

EMERGENCY ORDINANCE
REGARDING PUBLIC PROCUREMENT APPROVED BY
AS LAW no.212/2002
Consolidated Text

Based on article 107 of the Romanian Constitution,

The Romanian Government issues the present emergency ordinance:

CHAPTER I
General provisions

SECTION 1
Purpose. Principles

Art. 1

The present emergency ordinance sets the principles, the general framework and the procedures for the award of the public procurement contract, as well as the ways of legal attack of the deed or the decision of the contracting authority which applies one of the procedures for the award of the public procurement contract.

Art. 2

The principles for the award of the public procurement contract are the following:

- a) Free competition, that is ensuring all the conditions for any supplier, services provider or undertaker, irrespective of their nationality, to have the right to become a contractor, according to the law;

- b) Efficient use of public funds, that is the use of the competition system and of economic criteria for the award of the public procurement contracts;
- c) Transparency, that is the availability of relevant information regarding the use of the procedure for the award of the public procurement contract for those interested (concerned);
- d) Equal treatment, that is the use, in a non-discriminatory manner, of the selection criteria and of the criteria for the award of the public procurement contract, ensuring for each supplier, services provider or works provider equal chances to be awarded the public procurement contract;
- e) Confidentiality, that is guaranteeing the protection of the commercial secret and the intellectual property of the tenderer.

SECTION 2

Definitions

Art. 3

For the purposes of the present emergency ordinance, the following terms shall mean:

- a) *Public procurement* – the definitive or temporary purchase, by a legal person defined as contracting authority, of supplies, works or services through the award of a public procurement contract;
- b) *Public procurement contract* – contract for pecuniary interest concluded in written form, between the contracting authority and the contractor;
- c) *Contractor* – the tenderer which is awarded the public procurement contract following the use of one of the procedures provided in the present emergency ordinance;
- d) *Public supply contract* – public procurement contract having as object the supply of one or more goods - as defined in the official statistical classifications - which are purchased, lease rental or hire purchase, with or without option to buy;
- e) *Public services contract* – public procurement contract having as object the provision of one or more services – as they are defined in the official statistical classifications;
- f) *Works contract* – a public procurement contract having as its object either the execution or, according to the case, both the design and the execution of one or more building works - as covered by the official statistical

classifications - or the execution, by whatever means, of any combinations of such building works according to the requirements of the contracting authority and having a result meant to fulfil in itself a technical and economic function;

f) *Contract for the concession of works* – public procurement contract of the same type as the works contract, except for the fact that, for the works performed, the contractor, in its capacity of concessionaire, is granted the right to exploit the result of the works, totally or partially, right which could be accompanied, according to the case, by the payment of a certain amount;

g) *Contracting association* – association based on a civil convention, between two or more contracting authorities, without representing a new legal person, with a purpose to award, in common, a public procurement contract;

g') *Affiliated legal person* – any legal person which, according to the legal provisions in the field of consolidated accounts, enter into the consolidation perimeter of another legal person or any legal person in any of the following situations:

- a contracting authority or a concessionaire has a dominant influence on it;
- it has a dominant influence on a contracting authority or a concessionaire;
- following the association with a legal person, it is under the dominant influence of a contracting authority or a concessionaire.

g'') *Dominant influence* – situation in which, with regard to the relation with a legal person, another legal person are in at least one of the following cases:

- holds the major part of the subscribed capital,
- controls the majority of the votes in the general assembly;
- appoints in the structure of the board of administration, of the managerial body or of the supervisory body more than one half of the number of its members.

g''') *Special or exclusive right* – the right deriving from any authorizations granted under legal provisions by a competent authority, based on which one or more legal persons are empowered to carry out one or more of the activities provided at art. 6 par.(1).

h) *Public funds* – amounts allocated from the state budget, the state social security budget, the health social insurance budget, budgets of the special funds, the state treasury budget, the local budgets, the budgets of the public institutions financed from extrabudgetary funds, external financial aids granted to Romania or to public institutions and external credits contracted

or guaranteed by the state or by authorities of the public local administration, as well as domestic loans contracted by authorities of the local public administration;

i) *Candidate* – any supplier, undertaker or services provider, individual or legal person, requesting an invitation to a restricted procedure or competitive negotiation;

j) *Tenderer* – any supplier, undertaker or services provider, individual or legal person, having submitted a tender;

k) *Competitor* – any service provider, individual or legal person, that has submitted a solution in a design contest;

l) *Tender* – documentation that includes the financial proposal and the technical proposal;

m) *Technical proposal* – document of the tender, drawn based on the requirements of the terms of reference set by the contracting authority;

n) *Financial proposal* – document of the tender providing the information required by the terms of reference regarding prices, tariffs, other financial and commercial conditions;

o) *Technical specifications* – requirements of technical nature of the contracting authority, defining the characteristics of a set of products, services or works and which allow the objective description of each product, service or work in such a manner to fit the need of the contracting authority;

p) *Guarantee for participation* – money deposit, security or any other form of guarantee accepted by the contracting authority, put at the disposal of the contracting authority by the tenderer, before opening the tender;

q) *Guarantee for the good performance of the contract* – money deposit, security or any other forms of guarantees accepted by the contracting authority, put at the disposal of the contracting authority before the execution of the contract by the tenderer invited to conclude the public procurement contract;

r) *Transport network* – network which ensures the providing of services in the field of transport which has the pre-set operational conditions established by a competent authority, conditions regarding routes, capacity of transport and frequency of the transport services;

s) *Public telecommunications network* – public telecommunications infrastructure enabling signals to be conveyed between different network termination points by wire, by microwaves, optical means or other electromagnetic means;

t) *Network termination point* - all physical connections and their technical access specifications which form part of the public telecommunications

network and are necessary for the access to, and efficient communication through, that public network;

u) *Telecommunications services* –services the provision of which consists wholly or partly in the transmission or routing of signals on the public telecommunications network by means of telecommunication processes, with the exception of radio-broadcasting and television;

v) *Public telecommunications network* – telecommunication services the provision of which the competent public authorities have specifically assigned notably and specifically to one or more legal persons having relevant activities of the nature of those described in art. 6 paragraph (1) letter f);

w) *Ways of legal attack* – contests or legal actions against deeds or decisions invoked as illegal and requesting:

(i) either the suspension, the correction, the repeating, the revoking, the modification or the annulment of a deed, of a decision or of a procedure applied by the contracting authority; or

(ii) the payment of a remedy as a consequence of a deed, of a decision or of a procedure applied by the contracting authority.

SECTION 3 *Scope of enforcement*

Art. 4

(1) The provisions of the present emergency ordinance shall be applied for the award of any public procurement contract.

(2) Any contracting authority who finances a public procurement contract awarded by another legal person has the obligation to require, for the purpose of awarding such contract, the enforcement of the provisions of the present emergency ordinance through the financing contract.

(3) The provisions of the present emergency ordinance apply also in the case where, after the award of a works concession contract, the concessionaire which is a contracting authority in the meaning of the present emergency ordinance, shall fulfil the obligations deriving from the respective contract by awarding works contracts to third parties. Are not considered as third parties neither the associates that submit common tenders, when the contracting authority intends to award a contract for the concession of works nor the legal persons affiliated to the concessionaire/associated concessionaires.

(4) In the case when the concessionaire is not a contracting authority in the meaning of the present emergency ordinance, then it has however the obligation to observe at least the provisions regarding the publishing of the notices of participation and of the award of the public procurement contract as well as those regarding the deadlines for receipt of the letter of interest and for the submission of the tenders.

Art. 5

(1) For the purposes of the present emergency ordinance, are considered contracting authorities:

- a) Any public authority, as defined by the Romanian Constitution, including the judicial authority;
- b) Any public institution of general or local interest, autonomous or subordinated or controlled by a public authority;
- c) Any legal person, other than those provided in letter a) or b), which has been established for carrying out activities of public interest, without commercial or industrial purposes, and which is found in one of the following situations:
 - is financed from public funds;
 - is subordinated to or controlled by a public authority or institution;
 - in the structure of the board of administration/managerial or supervisory body, more than one half of the members are appointed by a public authority or institution;
- d) any legal person carrying out relevant activities in one of the public utilities sectors - water, energy, transportation and telecommunications - and which are directly or indirectly under the dominant influence of a legal person provided at letter a), b) or c) above or which enjoys special or exclusive rights for carrying out such activities.

(2) The contracting association is also a contracting authority; in such case, by means of a civil convention, the parties appoint from among themselves one legal person representing them in its capacity of unique purchaser in their relations with any supplier, contractor or provider;

(3) By Governmental Decision, may be appointed also other legal persons having the obligation to use public procurement according to the provisions of the present emergency ordinance in the case when their activity is carried out on markets where competition is excluded by effect of a law or due to the existence of a monopoly.

Art. 6

(1) Relevant activities for the purposes of this emergency ordinance shall be the following:

- a) The provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water, electricity, gas or heat and hot water, as well as the supply of drinking water, electricity, gas or heat and hot water to such networks;
- b) The disposal or treatment of waste water;
- c) The exploitation of a geographical area for the purpose of exploring for or extracting oil, gas, coal or other solid fuels;
- d) The exploitation of a geographical area for the purpose of the provision of airports, maritime/inland water harbors or other transport network terminals to the transport providers operating on air routes, maritime or inland waterways;
- e) The provision or the exploitation of transport networks intended to ensure the provision of services for the benefit of the public, in the field of railway transportation and passenger land transportation;
- f) The provision or exploitation of public telecommunication networks or ensuring, for the benefit of the public, of one or more telecommunication services.

(2) The activities provided in paragraph (1) letter a) are not considered to be relevant activities if:

- a) in the case of drinking water and electricity:
 - the production of drinking water or electricity is destined for carrying out of another activity than those referred to in paragraph (1);
 - supply to the public network depends only on the entity's own consumption and has not exceeded 30% of the entity's total production of drinking water or electricity, having regard to the average for the preceding three years, including the current year;
- b) in the case of gas, heating and hot water:
 - the production of gas or heating or hot water by the entity concerned is the unavoidable consequence of carrying on an activity other than that referred to in paragraph (1);

- supply to the public network is aimed only at the economic exploitation of such production and amounts to no more than 20% of the entity's turnover having regard to the average for the preceding three years, including the current year.

(3) The provision of bus transport services to the public shall not be considered to be a relevant activity where other legal persons are free to provide the same type of services, in the same geographical area and under the same conditions.

(4) The contracting authority has not the obligation to enforce the provisions of the present emergency ordinance in the case of procurement of goods, services or works for the provision of one or more telecommunications services in the case when other legal persons are free to provide similar telecommunication services in the same geographical area and in the same conditions.

Art. 7

(1) A contracting authority in the field of national defense, public order, safety and national security has the obligation to enforce the provisions of the present emergency ordinance except for the case when it procures goods and services related to the production of guns, munition and armed war systems or in the case when the award of the supply or services contract would lead to the dissemination of information contrary to the defense and security interests of the country.

(2) The list of products and services referred to in paragraph (1) as well as the procedures for the award of such contracts are set by Government Decision.

Art. 8

(1) The contracting authority has not the obligation to enforce the provisions of the present emergency ordinance when it awards public procurement contracts if:

- a) the contract is declared to be secret or its performance must be accompanied by special security measures in accordance with the legal provisions referring to national defense, public order as well as national safety and security;

- b) the procedures for the award of the public procurement contracts are decided following:
- the conclusion of a treaty or of an international agreement referring to the implementation or the exploitation of a project, in common, with one or more foreign partners;
 - the conclusion of a treaty, international agreement or other similar referring to the stationing of troops;
 - the enforcement of a procedure specific to certain international organizations or donors.
- c) the contract is a services contract and is awarded to a legal person which is itself a contracting authority and which provides such services based on exclusive rights granted according to legal provisions;
- d) the contract has as object the purchase of surface or underground water, for the purpose of carrying out activities in the field of production, transport or distribution of drinkable water;
- e) the object of the contract is buying electricity or energy products of the extracting industry and other fuels, with the purpose to carry out activities in the field of prospects or extracting crude oil, natural gas, coal or other solid fuel;
- f) the object of the contract is:
- the acquisition or the rental, by whatever financial means, of existing land/buildings/other immovable goods or of the rights for the use of such goods; however, the award of the contracts for the purchase of services of financial intermediation, concluded, irrespective of their form, related to the buying or rental contract, are to observe the provisions of the present emergency ordinance;
 - the acquisition, development, production or co-production of program material by broadcasters and contracts for broadcasting time;
 - voice telephony, cable, telex and maintenance of such networks, radio broadcasting and satellite services;
 - arbitration and conciliation services;
 - financial services in connection with the issue, sale purchase or transfer of securities or other financial instruments, and services for the National Bank of Romania;
 - employment contracts;
 - research and development service contracts other than those where the benefits accrue exclusively to the contracting authority

for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority;

In any of the cases provided in this paragraph, the contracting authority has the obligation to award the public procurement contract while observing economic criteria and, to the possible extent, by using competition adapted to the special features of the procurement.

(2) The contracting authority has not the obligation to enforce the provisions of the present emergency ordinance when it purchases:

- a) hotel and restaurant services;
- b) rail transport services;
- c) water transport services;
- d) supporting and auxiliary transport services;
- e) legal services;
- f) personnel placement and supply services;
- g) investigation and security services for goods and persons;
- h) educational services;
- i) health and social services;
- j) recreational, cultural and sporting services.

In any of these cases, the contracting authority has the obligation to award the public procurement contract based on the principles provided in article 2 as well as on the provisions in article 37 regarding technical specifications and in article 77 regarding the file of the public procurement and the monitoring of the public procurement system.

(3) The contracting authorities provided in art. 5 par. (1) let. d) do not have the obligation to apply the provisions of the present emergency ordinance when they purchase goods with the aim to re-sell or to rent and do not benefit of any special or exclusive right as regards the goods to be purchased or rented, and other legal persons are also free to sell or to rent similar goods, under the same conditions as the contracting authority.

(4) The contracting authorities art. 5 par. (1) let. d) do not have the obligation to apply the provisions of the present emergency ordinance when they purchase:

a) goods, works or services meant to other purposes than carrying out relevant activities;

b) goods, works or services destined to carrying out relevant activities in another country than Romania, in the conditions in which the fulfilment of such purpose does not suppose the actual use of a network or of a geographical area in Romania.

(5) By way of exception from the provisions of paragraph (4), the provisions of the emergency ordinance shall be applied in the case of the award of a public procurement contract or in case of the organise a design contest by a legal person carrying out activities in the field of production, transport or distribution of drinkable water, if the respective contract is connected with the supply of services of land drainage and irrigations, or with hydraulic engineering projects, but only in the case when the volume of water, destined to the supply of drinkable water, represents more than 20% of the total volume of water available by the irrigation or draining installations or by the respective projects.

(6) The contracting authority has the right to direct purchase, according to the norms for the implementation of the present emergency ordinance, without the obligation to apply the procedures provided in art. 9, in the case when it purchases goods, works or services whose value, excluded VAT, cumulated for the duration of one year, does not exceed the amount of euro 2,000.

CHAPTER II

Procedures for the award of the public procurement contracts

Art. 9

(1) The contracting authority has the obligation to enforce one of the following procedures for the award of a public procurement contract;

- a) *Open procedure*, that is the procedure where each supplier, undertaker or services provider is entitled to submit a tender;
- b) *Restricted procedure*, that is the procedure performed in two distinct phases, where only the candidates selected by the contracting authority are invited to submit tenders;
- c) *Negotiated procedure*, that may be:
 - competitive negotiation, meaning the procedure by which the contracting authority is in consultations and negotiates the contract clauses, excluding price, with several suppliers, undertakers or service providers;
 - negotiation with single source, meaning the procedure where the contracting authority is in consultations and negotiates the contract clauses, including price, with a single supplier, undertaker or service provider.

d) *Request for tender*, respectively the simplified procedure by which the contracting authority asks for tenders from several suppliers, service providers or undertakers.

(2) The contracting authority has the right to organize a *design contest*, that is a procedure that enables the contracting authority to acquire, mainly in the field of land planning, town planning, architecture and civil engineering or data processing, a plan or design selected by a jury after being put out to competition with or without awarding prizes to the winner/winners. The design contest may be an independent procedure or part of a procedure leading to the execution of a service contract. The projects/plans submitted by the participants to the contest have to remain anonymous until the finalizing of the evaluation performed by the jury.

Art. 10

The public procurement contracts are awarded, as a general rule, after an open procedure or a restricted procedure.

Art. 11

(1) The contracting authority has the right to use the competitive negotiation only in the following cases:

a) When, following the use of an open or restricted procedure no tenders or no suitable tenders have been submitted and only if the contracting authority, after consultation and negotiation with the suppliers, undertakers or service providers, does not substantially alter the initial requirements in the documentation for the elaboration and presentation of the tender;

b) Under exceptional circumstances, well explained, when the contracting authority intends to get services or works which do not allow a prior overall pricing of the public procurement contract due to the nature of the respective services or works or due to the risks involved by the carrying out of those services or works;

c) When the services to be procured by the contracting authority cannot be described in the terms of reference with sufficient precision to permit the award of the contract by applying an open or restricted procedure;

d) When the contracting authority purchases goods that are to be manufactured or works to be made exclusively for scientific research purposes, experiments or technological development and only if the

contracting authority does not envisage ensuring a certain rate of return or covering the costs of scientific research, experimentation or technological development.

e) When, after a design contest, a services contract must be awarded to one of the winners of the respective contest and only if the contracting authority sends an invitation for participation to all winners of the respective design contest.

(2) By way of exception from the provisions of paragraph (1), the contracting authorities carrying out relevant activities in the public utilities sectors have the right to use the competitive negotiation without restrictions, in the case when the financing of the public procurement contract does not suppose the use of public funds.

Art. 12

The contracting authority has the right to use the procedure of negotiation with a single source only in the following cases:

- a) When the goods, works or services may be supplied, performed or provided only by a single contractor, due to technical or artistic reasons or from reasons related to the protection of an exclusive right;
- b) When the contracting authority intends to additionally purchase products destined to partially replace, or supplement or expand the equipment or installations previously purchased from a certain supplier and finds out that those products cannot be purchased but only from the same supplier, with a view to avoid incompatibilities or increased technical difficulties in the operation and maintenance implied by the purchase of products with different technical features than those already purchased. The contracting authority has the right to use this procedure, as a rule, only within three years from the award of the initial contract;
- c) When the contracting authority intends to purchase additional services or works which, even if not included in the initial services or works contract previously awarded to a contractor, have become, due to unforeseeable circumstances, necessary for the completion of the respective contract and only if the following conditions are observed:
 - the contract to be awarded to the same contractor;
 - the additional works/services cannot be separated from the technical and economical point of view, from the initial contract because otherwise this would bring major

prejudice to the contracting authority or, even if separable from the initial contract, are absolutely necessary for the completion of such contract;

- the estimated value of the contract must not exceed 50% of the value of the services/works contract initially awarded.

- d) When, after the award of a services/works contract, the contracting authority intends to purchase new services or new works similar to the services or works awarded by the initial contract and only if the following conditions are observed:
- the new services or works are observing the requirements of the terms of reference elaborated for the award of the initial contract, and this award has followed an open or restricted procedure;
 - in the participation notice for the award of the initial services or works contract has been mentioned that, for the subsequent purchase of similar services or works might apply the procedure of negotiation with single source;
 - the estimated value of the initial services or works contract has been determined including the value of similar services or works to be subsequently purchased;
 - the contracting authority purchases such services or works within three years from the award of the initial contract.
- e) When, following a design contest, the public procurement contract must be awarded to the respective winner of such contest;
- f) When the contracting authority which carries out relevant activities in the public utilities sectors purchases goods quoted and transacted on a commodity market;
- g) When the contracting authority carrying out relevant activities in the public utilities sectors may benefit from taking advantage of a short term opportunity, extremely advantageous, and procures goods for a price significantly lower than the price of the market for goods of the same technical quality level;
- h) in cases of force majeure or in any other cases well founded that could not have been foreseen and whose circumstances, in any case, are not due to any action of the contracting authority, but only for the purchase of goods, services, works needed for coping with such a situation of extreme emergency, for the immediate period to follow,

period that cannot exceed the normal duration of applying the open tender procedure or restricted procedure.

Art. 13

The contracting authority has the right to apply the procedure of request for tender only when the estimated value, without VAT, of the public procurement contract is less than the Lei equivalent of the following thresholds:

- a) for the supply contract: Euro 40,000;
- b) for the services contract: Euro 40,000;
- c) for the works contract: Euro 100,000.

Art. 14

Irrespective of the procedure applied, the contracting authority has the obligation to ensure the observance of the principles of free competition, transparency, equal treatment and confidentiality in its relations with the suppliers, contractors or providers showing the interest to participate in the procedure for the award of the public procurement contract.

Art. 15

(1) The contracting authority has the obligation to estimate the value of the public procurement contract by taking into consideration of the duration of the contract and of all costs implied for the completion of the contract. The rules to be applied for the estimation of the contract value are set by the implementation norms of the present emergency ordinance.

(2) The contracting authority has not the right to divide the public procurement contract in more distinct contracts of lower value in order to avoid the use of the open or restricted procedures.

CHAPTER III **Transparency and publicity**

SECTION I

The indicative notice, the notice for participation and The notice of awarding of the public procurement contract

Art. 16

- (1) The contracting authority has the obligation to make public its intention to public procurement, to this end it must send for publishing, in the Official Gazette of Romania, Part VI, Public Procurement, a notice of intent.
- (2) The indicative notice shall be published, separately, for goods, services and works, within 30 days from the approval of the budget of the contracting authority.
- (3) The indicative notice must include all the public procurement contracts envisaged to be concluded up to the end of the budget year and whose estimated value, without VAT, is equal or in excess of the Lei equivalent of Euro 750,000.
- (4) The publishing of the notice provided in paragraph (1) does not mean the obligation of the contracting authority to make that procurement.
- (5) The contracting authorities that carry on relevant activities in the public utilities sectors are an exception from the provisions of paragraph (2), meaning that they have the right to send for publishing the indicative notice all along the year.

Art. 17

- (1) The contracting authority has the obligation to send for publishing in the Official Gazette of Romania, Part VI, Public Procurement, a notice for participation for all the cases when it uses one of the open, restricted or competitive negotiation procedures as well as in the case when it intends a design contest.
- (2) The contracting authority has the obligation to state in the notice for participation to the design contest, if such contest is followed by the award of a services contract to one of the winners of the contest.
- (3) The contracting authority has the right, with a view to ensure maximum transparency, to make public the notice for participation also in other local information media, domestic or international, but only after the publishing of the respective notice in the Official Gazette of Romania, Part VI, Public Procurement. The notice which is published in other local information media, domestic or international has to mention the number and the date of publication of the Official Gazette in which was published the notice for participation and has not to contain other information than those which were published in the Official Gazette of Romania.

(4) By way of exception from the provisions in paragraph (1), the contracting authority has not the obligation, when it applies the procedure of competitive negotiation to send for publishing a notice for participation in any of the following cases:

- a) when, following the use of an open or restricted procedure no tender has been submitted;
- b) when, following the use of an open or restricted procedure, have been rejected all the tenders submitted and only if the contracting authority sends an invitation for participation at least to all tenderers that have been qualified in the initial procedure;
- c) when, following a design contest, a services contract must be awarded to one of the winners of the respective contest;
- d) when the contracting authority purchases goods that are to be manufactured exclusively with scientific research purposes, experimenting purposes or purposes of technical development, and only if the contracting authority does not envisage ensuring a certain rate of return or covering the costs of scientific research, experimenting or technical development;

Art. 18

(1) The contracting authority has the obligation to send for publishing in the Official Gazette of Romania, Part VI, Public Procurement, a notice of award of the public procurement contract not later than 30 days from the date of the conclusion of the public procurement contract.

(2) The contracting authority having organized a design contest has the obligation to send for publishing a notice about the result of such contest not later than 30 days from the date of the decision of the jury.

(3) In the case of using the procedure of request for tenders, the contracting authority has not the obligation to observe the provisions of paragraph (1).

Art. 19

(1) The Regie Autonome "The Official Gazette" has the obligation to publish in the Official Gazette of Romania, Part VI, Public Procurement within 12 days from the date of their registration, the notices provided in articles 16, 17 and 18.

(2) In the case when, for emergency reasons, the contracting authority accelerates the use of the restricted procedure or competitive negotiation

according to provisions of art. 21 paragraph (4), then the Regie Autonome "The Official Gazette" has the obligation to publish the notice for participation within 5 days from the date of its registration.

(3) The contents of the notices provided in articles 16, 17 and 18 as well as of the invitation for participation are set in the implementation norms of the present emergency ordinance.

SECTION 2
***Deadlines for receiving the letter of interest
and for submitting the tenders***

Art. 20

(1) In the case of using the open procedure, the contracting authority has the obligation to set and to include in the notice for participation the deadline for submitting the tenders.

(2) In the case of the award of supply and services contracts whose estimated value, without VAT, is higher than the Lei equivalent of euro 100,000 as well as in the case of works contracts whose estimated value, without VAT, is higher than the Lei equivalent of euro 1,000,000, the deadline set for the submission of tenders has not to be earlier than 52 days from the date of the sending for publishing of the notice for participation in the Official Gazette of Romania, Part VI - Public Procurement.

(3) By way of exception from the provisions of paragraph (2) above, in the case when the contracting authority has published a notice of intent regarding the public procurement contract to be awarded, then such authority has the right to shorten the period set for the submission of tenders, which must not be less than 36 days from the date of sending for publishing of the notice for participation in the Official Gazette of Romania, Part VI - Public Procurement. In exceptional cases, the contracting authority has the right to shorten the period set for the submission of the tenders down to 26 days, but has the obligation to prolong it up to 36 days if at least one of the potential tenderers who had obtained, in the conditions of the present emergency ordinance, a copy of the documentation for the elaboration and the presentation of the tender, so requires.

(4) The provision in paragraph (3) above is applicable only in the case when the notice of intent has been sent by the contracting authority for publishing at most 12 months and at least 52 days before the date of the sending for publishing of the notice for participation.

(5) In the case of awarding supply and services contracts whose estimated value, without VAT, is equal to or smaller than the Lei equivalent of euro 100,000, as well as in the case of works contracts whose estimated value, without VAT, is equal to or smaller than the Lei equivalent of euro 1,000,000, then the deadline set for the submission of the tenders must not be earlier than 10 days from the date of publishing the notice for participation in the Official Gazette of Romania, Part VI - Public Procurement.

Art. 21

(1) In the case of using the first phase of the restricted procedure or competitive negotiation, the contracting authority has the obligation to set and to include in the notice for participation the deadline for receiving the qualification documents together with the letter of interest showing the intention of the candidate to participate in the procedure.

(2) The deadline set by the contracting authority must not be earlier than 37 days from the date of the sending for publishing of the notice for participation in the Official Gazette of Romania, Part VI - Public Procurement.

(3) The contracting authorities carrying out relevant activities in the public utilities sectors have the right to shorten the above period to 26 days from the date of the sending for publishing of the notice for participation in the Official Gazette of Romania, Part VI - Public Procurement.

(4) The contracting authority has the right to accelerate the use of the restricted procedure or the competitive negotiation, meaning to reduce the number of days provided in paragraph (2), but not less than 15 days and only in the case when, because of emergency reasons, the observance of the periods provided in the respective paragraphs would prejudice the contracting authority. In such a case, the contracting authority has the obligation to include in the notice for participation the reasons for the use of the accelerated use of the restricted procedure or competitive negotiation.

Art. 22

(1) In the final phase of the restricted procedure or competitive negotiation, the contracting authority has the obligation to set and to include in the invitation for participation, destined to the selected candidates, the deadline for submitting the tenders.

- (2) The deadline set for submitting the tenders must not be earlier than:
- a) 40 days from the date of sending the invitation for participation for submitting a tender, in the case of the restricted procedure;
 - b) 15 days from the date of sending the invitation for participation for submitting a tender, in the case of using the competitive negotiation.
- (3) By way of exception from the provisions of paragraph (2), letter a), in the case when the contracting authority has published a notice of intent regarding the public procurement contract to be awarded, then it has the right to shorten the delay set for submitting the tenders that must not be of less of 26 days from the date of sending the invitation for participation for submitting a tender.
- (4) The provision in paragraph (3) is applicable only in the case when the notice of intent has been sent by the contracting authority for publishing with at most 12 months and at least 52 days before the date of sending for publishing of the notice for participation.
- (5) In the case when, for emergency reasons the observance of the number of days provided in paragraph (2) letter a) would prejudice the contracting authority, then the contracting authority has the right to accelerate the restricted procedure by reducing the number of days but not less than 10 days.

Art. 23

In the case of applying the procedure of request for tender, the contracting authority has the obligation to set and to include, in the notice and in the invitation for participation, the deadline for submitting the tenders, which must not be earlier than:

- a) 10 days from the date of the publishing of the notice and the sending of the invitation for participation, in the case of awarding works contracts;
- b) 5 days from the publishing of the notice and the sending of the invitation for participation, in the case of the award of supply or services contracts.

Art. 24

(1) The contracting authority has the obligation to properly set the period for the time limit of submitting the tenders by expanding the minimum periods provided in art. 20, 22 and 23 if, due to the amount of work and their

complexity, the tenders cannot be submitted in due time or if the tender cannot be drawn up and submitted but after visiting the locations or consulting on the spot the documents annexed to the terms of reference.

(2) The contracting authority has the right to prolong the period for tenders' submission. In this case the contracting authority has the obligation to acknowledge the new deadline in writing at least 6 days before the initial deadline and communicated to all suppliers, contractors or providers who have got a copy of the documentation for the elaboration and submission of the tender.

CHAPTER IV

Participation in the procedure for the award of the public procurement contract

SECTION 1

General rules

Art. 25

Any supplier, undertaker or service provider, Romanian or foreign, individual or legal person, has the right to participate, in the conditions set by the present emergency ordinance, to the procedure for the award of the public procurement contract; the foreign supplier, undertaker or service provider enjoys in Romania the same treatment regarding participation that the Romanian provider enjoys in the country where the foreign supplier, undertaker or service provider is resident.

Art. 26

- (1) In the case when the open procedure applies, the number of suppliers, contractors or providers having the right to submit a tender is not limited.
- (2) The contracting authority has the obligation to repeat the open procedure in the case when the number of suppliers, undertakers or service providers having submitted a tender, is less than two.
- (3) In the case when, after repeating the open procedure, the number of suppliers, undertakers or service providers having submitted a tender is less than two, then the contracting authority has the right to either award the

contract to the tenderer having submitted the tender or to repeat once again the procedure.

Art. 27

(1) In the case of using the restricted procedure or competitive negotiation with notice of participation, any supplier, undertaker or service provider has the right to participate in the first selection phase.

(2) The contracting authority has the right to decide on the selected candidates only after checking the observance of the qualification conditions.

When it selects the candidates, the contracting authority has the obligation to use criteria related only to their technical or economic and financial capacity.

(3) The maximum number of selected candidates must be between the maximum and minimum limits set in the notice for participation or to be equal to the number set in the notice for participation. This number must be set as not to influence genuine competition and must be of:

a) not less than 5 and no more than 20 selected candidates, in the case of applying the restricted procedure;

b) not less than 3 selected candidates, in the case of applying the procedure of competitive negotiation, provided that there is a sufficient number of suitable candidates.

(4) The contracting authority does not have the obligation to repeat the restricted or negotiation procedure in the case when it receives at least one tender observing the requirements of the documentation for the elaboration and the submission of the tender.

Art. 28

(1) In the case of applying the procedure of request for tender, the number of suppliers, contractors or providers to which the contracting authority must send invitations is of at least 5, provided that there is a sufficient number of suitable tenderers. The contracting authority has the right to publish, in a nationally spread publication, a notice requesting tenders with a view to award the public procurement contract.

(2) In the case when it does not receive more than two suitable tenders, the contracting authority has the obligation to repeat the procedure, by sending invitations for participation also to other potential suppliers, contractors or providers that might submit a tender.

(2') By way of exception from the provisions of paragraph (2), the contracting authority has not the obligation to repeat the procedure if the notice provided at par. (1) was published.

(3) In the case when, after repeating the procedure, the contracting authority receives only one appropriate tender, then the contracting authority has the right either to award the public procurement contract to that tenderer or to repeat again the procedure.

Art. 29

(1) The contracting authority has the obligation to acknowledge to the suppliers, undertakers or service providers at least information regarding:

- a) the qualification documents that they have to submit as well as other ways to be used for checking the eligibility, registration, as well as their technical and economic and financial capacity; and
- b) the number of selected candidates that will be invited to submit tenders or the limits of such number when is used the restricted procedure or the competitive negotiation.

(2) Information provided in paragraph (1) must be stated in the notice for participation or, according to each case, in the invitation for participation, according to the procedure for the award of the public procurement contract.

SECTION 2

Eligibility, registration and qualification criteria

Art. 30

(1) May be excluded from a procedure for the award of a public procurement contract, that is not eligible, any candidate/tenderer finding itself in one of the following situations:

- a) is bankrupt or in liquidation, its business is administered by a syndic judge or its commercial activities are suspended or is in a situation similar to the aforementioned and is regulated by law;
- b) is object to a legal procedure for being declared in one of the situations mentioned above in letter a);
- c) did not comply with its payable obligations of tax payments to the state as well as the payment of social contributions;
- d) provides false information in the qualification documents;

- e) has committed a severe error in the professional activity or did not fulfill its obligations agreed in another public procurement contract, if the contracting authority may sufficiently document such a situation.
- (2) The contracting authority has the right to ask to the candidates/tenderers to submit documents proving the eligibility in the meaning of the provisions in paragraph (1). In the case of candidates/tenderers, foreign individuals or legal persons, the contracting authority has the obligation to take into account the documents considered as being sufficient in proof of eligibility in the country where the candidate/tenderer is resident.

Art. 31

The contracting authority has the right to ask, in writing, from any supplier, undertaker or service provider, to submit documents to prove their registration as legal person or of registration from the professional point of view, according to the legal provisions in force in Romania or from the country where it is residing, according to each case.

Art. 32

- (1) The tenderers/candidates have the obligation to submit the required qualification documents asked by the contracting authority in order to prove their technical, economic and financial capacity as well as to allow the checking by the contracting authority of its production capacity, of performing the studies, of research development as well as the system for quality control.
- (2) With the aim to check the economic and financial capacity of the candidates/tenderers, the contracting authority has the right to require the balance sheet or a similar document, bound legal and relevant in the country where the candidate/tenderer is resident. The contracting authority has the right to require also other documents in proof of the economic and financial capacity of the candidates/tenderers, such as comfort letters issued by banks, reports of the global turnover, confirmations of insurance/insurances for different professional risks, if such documents prove relevant for the performance of the public procurement contract. In the case when, for any valid reasons, the candidate/tenderer has not the possibility to submit the documents required by the contracting authority, then the candidate/tenderer may prove its economic and financial capacity by submitting other documents which the contracting authority considers appropriate.

(3) In the case of applying a procedure for the award of a supply contract, with a view to check the technical capacity of the candidates/tenderers, the contracting authority has the right to require, according to the specificity and the quantity of products to be supplied, the following:

a) information regarding similar experience, respectively a list of fulfilling similar contracts in the last three years and information containing certified data regarding the beneficiary, the date of termination, the value as well as the way of performing the respective contracts;

b) information regarding technical endowment of the candidate/tenderer as well as the system for quality guaranteeing;

c) information regarding the staff/technical body at its disposal or is to be hired to this purpose, especially in order to guarantee the quality control;

d) certificates or other written documents issued by bodies empowered to this sense, to certify the conformity of the goods with the relevant standards.

(4) In the case of applying a procedure for the award of the service contract, with a view to check the technical capacity of the candidates/tenderers, the contracting authority has the right to ask, according to the specific and the volume of services to be provided, the following:

a) information regarding similar experience, respectively a list of fulfilling similar contracts in the last three years and information containing certified data regarding the beneficiary, the date of termination, the value as well as the way of performing the respective contracts;

b) information regarding technical endowment of the candidate/tenderer;

c) information regarding the managing staff and its training level as well as of the staff responsible for the performance of the contract;

d) information regarding the annual average number of staff and of the managing staff in the last three years;

e) information regarding the system of ensuring quality;

f) information regarding the specialised staff/technical body at its disposal or is to be hired to this purpose, especially in order to guarantee the quality control;

g) information regarding the extent to which the services contract should be performed by sub-contractors;

(5) In the case of applying a procedure for the award of a works contract, with the aim to check the technical capacity of the candidates/tenderers, the contracting authority has the right to ask for, according to the specific and the amount of works to be performed, the following:

- a) information regarding similar experience, respectively a list of fulfilling similar contracts in the last five years and information containing certified data regarding the beneficiary, the date of termination, the value as well as the way of performing the respective contracts;
- b) information regarding the technical endowment of the candidate/tenderer;
- c) information regarding the training level and the qualifications of the managing staff as well as of the persons in charge with the performance of the contract;
- d) information regarding the annual average number of staff and of managing staff in the last three years;
- e) information regarding the system of ensuring quality;
- f) information regarding the specialised staff/technical body at its disposal or is to be hired to this purpose, especially in order to guarantee the quality control;
- g) information regarding the extent to which the contract is to be performed by subcontractors.

Art. 33

The contracting authority has the obligation to observe the confidentiality of information submitted by the tenderers/candidates for the check of the qualification conditions.

CHAPTER V

Documentation for the elaboration and the submission of the tender

SECTION I

The contents of the documentation for the elaboration and the submission of the tender

Art. 34

The contracting authority has the obligation to ensure the preparation of the documentation for the elaboration and the submission of the tender which must include at least:

- a) general information regarding the contracting authority;

- b) minimum qualification requirements imposed by the contracting authority and the documents to be submitted by the tenderer/candidate for meeting such requirements;
- c) terms of reference;
- d) instructions regarding the deadline to be observed and the formalities to be carried out, including those referring to the guarantee for participation and the guarantee for good performance, the manner of presentation and submission of the tender, as well as the validity period of the tender;
- e) instructions referring to the elaboration and presentation of the financial proposal;
- f) information regarding the criterion applied for the award of the public procurement contract.

Art. 35

(1) In the case of applying the open procedure the contracting authority has the obligation to make available by any supplier, service provider or undertaker, the documentation for the elaboration and the presentation of the tender, in no more than 6 days from the receiving a requirement to do so if such requirement is made in a reasonable period of time.

(2) In the case of applying the restricted or negotiated procedure the contracting authority has the obligation to make available immediately the documentation for the elaboration and the presentation of the tender by all the selected candidates who have been sent an invitation to participate with tender.

(3) In the case of applying the request for tender procedure the contracting authority has the obligation to make available, by any supplier, service provider or undertaker, the documentation for the elaboration and the presentation of the tender, in no more than 2 days from the receiving a requirement to do so.

(4) The contracting authority has the right to decide:

- a) the way in which the supplier, undertaker or service provider having forwarded a request for getting the documentation, may obtain that documentation for the elaboration and the submission of the tender;
- b) according to the case, the cost of the documentation and, if needed, of conveying it as well as the associated payment conditions.

SECTION 2

Terms of reference

Art. 36

(1) The terms of reference contain, compulsorily, technical specifications. They define, according to the case and without being limited to the following, characteristics referring to the qualitative, technical and performance levels, safety in exploitation, sizes, as well as systems for quality control, terminology, symbols, tests and methods for testing, packing, labeling, conditions for certifying conformity with standards in force.

In case of contracts for works, the technical specifications may refer also to rules for design and calculations, to checks, inspection and acceptance for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve.

(2) The suppliers, contractors or providers may obtain information regarding the compulsory regulations regarding the protection of labor that have to be observed during the performance of the respective contract and which are in force at national level or especially in the area or city where the works or services are provided.

Art. 37

(1) Without infringing the compulsory technical regulations as they are defined in the domestic legislation regarding national standards, the contracting authority has the obligation to define, in the terms of reference and in the contract, technical specifications by reference, as a rule in this order of preference, to the national standards implementing European standards, or by reference to approvals or common technical specifications which are used in European Community or by reference to international standards. In the case when such standards do not exist, then the technical specifications shall be defined by reference to other national standards or by other references of technical nature, in this last case being compulsory to state "or equivalent".

(2) It is forbidden to define in the terms of reference technical specifications indicating a certain origin/source or production, special proceedings, factory

or trade brands, invention patents, licenses or any other requirements having as effect the favouring of one or more tenderers.

(3) By way of exception from the provisions of paragraph (2) above, such an indication is allowed, but only accompanied by the statement "or equivalent" and only in the situation when the contracting authority has no other possibility to make clearer technical specifications in the terms of reference to all parties interested.

SECTION 3

The right to ask for clarifications

Art. 38

(1) Any supplier, contractor or provider who has obtained, in the conditions set by the present emergency ordinance, one copy of the documentation for the elaboration and presentation of the tender has the right to ask in writing clarifications about the elements within.

(2) The contracting authority has the obligation to answer to any request for clarifications, but only to those received:

- a) 8 days before the deadline for submitting tenders, in the case of use of open procedure, restricted procedure or competitive negotiation;
- b) 6 days before the deadline for submission of tenders in the case of accelerating the restricted procedure and in the case of procedure of request for tender for works contracts;
- c) 3 days before the deadline for submission of tenders in the case of procedure of request for tender for the supply or services contracts;

(3) The contracting authority has the obligation to send an answer to the requests for clarifications:

- a) 6 days before the deadline in the case provided in paragraph (2) letter a;
- b) 4 days before the deadline in the case provided in paragraph (2) letter b;
- c) 2 days before the deadline in the case provided in paragraph (2) letter c;

(4) The contracting authority has the obligation to send such answer to all suppliers, contractors or providers who have obtained, in the conditions of the present emergency ordinance, a copy of the documentation for the elaboration and the presentation of the tender, undertaking measures for not

disclosing the identity of the supplier, contractor or provider who has required those clarifications.

Art. 39

(1) The contracting authority has the right to complete, from its own initiative, in view of clarifications, the documentation for the elaboration and the presentation of the tender.

(2) Any such completion must be communicated by the contracting authority in writing to all suppliers, contractors or providers that have obtained, in the conditions of the present emergency ordinance, one copy of the respective documentation.

(3) The sending of this communication must be made within the periods mentioned in art.38, paragraph (3).

CHAPTER VI

Elaboration, presentation and assessment of the tender

SECTION 1

Elaboration and presentation of the tender. Alternative tenders

Art. 40

(1) The tenderer has the obligation to elaborate the tender according to the provisions in the documentation for the elaboration and the presentation of the tender.

(2) The technical proposal is elaborated according to the requirements of the terms of reference in order to ensure the provision of all necessary information for the technical assessment;

(3) The financial proposal is elaborated in order to ensure the provision of all information needed for the financial assessment.

Art. 41

(1) The tender is firm and compulsory, from the point of view of its content, during the whole period of validity set by the contracting authority and must be signed, on own accountability, by the tenderer or by a person legally appointed to this purpose.

(2) The tenderer has the obligation to present the total tendered price both in Lei and Euro. The formula for bringing up to date the price of the contract, that will be applied for protecting against the inflation influence, has not to lead to the outrunning of the price specified in Euro at the date of submitting the tender.

Art. 42

(1) The supplier, undertaker or service provider has the obligation to deposit the tender at the address and before the deadline for submission, indicated in the notice or the invitation for participation and takes all risks for conveying the tender, including force majeure.

(2) The tender deposited to another address of the contracting authority than the one indicated by the contracting authority, or after the deadline, is returned unopened.

Art. 43

(1) A number of suppliers, undertakers or service providers have the right to get associated and submit in common one tender, hereinafter named common tender, without being bound to present their association in a legal form.

Each of them undertakes the obligation for the common tender and is accountable for all consequences of the future public procurement contract.

(2) The contracting authority has the right to ask the legal form for such association before the conclusion of the contract, in the case when the common tender has been declared winner.

(3) The associates select from among themselves the one who, in the case of the award of the public procurement contract, shall represent them in the relations with the contracting authority, in its capacity of leader of the association.

(4) The associates do not have the right to submit other tenders, individually, besides the common tender.

Art. 43'

The tenderers participating in the procedure for the award of a contract for the concession of works have the obligation to include in the tender the list of legal persons affiliated to them; the concessionaire shall have the

obligation to update this list permanently until the termination of the contract for the concession of works.

Art. 44

(1) The associated tenderer/tenderers has/have the right to submit a single tender, named basic tender, which must observe the requirements in the terms of reference.

(2) By way of exception from paragraph (1) above, the associated tenderer/tenderers has/have the right to submit, in addition, other tenders, named alternative tenders, only in the case when the assessment criterion for tenders is "the most advantageous tender from the technical and economical point of view". Only the alternative tenders may not observe, in a certain measure, the requirements in the terms of reference for the basic tender.

(3) The contracting authority has the obligation to provide in the terms of reference the compulsory minimum requirements that the alternative tenders must observe for being taken into consideration. Also, if the contracting authority does not have the intention to allow the submission of alternative tenders, then it is compulsory for the contracting authority to so indicate the respective interdiction in the notice for participation.

(4) The contracting authority has not the right to reject an alternative tender for the sole reason that:

- a) this is set using technical specifications defined in any other way than those provided in the terms of reference, but the tenderer may prove that its proposed solution ensures the appropriate fulfilment of all technical requirements of the contracting authority;
- b) in the case when such offer may win:
 - the supply contract for which the procedure was organized becomes a services contract;
 - the services contract, for which the procedure was organized, becomes a supply contract.

Art. 45

In the case when the contracting authority so requires, the tenderer has the obligation to indicate in the tender that part of the public procurement contract it intends to subcontract.

Art. 45'

(1) The contracting authority, when it intends to award a works concession contract, has the right to require:

a) from the concessionaire, to award works contracts to third parties to a minimum extent of 30% of the total of works subjected to concession; or

b) from the tenderers, to state in the tender the value of the works contracts they intend to award to third parties as an effect of awarding a works concession contract.

(2) The contracting authority has the obligation to state in the notice for participation or in the invitation for participation the minimum extent referred to in paragraph (1) letter a) or the fact that the potential tenderers are asked to state the value referred to in paragraph (2) letter b).

(3) Any tenderer has the right to include in its tender a higher extent than the minimum extent provided in paragraph (2) letter a) set by the contracting authority.

Art. 46

The tender is not taken into consideration if the tenderer does not make the proof of the guarantee for participation according to the provisions in the documentation for the elaboration and the presentation of the tender.

Art. 47

The contracting authority has the obligation to keep confidential the contents of the tender as well as any other additional information required from the tenderer, whose disclosure would impede on the right of the tenderer to protect its intellectual property rights or its commercial secrets.

SECTION 2

Alteration, withdrawal and validity of the tender

Art. 48

Any tenderer has the right to alter or withdraw its tender only before the deadline for the submission of the tender.

Art. 49

The tenderer has not the right to withdraw or alter its tender after the expiry of the deadline for submission of tenders, under sanction of its exclusion from the procedure for the award of the public procurement contract and the losing of its guarantee for participation.

Art. 50

(1) The tenderer has the obligation to maintain the tender valid for all the period of validity; the validity period of the guarantee for participation shall be at least equal to the validity period of the tender.

(2) The contracting authority has the right to require from the tenderers, under exceptional circumstances, before the expiry of the validity period of the tender, the prolongation of such period; in the case of the prolongation of the validity period for the tender, the period of validity of the guarantee for participation must be prolonged accordingly.

(3) The tenderer has the obligation to inform the contracting authority if it agrees or not with the prolongation of the validity period of the tender.

(4) The tenderer who does not agree with the prolongation of the validity period of the tender is considered to have withdrawn its tender, without losing its guarantee for participation.

SECTION 3

The assessment commission. The jury

Art. 51

(1) The contracting authority has the obligation to set, for the award of each public procurement contract, an assessment commission responsible for the following activities:

- a) checking the eligibility, the registration, and the observance of the qualification criteria by the candidates/tenderers;
- b) the opening, the examination and the assessment of the tenders;
- c) the decision on the winning tender.

(1') In the case of applying the negotiated with single source procedure the contracting authority has the obligation to set, for the award of each public procurement contract, a commission responsible for negotiation the contractual clauses.

(2) The assessment commission consists of at least 3 members with relevant background and professional experience in the field as well as morally recognized.

(3) By way of exception from the provisions of paragraph (1), the contracting authority has the right to set the assessment commission for the award of more public procurement contract, but only if the procedure used is procedure of request for tender and only if the respective contracts are supply or services contracts.

Art. 52

(1) The contracting authority has the obligation to set, with a view to assess the designs presented in a design contest, a jury to:

- a) check the observance of the submission rules and of presentation of the design;
- b) assess the designs received;
- c) according to the criteria provided in the notice for participation, it adopts a decision or formulates an opinion;
- d) fulfill other specific assignments.

(2) The jury consists of at least three members, independent individuals, with professional experience and relevant experience in the field as well as morally recognized.

(3) In the situation when the contestants have been asked a certain professional degree, then at least one third of the members of the jury must have that degree or equivalent.

Art. 53

Have not the right to be members in the assessment commission or in the jury the following persons:

- a) the spouse or a relative up to the third degree or affiliated to the third degree of one of the tenderers/candidates/competitors;
- b) persons who in the last three years had labor or collaboration contracts with one of the tenderers/candidates/competitors or have been members of the Board or any other managerial or administrative body of such;
- c) persons having social parts or shares of the capital of one of the tenderers/candidates/competitors.

Art. 54

The contracting authority decides if the members of the assessment commission or of the jury, all or only part of them, are to be paid for such an assignment.

SECTION 4

Opening and assessment of the tenders

Art. 55

- (1) The assessment commission has the obligation to open the tenders at the date and time indicated in the notice or invitation for participation.
- (2) Any of the tenderers has the right to be present at the opening.
- (3) The assessment commission does not have the right to reject a tender for the sole reason that the tenderer is not present in the opening meeting.

Art. 56

- (1) In the case of a tender having an apparently unusually low price as compared with what has to be supplied, made or provided, the assessment commission has the obligation to ask in writing and anyhow before taking any decision regarding the rejection of that tender, details and precisions that in its judgment are relevant for the tender as well as to check the answers regarding that too low price.
- (2) The contracting authority shall take into consideration the explanations received from the tenderer, particularly those relating to:
 - a) the economics explanations about the manner in which the price is made up;
 - b) the technical solutions chosen or the exceptionally favourable conditions available to the tenderer for the fulfilment of the public procurement contract;
 - c) the originality of the tender proposed which answer to the requirements provided in the documentation for the elaboration and the submission of the tender.

Art. 57

The assessment commission has the right to reject a tender in any of the following cases:

- a) the basic tender does not observe in whole the requirements provided in the documentation for the elaboration and the presentation of the tender case in which are not taken into consideration the alternative tenders;
- b) the tender includes proposals referring to the clauses of the contract, proposals obviously disadvantageous for the contracting authority;
- c) the explanations required according to art. 56 are not credible or conclusive.

Art. 58

The assessment commission has the obligation to reject any tenderer in the case when it can be proved that such tenderer has been or is involved in corrupt or fraudulent practices related to the procedure for the award of the public procurement contract.

SECTION 5

Criteria for the award of the public procurement contract

Art. 59

The contracting authority has the obligation to precise, in the notice for participation and in the documentation for the elaboration and the presentation of the tender the criterion based on which the public procurement contract is to be awarded and which may not be changed during the whole procedure for the award of the public procurement contract.

Art. 60

The criterion mentioned in article 59 may be only:

- a) either the most advantageous tender from the technical and economical point of view;
- b) or exclusively the lowest price.

Art. 61

- (1) In the case of using the criterion "the most advantageous tender from the technical and economical point of view" the tender declared winner is the tender having the higher mark resulted after applying a certain algorithm.
- (2) The computation algorithm provided in paragraph (1) is set by taking into account, besides the price, of various criteria for the assessment of the tender, according to the specificity of each contract, such as: delivery terms or completion deadline, operating costs, cost/efficiency, characteristics regarding quality, esthetic, technical or functional requirements, post-sale services, technical assistance, supply of spare parts or other similar on long term, conditions referring to the domestic preference, other elements considered relevant for assessing the tenders. These criteria have to be clearly defined, to be directly connected to the specific of the contract and, after being set, cannot be changed for the entire duration of applying the procedure for the award of the public procurement contract.
- (3) The contracting authority has the obligation to precise, in the documentation for the elaboration and the presentation of the tender, the criteria for the assessment of the tender provided in paragraph (2), in the order of their importance for the assessment of the tender as well as, in detail, the algorithm to be applied.

Art. 62

In the case of applying "the lowest price", the requirements of the contracting authority set in the terms of reference are considered minimum requirements.

SECTION 6 **Communication**

Art. 63

- (1) Any communication, request, information, notification and other similar provided in the present emergency ordinance must be transmitted in written.
- (2) Any written document must be registered at the moment of its sending or receipt.
- (3) Any written document must be confirmed upon receipt, except for the documents confirming receipt.
- (4) The written documents may be transmitted in one of the following formats:

- a) mailed letter;
- b) telegram (cable);
- c) telex;
- d) facsimile transmission (fax);
- e) by electronic means.

(5) The contracting authority or, according to the case the supplier, contractor or provider who sent the documents in one of the formats provided in letters b)-d) above has the obligation to ensure their transmission also by mailed letter in less than 24 hours from the initial sending. In case when the written documents are transmitted by electronic means, to them shall apply the legal provisions regarding electronic signature, in order for such documents to fulfill the conditions for proof and validity of a legal deed.

Art. 64

The contracting authority has the obligation to make no discrimination between candidates/tenderers from the point of view of the format in which documents, decisions or other communications are transmitted or received.

Art. 65

(1) In the case of applying the restricted procedure or competitive negotiation, the contracting authority has the obligation to send simultaneously to all candidates having participated in the selection phase, a communication in writing referring to the result of the respective phase.

(2) In the case of the candidates not selected, the communication must state the reasons for the exclusion, non-qualification or, according to the case, non-selection.

(3) In the case of selected candidates the communication represents the invitation for participation itself with a tender to the second phase and shall be accompanied by the documentation for the elaboration and the presentation of the tender or by precise information about how to obtain such documentation for the elaboration and the presentation of the tender.

Art. 66

(1) In the case of applying the open tender procedure, the request for tender as well as at the end of the final stage in the case of the restricted procedure

or competitive negotiation, the contracting authority has the obligation to send simultaneously to all tenderers a written communication regarding the result of applying the respective procedure.

(2) In the case of the tenderers whose tender has not been declared as winning, the communication must state the reasons for such decision and the name of the winning tenderer, and in the case of the tenders declared as appropriate, to state also the characteristics and the relative advantages of the winning tender as compared with the non-winning tenders.

(3) In the case of the winner, the communication must state the fact that its tender has been declared winner and that it is invited for the signing of the contract.

Art. 67

(1) The communications provided in art. 65 and 66 must be transmitted in no more than 2 days from the date when the assessment commission has decided the selected candidates or has declared the winner.

(2) The contracting authority has the right not to make public some information referring to the award of the contract and that may be included in the information referring to the features and relative advantages of the winning tenders compared with other tenders, this in the case when the respective information:

- a) would lead to the non-enforcement of a legal provision and implicitly would be contrary to the public interest; or
- b) would infringe commercial interests of the tenderers/candidates, including those of the tenderer declared winner; or
- c) would infringe loyal competition between suppliers/undertakers/service providers.

SECTION 7

The annulment of the use of the procedure for the award of the public procurement contract

Art. 68

(1) The contracting authority has the right to annul the application of the procedure for the award of the public procurement contract if such decision is taken, as a rule, before the date of the transmission of the communication

regarding the result of applying the procedure and, anyhow, only before the date of the concluded the contract, in the following cases:

- a) it was not possible to ensure an appropriate level of competition, meaning that the number of candidates/tenderers is lower than the minimum number provided for each procedure in the present emergency ordinance.
- b) none of the candidates/tenderers is eligible or did not meet the qualification conditions provided in the documentation for the elaboration and the presentation of the tender;
- c) have been submitted only unsuitable tenders, meaning that:
 - either are submitted after the deadline;
 - either have not been elaborated and presented according to the requirements in the documentation for the elaboration and the presentation of the tender;
 - either include in the financial proposal prices that seem obviously not to be the result of free competition and can not be sufficiently fundamented;
 - either include proposals referring to the contract clauses which prove to be obviously in disadvantage for the contracting authority;
 - or, by the value included in the financial proposal, each of them has exceeded the value of the funds allocated for the respective public procurement contract.
- d) exceptional circumstances affect the procedure for the award of the public procurement contract or the conclusion of a contract is impossible.

Art. 69

The decision of annulment does not create any obligation of the contracting authority to the participants to the public procurement procedure, except for the returning of the guarantee for participation.

Art. 70

The contracting authority has the obligation to inform in writing all the participants to the public procurement procedure, in no more than 2 days from the date of annulment, both the ceasing of the obligations of the participants, created by submitting tenders, as well as the reason of the annulment.

CHAPTER VII
**The conclusion, the performance and the completion of
the public procurement contract**

SECTION 1
The conclusion of the public procurement contract

Art. 71

- (1) The contracting authority has the obligation to conclude the public procurement contract with the tenderer whose tender has been declared winner by the assessment commission.
- (2) In the case when the contracting authority does not succeed to conclude the contract with the winning tenderer, then the contracting authority is entitled to:
 - a) invite the tenderers, in the decreasing order of the marks obtained by their tenders, with a view to conclude the contract; or
 - b) to annul the procedure for the award of the public procurement contract.
- (3) The contracting authority has the obligation to conclude the public procurement contract within the validity period of the tender.
- (4) Without prejudice to the provisions of paragraph (3), in the case when the public procurement contract has been awarded following an open procedure, a restricted procedure or a competitive negotiation, the contracting authority has the obligation to conclude the contract only after 7 days from the date of conveying the communication regarding the result of applying such procedure.

Art. 72

The tenderer invited by the contracting authority in view of concluding the public procurement contract has the obligation to submit the proof of the guarantee for good performance according to the provisions of the documentation for the elaboration and presentation of the tender.

Art. 73
abrogated

Art. 74

In the case of non-observance of the contract clauses by one of the parties, the injured party has the right to ask for the cancellation of the public procurement contract and to require remedies.

SECTION 2 ***Avoidance of unfair competition***

Art. 75

The individuals or legal persons, that have participated in any way to the setting of the documentation for the elaboration and the presentation of the tender or are part of the assessment commission for the awarding of the respective contract have not the right to be tenderers, associated tenderers or subcontractors under sanction of annulment of that contract.

Art. 76

The contractor has nor the right to hire, to the purpose of performing the public procurement contract, individuals or legal persons that have participated to the setting of the documentation for the elaboration and the presentation of the tender or were part of the assessment commission for the awarding of the respective contract, for at least 6 months after the conclusion of the contract, under sanction of cancellation of the contract by the contracting authority.

CHAPTER VIII **The file of the public procurement**

Art. 77

- (1) The contracting authority has the obligation to create the file of the public procurement.
- (2) The documents to be included in the file of the public procurement as well as those that must be sent to the institutions which monitorize the public

procurement system are set by norms of implementation of the present emergency ordinance.

Art. 78

The file of the public procurement is kept by the contracting authority as long as the public procurement contract produces legal effects and anyhow not less than 5 years from the date of the completion of that contract.

Art. 79

Upon request, the file of the public procurement is put at the disposal of any interested public authority, upon condition that no information be disclosed, if such disclosure would be contrary to the law, would impede on the enforcement of the law would affect public interests, would infringe the legitimate commercial interest of the parts or would affect free competition, but without limiting the rights deriving, according to the law, for the appointed bodies, to take documents that can help to prove fraud, contraventions or felonies.

CHAPTER IX **Ways of legal attack**

SECTION I

General provisions regarding the use of the ways of legal attack

Art. 80

- (1) The illegal deeds or decisions determining the infringement of the provisions of the present emergency ordinance may be attacked by administrative ways and/or in justice.
- (2) The contracting authority has the competence to solve the contests forwarded on administrative way. The contracting authority has the obligation to state in the notice for participation or, according to the case, in the invitation for participation, the name, the address, the fax/telex and the e-mail address of the division of the contracting authority where are to be sent/submitted or, according to each case, are solved the contests.

(3) The legal action is to be registered to the administrative court of the court having territorial competence on the contracting authority (where the HQ of the contracting authority are located). Against the decision of the court may be declared recourse to the administrative court of the Court of Appeal.

Art. 81

(1) Any individual or legal person has the right to use the ways of legal attack provided in the present emergency ordinance if it has a legitimate interest related to a certain public procurement contract and which suffers, may suffer or has been suffering a prejudice as direct consequence of an illegal deed or decision.

(2) The legal action is filed only after the exhaustion of the way of attack of the contest by administrative way and only by those persons who have filed contests as well as for the requests subject of the attack by administrative way. The action in justice is to be filed only when the contracting authority did not answer a contest within the period provided in the present emergency ordinance or when the contestant is not satisfied with the answer received within the legal delay.

(3) By way of exception from the provisions of paragraph (2) may file an action in justice without having previously file an administrative contest:

- a) any individual or legal person meeting the conditions provided in paragraph (1) and which was not involved in any way in the procedure for the award of the public procurement contract, but only after the publishing of the notice of awarding the respective public procurement contract and not earlier than 15 days from the date of publishing the award notice;
- b) any participant still involved in the procedure for the award of the public procurement contract only for attacking the corrective measures decided by the contracting authority as effect of the solution of the contest(s) if it can prove that:
 - the corrective measures are in their turn illegal and determine the infringement of the provisions of the present emergency ordinance;
 - the corrective measures, even if legal, are incomplete and alter the observance of the principles of free competition, the efficient use of public funds, equal treatment, transparency and confidentiality provided in art. 2 of the present emergency ordinance.

c) any tenderer, only in the case when the contracting authority has already concluded the public procurement contract earlier than 7 days from the date of the transmission of the communication regarding the result of the procedure for the award of the public procurement contract, but not later than 15 working days from the date of the publishing of the award notice.

Art. 82

(1) Damages may be required only by legal action, filed exclusively to this purpose and only after the solution by administrative proceedings of the contest or in justice of the actions provided in art. 81, paragraph (2).

(2) The action in justice by which damages are envisaged is to be filed to the administrative court of the competent territorial court where is located the contracting authority. Against the decision of the court may be declared a recourse (appeal) to the administrative court of the Court of Appeal.

Art. 83

The individual or the legal person who files an action in court in the conditions provided by the present emergency ordinance has the obligation to notify immediately to the contracting authority about such an action and to make sure that the notification is received by the contracting authority in no more than 3 working days from the date of introduction of the action;

Art. 84 **abrogated**

Art. 85

(1) Each time a contest is received, the contracting authority suspends the procedure for the award of the public procurement contract.

(2) The suspension period supposes the prolongation accordingly of all periods affected by the suspension, except for the periods provided for the use of the ways of attack.

(3) The decision of suspension is immediately communicated by the contracting authority to the contestant as well as to all other participants yet involved in the procedure for the award of the public procurement contract at the date of filing the contest.

(4) By way of exception from the provisions of paragraph (1), the contracting authority has the right to not suspend the procedure for the award of the public procurement contract in cause, in any of the following situations:

- a) the contest is obviously not founded or its contents is obviously not serious;
- b) by suspending the procedure for the award of the public procurement contract there is an imminent danger to seriously affect a major public interest that the contracting authority must argue.

(5) The provisions in paragraphs (1) apply without limiting the capacity of the competent courts to rule the suspension of the procedure for the award of the public procurement contract.

Art. 86

(1) As soon as the contracting authority receives a contest or a notification regarding the filing of a legal action, it has the obligation to acknowledge about it and about its motivated decision to suspend or not the procedure for the award of the public procurement contract to all participants yet involved in that procedure, attaching a copy of the contest/notification received.

(2) The contracting authority has the obligation to communicate to all participants yet involved in the procedure for the award of the public procurement contract all further deeds and decisions referring to the respective contest/action in justice within two working days from their receiving.

Art. 87

(1) The participants yet involved in the procedure for the award of the public procurement contract have the right to get associated for the contest forwarded to the contracting authority, by written communication deposited with the HQ of the contracting authority, within 5 working days from receiving the notification about the introduction of a legal action.

(2) Those who get associated for a contest have the same rights and responsibilities with the one having initiated the contest. The participants yet involved in the procedure for the award of the public procurement contract that do not get associated for a contest according the provisions of this paragraph lose the right to attack both administratively and legally the deed or the decision invoked as illegal by the initially forwarded contest.

Art. 88

(1) In the case of a legal action, the participants yet involved in the procedure for the award of the public procurement contract if they did not lose their right according to the provisions of the present emergency ordinance have the right to file to the competent court requests for intervention within 5 working days from receiving the notification regarding the filing of a legal action.

(2) Those who do not file requests for intervention lose the right to attack both administratively and legally the deed or the decision against which has been filed the legal action.

SECTION 2 *Solving the contest*

Art. 89

(1) The administrative attack of illegal deeds and decisions generating infringements of the provisions of the present emergency ordinance is the contest.

(2) The contest must be presented in written form.

(3) The contest provided in paragraph (2) above must state the fact that it stands for a contest, the deed or the decision invoked as illegal, the interests that have been injured and the prejudice suffered, suffers or may suffer by the contestant, as well as the way it expects for the contest to be solved.

Art. 90

(1) Immediately after receiving a contest, the contracting authority verifies the contest and evaluates the justification of the suspension the procedure according to the provisions of article 85.

(2) For each contest, the contracting authority has the obligation to formulate a motivated resolution that has to be communicated to the contestant, to the other participants yet involved in the procedure for the award of the public procurement contract in no more than 10 working days from the date of the registration of the contest.

(3) Within two working days from receiving the communication provided in paragraph (2), the contestants have the obligation to notify to the contracting

authority if they accept or not the resolution of the contracting authority and the possible corrective measures decided by it; those who notify to the contracting authority and accept the resolution and the corrective measures have no more the right to attack in justice, including the right to file a request for intervention to the interest of the part who would attack the respective resolution and/or the corrective measures in cause.

(4) In view of formulating its motivated resolution, the contracting authority may consult with the contestant and with those who got associated to the contest; also, the contracting authority may initiate consultations with the other participants yet involved in the procedure for the award of the public procurement contract.

(5) Each time the contracting authority keeps in view of solving several contest against the same deed or decision invoked as illegal, it has the obligation to solve in a unitary manner all contests received, having in view the observance of the principle of equal treatment.

Art. 91

(1) When solving the contests, the contracting authority may decide corrective measures to modify, to stop, to revoke, to annul or other similar for the illegal deed or decisions or related activities in order to comply with the provisions of the present emergency ordinance.

(2) Any corrective measure decided by the contracting authority must be included in the motivated resolution.

Art. 92

(1) As soon as it receives a contest or a notification regarding the introduction of a legal action, with a purpose to improve the process of monitorization of the public procurement system, the contracting authority has the obligation to inform the Ministry of Public Finance attaching a copy of the contest/notification. In the case when the contest or the legal action regards a procedure for the award of a works contract or a service contract for building design, then the contracting authority has the obligation to send the information provided in paragraph (1) also to the Ministry of Public Works, Transportation and Housing.

(2) The contracting authority has the obligation to inform the Ministry of Public Finance and if the case also the Ministry of Public Works, Transportation and Housing, all deeds and decisions made after referring to

the contest/legal action in cause within two working days from their issuance/receipt.

(3) Within seven days from receiving the information regarding the filing of a contest, including the copy attached provided in paragraph (1), the Ministry of Public Finance has the obligation to formulate and to send an opinion regarding the way of solving the contest.

In the case when the contest regards the use of a procedure for the award of a works contract or a services contract for building design, then the opinion regarding the solving of the contest shall be elaborated in common by the Ministry of Public Finance and the Ministry of Public Works, Transportation and Housing.

(4) The opinion provided in paragraph (3) has information and purposes and is meant to facilitate to the contracting authority and, if case, to the court of justice the taking of an appropriate decision, based on an authorized interpretation of the legislative provisions in the field of public procurement and based on the solving of previous similar cases.

SECTION 3 *The legal attack*

Art. 93

Under sanction of withdrawal of rights, the legal action must be filed in no more than 30 days from the date of receipt of the motivated resolution regarding the contest or, in the case it receives no answer, from the date of expiry of the period for solving the contests.

Art. 94

(1) In no more than 10 days from the filing of a legal action the court may decide, summoning the parties, but only if the contestant who has filed the action expressly asks for such, invoking a serious and imminent prejudice, with the aim to eliminate the prejudice or to prevent damage of interests of the person who has filed the legal action, provisory measures up to the final resolution of the cause, as follows:

- a) the suspension of the procedure for the award of the public procurement contract;
- b) measures to ensure the suspension of the procedure for the award of the public procurement contract;

c) measures to stop the implementation of any decision of the contracting authority.

(2) When it judges a case where provisory measures are required, the court may take into consideration the probable consequences of these measures on all the categories of interests that might be affected by the respective measures, including the public interest and, on this basis, it is entitled not to decide such measures in the situation in which negative consequences of the measures may be higher than their benefits. The decision not to take provisory measures shall not affect any other right of the person who has required for such measures to be taken.

(3) If the court rules any of the provisory measures of the paragraph (1), the court shall settle the case as soon as possible and not later than 60 days from the date when the action was filed.

Art. 95

The competent courts may decide, based on the hearings of the parties involved, measures for the annulment of those decisions of the contracting authority which infringe the provisions of the present emergency ordinance, measures for correcting, altering or ensuring the correction, alteration of such deeds and decisions, including the modification of technical specifications having a discriminatory character or of other requirements having the same character from any document related to the procedure for the award of the public procurement contract.

Art. 96

In the case when by legal action is asked the payment of remedies due to a prejudice determenied by an illegal deed or decision of the contracting authority, then in order to prove the fact that legal provisions have been infringed it is sufficient to find out:

a) the existence of an irrevokable decision of the court set according to the provisions of art. 95; or

b) the adoption, by the contracting authority, of corrective measures following the contest.

Art. 97

The irrevocable court decisions ruled in the litigations caused by the application of the provisions of the present emergency ordinance shall be published in the Official Gazette of Romania, Part VI, Public Procurement, and the party having lost shall pay the legal charges and the charges for transmission and publishing; to this purpose, the court shall rule the payment of such charges.

CHAPTER X Contraventions and sanctions

SECTION 1 *Contraventions*

Art. 98

Are considered contraventions and are sanctioned the following deeds, if they are not made under such conditions that they could be considered felonies, according to penal law:

- a) public procurement by infringing the provisions of the present emergency ordinance and of the other legal acts issued for its enforcement;
- b) applying the procedure for the award of the public procurement contract without having the funds allocated to this purpose in the current year;
- c) applying the procedure for the award of the public procurement contract for the purpose of testing market prices;
- d) applying the procedure for the award of the public procurement contract without all necessary approvals;
- e) providing information to one or more suppliers, undertakers or service providers that could favor them in a procedure for the award of a public procurement contract;
- f) a participant in the procedure for the award of the public procurement contract having information about the contents of the tenders of other participants as well as understandings between the participants with the purpose to alter the outcome of the procedure.

SECTION 2

Sanctioning contraventions

Art. 99

(1) Contraventions provided in art. 98 letters a), b), e) and f) are sanctioned with fines from Lei 20,000,000 to 50,000,000 and those in letters c) and d) with fines from Lei 5,000,000 to 10,000,000.

(2) The fines provided as sanctions for having committed the contraventions stipulated in art. 98 may be applied both to individuals and legal persons.

Art. 100

The level of the fines provided in art. 99 are to be adjusted by Government Decision, relative to the inflation rate.

Art. 101

(1) The finding of contraventions and the enforcement of sanctions are made by the appointed representatives of the Ministry of Public Finance.

(2) To the contraventions provided in art. 98 apply the provisions of Law 32/1968 regarding the setting and sanctioning contraventions, with subsequent modifications, except for the provisions of art. 25-27 from the said Law.

CHAPTER XI

Transitory and final provisions

Art. 102

Public procurement being performed at the date of the entering into force of the present emergency ordinance shall be finalized based on the provisions of Government Ordinance 12/1993 with its subsequent amendments as well as on the provisions of acts issued for its enforcement.

Art. 103

The provisions of common law apply unless the present emergency ordinance does not provide otherwise.

Art. 104

(1) At the date of the entering into force of the present emergency ordinance, Part VI Public Procurement of the Official Gazette of Romania is maintained.

(2) In the Official Gazette of Romania, Part VI, Public Procurement are published the indicative notices, the notices for participation and the notices of award of public procurement contracts, as well as irrevocable court rulings pronounced in the litigation related to the enforcement of the present emergency ordinance.

(3) The publishing of the indicative notices, notices for participation and notices of award is free of charge.

(4) By means of a Government Decision may be set the obligation of the contracting authority to send for publishing the indicative notices, the notices for the participation and the notices of award also to the Official Journal of the European Communities.

Art. 105

The norms for the implementation of the present emergency ordinance shall ensure the correspondence of products, works and services whose purchase is object of public procurement contracts with the system of grouping and codification provided in the official statistical classification.

Art. 106

The value of the threshold provided in art. 8 paragraph (6) as well as the thresholds provided in art. 13 may be adjusted by Government Decision.

Art. 107

By Government Decision may be set the situations and ways in which the contestant, before filing a legal action, has the right to use a conciliation procedure.

Art. 108

- (1) The contracting authority has the obligation to grant a domestic preference margin for the tenders which provide the carrying out of the public procurement contract:
- a) with domestic labor force representing a certain percentage of the total labor force necessary for carrying out the contract;
 - b) with domestic products (Romanian origin) representing a certain percentage of the value of the public procurement contract;
 - c) with subcontractors individuals or legal persons , which subcontract a certain percentage from the value of the contract;
 - d) with any combination between the above, situation in which the contracting authority should provide the order it prefers with regard to the application of the provisions in letters a) - c) as well as any other additional information which may represent selection criteria of the tenders, in such a way to ensure the possibility to elaborate the tender by any supplier, contractor or provider in good knowledge and without alter competition.
- (2) The percentages provided in paragraph (1) as well as the way of applying the domestic preference margin shall be set in the norms for the implementation of the present emergency ordinance.
- (3) The contracting authority has not the right to grant the domestic preference margin if by doing so it infringes commitments taken by Romania in international agreements.
- (4) The contracting authority has not the right to grant domestic preference margin in the case of awarding a public procurement contract which is financed from EU programs or from other donors, except for the cases when the documents concluded with those do not provide otherwise.

Art. 109

The Ministry of Public Finance shall issue norms for the implementation of the present emergency ordinance, to be submitted to the approval of the Government within 30 days from the date of entry into force of the present emergency ordinance.

Art. 110

The provisions of the present emergency ordinance are completed with specific provisions regarding public procurement provided in other special laws.

Art. 111

Starting on the date of enforcement of the present emergency ordinance, are abrogated Government Ordinance no. 118/1999 regarding public procurement, published in the Official Gazette of Romania, Part I, no. 431 of August 31st, 1999, modified and completed by the Emergency Ordinance no. 202/1999 published in the Official Gazette of Romania, Part, I, no. 649 of December 30, 1999, and by the Emergency Ordinance no. 122/2000, published in the Official Gazette of Romania, Part I, no. 312 of July 5, 2000; the Emergency Ordinance no. 48/2001 published in the Official Gazette of Romania, Part I, no. 161 of March 30, 2001; Government Decision no. 325/2000 regarding the approval of the rules on transparency and publicity of public procurement, published in the Official Gazette of Romania, Part I, no. 180 of April 26, 2000; Government Decision no. 724/2000 regarding the setting of the conditions for granting domestic preference in the case of the procedure for the award of the public procurement contract, published in the Official Gazette of Romania, Part I, no. 411 of August 30, 2000; Government Decision no. 725/2000 regarding the setting of the list of contracting authorities, published in the Official Gazette of Romania, Part I, no. 408 of August 30, 2000; Government Decision no. 726/2000 regarding the approval of the correspondence of products, works and services whose purchase is subject of a public procurement contract with the official statistical classification, published in the Official Gazette of Romania, Part I, no. 410 of August 30, 2000; Government Decision no. 727/2000 regarding the setting of rules for the estimation of the value of the public procurement contract, published in the Official Gazette of Romania, Part I, no. 411 of August 30, 2000; Government Decision no. 728/2000 regarding the file of the public procurement and monitoring of the award of the public procurement contract, published in the Official Gazette of Romania, Part I, no. 411 of August 30, 2000; Government Decision no. 729/2000 regarding the approval of the norms for the implementation of the procedures for the award of the public procurement contract, published in the Official Gazette of Romania, Part I, no. 409 of August 30, 2000.

