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SUPPLEMENT TO INSTRUCTIONS TO TENDERERS
„Components for upgrading the LLRF System”

This section details the formalities that must be fulfilled, the manner in which economic operators have to structure the information to be presented so as to meet the requirements of the Contract Notice, mentions regarding the bonds requested, how to write and structure the Technical Proposal and the Financial Proposal, the award criterion to be applied, the procedural time limits that have to be complied with, and the remedies.

1. INSTRUCTIONS ON THE ESPD

The European Single Procurement Document (DUAE in Romanian) is a Self Declaration Statement, a form that enables the participating economic operators to declare that they hold suitability, financial status, and ability and that they meet the selection criteria. ESPD is used as preliminary evidence in all public procurement procedures replacing the certificates released by public authorities or third parties. The ESPD document is an official statement by the economic operator that they are not in a situation in which they have to/may be excluded from the procedure and fulfils the relevant qualification criteria. The contracting authority may request any tenderer, at any moment during the procedure, to submit all or part of the supporting documents proving the information contained in the ESPP when necessary to ensure proper conduct of the procedure.

Economic operators may be excluded from the public procurement procedure or may be sued based on the national legislation for serious cases of false statements when completing the ESPD or, in general, when supplying the information requested to verify the absence of reasons for exclusion of the fulfilment of the selection criteria or when not disclosing such information or not being able to submit supporting documents.

Economic operators may reuse the information provided in an ESPD already used under a previous public procurement procedure, provided that the information remains correct and continues to be pertinent. The easiest way to do this is to enter the information in the new ESPD using the suitable functionalities provided under the electronic service for ESPD in this respect.

As previously described, the ESPD is a formal statement by the economic operator stating that relevant reasons for exclusion do not apply, that the applicable qualification criteria are fulfilled and that the relevant information requested by the contracting authority will be provided.

In addition, ESPD identifies the public authority or the third-party responsible for preparing the supporting documents, and it contains an official declaration stating that the economic operator will be able to provide all the supporting documents upon request and without delay.

Where an extract from the pertinent register, such as the judicial records, can be read by the contracting authority in electronic format, the economic operator may specify where the information can be found (i.e. the name of the archive, the internet address, the identification of the file or register, etc.), so that the contracting authority is able to retrieve such information. By indicating this information, the

economic operator agrees that the contracting authority may obtain the relevant documents in accordance with the national norms relating to the processing of personal data, in particular of the special categories of data, such as offences, criminal convictions or security measures.

Economic operators registered on the official lists of authorised economic operators or holding a relevant certificate released by public or private law bodies may, with respect to the information required in ESPD, send the contracting authority the registration certificate released by the competent authority or the certificate released by the competent certification body.

An economic operator participating on its own and not relying on the capacities of other entities to fulfil the qualification criteria, must fill in a single ESPD.

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An economic operator participating on its own, relying on the capacities of one or more entities must make sure that the contracting authority receives its own ESPD along with a separate ESPD containing the relevant information for each of the entities it relies on.

Where groups of economic operators, including temporary associations, participate jointly in the award procedure, a separate ESPD must be presented which contains the information requested in parts “Reasons for exclusion” and “Selection criteria” for each of the participating economic operators.

In all cases where several persons are members of the administration, managing or control body of the economic operator or have a representation, decision or control power therein, each of them might need to sign the same ESPD, depending on the national norms, including those regulating data protection.

The answers provided in the ESPD by the economic operators participating in the procedure will be completed in the Electronic Public Procurement System (SEAP) directly, after logging in, by each participant. You will find details on how to write the ESPD in section “ESPD Information” - Guide to fill in the ESPD”, after you have logged in.

It is necessary that all those who have to answer to the ESPD are registered as system users.

In the award procedure shall register and submit a tender one of the members of the association or the economic operator participating with a tender individually, while the other participants shall fill in directly in the system only the ESPD and cannot modify the tender.

2. INSTRUCTIONS ON THE REQUESTED BONDS – as a supplement to Sections III.1.6.a) and III.1.6.b) of the Instructions to tenderers/applicants (Data Sheet) (information not included in the Instructions to tenderers/applicants (Data Sheet) generated

A. Participation Bond

The amount of the participation bond is: **6000 EURO**.

The participation bond can be also set up in RON or other currency, the reference exchange rate calculated for its payment being the one published by the National Bank of Romania (NBR), (www.bnr.ro) on the date of publication of the contract notice in the Electronic Public Procurement System (S.E.A.P.).

Validity period of the bond: **4 MONTHS** from the deadline for submission of tenders.

Method for setting up the bid bond:

1. By bank transfer to, respectively, RON account: RO96BTRLRONCRT00A492230F, EUR account: RO81BTRLEURCRT00A4922304, and USD account: RO51BTRLUSDCRT00A4922303, open with BANCA TRANSILVANIA Bank - Magurele Branch.

By a security instrument issued in accordance with the law, namely:

- (i) letter of guarantee issued by a bank credit institution or a non-bank financial institution from Romania or another country;
- (ii) letters of guarantee issued by non-bank financial institutions from Romania or another country for the purchase of works whose estimated value is less than or equal to 40,000,000 lei without VAT and

respectively for the purchase of products or services whose estimated value is less or equal to 7,000,000 LEI without VAT;

(iii) surety insurance issued by

- either surety company holding an operating license issued in Romania or in another Member State of the European Union and/or entered in the registers published on the website of the Financial Supervisory Authority, as applicable;

- or a surety company from third-party countries through branches authorized in Romania by the Financial Supervisory Authority;

according to the model shown in **Form no. 2 under the Forms Section.**

The participation bond must be irrevocable and set up in the amount and for the validity period provided in the award documentation. The security instrument must provide that the payment of the participation bond will be enforced unconditionally, namely upon the beneficiary's first request, based on its statement regarding the fault of the guaranteed person.

The document setting up the participation bond will be scanned and attached to the Electronic Public Procurement System (SEAP) so as to be legible, only in PDF or JPG format, signed with qualified electronic signature, based on a qualified certificate, issued by an accredited certification service provider accredited under the law, **until the closing date and time set for the submission of tenders.**

After this date, the contracting authority will ask for clarifications from the tenderers in order to submit the participation bond document in original, when this document is included in the category of special documents whose validity is conditional upon submission in original format.

In the case of a joint participation in the award procedure, the participation bond must be set up on behalf of the association and it must specify that it covers jointly and severally all members of the group of economic operators.

The participation bond issued in another language than Romanian is to be uploaded to the Electronic Public Procurement System (in Romanian SEAP), accompanied by the Romanian authorized translation, and thereafter submitted, at the contracting authority's request, in the original format issued in the country of residence.

The participation bond is returned by the contracting authority within maximum 3 working days after setting up the good performance bond.

In the case of award procedures for framework agreements, as well as in the case of awarding a contract for which it is not mandatory to set up a performance guarantee, the participation bond set up by the tenderer whose offer was determined to be the winner is returned by the contracting authority in no more than 3 working days from the date of signing the framework agreement/contract.

The participation bond, set up by the tenderers whose tender has not been successful, shall be returned by the contracting authority after signing the public procurement contract with the tenderer/tenderers whose tender(s) has/have been declared successful, but no later than 3 working days after signing the public procurement contract with the successful tenderer.

Should the contracting authority find itself in a situation to cancel the award procedure, the participation bond will be returned, after the expiry of the time limit for filing a complaint regarding the decision, but not later than 3 working days from this date.

After receiving the communications set forth in Art. 215 of Law 98/2016, the tenderers whose tenders have been declared unsuccessful are entitled to obtain the release of the participation bond before the expiry of the time limit mentioned in Art. 154¹ par. (3) of Law 98/2016, if they send a request to the

contracting authority in that regard. The contracting authority has the obligation to return the participation bond within maximum 3 working days from receiving a request in this respect.

The contracting authority shall not retain the participation bond if the successful tenderer refuses to sign the public procurement contract within the period of validity of the tender, awarded following an award procedure which has been subject to ex-ante control and in which NAPP issued a conditional opinion, and the contracting authority carried out and completed the award procedure without remedying the deviations found by NAPP, in this case, the provisions of paragraph (1) letter c) and Art. 144 paragraph (1) of Romanian Government Decision (HG) 395/2016.

B. Performance Bond

Amount of the performance bond: 10 % of the contract price, without VAT, and is to be set up in accordance with the provisions of Article 154 of Law 98/2016, namely:

a) By bank transfer to, respectively, RON account: RO96BTRLRONCRT00A492230F, EUR account: RO81BTRLEURCRT00A4922304, and USD account: RO51BTRLUSDCRT00A4922303, open with BANCA TRANSILVANIA bank - Magurele Branch;

b) By a security instrument issued in accordance with the law, namely:

(i) letter of guarantee issued by a bank credit institution or a non-bank financial institution from Romania or another country;

(ii) letters of guarantee issued by non-bank financial institutions from Romania or another country for the purchase of works whose estimated value is less than or equal to 40,000,000 lei without VAT and respectively, for the purchase of products or services whose estimated value is less or equal to 7,000,000 LEI without VAT;

(iii) surety insurance issued by:

- either an insurance company holding an operating licence issued in Romania or in another Member State of the European Union and/or entered in the registers published on the website of the Financial Supervisory Authority, as applicable;

- or an insurance company from third countries through branches authorised in Romania by the Financial Supervisory Authority;

c) by depositing cash amounts at the pay office if the value accounts for less than RON 5,000;

d) by successive withdrawals from the amounts due for partial invoices;

e) by combining two or more of the setting-up methods provided from a) to c)

and shall become annex to the contract.

The performance bond of the contract is issued by the Contractor to guarantee the Contracting Authority the Contractor will fulfill all of their scheduled quantitative and quality obligations under the public procurement contract agreement.

The performance bond shall be irrevocable and unconditional, and can be constituted in Lei or foreign currency, the reference rate calculated for its payment being the one published by the National Bank of Romania (www.bnr.ro) on the date of the signing of the public procurement contract.

The performance bond is constituted in a term of 5 working days starting from the date the public procurement contract/subsequent contract was signed. This term can be extended at the contractor's justified request without exceeding 15 days from the date the public procurement contract/subsequent contract was signed.

If during the performance of the public procurement contract, the contract value is increased, the contractor has the obligation to complete the performance bond in correlation with the new value of the public procurement contract.

In the case of a supply contract, the contracting authority is obliged to release/return the performance bond within 14 days from the date of drawing up the receipt report of the products that are the subject of the public procurement contract/subsequent contract and/or from the payment of the final invoice, if it has not raised any claims against it by that date.

3. INSTRUCTIONS ON THE EVALUATION OF TENDER OFFERS

A. Evaluation of Technical Proposals

During the evaluation, the Evaluation Committee will verify if the Technical Proposal:

- 1) refers to the entire object of the Contract. The Technical Proposals referring only to part of the Contract object shall not be accepted;
- 2) demonstrates the fulfilment of all minimum requirements contained in the Specifications.

If applicable, the Contracting Authority shall send clarifications to the Tenderers regarding the Technical Proposals via the Electronic Public Procurement System (S.E.A.P.) in order to finalize their evaluation.

Tenderers shall send the answer via the Electronic Public Procurement System (S.E.A.P.), as described below in section Clarifications requested by the Contracting Authority from the Tenderers.

At the end of the evaluation of the Technical Proposals the Contracting Authority shall enter to the Electronic Public Procurement System (S.E.A.P.) the names of the Tenderers whose tenders are admissible and of the Tenderers whose tenders have been declared unacceptable or non-conforming.

The Tenderers will receive notifications sent automatically by the Electronic Public Procurement System (S.E.A.P.) regarding the result of the evaluation of the Technical Proposals.

B. Evaluation of Financial Proposals Propunerilor Financiare

After notifying the result of the evaluation of the Technical Proposals, the values of the Financial Proposals will be decrypted and the Contracting Authority will view the value, and the substantiating documents in the Electronic Public Procurement System (S.E.A.P.).

During the evaluation, the Evaluation Committee will verify if the Financial Proposal:

- 1) refers to the entire object of the Contract. The Financial Proposals referring only to a part of the contract object shall not be accepted;
- 2) is correlated with the information included in the Technical Proposal. All requirements described in the Technical Proposal shall indicate their prices in the Financial Proposal.

The activities described in the Technical Proposal, but for which prices are not included, will be considered as included in the price of the requirements presented by the Tenderer in the Technical Proposal.

For those requirements, the Contracting Authority will pay only the price set in the Financial Proposal and nothing more, even if they are achieved during Contract performance.

The Contracting Authority may request clarifications/supplementations of the information presented by the Tenderers relating to the Financial Proposals.

The request for clarifications is to be made via the Electronic Public Procurement System (S.E.A.P.). Tenderers shall send the answer via the Electronic Public Procurement System (S.E.A.P.), as described below in section Clarifications requested by the Contracting Authority from the Tenderers.

C. Clarifications requested by the Contracting Authority from the Tenderers

As a general rule, during the evaluation the Contracting Authority may send requests for clarifications to the Tenderers using the functionalities of the Electronic Public Procurement System (S.E.A.P.) platform.

The Tenderer's answer must be uploaded in the Electronic Public Procurement System (S.E.A.P) in electronic format in the same section, before the deadline set by the Contracting Authority, signed by

qualified electronic signature based on a qualified certificate issued by an accredited certification service provider, accredited under the law, for a person duly authorised to sign on behalf of the Tenderer.

Admissible Tender - The admissible tender is the tender that is not unacceptable, non-conforming or inadequate in accordance with the provisions of article 215 (3) of Law no. 98/2016, as further amended and supplemented.

Situations determining the rejection of the Tender - The tender may be rejected as unacceptable, non-conforming and/or inadequate in the situations described below.

The Tender may be considered **UNACCEPTABLE** in the following situations:

- 1) In accordance with the provisions of Art. 137 (2) of Romanian Government Decision (HG) 395/2016:
 - the tenderer does not fulfil one or several of the qualification criteria established in the Award Documentation or has not filled the ESPD in accordance with the criteria established by the Contracting Authority;
 - is an alternative to the provisions of the Technical Specifications, an alternative that cannot be taken into account because the Contract Notice does not explicitly provide for the possibility to submit alternative tender offers;
 - does not ensure compliance with the mandatory regulations regarding the specific working conditions and labour protection conditions, when this requirement is formulated under the conditions of Art. 51 (2) of Law 98/2016;
 - the price, without VAT, included in the Financial Proposal exceeds the estimated value communicated in the Contract Notice and there is no possibility to make additional funds available to fulfil the contract;
 - the price, without VAT, included in the Financial Proposal exceeds the estimated value communicated in the Contract Notice and, although there is a possibility to make additional funds available to fulfil the contract, it is found that accepting such a Tender Offer would lead to a substantial modification in the sense of exceeding the percentages in Art. 221 (1) f ii) of Law 98/2016, as further amended and supplemented;
 - the tender offer and its accompanying documents are not signed by qualified electronic signature based on a qualified certificate issued by an accredited certification service provider, accredited under the law;
 - in case a tender does not have one of the two components, under the provisions of Article 3 (1) hh) of Law 98/2016;
- 2) In accordance with the provisions of Art. 134 (5) of Romanian Government Decision (HG) 395/2016, as further amended and supplemented, the tenderer does not send within the deadline set out by the evaluation committee the requested clarifications/supplementations or the clarifications/supplementations sent are not conclusive.
- 3) In accordance with the provisions of Art. 134 (6) of Romanian Government Decision (HG) 395/2016, as further amended and supplemented, the tenderer modifies by the answers presented to the evaluation committee the content of the technical proposal or of the financial proposal.
- 4) In accordance with the provisions of Art. 134 (11) of Romanian Government Decision (HG) 395/2016, as further amended and supplemented, the tenderer does not agree with rectifying the arithmetic errors in its Tender Offer.
- 5) In accordance with the provisions of Art. 135 (2) of Romanian Government Decision (HG) 395/2016, as further amended and supplemented, the tenderer does not agree with rectifying the flaws of form regarding its Tender Offer.
- 6) In accordance with the provisions of Art. 132 (3) of Romanian Government Decision (HG) 395/2016, as further amended and supplemented, corroborated with Art. 215 (4) of Law 98/2016,

as further amended and supplemented, does not remedy, within the deadline provided, the inconsistencies relating to the fulfilment of the conditions of form for the participation bond, as well as its amount or validity.

- 7) In accordance with the provisions of Art. 124 par. (3) of Romanian Government Decision (HG) 395/2016, corroborated with Art. 137 (2) i) of Romanian Government Decision (HG) 395/2016, as further amended and supplemented, at any time during the evaluation period, the Tenderer refuses to extend the validity period of the Tender and of the tender bond .
- 8) In accordance with the provisions of Art. 215 (4) of Law 98/2016 as further amended and supplemented, at any time during the evaluation period, if it does not meet the conditions of the form related to its elaboration and presentation, as well as the qualification and selection requirements provided for in the procurement document or the price exceeds the estimated value, as established and documented before the initiation of the award procedure, and the value cannot be supplemented.

The Tender may be considered **NON-COMPLYING** in the following situations:

- 1) In accordance with the provisions of Art. 215 (5) of Law 98/2016, as further amended and supplemented:
 - does not comply with the requirements presented in the procurement documents;
 - gives indication of anti-competitive arrangements or corruption;
 - is considered by the Contracting Authority as unusually low;
- 2) In accordance with the provisions of Art. 137 (3) of Romanian Government Decision (HG) 395/2016, as further amended and supplemented:
 - does not properly meet the requirements as per the Technical Specification;
 - contains proposals to amend the contractual clauses established by the Contracting Authority, which are obviously disadvantageous for the latter, and the Tenderer, although it has been informed about the situation, does not accept to waive those clauses;
 - contains in the Financial Proposal prices which are not the result of free competition and which cannot be justified;
 - The Financial Proposal is not correlated with the elements of the Technical Proposal which might lead to a faulty performance of the contract, or represents a deviation from the incidental legislation, other than in public procurement;
 - the tender offer is submitted by breaching the provisions of Art. 60 (1) d) and e) of Law 98/2016, as regards the deadline established for submitting requests for participation/tenders and/or at any time during their evaluation;
 - following the verifications provided in art. 210 of Law 98/2016, as further amended and supplemented, it is found that the Financial Proposal has an unusually low price or costs in relation to the requirements so that fulfilment of the contract at the quantitative and qualitative parameters requested in the Technical Specification document cannot be ensured.
- 3) In accordance with the provisions of Art. 136 (3) of Romanian Government Decision (HG) no. 395/2016, as further amended and supplemented, in case the tenderer does not present to the evaluation committee the requested information and/or documents and the requested information and/or documents do not properly justify the low level of the proposed price or costs.

The Tender may be deemed **INADEQUATE**, in accordance with the provisions of Art. 215 (5¹) of Law 98/2016, as further amended and supplemented, if it lacks relevance with respect to the object of the contract, not being obviously able to meet, without substantial modifications, the needs and requirements of the Contracting Authority indicated in the procurement documents.

D. Rules on avoiding conflict of interests

Conflict of interests represents any situation where the members of the Contracting Authority's personnel or the personnel of a supplier of procurement services acting on behalf of the Contracting Authority, who are involved in the process of the award procedure or who may influence its result have, directly or indirectly, a financial, economic interest or other personal interest, which might be perceived as element compromising their impartiality or independence in the award procedure context. The natural or legal entity having participated in preparing the award documentation shall be entitled, acting as an economic operator, to be a tenderer, associated tenderer or subcontractor, but only if their involvement in preparing the award documentation is not likely to distort competition.

The following persons are not be entitled to be involved in the process of verification/evaluation of tender offers:

- persons who hold shares, interest shares, or stock in the subscribed capital of one of the tenderers/candidates, supporting third parties or subcontractors or persons who are part of the board of directors/managing or supervisory body of one of the tenderers/candidates/third parties or subcontractors;
- a spouse, relative or kin, down to the second degree included, of persons who are part of the board of directors/managing or supervisory body of one of the proposed tenderers/candidates, supporting third parties or subcontractors;
- persons about whom it is found or regarding whom there is reasonable indication/concrete information that they may have, directly or indirectly, a personal, financial, economic or other interest, or are under a situation likely to affect their independence and impartiality during the evaluation process.

Contractantul se va asigura că personalul său nu se află într-o situație care ar putea genera un conflict de interese, cum ar fi:

- the situation where the individual tenderer/associated tenderer/candidate/proposed subcontractor/third supporting party has as members of the board of directors/managing or supervisory body and/or has significant shareholders or associates who are a spouse, relative or kin up to the second degree included, of or who are in trade relationships with persons holding decision-making positions within the Contracting Authority or the supplier of procurement services involved in the award procedure;
- the situation where the tenderer/candidate nominated among its main persons appointed to perform the contract persons who are a spouse, relative or kin up to the second degree included, of or who are in trade relationships with persons holding decision-making positions within the Contracting Authority or the supplier of procurement services involved in the award procedure.

The situations likely to generate a conflict of interests are any situations that might lead to the occurrence of a conflict of interests within the meaning of Art. 59, and those previously mentioned are regulated for exemplification purposes in Law no. 98/2016, as further amended and supplemented.

The Contractor is not entitled to employ or conclude any other agreements regarding the supply of products, directly or indirectly, in order to fulfil the public procurement contract, with natural or artificial persons having been involved in the process of verification/evaluation of the tenders submitted under an award procedure or employees/former employees of the Contracting Authority or of the supplier of procurement services involved in the award procedure with whom the Contracting Authority has terminated contractual relations after the award of the public procurement contract, during a period of at least 12 months after conclusion of the contract, under the penalty of rescission or termination de jure of the respective contract.

E. ESTABLISHING THE AWARD WINNER

The contract shall be awarded to the tenderer who fulfills the qualification requirements imposed and whose tender has been established as successful by the evaluation committee based on the award criterion specified in the contract notice and in the award documentation.

Considering that the award shall be made on the basis of the “**best quality-price ratio**” criterion, the award winning tender offer is the one having obtained the highest score resulting from the application of the calculation algorithm established in the award documentation.

As per the provisions of Article 139 of the Romanian Government Decision (HG) 395/2016, as further amended and supplemented,

“(1) If the awarding of the public procurement contract/framework agreement is based on the "best value for money" or " best quality-price ratio " criteria, the evaluation of the offers is carried out by awarding, for each offer in part, of a score resulting from the application of the calculation algorithm established in the award documentation.

(2) In the case provided for in para. (1), the ranking of the offers is determined by the descending order of the respective scores, the winning offer being the one in first place, respectively the one with the highest score".

(3) Where two or more tenders are ranked first, with equal scores, the separation between/among them will be made taking into account the score obtained for the evaluation factors in the descending order of their weightings. Where equality is still maintained, the contracting authority is entitled to request new financial proposals, and the successful tender will be that with the lowest financial proposal.

4. INSTRUCTIONS ON COMMUNICATING THE AWARD PROCEDURE RESULT

The Contracting Authority will inform the economic operators involved in the award procedure about the decisions concerning the result of the public procurement contract award procedure or, as applicable, the cancellation of the award procedure and the possible subsequent initiation of a new procedure, in writing and as soon as possible, but no later than 3 working days from issuing such decisions.

The communication issued by the Contracting Authority will inform the award winner(s) tenderer(s) that the submitted tender(s) was declared successful, whereby expressing the agreement to conclude the public procurement contract.

The Contracting Authority will inform the tenderers that have been rejected or whose tender has not been declared successful about the underlying reasons for that decision, as follows:

- i. to each rejected candidate, the concrete reasons underlying the decision to reject its tender;
- ii. for each rejected tender, the concrete reasons underlying the rejection decision, by detailing the arguments pursuant to which the tender has been deemed unacceptable, inadequate and/or non-conforming, in particular the tender elements that have not corresponded to the operation and performance requirements stipulated in the Technical Specification;
- iii. to each tenderer that has presented an admissible tender, but which has not been declared successful, the relative characteristics and advantages of the successful tender(s) in relation to its tender, the name of the tenderer to whom the public procurement contract is to be awarded or, as applicable, of the tenderers with whom a framework agreement is to be concluded;
- iv. to each economic operator from among those stipulated from i) to iii), the time limit within which they are entitled to file a complaint according to Law 101/2016, as further amended and supplemented.

In accordance with the provisions of Art. 215 (7) of Law 98/2016, as further amended and supplemented, the contracting authority is entitled not to communicate certain information only where its disclosure:

- 1) would impede the enforcement of legal provisions or would otherwise be contrary to the public interest;
- 4) would prejudice the legitimate commercial interests of an economic operator, whether public or

private, or might prejudice fair competition among economic operators.

In accordance with the provisions of article 64 (1) of Law no. 98/2016, as further amended and supplemented, “Any **communication**, request, information, notification and others alike, provided by this law, **shall be sent in writing, via electronic means of communication** or, as an exception, via other means than electronic.”

In accordance with the provisions of Art. 52 par. (2) of Romanian Government Decision (HG) no. 395/2016, as further amended and supplemented, “With respect to the communications for which electronic means of communication are not used in accordance with par. (1), the communication can be made by:

- a) means of the postal services;
- b) fax;
- c) a combination between letters a) and b).”

In accordance with the provisions of Art. 59 of Law No. 101/2016, as further amended and supplemented:

Pursuant to Art. 58 (6) the legal time limit for waiting contract conclusion cannot be shorter than 11 days, starting from the day after sending the decision to award the contract to the interested tenderers/candidates, via any means of communication provided by the legislation on public procurement, the legislation on sectoral procurement or the legislation on works concessions and services concessions, when the estimated value of the public procurement or concession procedure is equal to or higher than the value thresholds in relation to which it is mandatory to send for publication to the Official Journal of the European Union the contract notices, according to the legislation on public procurement, the legislation on sectoral procurement or the legislation on works concessions and services concessions.

(2) By way of exception to the provisions of par. (1), if the contracting authority uses other means of communication than electronic, the time limits shall be increased by 5 days.”

5. INSTRUCTIONS ON THE CANCELLATION OF THE AWARD PROCEDURE

In accordance with the provisions of Art. 212 (2) of Law 98/2016, as further amended and supplemented, the contracting authority is bound to cancel the public procurement contract award procedure, in the following cases:

- i. if no tender has been submitted or if no admissible tender has been submitted;
- ii. if admissible tenders have been submitted which cannot be compared due to the non-uniform manner of approaching the technical and/or financial solutions;
- iii. if breaches of the legal provisions affect the award procedure or if is impossible to conclude the contract;
- iv. The National Council for Solving Complaints or the court of law orders the modification/removal of some technical specifications/requirements in/from the specifications or other documents issued in connection with the award procedure so that the purpose of the procurement can no longer be properly achieved, and it is impossible for the contracting authority to adopt remedial measures, without these affecting the principles of public procurement regulated in Art. 2 (2) of Law 98/2016, as further amended and supplemented.
- v. if the contract cannot be concluded with the tenderer whose tender has been established successful, due to the fact that the tenderer in question finds itself in a force majeure situation or in a fortuitous impossibility to perform the contract and there is no admissible tender ranked next.

In accordance with the provisions of Art. 55 (2) of Romanian Government Decision (HG) no. 395/2016, as further amended and supplemented, should certain modifications occur with respect to

the information already existing in the award documentation and the modifications lead to adjustments/supplementations of the technical specifications which represent substantial modifications, they shall lead to the cancellation of the award procedure if:

- a) they affect so much the elements describing the context of the public procurement that they result in changing the main indicators that characterize the outcome of the contract to be awarded, which affects the level of competition or changes the market in the field it is aimed at;
- b) lead to substantial changes to the qualification criteria, in the sense of extending their level or introducing new ones, which determines the restraining of competition or the favouring of certain economic operators.

The Contracting Authority has the obligation to make public the decision to cancel the public procurement award procedure, accompanied by the justification for cancelling the award documentation, via the electronic platform set forth in Art. 150 (1) of Law 98/2016, no later than one working day from adopting the cancellation decision.

By way of exception, the Contracting Authority is entitled to cancel the application of the contract award procedure, if it takes this decision, if the contracting authority no longer has ensured the funds necessary to perform the procurement or the need to be covered no longer exists, the two situations not being due to an action or inaction by the Contracting Authority.

6. INSTRUCTIONS ON PUBLIC PROCUREMENT CONTRACT SIGNING

The Contracting Authority will conclude the procurement contract with the tenderer declared successful, in the validity period of the tenders, but no sooner than 11 days after sending the communication on the result of applying the award procedure to grant the legal time limit of 10 days for formulating any possible administrative complaints.

The successful tenderer is bound to answer to the invitation to sign the contract and to come on the date set forth in the invitation by the Contracting Authority, to sign the contract.

If the successful tenderer does not present to sign the contract on the date set forth by the invitation, this situation will be assimilated as refusal to sign the contract, and the Contracting Authority will retain in its favor the participation bond.

In the case the award winner tenderer is an association, the award winner tenderer is bound to present when signing the contract the following documents:

- 2) documents authorizing the person who is to sign the contract;
- 3) the association agreement that indicates the share of participation of each association member, the legal representative of the association, the nominated leader (information that must not be different than the information specified in the documents that have accompanied the tender) in authentic form;

Where the tenderer to whom the contract has been awarded has nominated subcontractors in the tender, it is bound to present on contract signing the contract(s) concluded with the subcontractors nominated in the tender.

4. INSTRUCTIONS ON THE REMEDIES PROCEDURE

In accordance with the provisions of Art. 2 of Law 101/2016, as further amended and supplemented, any person considering themselves injured in one of their rights or in a lawful interest by an act of a contracting authority or by not solving a request within the legal time limit may request the cancellation of the act, the obligation of the contracting authority to issue an act or to adopt remedial measures, the recognition of the alleged right or of the lawful interest, by administrative-jurisdictional or judicial means, according to the provisions of this law.

In accordance with the provisions of Art. 4 (1) of Law 101/2016, as further amended and supplemented, to solve the complaint, the person considering themselves injured may refer the matter:

- a) either to the National Council for Solving Complaints by administrative-jurisdictional means;
- b) or to the court of law by judicial means.

In accordance with the provisions of Art. 8 (1) of Law no. 101/2016, as further amended and supplemented, the person considering themselves injured by an act of the contracting authority may refer to the Council with a view to cancelling the contracting authority's act, compelling it to issue an act or to adopt remedial measures, as well as for recognizing the alleged right or the lawful interest, within 10 days, starting from the day following the acknowledgement of the contracting authority's act deemed unlawful.

In accordance with the provisions of Art. 16 (1) of Law 101/2016, as further amended and supplemented, under the penalty of rejecting the complaint as belated, it shall be submitted both to the Council and to the contracting authority, no later than the expiry of the legal time limit for the review procedure.