcasting times
 - providing services related to telecommunications, maintenance of networks, satellite communications
 - providing arbitration or conciliation services
 - providing financial mediation services connected to issue, purchase, sale or transfer of movable assets or of other financial instruments; services provided by the Romanian National Bank;
 - employment of personnel, and respectively, concluding Labour Contracts
 - providing research and development services, paid entirely by the contracting authority, should the results thereof not be for the sole benefit of the contracting authority.

Under any of the circumstances mentioned above at paragraph (f), the contracting authority is bound to award the public purchase contract by observing economic criteria and, to the extent possible, by using the competition system adapted to the specific features of the purchase.

(2) The contracting is not bound to enforce provisions of this Government Ordinance when purchasing:

- a) hotel and restaurant services
- b) rail transport services
- c) sea (water) transport services
- d) services connected to transport
- e) legal services
- f) recruitment and employment services
- g) investigation services, protection of property or individuals
- h) teaching services
- i) health and welfare work services
- j) recreational, cultural and sports services.

Under any of the circumstances stated above, the contracting authority shall award the public purchase contract by observing economic criteria and, to the extent possible, by using the competition system adapted to the specific features of the purchase.

(3) The contracting authorities carrying out relevant activities in the public utilities sectors are not bound to apply the provisions herein when purchasing:

- a) goods, in the aim of reselling or hiring them out, and hold no special rights whatsoever on the goods to be sold or hired out, as any other legal entities might be entitled to sell or hire out similar products under the same circumstances as the contracting authority.
- b) goods, works or services meant for other purposes that carrying out relevant activities,

- c) goods, works or services meant for carrying out relevant activities in a country other than Romania, in the event that fulfilment of such purposes does not imply physical employment of a Romanian network or geographic area.
- (4) The contracting authority is entitled to purchase directly, according to the rules for the application of this Government Ordinance, without this implying obligation to apply the procedures provided in art. 9 herein, should they purchase goods, works or services, with a VAT exclusive value which does not exceed the equivalent in RoL of 1,500 euro, by accumulation over a year.

CHAPTER II

Procedures for the Award of the Public Purchase Contract

- Art.9. (1) The contracting authority is bound to apply one of the procedures hereinafter for the award of a public purchase contract:
- a) open tendering, i.e. the procedure through which every interested Supplier, Contractor or Service Provider is entitled to submit a tender;
 - b) restricted tendering, i.e. the procedure carried out on two distinct stages and allowing only candidates selected by the contracting authority to submit tenders
 - c) negotiation, which could be:
 - competitive negotiation, the procedure enabling the contracting authority to consult and negotiate contracting clauses, including price, with several Suppliers, Contractors or Service Providers;
 - negotiation with a single source, which is the procedure through which the contracting authority consults and negotiates the contractual clauses, including price, with a single Supplier, Contractor or Service Provider;
 - d) appeal for bids, which is the simplified procedure, through which the contracting authority requests, without a published ad, tenders from several Suppliers, Contractors, or Service Providers.

(2) The contracting authority is entitled to organise solutions contests, respectively procedures meant for the purchase of a project or a design in the domains of territorial planning, urban and landscaping designs, architecture or data processing, by selection on a competition basis by a jury, with or without granting prizes to the winner competitor/competitors. Solutions contests can be independent procedures or part of procedures for the award of a services contract.

Art.10. Public purchase contract shall usually be awarded by applying the open tendering or restricted tendering procedures.

- Art.11. (1) The contracting authority is only entitled to apply the competitive negotiation only under the following circumstances:
- a) when, further to applying the open tendering or restricted bidding procedures, no adequate tenders or no tenders at all were received and only if the contracting authority, after consulting and negotiating with the Suppliers, Contractors, or Service Providers does not alter substantially the requirements initially provided in the documentation for preparation and submission of tenders;
 - b) under exceptional, thoroughly motivated circumstances, when the contracting authority is interested to purchase services or works which do not allow an initial estimation of the public purchase contract value, due to the nature of the respective services or Works, or due to the risks implied by providing the said services or executing the respective works.
 - c) when the services that the contracting authority intends to purchase are of such nature that the technical specifications cannot be drawn up of such precise manner as imposed by award of a public purchase contract by open or restricted tendering;
 - d) when the contracting authority purchases goods to be manufactured or works to be performed in the exclusive purpose of scientific research, technical experimentation or development, and only if the contracting authority is not interested in achieving profitability or covering costs of scientific research, technological experimentation and development;
 - e) when, further to organisation of a solutions contest, the services contract is to be awarded to one of the winner competitors, and only if the contracting authority sends inviting bids letters to all winner competitors of the respective contest;

(2) Notwithstanding provisions of paragraph (1), the contracting authorities carrying out relevant activities in the public utilities sectors are entitled to apply the competitive negotiation procedures with no restrictions whatsoever, in the event that the public purchase contract's financing does not imply use of public funds.

Art.12. The contracting authority is only entitled to apply the negotiation with a single source procedure under the following circumstances:

- a) when the goods, works or services can be supplied, performed or provided, due to reasons of technical and artistic nature, or reasons determined by protection of an exclusive right thereon, by a sole Supplier, Contractor or Service Provider .
- b) when the contracting authority intends to purchase additionally, products meant for partial replacement, supplementation or extension of equipment, plant or installations previously purchased from a Supplier and finds that these can only be purchased from the same Supplier, so as to avoid causing incompatibilities or increased technical difficulties in the operation and maintenance process, arising from purchase of products with different technical characteristics from those previously purchased. The contracting authority is only entitled to apply this procedure within 3 years at the most from the award of the initial public purchase contract;
- c) when the contracting authority intends to purchase additional services or works, which, although not included in the Services Contract, respectively in the Works Contract, previously awarded to the Services Provider, Contractor, have become, due to unforeseeable circumstances, necessary for completing the contract in question, and only if the following conditions are cumulatively observed:
 - this additional contract will be awarded to the same (initial) Contractor/Service Provider;
 - the additional services/Works cannot be separated from the initial contract, neither from the technical, nor from the economic point of view, without causing major

- damage to the contracting authority; or, although separable from the initial contract, they are strictly required in the aim of completing performance of the aforesaid contract
 - the estimated value of the new contract shall not exceed 50% of the updated value of the services contract, or Works contract, initially awarded;
- d) when, subsequently to the award of a Services Contract or of a Works Contract, the contracting authority intends to purchase new services, respectively new works, similar to the services or Works purchased by the contract initially awarded and only if the following conditions are cumulatively complied with:
- the new services or works are in compliance with the requirements in the Technical Specifications prepared for the contract awarded initially, and the procedure for the award of the initial contract was by open tendering or restricted tendering;
 - the inviting bids ad published on the occasion of the initial contract's award stipulated the fact that the subsequent purchase of similar services or works would be done by applying the negotiation with a single source procedure;
 - the estimated value of the initial Services or Works Contract was calculated including similar services/works to be subsequently purchased;
 - the contracting authority purchases the aforesaid Services or Works within 3 years at the most from the award of the initial Contract.
- e) when, further to organisation of a solutions contest, the services contract is to be awarded to the winner competitor;
- f) when a contracting authority carrying out relevant activities in the public utilities sectors purchases products listed and traded on the officially recognised commodity markets or when purchasing goods for a price significantly lower than that usually practised on the market, by materialising a short term opportunity;
- g) in case of force majeure (natural calamities, conflagrations) and in any other unforeseeable, thoroughly motivated situations, and whose circumstances were not due, in any way whatsoever, to the contracting authority's action, but only for the purchase of goods, services and works required immediately in order to deal with a state of emergency, for the immediately following period, which shouldn't usually last longer than 1 month.

Art.13. The contracting authority shall apply the appeal for bids procedure only in the event that the VAT exclusive estimated value of the public purchase contract is lower than the equivalent in RoL of the following ceiling values:

- a) for Supply Contracts – 40,000 euro
- b) for Services Contracts – 40,000 euro
- c) for Works Contracts – 100,000 euro.

Art.14. Whatever the procedure applied, the contracting authority is bound to enforce observance of the free competition, transparency, equal treatment and confidentiality principles in the relations with the Suppliers, Contractors or Service Providers interested to participate to the procedures for the award of the public purchase contract.

Art.15. (1) The contracting authority shall estimate the value of the public purchase contract by considering the contract duration and all the costs incurred by performance thereof. The rules to be applied for estimating the value of the public purchase contract shall be settled by this Ordinance's applicability norms and regulations.

(2) The contracting authority is not entitled to split the public purchase contract into several distinct contracts of smaller value, in the aim of avoiding the restricted bidding or open tendering procedures.

CHAPTER III

Transparency and Publicity

SECTION 1

Intention Ad, Inviting Bids Ad and Award Ad

Art.16. (1) The contracting authority is bound to advertise the intention to carry out public purchases, and shall therefore send for publishing in "Monitorul Oficial al Romaniei", Part VI, Public Purchase, an intention ad.

(2) The intention ad shall be published separately for goods, Works and services, within 30 days at the most from the date when the contracting authority's budget was approved.

(3) The intention ad shall include at least all the public purchase contracts estimated to be awarded by the end of the budgetary year and whose VAT exclusive estimated value is equal to or higher than the equivalent in RoL of 750,000 euro. Publishing of an intention ad for contracts whose VAT exclusive estimated value is smaller than the equivalent in RoL of 750,000 euro is optional.

(4) Publishing of the ad mentioned at paragraph (1) above does not imply for the contracting authority obligation to carry out the respective public purchase.

(5) Notwithstanding provisions of paragraph (2), contracting authorities carrying out relevant activities in the public utilities sectors can publish the intention ad at any time during the year.

Art.17. (1) The contracting authority shall forward for publishing in "Monitorul Oficial al Romaniei", Part VI, Public Purchase, an inviting bids ad, in the event that the procedures of open tendering, restricted tendering or competitive negotiation are applied; an ad will also be published in case that a solutions contest is intended.

(2) The contracting authority shall make sure that it is specified in the ad whether, further to the contest, a public purchase contract will be awarded to one of the winner competitors.

(3) The contracting authority is entitled, in the aim of ensuring maximum transparency, to advertise the respective ad in other local, national or international mass media, but only after publishing the respective ad in "Monitorul Oficial al Romaniei", Part VI – Public Purchase, and with making sure that the content and format of the published ad are observed.

(4) Notwithstanding provisions of paragraph (1), the contracting authority is not bound, when applying the competitive negotiation procedures, to forward for publishing the said ad, under any of the following circumstances:

- a) when, further to the open or restricted tendering procedures, no tenders were submitted;
- b) when, further to open or restricted tendering procedures, all the tenders submitted were rejected and only if the contracting authority has previously sent inviting bids letters to all candidates selected during the initial procedure;
- c) when, further to a solutions contest, the public purchase contract is to be awarded to one of the winner competitors of the respective contest;
- d) when the contracting authority purchases works to be performed in the exclusive purpose of scientific research, technical experimentation or development, and only if the contracting authority is not interested in achieving profitability or covering costs of scientific research, technological experimentation and development.

Art.18. (1) The contracting authority shall forward for publishing in "Monitorul Oficial al Romaniei", Part VI – Public Purchase, the public purchase contract award ad, no later than 30 days from the date when the public purchase contract was concluded.

(2) The contracting authority having organised a solutions contests shall forward for publishing in "Monitorul Oficial al Romaniei", Part VI – Public Purchase an ad concerning the result of the respective contest no later than 30 days from the date when the jury reached their final decision.

(3) In the event of appeal for bids procedures, the contracting authority is not bound to apply provisions of paragraph (1) above.

Art.19 (1) Regia Autonoma "Monitorul Oficial" shall publish in "Monitorul Oficial al Romaniei", Part VI – Public Purchase, within 12 days at the most from receipt, the ads described in articles 16, 17 and 18.

(2) Should the contracting authority decide, for emergency reasons, to accelerate the restricted bidding or competitive negotiation procedures according to provisions of art.21, paragraph (4) hereinafter, Regia Autonoma "Monitorul Oficial" shall publish the ad within 5 days at the most from receipt.

(3) The content of the ads specified in articles 16, 17 and 18, as well as of the inviting bids letter will be established by the application norms and rules of this Ordinance.

SECTION 2

Deadlines for Receipt of Application Letter and for Submission of Tenders

Art.20. (1) In case that the open tendering procedures are applied, the contracting authority shall settle and specify in the inviting bids ad the deadline for submission of tenders.

(2) The deadline for submission of tenders shall not be earlier than 40 days from the date when the inviting bids ad was published in "Monitorul Oficial al Romaniei", Part VI – Public Purchase.

(3) Notwithstanding provisions of paragraph (2), in the event that the contracting authority published during the current year an intention ad concerning the public purchase contract to be awarded, the contracting authority is entitled to reduce the period settled for submission of tenders, which should not be shorter, though, than 15 days from the date when the inviting bids ad was published in "Monitorul Oficial al Romaniei", Part VI – Public Purchase.

(4) The provisions of paragraph (3) above are only applicable in the event that the intention ad was forwarded by the contracting authority for publishing, at least 52 days before the inviting bids ad was forwarded for publishing.

Art.21. (1) Should the first phase of the restricted bidding or competitive negotiation be applied, the contracting authority shall settle and include in the intention ad the deadline for receipt of the qualification documents, having attached thereto the application letter, in order to prove the candidate's interest to participate to the procedures.

(2) The deadline established by the contracting authority should not be sooner than 25 days from the date when the initial ad was published in "Monitorul Oficial al Romaniei", Part VI – Public Purchase.

(3) Contracting authorities carrying out relevant activities in the public utilities sectors are entitled to reduce this period to 10 days from publishing of the ad.

(4) The contracting authority is entitled to accelerate the restricted bidding and the competitive negotiation procedures by reducing the number of days stated in paragraph (2) above, but not to less than 15 days and only in case that, due to emergency reasons, compliance with the period specified in the said paragraph would cause damage to the contracting authority. In this event, the contracting authority shall include in the respective ad the reasons for accelerating the restricted bidding or competitive negotiation procedures.

Art.22. (1) During the second phase of the restricted bidding or competitive negotiation procedures, the contracting authority shall establish and include in the inviting bids letters sent to the qualified candidates the deadline set for submission of tenders.

(2) The deadline for submission of tenders should not be sooner than:

- a) 40 days from the date when the inviting bids letters were forwarded, in case of restricted bidding procedure;
- b) 15 days from the date when the inviting bids letters were forwarded, in case of competitive negotiation procedures.

(3) Notwithstanding provisions of paragraph (2), a), in the event that the contracting authority has already published during the same year an intention ad on the public purchase contract to be awarded, the contracting authority is entitled to shorten the period settled for submission of tenders, which cannot be though shorter than 30 days from the date when the inviting bids letter was forwarded.

(4) Provisions of paragraph (3) are only applicable in case that the intention ad was forwarded, by the contracting authority, for publishing, at least 52 days before forwarding for publishing the inviting bids ad.

(5) In case that, for emergency reasons, observance of the period stated in paragraph (2), a) would cause damage to the contracting authority, the contracting authority is entitled to accelerate the restricted bidding procedure by reducing the aforesaid number of days, but not to less than 15 days.

Art.23. In case that the appeal for bids procedure is chosen, the contracting authority shall establish and include in the invitation the deadline for submission of tenders, which should not be sooner than:

- a) 15 days from the date when the appeal for bids was forwarded, in case that the contract to be awarded is a Works Contract;
- b) 7 days from the date when the appeal for bids was forwarded, in case that the contract to be awarded is a Services or a Supply Contract.

Art.24. (1) The contracting authority is bound to adequately settle the period established for submission of tenders by extending the minimum submission periods provided in articles 20, 22 and 23, in the event that, due to the volume and the complexity of tenders, preparation and submission within the required period is impossible or if the tender can only be prepared and submitted after visits of the location or after consulting on Site the documents appended to the Technical Specifications.

(2) The contracting authority is entitled to extend the period settled as a deadline for submission of tenders. In this event, the contracting authority shall make sure to notify the new deadline, in writing, at least 6 days prior to expiry of the initial deadline, to all the Suppliers, Contractors or Service Providers having obtained, in compliance with the conditions within this Government Ordinance, a copy of the documentation for preparation and submission of tenders.

CHAPTER IV

Participation to the Procedures for the Award of the Public Purchase Contract

SECTION 1

General Rules

Art.25. Any Supplier, Contractor or Service Provider, whether Romanian or foreign, individual or legal entity, is entitled to participate, according to the conditions herein set, to the procedures for the award of the public purchase contract. Foreign Suppliers, Contractors or Service Providers shall hold the same rights with respect to participation as those held by Romanian Suppliers, Contractors or Service Providers in the foreign Supplier's, Contractor's or Service Provider's country of residence.

Art.26. (1) Should the open tendering procedure be applied, the number of Suppliers, Contractors and Service Providers entitled to submit a tender is unlimited.

(2) The contracting authority shall repeat the open tendering procedure in case that the number of Suppliers, Contractors or Service Providers having submitted a tender is less than 2.

(3) In case that, after repeating the open tendering procedure, the number of Suppliers, Contractors or Service Providers is still less than 2, the contracting authority is entitled to either award the public purchase contract to the candidate who submitted the only tender, or to repeat the procedure.

(4) Whatever the circumstances, the contracting authority is not obliged to repeat the open tendering procedure in case that at least a tender, which is appropriate in respect of all requirements included in the documentation for preparation and submission of tenders, is received.

Art.27. (1) In case of restricted bidding or competitive negotiation procedures with an inviting bids ad, any Supplier, Contractor or Service Provider is entitled to take part in the first phase (selection phase).

(2) The contracting authority shall settle the selected candidates only among the qualified candidates. When selecting the candidates, the contracting authority shall only consider the criteria concerning technical capacity and economic-financial capacity.

(3) The number of selected candidates should be between the minimum and maximum limits settled in the inviting bids ad or equal to the exact number indicated in the inviting bids ad. This number should be:

- a) not less than 5, nor more than 20 selected candidates, for the restricted bidding procedure;
- b) 2-3- selected candidates, for competitive negotiation procedure.

(4) The contracting authority is not bound to repeat the restricted tendering or competitive negotiation procedures if at least a tender is received, which is adequate in respect of all requirements included in the documentation for preparation and submission of tenders.

Art.28. (1) In case that the appeal for bids procedure is applied, the contracting authority shall send the appeals to at least 5 Suppliers, Contractors or Service Providers.

(2) In the event that they did not receive at least 2 adequate tenders, the contracting authority shall repeat the procedure, by forwarding appeal for bids letters to other Suppliers, Contractors or Service Providers who might be interested in submitting tenders.

(3) In case that, after repeating the procedure, a single adequate tender is received, the contracting authority is entitled to either award the public purchase contract to the respective bidder, or to repeat the procedure.

Art.29. The contracting authority shall at least notify the Suppliers, Contractors and Service Providers, of the hereinafter:

- a) documents to be submitted, and methods to be used in the aim of checking eligibility, registration, technical and economic-financial capacities of the candidates;
- b) the exact no. of selected candidates, or the limits to this number, in case of competitive negotiation or restricted bidding.

(2) The information provided in paragraph (1) above should be specified in the inviting bids ad or letter, as applicable, according to the procedures applied for the award of the public purchase contract.

SECTION 2

Eligibility, Registration, Technical Capacity and Economic-Financial Capacity

Art.30. Candidates/bidders in any of the situation hereunder shall be excluded from the procedures for the award of the public purchase contract and considered non-eligible:

- a) bankruptcy or winding-up, lien or business taken over for administration by a liquidator, commercial activities suspended or any other similar situation to those previously mentioned, provided within the law;
- b) should they make the object of any legal proceedings to be declared in any of the situations mentioned in paragraph a)
- c) failure to meet their tax payment obligations, including local and State taxes, other duties or monies due for social insurance;
- d) attempt to misleading authorities by providing false information in the documents submitted
- e) gross professional misconduct or failure to meet contractual obligations undertaken under another public purchase contract, provided that the contracting authority is able to produce evidence of such default or misconduct.

Art.31. The contracting authority is entitled to request from each Supplier, Contractor or Service Provider to produce evidence of their registration as legal entities, or of chartering, and professional affiliation, in compliance with legal provisions applicable in Romania or in their country of residence, as may be the case.

Art.32. The candidate/bidder shall submit all documents requested by the contracting authority to prove technical and economic-financial capacities and to enable checking by the contracting authority of the production capacities, Quality Assurance System and surveying, research and development activities.

Art.33. The contracting authority shall keep in confidence all the information submitted by the candidates/bidders in the aim of making possible checking of compliance with the conditions to qualify.

CHAPTER V

Documentation for Preparation and Submission of Tenders

SECTION 1

Content of the Documentation for Preparation and Submission of Tenders

Art.34. The contracting authority shall prepare the documentation for preparation and submission of tenders, which should include, at least:

- a) general information on the contracting authority;
- b) minimum requirements to qualify established by the contracting authority and documents to be submitted by each candidate/bidder in order to prove compliance with the respective requirements;
- c) Technical Specifications;
- d) instructions on deadlines to be observed and formalities to be carried out, including setting up of Bid Bonds and Performance Securities, tender format and submission, and tender validity period;
- e) recommendations for preparation and submission of the financial proposal;
- f) information on the criterion applied for the award of the public purchase contract.

Art.35. (1) The contracting authority shall provide a copy of the documentation for preparation and submission of tenders to:

- a) any Supplier or Service Provider having made a request in this regard at least 4 days prior to tenders' opening, should the public purchase contract be awarded by open tendering procedures
- b) any Contractor having made a request in this respect at least 10 days prior to tenders' opening, should the public purchase contract be awarded by open tendering;
- c) all selected candidates, should the public purchase contract be awarded by restricted bidding or competitive negotiation;
- d) any Supplier, Contractor or Service Provider having received an appeal for bids letter, in case that the public purchase contract is to be awarded by appeal for tenders;
- e) the Supplier, Contractor or Service Provider having received the invitation to attend to the negotiation, should the contract be awarded by negotiation with a single source.

(2) The contracting authority is entitled to establish:

- a) possibility to obtain a copy of the documentation for the preparation and submission of tenders by any Suppliers, Contractors, or Service Providers having requested it;
- b) cost of the copy and, if applicable, of forwarding, as well as associated payment terms.

SECTION 2

Technical Specifications

Art.36. (1) The Technical Specifications necessarily contain information of technical nature. They define, as the case may be, but not limited to the thereafter, characteristics concerning quality, technical and performance levels to be achieved, safety in operation, sizes, as well as Quality Assurance systems, terminology, symbols, tests and testing methods, packaging, labelling, marking, conditions to certify compliance with relevant standards, and others. In case of Works Contracts, the Technical Specifications will also include details on Designing and calculation requirements, checking, inspections and Works' acceptance conditions, as well as on construction techniques, procedures and methods, or on any other technical conditions that the contracting authority could describe, on the basis of the norms and regulations applicable to the Works, raw materials, other materials or parts of the works used.

(2) The Technical Specifications should also specify competent authorities from which Contractors can obtain information on the mandatory regulations with regard to health and safety, fire prevention and extinguishing and environment protection, which should be met throughout the respective contract's execution period and which are valid on national level or, under special circumstances, within the region or town where the works are to be carried out or services are to be provided.

Art.37. (1) The contracting authority is bound to define, both in the Technical Specifications and in the Contract, the technical regulations to be observed, by reference to:

- a) either technical regulations, as they might be defined in the internal legislation concerning national standardisation, which are in compliance with the EU regulations;
- b) or, should there be no technical regulations as indicated above in paragraph (1), by reference to national standards, in the following exact order of priority:
 - national standards adopting European standards,
 - national standards adopting international standards
 - other standards.

(2) Stipulation, in the Technical Specifications, of technical information meant to designate products of a certain origin/manufacture, trademarks, patents, licences, or special procedures meant to favour one or several bidders, is strictly forbidden.

(3) Notwithstanding the provisions of paragraph (2), some directions may be tolerated, if accompanied by the note "or equivalent" and only in case that the contracting authority is in the impossibility to provide in the Technical Specification technical information sufficiently clear and intelligible for all the parties concerned.

SECTION 3

Right to Request Further Clarification

Art.38. (1) Any Supplier, Contractor or Service Provider having obtained a copy of the documentation for the preparation and submission of tenders is entitled to request, in writing, further clarification on any issues included therein.

(2) The contracting authority is bound to reply to any request for further clarification, on condition that such requests are received at least:

- a) 8 days prior to the deadline for submission of tenders, in case of restricted tendering, competitive negotiation or open bidding;
- b) 6 days before the deadline for submission of tenders, in case of acceleration of the restricted bidding procedure or for the appeal for bids procedure applied for awarding Works Contracts
- c) 3 days before the deadline for submission of tenders, in case that the appeal for bids procedure is applied to award Supply Contracts or Services Contracts.

(3) The contracting authority shall reply to any requests for further clarifications at least:

- a) 8 days prior to the deadline for submission of tenders, for situations provided at paragraph (2), a);
- b) 6 days prior to the deadline for submission of tenders, for situations provided at paragraph (2), b);
- c) 2 days prior to the deadline for submission of tenders, for the situation indicated in paragraph (2), c).

(4) The content of the reply to requests for clarification shall be forwarded by the contracting authority to all Suppliers, Contractors or Service Providers having obtained a copy of the documentation for the preparation and submission of tenders, without disclosing the identity of the candidate having requested the respective clarification.

Art.39. (1) The contracting authority is entitled to supplement on their own initiative, the documentation for preparation and submission of tenders, in the aim of clarifying any issues included therein.

(2) Any such supplementations should be notified by the contracting authority, in writing, to all the Suppliers, Contractors or Service Providers having obtained, according to the conditions herein, a copy of the documentation for preparation and submission of tenders.

(3) The notification shall be forwarded within the periods stated in article 38, paragraph (3).

CHAPTER VI

Preparation, Submission and Evaluation of Tenders

Section 1

Preparation and Submission of Tenders. Alternative Tenders

Art.40. (1) Bidders shall prepare their tenders in compliance with the provisions of the documentation for preparation and submission of tenders.

(2) The Technical Proposal shall be prepared according to the requirements in the Technical Specifications, in such way to provide all the information required for the technical evaluation.

(3) The financial proposal shall be prepared in such way to provide all the information required for the financial evaluation.

Art.41. Tenders should be construed as firm and binding from the point of view of their content throughout the tender validity period and shall be signed by the bidder or by his authorised proxy.

Art.42. (1) Suppliers, Contractors or Service Providers shall submit the tenders to the address and before the deadline settled for submission, specified in the inviting bids ad or letter, and thereby assumes all risks arising therewith, including force majeure.

(2) Tenders forwarded to an address of the contracting authority other than that indicated in the inviting bids letter/ad or received by the contracting authority after the deadline settled for submission shall be returned unopened.

Art.43. (1) Several individuals or legal entities are allowed to associate in the purpose of setting up a joint venture for the submission of a joint tender, without being hereby obliged at this stage to legally authorise their venture. Each and every one of the associates assumes responsibility for possible consequences of the future public purchase contract, if any.

(2) The contracting authority is entitled to request that the venture is legalised before the signing of the contract, should the joint tender be declared successful.

(3) The associates shall in their turn designate and appoint, in the event of award of the public purchase contract, a representative to liaise on the venture's behalf with the contracting authority, as the venture leader.

(4) The associates shall not submit distinct individual tenders in addition to the joint tender.

Art.44. (1) The joint bidders/associates are entitled to submit a single tender, named "basic tender", which shall observe the requirements provided in the documentation for presentation and submission of tenders.

(2) Notwithstanding provisions of paragraph (1), the joint bidders/associates could also submit other tenders, "alternative tenders", but only on condition that the tenders' evaluation criterion is "the lowest and best bidder". Only alternative tenders can deviate within certain limits from the requirements provided in the documentation for preparation and submission of tenders and applicable to the basic tender

(3) The contracting authority shall include in the Technical Specifications the minimum mandatory requirements that the alternative tenders should comply with in order to be taken into consideration. Furthermore, in case that the contracting authority does not intend to accept alternative tenders, prohibition to submit alternative tenders shall be specified in the inviting bids ad.

(4) The contracting authority is not entitled to reject an alternative tender based on the sole motivation that:

- a) the tender was drawn up using technical specifications defined by referring to standards adopting European standards; or

- b) in the event that the tender was declared successful:
- the Supply Contract to be awarded would become a Services Contract; or
 - the Services Contract to be awarded would become a Supply Contract.

Art.45. In the event that the contracting authority requests it, the bidder shall specify in the tender that part of the public purchase contract that he intends to subcontract.

The tender shall not be taken into consideration in case that the bidder fails to set up the bid bond according to the provisions of the documentation for preparation and submission of tenders.

Art.46. The contracting authority shall keep in confidence the content of the Tender, as well as any other additional information requested from the bidder and whose disclosure might harm or be at the detriment of the bidder's right to safeguard intellectual property and commercial secrecy.

SECTION 2

Changes, Withdrawal and Validity Period of Tenders

Art.48. All Bidders are allowed to change or withdraw their Tenders only before the deadline settled for submission.

Art.49. Bidders are not allowed to change or withdraw their Tenders after the deadline settled for submission, under penalty of exclusion from the procedure for the award of the Public Purchase Contract and loss of the Bid Bond.

Art.50. (1) Bidders shall maintain their tenders valid throughout the tender's validity period; the bid bond validity period shall at least be equal to the tenders' validity period.

(2) The contracting authority is entitled to request to the bidders, under exceptional circumstances, prior to expiry of the tender's validity period, to extend the said period; should the tender validity period be thus extended, the bid bond validity period shall be extended accordingly.

(3) The bidder shall notify the contracting authority whether he agrees or not to the suggested tender validity period extension.

(4) The bidder who does not agree to extend the tender validity period shall be considered as having withdrawn his tender, without this incurring loss of the bid bond.

SECTION 3

Evaluation Commission. Jury

Art.51. (1) The contracting authority shall convene, for the award of each public purchase contract, an evaluation commission responsible for carrying out the following activities:

- a) checking eligibility, registration and compliance with the criteria concerning technical capacity and economic-financial capacity
- b) opening, examining and evaluating tenders
- c) establishing the successful tender.

(2) The evaluation commission shall be made up of at least 5 members, having the adequate professional training and relevant experience in the respective domain, as well as incontestable moral probity.

(3) Notwithstanding provisions of paragraph (1), the contracting authority is entitled to convene the evaluation commission for the award of several contracts, but only if the procedure applied is the appeal for bids and the contracts to be awarded are Supply or Services Contracts.

Art.52. (1) The contracting authority shall convene, in the aim of evaluating the solutions presented in a solutions contest, a jury to:

- a) check compliance with the solutions' submission and presentation rules;
- b) evaluate solutions
- c) adopt decisions or argue opinions
- d) carry out other specific tasks

(2) The jury will be made up of at least 3 members, having the adequate professional training and relevant experience, as well as an incontestable moral probity.

(3) In the event that the contestants were required to have a certain professional training, at least one third of the members of the jury should have the required training or similar training.

Art.53. The following are not entitled to be members of the jury or of the evaluation commission:

- a) spouse or relative (until the third level of kinship), of one of the candidates/bidders
- b) former employee (under labour or collaboration concluded within the previous 3 years with one of the candidates/bidders) or member of the board of directors or of any other management or administration council of the candidates/bidders;
- c) shareholder of the subscribed share capital of one of the candidates/bidders.

Art.54. The contracting authority decides whether the members of the evaluation commission and of the jury (all of them, or some of them) shall be paid or not for having carried out the respective activities.

SECTION 4

Opening and Evaluation of Tenders

Art.55. (1) The evaluation commission is bound to open the tenders at the date and place indicated in the inviting bids ad, or letter, as applicable.

(2) Bidders are entitled to attend.

(3) The evaluation commission is not allowed to reject tenders based on the sole motivation that the bidder who submitted the respective tender failed to attend the opening.

Art.56. In the event of a Tender with an unusually low price quotation for the goods to be supplied, services to be provided or works to be executed, the evaluation commission is obliged to request further clarifications or additional information, as may be

considered appropriate, in writing and before decision to reject such tenders is reached, and to check the information brought in support of the respective prices.

Art.57. The evaluation commission is entitled to reject tenders under any of the circumstances hereinafter:

- a) the basic tender fails to observe requirements provided in the documentation for the tenders' preparation and submission, in which case the possible alternative tenders shall not be taken into consideration
- b) tenders containing proposals concerning contractual clauses at the evident disadvantage of the contracting authority
- c) the explanations to the clarifications requested as provided in article 56 are either inconclusive or not credible.

Art.58. The contracting authority shall make sure that bidders proven to have been involved in bribery and collusion practices in connection to the procedure for the award of the public purchase contract are excluded.

SECTION 5

Criteria for the Award of the Public Purchase Contract

Art.59. The contracting authority shall make sure that the criterion applied for the award of the public purchase contract is provided in the documentation for preparation and submission of tenders and will be altered in any way whatsoever throughout the procedures for the award of the respective contract.

Art.60. The criterion stated at article 59 above can be either:

- a) "the lowest and best bidder", or
- b) "the lowest responsible bidder".

Art.61. (1) Should the "lowest and best bidder" criterion be applied, the tender declared successful shall be the tender with the highest score resulted from application of a calculation algorithm.

(2) The calculation algorithm provided at paragraph (1) will be established by taking into consideration different tender evaluation criteria, depending on the specific features of each public purchase contract, as applicable: delivery terms, execution period, current costs, cost/efficiency ratio, characteristics of quality, aesthetic, technical or functional levels, post-sale and technical assistance services, commitments regarding delivery of spare parts, subunits or furnishing on long term, conditions connected to application of the internal preference margin, other elements considered significant for the evaluation of tenders. These criteria should be clearly stated, be grounded on the specific characteristics of each contract and, once settled, should not be changed throughout the entire application period of the procedure for the award of the public purchase contract.

(3) The contracting authority shall specify in the documentation for preparation and submission of tenders the tender evaluation criteria stated at paragraph (2), in the order of their importance for the evaluation of tenders, as well as the calculation algorithm to be applied.

Art.62. Should the criterion for the award of the contract be "the lowest responsible bidder", the requirements enforced by the contracting authority through the Technical Specifications should be construed as minimal requirements.

SECTION 6

Methods of Communication

Art. 63. (1) Any notification, communication, request, information or other similar provided in this Government Ordinance, shall be in writing.

(2) Any written document should be registered both on forwarding and at receipt.

(3) Receipt of written documents should be acknowledged, except for documents acknowledging receipt.

(4) Written documents can be forwarded as follows:

- a) dispatched by registered post;
- b) by telegram
- c) by telex
- d) by telefax.

(5) The contracting authority or, as applicable, the Supplier, Service Provider or Contractor having forwarded documents by using one of the methods of forwarding indicated at paragraph (4), b)– d), shall also forward the respective documents by registered post.

Art.64. The contracting authority shall not discriminate the candidates/bidders because of the method of forwarding adopted for receipt or issue of documents, decisions or other communications.

Art.65. (1) In case of restricted bidding or competitive negotiation procedures, the contracting authority shall forward simultaneously to all the candidates involved in the selection stage written notification on the result of the respective stage.

(2) For unselected candidates, the aforesaid notification shall include the reason of exclusion, failure to qualify, or, as applicable, non-selection.

(3) For selected candidates, the notification should be construed as an inviting bids letter for stage II, and will have attached thereto, as applicable, either the documentation for preparation and submission of tenders, or detailed information on how to obtain the respective documentation.

Art.66. (1) In case of open tendering, or appeal for bids procedures, as well as after completion of stage II in case of restricted bidding or competitive negotiation procedures, the contracting authority shall forward simultaneously to all the bidders a written notification on the result of the respective procedure.

(2) For unsuccessful bidders, the notification should specify whether the respective tender was rejected, or, if that was not the case, it should include the name of the successful bidder as well as the characteristics and the relative advantages of the successful tender against the tender of the respective unsuccessful bidder.

(3) For the successful bidder, the notification should point out the fact that his tender was declared successful and specify that the tender is invited to sign the public purchase contract.

Art.67. (1) The contracting authority shall forward the notifications provided at art. 65 and 66 within 2 days at the most from the date when the evaluation commission established the selected candidates or the successful tender, as applicable.

(2) The contracting authority is entitled to keep in confidence and refuse to disclose information connected to the award of the public purchase contract which might be included in the ensemble of information regarding the characteristics and relative advantages of the successful tender against other tenders, should the said information:

- a) lead to breach of legal provisions and, consequently, be at the detriment of the public interest;
- b) harm the commercial interest of candidates/bidders, including the interest of the successful bidder;
- c) influence the fair competition between Suppliers/Contractors/Service Providers.

SECTION 7

Cancelling the Procedure for the Award of the Public Purchase Contract

Art.68. The contracting authority is entitled to cancel application of the procedures for the award of the public purchase contract, only if the decision was taken prior to the date of issue of a notification concerning the result of the respective procedure's application and only under the following circumstances:

- a) impossibility to ensure an acceptable level of competition, i.e. less bidders than the minimum provided for each procedure;
- b) none of the bidders is eligible, or all have failed to meet the qualification requirements provided in the documentation for the tenders' preparation and submission.
- c) all tenders submitted were inadequate, i.e.:
 - tenders submitted after the deadline established for submission of tenders;
 - tenders prepared and submitted with failing to observe the requirements provided in the documentation for the tenders' preparation and submission
 - tenders containing in their financial proposal prices proven by the evaluation commission to be the result of unfair practices.
 - tenders containing proposals concerning the contractual clauses at the obvious detriment of the contracting authority.
 - tenders exceeding, by the prices quoted in the financial proposal, the funds allotted for the performance of the respective Public Purchase Contract.
- d) exceptional circumstances affect the procedures for the award of the respective Public Purchase Contract or signing of the contract has become impossible.

Art.69. The cancellation decision shall create no liability whatsoever of the contracting authority towards the bidders, except for obligation to return Bid Bonds.

Art.70. In the event of cancellation of the procedures for the award of the Public Purchase Contract, the contracting authority shall notify in writing all the bidders of the cessation of all the undertakings they have assumed by the submission of tenders and of the reasons for cancellation.

CHAPTER VII

Signing, Performance and Completion of the Public Purchase Contract

SECTION 1

Public Purchase Contract Signing

Art.71. (1) The contracting authority is bound to conclude the public purchase contract with the bidder whose tender was declared successful by the evaluation commission.

(2) In the event that the contracting authority cannot conclude the contract with the bidder who had the successful tender, the contracting authority is entitled:

- a) either to invite bidders, in decreasing order of their scores in the classification, to sign the contract;
- b) or to cancel the procedures for the award of the public purchase contract.

(3) The contracting authority shall conclude the public purchase contract within the tenders' validity period.

(4) Notwithstanding provisions of paragraph (3) above, should the contract have been awarded by open tendering, competitive negotiation or restricted tendering procedures, the contracting authority shall conclude the public purchase contract no sooner than 15 days from the date when the notifications on the result of the aforesaid procedure were forwarded.

Art.72. The bidder invited to sign the public purchase contract shall set up the performance security in compliance with the provisions in the documentation for preparation and submission of tenders.

Art.73. (1) The contracting authority is entitled to unilaterally terminate the public purchase contract, within 30 days at the most from occurrence of circumstances which could not have been foreseen at the date when the public purchase contract was concluded and which lead to modification of contractual clauses to the extent that performance of the respective contract would be contrary to the public interest.

(2) In this event, the Supplier/Contractor/Service Provider is only entitled to request payment of monies due for that part of the contract that was executed until the date when the unilateral termination of the contract occurred, and claim reimbursement of other costs incurred by the contract's performance prior to the aforesaid date.

Art.74. In the event that one of the parties fails to observe or breaches the obligations assumed under the contract, the wronged party is entitled to request termination of the public purchase contract and claim liquidated damages.

SECTION 2

Avoiding Unfair Competition

Art.75. Individuals or legal entities involved in any way whatsoever to drawing up of the documentation for preparation and submission of tenders, or making part of the evaluation commission convened for the award of the respective public purchase contract, are not entitled to become bidders, joint bidders or Subcontractors, under penalty of nullity of the respective contract.

Art.76. The contractor shall not employ (neither under a Labour Contract nor under a services' agreement) for the performance of the public purchase contract, individuals or legal entities who were involved in drawing up the documentation for preparation and submission of tenders or who made part of the evaluation commission convened for awarding the contract in question, for a period of at least 6 months from the date when the contract was concluded, under penalty of termination of the contract initiated by the contracting authority.

CHAPTER VIII

Public Purchase File

Art.77. (1) The contracting authority shall prepare the Public Purchase File for each awarded contract.

(2) Documents to be included in the Public Purchase File, as well as those to be forwarded to the institutions monitoring the public purchase system, shall be established by the application norms of this Government Ordinance.

Art.78. The Public Purchase File shall be kept by the contracting authority for as long as the public purchase contract still produces legal effects and, by no means, not less than 5 years from the respective contract's signing date.

Art.79. The Public Purchase File will be placed at the disposal of any interested public authority, upon request, for consultation, on condition that no information therein is disclosed, should its disclosure be contrary to the law, hinder enforcement of the law, be at the detriment of the public interest, harm the legitimate commercial interest of the parties or affect free competition, without any of the aforesaid limiting in any way whatsoever the rights of the competent authorities to collect documents which might prove perpetration of embezzlement, misdemeanours or felonies.

CHAPTER IX

Methods of Attack

SECTION 1

General Provisions

Art.80. (1) Illegal documents or decisions determining breaches of provisions herein can be attacked at administrative level and/or by legal action.

(2) The contracting authority is entitled to settle at administrative level challenges and complaints issued by the participants. The contracting authority shall indicate in the inviting bids ad or letter, the name, address, fax no. or e-mail address of the department dealing with challenges and complaints.

(3) Legal actions shall be lodged at the disputed claims office in the legal courts settling legal cases within the area where the contracting authority has its registered offices. Appeals can be filed against the decision reached by the court at the Court for Appeal.

Art.81. (1) Any individual or legal entity having a legitimate interest in connection with a public purchase contract and who suffers, risks to suffer or has suffered damage as a direct consequence of an illegal document or decision, is entitled to make use of the attack methods herein provided.

(2) The legal action shall only be taken after making use of administrative objections or challenges and only for those counts of the charge that made the object of the respective challenges or objections. Actions at law will only be instituted when the contracting authority failed to reply to such objections or challenges within the period herein specified or if the reply received within the legal; period is not to the initiator's satisfaction.

(3) Notwithstanding provisions of paragraph (2) herein, legal proceedings can be undertaken without prior administrative complaints or objections by:

- a) individuals or legal entities observing provisions of paragraph (1) above, which were not involved in any way whatsoever in the procedures for the award of the respective public purchase contract, but only after publishing of the award ad for the respective public purchase contract and no later than 15 days from the date when the award ad was published.
- b) Participants still involved in the procedures for the award of the public purchase contract, but only in order to attack corrective measures taken by the contracting authority in order to settle claims or objections, if the participants can prove that:
 - the corrective measures instituted are also illegal and they lead to breach of the provisions herein;
 - the corrective measures instituted, although legal, are incomplete and thereby affect compliance with the principles of free competition, efficiency of public funds usage, transparency, equal treatment and confidentiality, provided in article 2 herein.
- c) any bidder, in case that the contracting authority concludes the public purchase contract sooner than 15 days from the date when the notifications on the result of the procedures for the award of the public purchase contract were forwarded but no later than 15 days from the date when the award ad was published.

Art.82. (1) Damages can only be claimed by legal action, taken exclusively for that purpose and only after settlement at administrative level of challenges or objections or after settlement of complaints in the legal courts as mentioned at article 81, paragraph (2).

(3) Legal actions instituted in the aim of claiming damages shall be lodged at the disputed claims office within the legal courts settling legal cases within the area where the contracting authority has its registered offices. Appeals can be filed against the decision reached by the court at the Court for Appeal.

Art.83. The individual or legal entity instituting an action at law according to the provisions herein shall immediately notify the contracting authority and make sure that the contracting authority receives the notification within 3 working days at the most from the date when the complaint was lodged.

Art.84. The decisions of the contracting authority with regard to the hereinafter cannot be challenged or contested:

- a) the choice of one of the criteria for the award of the public purchase contract indicated herein;
- b) the choice of the number of selected candidates, should the said number be in compliance with the provisions herein;
- c) applying the internal preference margin
- d) suspension of the procedures for the award of the public purchase contract
- e) cancellation of the procedures for the award of the public purchase contract, should the decision for cancellation be taken due to occurrence of one of the situations provided in art. 68 herein and prior to forwarding the notification on the result of the procedures for the award of the public purchase contract.

Art.85. (1) Any time that a decision is challenged or contested, the contracting authority shall suspend the procedures for the award of the respective public purchase contract.

(2) The suspension period due to settling of an administrative challenge or objection or to a legal complaint should not usually exceed 30 days and shall not exceed, under no circumstances whatsoever, 60 days. The suspension period will automatically lead to adequate extension of any period affected by suspension, except for the periods granted for lodging complaints.

(3) The suspension decision will be immediately brought to the attention of the challenge's initiator and of all the participants still involved in the procedure for the award of the public purchase contract at the date when the complaint was lodged or when the notification was received.

(4) Notwithstanding provisions of paragraph (1) above, the contracting authority is entitled to refuse suspension of the procedures for the award of the public purchase contract under any of the following circumstances:

- a) the challenge, objection or complaint was not initiated within the period provided or in compliance with the requirements stated herein;
- b) challenges, objections or complaints are evidently unjustified or their content is obviously unserious;
- c) by suspension of the procedures for the award of the public purchase contract, a major public interest can be seriously affected of detrimental manner, on condition that the contracting authority is capable to argue it.

(5) The provisions of paragraphs (2) and (4) above will be applied without this limiting in any way whatsoever the right of the competent legal courts to decide on suspension of the procedures for the award of the public purchase contract, within the period stated herein for deciding to take temporary measures in order to limit damage, prior to reaching the final decision.

Art.86. (1) All participants still involved in the procedures for the award of the public purchase contract are entitled to support the challenge, objection or complaint against the contracting authority within 5 days from receipt of such a notification.

(2) The parties supporting the challenge shall have the same rights and responsibilities as the challenge's initiator. Participants still involved in the procedures for the award of the public purchase contract who choose not to join the challenge as described in the previous paragraph, shall no longer have the right to attack, neither at administrative level, nor by legal action, the action or decision invoked as illegal in the challenge initially instituted.

Art.88. (1) In the event of a legal action, the participants still involved in the procedure for the award of the public purchase contract, if still holding their rights to do so according to the legal provisions herein, are entitled to submit to the competent authorities intervention requests within 5 days from receipt of a notification with regard to legal proceedings being instituted.

(3) The participants not forwarding intervention requests shall lose their right to attack at administrative levels or by legal proceedings, the documents or decisions contested.

SECTION 2

Settlement of Complaints

Art.89. (1) The method used to contest on administrative level illegal decisions and documents breaching provisions of this Government Ordinance is the challenge.

(2) Upon penalty of annulment, the objections should be in writing and submitted to the contracting authority as follows:

- a) within 5 days at the most from the date when the inviting bids ad was published or from the date of receipt of any other document issued by the contracting authority;
- b) within 7 working days at the most from acknowledgement of a document or decision of the contracting authority
- c) within 10 days at the most from receipt of the notification concerning the result of procedures for the award of the public purchase contract.

(3) Upon penalty of annulment, the objection or challenge should specify the fact that it is a challenge/objection, describe the challenged documents or decisions, the article/articles herein referred to, or as applicable, any other rules and regulations that were breached, in the initiator's opinion, specify interests thereby harmed and/or losses incurred thereby to the objection's initiator, and the expected settlement of the matter, as well as the legal basis thereof.

(4) The contracting authority is entitled to reject challenges and objections which do not observe cumulatively the requirements described in paragraphs (2) and (3) above.

Art.90. (1) Forthwith receipt of an objection or challenge, the contracting authority shall analyse it and decide whether it is well grounded and:

- a) shall either reject it, with informing forthwith the initiator, and the other participants still involved in the procedures for the award of the public purchase contract, stating the reasons for rejection, based on applicable provisions herein
- b) or withhold the objection/challenge for settlement.

(2) The contracting authority shall prepare well-grounded responses to each challenge/objection received and forward them both to the initiator and to the other participants still involved in the procedures for the award of the public purchase contract within 10 days at the most from receipt of the challenge/objection.

(3) Within 2 working days from receipt of the notification provided in paragraph (2) above, the initiators shall notify the contracting authority whether they accept or not the decision and possible corrective measures suggested. The parties notifying the contracting authority that they accept the decision and corrective measures suggested shall lose their right to further address the matter to the legal courts, including the right to support another party which might institute the legal proceedings against the respective decision or corrective measures.

(4) The contracting authority could consult the challenge's initiator as well as the other participants supporting the challenge, in the aim of preparing a motivated resolution and could also involve in these discussions the other participants still involved in the procedures for the award of the public purchase contract.

(5) At any time that the contracting authority withholds for settlement several challenges/objections against the same document or the same decision invoked as illegal, the contracting authority shall settle equally all objections/challenges received, in order to observe the principle of equal treatment.

Art.91. (1) When settling challenges/objections, the contracting authority can decide corrective measures of modification, suspension, cancellation, annulment or other similar of all illegal documents and decisions or of all activities thereto connected, in the aim of complying with the provisions herein.

(2) Any corrective measures decided by the contracting authority shall be stated in the motivated resolution.

Art.92. (1) Forthwith receipt of a challenge or notification of a legal action, in the aim of improving the public purchase system monitoring, the contracting authority shall inform the Ministry of Public Finances and enclose a copy of the challenge/notification received. Should the challenge or legal action be connected to the procedures for the award of a Works Contract or Civil Works Design Services Contract, the contracting authority shall also forward the above-mentioned notification at the Ministry of Public Works.

(2) The contracting authority shall inform the Ministry of Public Finances and, as applicable, the Ministry of Public Works of all subsequent documents and decisions concerning the challenge/legal action in question, within 2 working days from issue/receipt.

(3) Within 7 days from receipt of such notifications, including the copy thereto attached, as described in paragraph (1) above, the Ministry of Public Finances shall prepare and forward a point of view with regard to the procedure to be used for settling the complaint. Should the challenge or complaint be connected to the procedures for the award of a Works Contract or to a Civil Works Design Services Contract, the official point of view should be prepared jointly with the Ministry of Public Works.

(4) The Ministry's point of view provided at paragraph (3) is of informative and specialised nature, and it is meant to facilitate taking of the adequate decision by the contracting authority or by the legal courts, on the basis of an authorised interpretation of the legal provision in the field of public purchase and on the basis of previous settlements of similar challenges or complaints.

SECTION 3 Legal Action

Art.93. – Upon penalty of annulment, the legal proceeding shall be instituted within 30 days at the most from the receipt of the motivated resolution to the challenge, or, in the event that the initiator did not receive a reply to the objection, from the challenge settlement period expiry date.

Art.94. (1) Within 10 days at the most from the date when the legal action was brought to justice, the legal courts can decide, with subpoenaing the parties, but only if the initiator expressly requests it by claiming imminent and serious damage, in the aim of limiting the damage or preventing detrimental effects on the interests of the legal action's initiator, temporary measures, taken until final settlement of the matter, as follows:

- a) suspension of the procedures for the award of the public purchase contract
- b) measures to ensure suspension of the procedures for the award of the public purchase contract
- c) measures to cease implementation of any decision of the contracting authority.

(2) When judging a case requiring application of temporary measures as aforesaid, the legal courts shall consider the probable consequences of such measures on all categories of interests involved, including public interest, and on the basis thereof, can decide not to take such measures in the event that their detrimental effects are greater than their benefits. The decision not to take temporary measures should not harm in any way whatsoever the rights of the individual/legal entity requesting them.

(3) Should they decide to apply any of the temporary measures provided in paragraph (1), the court shall settle the cause as soon as possible and under no circumstances, should the settlement period be more than 60 days from the date when the action was preferred.

Art.95. Legal courts can decide, after hearing the parties involved, cancellation or annulment of such decisions of the contracting authority which breaches provisions herein, correction or modification measures, or measures enabling correction or modification of such documents and decisions, including modification of the technical specifications, if having proven discriminatory nature, or of any other discriminatory requirements within any document connected to the procedures for the award of the public purchase contract

Art.96. (1) In the event that the public purchase contract was not yet concluded, and by the legal proceedings instituted, the initiator claims damages based on its belief that the contracting authority breached the provisions herein, the damages payable by the contracting authority should not exceed the additional costs incurred supplementary to the costs that the initiator would have suffered anyway, even in the event that the contracting authority had not breached the legal provisions.

(2) In the event that the public purchase contract was concluded, and the complaint's initiator claims damages for the costs of the Tender's preparation and participation to the procedures for the award of the public purchase contract, it would be sufficient to prove breach of the provisions herein, the fact that the initiator had real chances to become the successful bidder, chances detrimentally affected by the breach of the provisions herein, and the fact that he suffered damages due to the respective breaches.

(3) The hereinafter should be construed as being sufficient to prove breach of the legal provisions by the contracting authority:

- a) existence of an irrevocable legal decision, according to provisions of art. 95.
- b) adoption of corrective measures by the contracting authority as a result of the complaint or challenge.

Art.97. Irrevocable legal decisions in the disputes arising out of application of the provisions herein shall be published in "Monitorul Oficial al Romaniei", Part VI, Public Purchase, and the costs and charges of forwarding for publishing and actual publishing will be assumed by the party having lost the trial. In this aim, the courts will include in the final decision obligation to support these expenses.

CHAPTER X Misdemeanour and Penalties

SECTION 1 Misdemeanour

Art.98. The hereinafter will be considered misdemeanour and incur imposing of penalties in the event that they were not committed of such manner to be considered, under the criminal law, as a felony:

- a) carrying out a public purchase by breaching or evading provisions herein
- b) applying the procedures for the award of the public purchase contract without having allotted for the current year the funds required for performance of the contract
- c) applying the procedures for the award of the public purchase contract in the aim of testing the market prices
- d) applying the procedure for the award of the public purchase contract without having the legal approvals, endorsements, authorisations or certificates
- e) providing information to one or several Suppliers, Contractors or Service Providers meant to favour them within the procedures for the award of the public purchase contract
- f) information held by a participant to the procedures for the award of the public purchase contract with regard to the tenders submitted by the other participants to the procedure, as well as secret agreements (collusion) between participants or between participants and the contracting authority in the aim of influencing the result of the procedure.

SECTION 2 Penalties

Art.99. (1) Misdemeanours provided in article 98, paragraph a), b) and e) shall be punished by fining, from 20,000,000 RoL to 50,000,000, whilst the fine applicable for misdemeanours provided at paragraphs c) and d) is 5,000,000 RoL to 10,000,000 RoL.

(2) The fines provided above as penalties for misdemeanours are applicable both to individuals and to legal entities.

Art.100. The value of the fines provided in art. 99 above shall be updated regularly, by Government Decision, according to the rate of the inflation.

Art.101. (1) Misdemeanours shall be ascertained and penalties applied by the authorised representatives of the Ministry of Public Finances.

(2) Provisions of Law no. 32/1968 regarding misdemeanours' ascertaining and punishing, with the subsequent modifications, except for provisions of art. 25-27 in the said Law are applicable to misdemeanours described in article 98 herein.

CHAPTER XI Final Stipulations

Art.102. The public purchase procedures in progress at the effective date hereof shall be completed on the basis of the legal provisions effective at the date when the respective procedures were commenced.

Art.103. Provisions of Common Law are applicable, unless it is otherwise provided herein.

Art.104. On effective date hereof, this Ordinance will be included in and maintained as part of the format of "Monitorul Oficial al Romaniei", Part VI, Public Purchase.

(2) Intention ads, inviting bids, as well as irrevocable legal decision in the disputes arising out of application of the provisions herein shall be published in "Monitorul Oficial al Romaniei", Part VI, Public Purchase.

(3) Publishing of the intention ad, inviting bids ad and award ad will be free of charge.

(4) By Government Decision, obligation of the contracting authority to forward for publishing in the "Official Journal of the European Communities" of the intention ad, inviting bids ad and public purchase contract award ad can be imposed.

Art.105. The application norms and regulations to this Ordinance shall ensure correspondence of the goods, works and services to be purchased under public purchase contracts with the grading and codification system used in the official statistical classifications.

Art.106. Ceiling values provided in art.8, paragraph (4) and art.13 can be changed by Government Decision

Art.107. The methods and circumstances under which the complaint's initiator can resort to arbitration, prior to addressing the matter to the court will be established by Government Decision.

Art.108. (1) The contracting authority shall apply an internal preference margin for Tenders implying performance of the public purchase contract by using:

- a) Romanian manpower representing a stated ratio from the total manpower used on the contract's performance;
- b) Goods or products of Romanian origin, representing a stated ratio from the value of the contract
- c) Romanian individuals or legal entities as Subcontractors, subcontracting an established ratio from the value of the contract;
- d) Any other combination between the conditions provided at paragraphs a) – c), with the contracting authority making sure to specify the preference order with regard to application of provisions in paragraphs a)-c), as well as any other related information, which might constitute tenders' selection criteria and in such way that possibility to prepare the tender by any Supplier, Contractor or Service Provider, without affecting in any way whatsoever fair competition, is ensured.

(2) Ratios mentioned in paragraph (1) above, as well as methods to apply the internal preference margin shall be detailed in the application rules and regulations of this Government Ordinance.

(3) The contracting authority shall not apply the internal preference margin, should they thereby breach obligations assumed by Romania under international treaties or agreements.

(4) The contracting authority shall not apply the internal preference margin in the event that the public purchase contract to be awarded is financed by EU programmes or other financing authorities, unless otherwise specified in the documents concluded with the respective financing authorities.

Art.109. The Ministry of Public Finances shall prepare the application norms and regulations for this Government Ordinance and forward them for Government approval within 30 days from the effective date hereof.

Art.110. Provisions herein will be supplemented by the specific dispositions regarding public purchase and included in other special laws.

Art.111. On effective date hereof, the following Government Ordinances and Decisions will be annulled: GO118/1999, GO202/1999, GO122/2000, GO48/2001, GO12/1993, GD325/2000, GD724/2000, GD725/2000, GD726/2000, GD727/2000, GD728/2000, GD729/000.