

## **STANDARD DOCUMENTATION for public procurement of goods and services**

### **INSTRUCTIONS FOR CONTRACTING AUTHORITIES AND TENDERERS**

#### **Section 1**

##### **General dispositions**

1. This Documentation is an instruction for contracting authorities and tenderers, used for initiating and conducting public procurement procedures for goods and services. Within the procurement procedures for goods and services initiated and carried out by the request of price bids and low value procurement, contracting authorities may simplify the forms depending on the complexity of the procurement.

2. This Documentation contains annexes for the initiation, publication, award and amendment of public procurement procedures, as well as for the purpose of facilitating the preparation and submission of bids, and for documents allowing the working group to examine and evaluate all bids submitted, as follows:

- 1) General Procurement Notice (Annex no. 1);
- 2) Procurement Notice, including for pre-selection procedures/ negotiated procedures (Annex no. 2);
- 3) Invitation for participation at the pre-selection stages/ negotiated procedures (Annex no. 3);
- 4) Minutes concerning the results of the pre-selection of candidates (Annex no. 4);
- 5) Award notice (Annex no. 5);
- 6) Announcement regarding the modification of the public procurement contract/ Framework agreement (Annex no. 6);
- 7) Application for participation (Annex no. 7);
- 8) Statement on the validity of the bid (Annex no. 8);
- 9) Bid Security Form (Annex no. 9);
- 10) Performance Security Form (Annex no. 10);
- 11) Information on the Association (Annex no. 11);
- 12) Statement regarding the list of the main deliveries/ services performed in the last 3 years of activity (Annex no. 12);
- 13) Statement on the specific facilities, machinery and equipment necessary for the proper fulfillment of the Contract (Annex no. 13);
- 14) Statement regarding the specialized personnel proposed for the implementation of the Contract (Annex no. 14);
- 15) List of subcontractors and the part/ parts of the Contract that are fulfilled by them (Annex no. 15);
- 16) Third party financial support commitment (Annex no. 16);
- 17) Third party financial supporter statement (Annex no. 17);
- 18) Commitment regarding the technical and professional support of the tenderer/ group of economic operators (Annex no. 18);
- 19) Third party technical supporter statement (Annex no. 19);
- 20) Third party professional supporter statement (Annex no. 20);

- 21) Tender specifications (Annex no. 21);
- 22) Technical specifications (Annex no. 22);
- 23) Price specifications (Annex no. 23);
- 24) Model contract (Annex no. 24);
- 25) Additional Agreement (Annex no. 25);
- 26) Framework Agreement (Annex no. 26).

3. Details concerning the quantities of goods and services, technical specifications, standards and resources are set out in the tender specifications (Annex no. 21).

4. The contracting authority shall ensure that, at the moment the public procurement procedure is initiated, the financial sources are allocated (or there shall exist a guarantee of their allocation) exclusively for this procurement.

5. The award of the public procurement contract for goods and services shall be carried out in accordance with the provisions of the Law no. 131/2015 on Public Procurement.

6. In case the contracting authority initiates a Framework Agreement as a special way of awarding contracts for public procurement of goods and services, the procedure shall be conducted in accordance with the Regulation on Framework Agreement as a special way of awarding public procurement contracts, approved by the Government Decision no. 694/2020.

7. In case the contracting authority initiates the negotiation procedure, such a procedure shall be carried out according to the Regulation on Public Procurement using the negotiated procedure, approved by the Government Decision no. 599/2020.

8. If the contracting authority initiates pre-selection procedures, the Annex no. 1, Annex no. 3, Annex no. 4, Annex no. 5, Annex no. 6 and Annex no. 25, related to the given procedures shall be used.

9. The tenderer shall bear all costs associated with the preparation and presentation of his bid, as well as the accompanying documents.

10. The Application for participation (Annex no. 7), the bid, the Single European Procurement Document (hereinafter - ESPD/DUAE), the award documentation, the tender specifications and all correspondence between the tenderer and the contracting authority shall be drawn up in Romanian, or as the case may be, all the listed documents can be drawn up in one of the languages of international circulation. The supporting documents and the printed specialized literature, which are part of the bid, may be drawn up in another language, specified in the award documentation, provided that they are accompanied by an exact translation of the relevant excerpts into Romanian.

11. In case the contracting authority found that the tenderer has been involved in the practices described in points 22 and 23 in the award procedure for the public procurement contract, it shall:

1) exclude the tenderer from the respective procurement procedure and shall submit the request to the Public Procurement Agency regarding its inclusion in the Prohibition List, according to the Government Decision no. 1420/2016 for the Approval of the Regulation on the record of the List of qualified economic operators; or

2) undertake any other measures provided in art. 42 of the Law no. 131/2015 on Public Procurement.

12. Within a procurement procedure, the following actions are prohibited:

1) promise or bidding goods or services, or privileges, or benefits in any form to a person holding a managerial (leading) position, personally or through an intermediary, in order to influence the actions of another party;

2) any act or omission, including misinterpretation, which, knowingly or negligently, misleads or tends to mislead a party in order to obtain a financial or other benefit or to avoid an obligation;

- 3) agreement prohibited by law, between two or more parties, made in order to coordinate their behavior in public procurement procedures;
- 4) prejudice, directly or indirectly, of any part or property of that party, in order to improperly influence its actions;
- 5) intentional destruction, falsification, counterfeiting or concealing the evidence of the investigation, or presentation of false information to criminal prosecution bodies, in order to essentially prevent the criminal prosecution conducted by the competent bodies in order to identify fraudulent practices, as well as threatening, harassing or intimidating any party to prevent it from disclosing information on matters relevant to the criminal prosecution.

## **Section 2**

### **Qualification of candidates/ tenderers**

**13.** Any economic operator, resident or non-resident, natural or legal person of public or private law or association of such persons has the right to participate in the procedure for awarding the public procurement contract of goods and services.

**14.** The natural or legal person who participated in the preparation of the award documentation has the right, as an economic operator, to be a tenderer, associate tenderer or subcontractor, only if his involvement in the preparation of the award documentation is not to distort competition. The natural or legal person who participates directly in the process of verification and evaluation of bids does not have the right to be a tenderer, associate tenderer or subcontractor, under the sanction of exclusion from the award procedure.

**15.** Several legal entities have the right to associate for the purpose of submitting a joint bid, each associate shall also submit a separate ESPD/DUAE. The association shall be submitted in writing at the request of the contracting authority, once it has been declared in the ESPD/DUAE.

**16.** Subsidiaries of economic operators, with legal personality and registered in accordance with the provisions of point 29, have the right to participate in the procedure for awarding the public procurement contract for goods and services in their own name and, for this purpose, shall present documents proving eligibility, registration, technical capacity and economic and financial capacity.

**17.** The branches have the right to participate in the procedure for awarding the public procurement contract for goods and services and to conclude the respective contract only on behalf of the legal person, by a Power of Attorney. In this case, the documents presented, which prove the eligibility, registration, technical capacity and economic and financial capacity, shall be those of the legal person.

**18.** In order to confirm the qualification data within the public procurement procedure, the economic operator completes and presents the ESPD/DUAE, according to the standard form of the Single European Procurement Document (ESPD/DUAE), approved by the Order of the Minister of Finance no. 72/2020, in accordance with the requirements established by the contracting authority. Submission of any other ESPD/DUAE form shall be considered grounds for disqualification from the public procurement procedure.

**19.** Depending on the specifics of the procurement and the procedure chosen, the contracting authority has the obligation to establish the qualification criteria as well as the supporting documents necessary to be submitted by the economic operators for each procedure.

**20.** The contracting authority applies criteria and qualification requirements only in relation to:

- 1) eligibility of the tenderer or candidate;
- 2) capacity to exercise the professional activity;
- 3) economic and financial capacity;



- 4) technical capacity;
- 5) quality assurance standards;
- 6) environmental protection standards.

**21.** In order to ascertain the qualification data within public procurement procedures, the economic operator shall present the documents requested by the contracting authority in public procurement procedures at the moment of evaluation. The documents shall be presented in electronic form, via the Automated Information System "State Register of Public Procurement" (hereinafter - SIA RSAP, except for the cases provided for in art. 33 para. (7) and para. (11) of the Law no. 131/2015 on Public Procurement.

**22.** Any tenderer or candidate the fact of whose conviction for participation in the activities of a criminal organization or criminal group, corruption, fraud and/ or money laundering, terrorism offences or crimes related to terrorist activities, financing of terrorism, child labor and other forms of trafficking in human beings, by a final judgment of a court instance over the last 5 years has been confirmed, shall be excluded from the public procurement procedure.

**23.** Any tenderer who meets any of the conditions/ situations provided in art. 19 para. (2) and para. (3) and art. 16 para. (6) of the Law no. 131/2015 on Public Procurement, and respectively, is not eligible, is excluded from the procedure for awarding the public procurement contract.

**24.** Any tenderer/ candidate who meets any of the conditions/ situations referred to in points 22 and 23 shall provide evidence that the measures taken by him are sufficient to demonstrate his reliability and credibility, despite the existence of grounds for exclusion. In case whether the contracting authority considers such evidence to be sufficient, the tenderer/ candidate concerned shall not be excluded from the public procurement procedure, unless the economic operator has been excluded by a final judgment of a court instance from participation in public procurement procedures.

**25.** The contracting authority shall extract the information necessary to establish the existence or non-existence of the circumstances referred to in points 22 and 23 in the available databases of public authorities or third parties. If this is not possible, the contracting authority shall accept as sufficient and relevant to demonstrate that the tenderer/ candidate does not fall into one of the situations provided for in points 22 and 23 of any document considered to be edifying, from this point of view in the country of origin or in the country where the tenderer is domiciled, such as certificates, criminal records or other equivalent documents issued by the competent authorities of that country.

**26.** As regards the references in point 23, according to the national law of the State which the tenderers are established in, these requests concern natural and legal persons, including, where appropriate, company directors or any other person with the power of representation, decision or control over the tenderer/ candidate.

**27.** In case documents of the nature referred to in p. 22 are not issued in the country of origin or in the country where the tenderer/ candidate is domiciled or those documents do not cover all the situations referred to in p. 23, the contracting authority has the obligation to accept a declaration on their own responsibility or, if there exist no legal provisions in that country regarding the declaration on their own responsibility, an authentic statement (declaration) given before a notary, an administrative or judicial authority or a professional association that has competences in this regard.

**28.** The contracting authority shall assess the measures taken by the economic operators taking into account the gravity and the particular circumstances of the offense or the violation. If the contracting authority considers that the measures taken are insufficient, it shall inform the tenderer/ candidate of the reasons for the exclusion.



**29.** The contracting authority requires any tenderer to provide proof of a form of registration in the case of a legal person, the legal capacity to execute the award documentation and to deliver/ supply the goods/ services, in accordance with the legal provisions of the country where it is domiciled.

**30.** The tenderer shall have a minimum level of economic and/ or financial capacity and present information/ documents on economic and/ or financial capacity in order to qualify according to the requirements of the contract performance, such as:

1) the achievement of an average annual turnover in the last 3 years equal or higher than the amount established in p. 16 of the Annex no. 2, which shall not exceed twice the estimated value of the contract, except in well-justified cases, such as those related to special risks related to the nature of the goods or services;

2) appropriate bank statements or, as the case may be, evidence of occupational accident insurance;

3) the financial situation for the previous management period, endorsed and registered by the competent bodies, and any other edifying legal documents through which the tenderer can prove its economic and financial capacity.

**31.** When a contract is divided into lots, the turnover index shall apply to each individual lot. However, the contracting authority shall determine the minimum annual turnover imposed on economic operators in respect of groups of lots if several successful lots shall to be awarded to the successful tenderer at the same time.

**32.** At the request of the contacting authority, the tenderer shall submit documents demonstrating the technical and/ or professional capacity to perform the future contract only to the extent that this information is relevant to the performance of the contract and is not available in public or third-party databases:

1) a list of the main deliveries of similar goods/ services carried out in the last 3 years, according to the Annex no. 12. Those certifications shall indicate the beneficiaries, whether they are contracting authorities or private customers, the values and periods of delivery/ service.

2) the statement regarding the technical equipment and the measures applied in order to ensure the quality, as well as, if necessary, the study and research resources;

3) information regarding the specialized personnel/ technical body at its disposal or whose commitment to participate has been obtained by the tenderer/ candidate, especially for ensuring quality control;

4) certificates or other documents issued by bodies authorized for this purpose, attesting the conformity of the goods, clearly identified by reference to relevant specifications or standards;

5) samples (insofar as the need for presentation is justified), descriptions and/ or photographs the authenticity of which shall be able to be demonstrated if the contracting authority requests so;

6) information regarding the studies, professional training and qualification of the management staff, as well as of the persons responsible for fulfilling the contract according to the Annex no. 14;

7) statement regarding the average annual employed staff turnover rate as well as the management staff in the last 3 years;

8) if applicable, information on the environmental protection measures that the economic operator may apply during the performance of the goods/ services contract, according to the p. 36;

9) information regarding the equipment, installations, technical equipment available to the economic operator for the proper fulfillment of the goods/ services contract according to the Annex no. 13;



10) information regarding the part of the contract that the economic operator possibly intends to subcontract, according to the Annex no. 15. Copy/ copies of the contract/ contracts concluded with the subcontractors shall also be attached to the Annex no. 15.

**33.** The tenderer shall have a minimum level of experience to qualify according to the requirements of the contract by demonstrating specific experience holding the position regarding the delivery/ provision of similar goods/ services for at least 3 years, confirmed by attaching copies of contracts, invoices and delivery-receipt documents.

**34.** The economic operator shall present, at the request of the contacting authority, documents and certificates issued by the independent bodies certifying compliance with certain quality assurance standards (ISO 9001), they shall relate to quality assurance systems, based on the relevant European standards series, certificates of the compliant bodies with the series of European certification standards, or at relevant international standards, issued by the accredited bodies.

**35.** According to the principle of mutual recognition, the contracting authority is required to accept equivalent certificates issued by the bodies established in the Member States of the European Union. In case the economic operator does not hold a quality certificate as required by the contracting authority, the latter shall be obliged to accept any other certifications submitted by that economic operator, insofar as they confirm the assurance of an appropriate level of quality.

**36.** The economic operator shall present documents, certificates, issued by the independent bodies, certifying that it complies with certain environmental protection standards and:

1) the Eco-Management and Audit Scheme (EMAS), or;

2) ecological management standards based on the series of European or international standards in the field, certified by bodies complying with Community legislation or with the European or international standards regarding the certification.

**37.** According to the principle of mutual recognition, the contracting authority is required to accept equivalent certificates issued by the bodies established in the Member States of the European Union. In case the economic operator does not hold an environmental certificate as required by the contracting authority, the latter shall be obliged to accept any other certifications submitted by that economic operator, insofar as they confirm the assurance of an appropriate level of environmental protection.

**38.** Contracting authorities may use a number of general sustainability criteria for the delivery of goods and the provision of services:

1) Labels with multiple criteria: European label (flower), Scandinavian label (northern swan) and national labels (such as the German blue angel);

2) Purchasing organic food with a balanced nutritional intake for schools/ kindergartens;

3) Possibilities of recycling/ reusing the product after its decommissioning;

4) Use of reusable containers or packaging for transporting products;

5) Supply of ecological and recycled paper (without chlorine and fiber);

6) Restrictions on the use of certain hazardous substances in the composition of the product;

7) Efficient air and water waste treatment systems in the manufacture of products;

8) Use of environmental management systems and schemes (e.g. EMAS, ISO 14001);

9) Reduction of CO<sub>2</sub> and other gas emissions by reducing the frequency of delivery and new packaging options;

10) Recycling or reuse of packaging accompanying products;

11) Introduction of specifications for vehicles with the lowest possible level of CO<sub>2</sub> emissions for the respective category and dimensions, EURO standards on particulate and NO<sub>x</sub> emissions;

12) Encouraging the use of alternative fuel vehicles and electric or hybrid options;

13) Purchase of vehicles with air conditioning systems with low GWP coolants (global warming potential);

14) Purchase of equipment/ machinery from the highest energy efficiency class;

- 15) Purchase of lighting fixtures with a low mercury content;
- 16) Reducing air pollution in cities (by purchasing buses and cars with low emissions of suspended dust and nitrogen oxides);
- 17) Purchasing organic food and directly supporting sustainable agriculture;
- 18) Saving natural resources (by purchasing products obtained from recycled materials, reducing paper consumption by purchasing, promoting the use of multifunctional devices);
- 19) Acquisition of construction materials and sustainable supply;
- 20) Encouraging the use of recycled materials in construction;
- 21) Supply of products certified as sustainable (four EU eco-labels for components);
- 22) Purchase and use of construction materials with low impact on the environment;
- 23) Recyclable waste storage services and waste management system;
- 24) Demolition waste management;
- 25) Purchasing ecological cleaning services using products that meet the requirements of ecological labels;
- 26) Acquisition of catering services with organic (bio) food, indicating the percentage of organic food;
- 27) Use of an environmental management system (EMS) for catering services;
- 28) Use of non-chemical, environmentally friendly methods;
- 29) Purchase of green electricity;
- 30) Imposition of extended product lifetimes and a guarantee for spare parts;
- 31) and others.

**39.** In case of an association, the requirements for the fulfillment of the qualification and selection criteria relating to the economic and financial situation or of the technical and professional capacities may be met by cumulating them proportionally to the tasks of each member.

**40.** As regards the turnover criteria, in case of an association, the average annual turnover taken into account is the overall value, resulting from the sum of the average annual turnover corresponding to each member of the association.

**41.** In terms of experience, in order to qualify according to the established requirements, associations shall demonstrate experience commensurate with the tasks of each member.

**42.** The economic and financial capacity, as well as the technical and/ or professional capacity of the tenderer/ candidate may be supported, for the fulfillment of a contract, by another person, regardless of the nature of the existing legal relations between the tenderer/ candidate and the respective person.

**43.** If the tenderer/ candidate demonstrates his economic and financial capacity as well as the technical and/ or professional capacity by invoking the support granted, in accordance with the provisions of p. 42 by another person, he/ she has the obligation to prove the support he benefits by the presentation in written form of a firm commitment of the respective person, concluded in authentic form (according to the Annexes no. 16 and no. 18) and the declarations of the third financial supporter and the third party technical and professional supporter (Annexes no. 17, no. 19 and no. 20), by which this person confirms that he makes available to the tenderer/ candidate the financial resources as well as the technical and professional resources invoked. The commitment shall be submitted at the request of the contracting authority once it has been declared in the ESPD/DUAE. The person providing financial as well as technical and professional support shall meet the relevant selection criteria and shall not be in any of the situations set out in p. 22 and 23 which lead to exclusion from the award procedure.

### **Section 3**

#### **Preparation/ elaboration of bids**

**44.** The Contracting authority shall describe in the Tender specifications the supply conditions/ requirements for:

**a) electricity**, according to the Law no. 174/2017 on energy and regulatory acts adopted by the Board of Directors of the National Agency for Energy Regulation (hereinafter - ANRE), for example: Regulation on electricity supply, approved by ANRE Decision no. 23/2017, the Regulation on the connection to electricity networks and the provision of electricity transmission and distribution services, approved by ANRE Decision no. 168/2019, Methodology for calculating, approving and applying the regulated tariffs for auxiliary services provided by system operators in the electricity sector, approved by ANRE Decision no. 269/2018, the Instruction regarding the calculation of active and reactive electricity losses in the network elements on the consumer's balance, approved by ANRE Decision no. 246/2007, the Instruction regarding the calculation of the technological consumption of electricity in the distribution networks, depending on the value of the power factor in the use installations, approved by ANRE Decision no. 89/2003 etc.

**b) natural gas**, according to the Law no. 108/2016 on natural gas and the Law no. 174/2017 on energy and regulatory acts of ANRE, for example: Regulation on the supply of natural gas, approved by ANRE Decision no. 113/2019.

**c) thermal energy**, according to the Law no. 92/2014 on thermal energy and the promotion of cogeneration and the Law no. 174/2017 on energy, and the regulatory acts of ANRE, for example: Regulation on the supply of thermal energy, approved by the ANRE Decision no. 169/2019.

**d) water supply and sewerage**, according to the Law no. 303/2013 on the public water supply and sewerage service and secondary normative acts, for example: Framework Regulation for the organization and operation of the public water supply and sewerage service, approved by ANRE Decision no. 355/2019 or the Regulations for the organization and operation of the public water supply and sewerage service approved by the local public authorities of the first level, if they have been developed and approved.

**e) petroleum products for refueling cars** according to the complete list of the distribution network at country level showing that the tenderer owns filling stations in the localities indicated in the award documentation. The fuel is delivered to the refueling station based on the cards issued by the Supplier. The tenderer shall bid the contracting authority the opportunity to purchase fuel (without payment in cash) by means of vouchers at the supplier's refueling stations at the level of each of the localities mentioned in the award documentation. If the place of final destination constitutes several localities/ regions, the award of procurement contracts is made in lots for each locality/ region. The cards shall be delivered on the basis of a request for a card from the contracting authority. The deadline for the delivery of the cards at the headquarters of the contracting authority constitutes 5 working days from the date of entry into force of the contract and, respectively, from the date of transmission of the request for issuance of additional cards.

45. The contracting authority shall specify in the tender specifications details on the mode of transport, supply, use of the products/ services:

**a) petroleum products for refueling cars**

The supplier permanently gives the purchaser the possibility to access on-line information on the detailed situation of all fuel purchases made by each of his vehicles. The possibility for the purchaser to obtain at any card-based distribution station information on the remaining value for each card. The provider manages the list of lost or stolen cards and has the obligation to block/unblock their use within 24 hours of the buyer's request. The supplier has an obligation to ensure that the products supplied comply with the minimum pollution standards approved under national law and can be supplied from existing stations in the localities indicated in the award documentation. The fuels delivered shall qualitatively comply with the regulations in force. In Part II, the Special Conditions of the Contract, as well as in Annex no. 1 to the Contract "Technical Specifications", the technical conditions of quality and the methods of determining the products, based on national or international standards and approvals shall be presented. The supplier ensures the personalization of the cards for each vehicle (by registration number), the configuration of the card on the type of fuel. The Supplier provides permanent assistance 24 hours a day, 7 days a week,



so that, in the event of certain deficiencies in the fuel cards operation, the Supplier shall be able to solve the problems that occur as soon as possible. The provider shall specify whether all cards are accepted at all CEEC stations located in the localities mentioned in the award documentation. The supplier provides the purchaser with instructions for using the card. The contracting authority reserves the right to increase or decrease the number of cards and to supplement or decrease the amount of fuel based on regulatory provisions.

**b) electricity supply**

The record of electricity consumption is made through the Beneficiary's measurement equipment which is responsible for its integrity. If the measuring equipment is installed within the limits of the ownership of the system operator, the system operator shall be responsible for the integrity of the measuring equipment and the seals applied. The system operator shall, upon request, ensure the Beneficiary's access to the measuring equipment. In this case, the Beneficiary is entitled to affix his seal to the measuring equipment. The installation, operation, maintenance, repair, periodic metrological verification and replacement of the Beneficiary's measuring equipment shall be carried out according to the Law no. 174/2017 regarding energy and Law no. 107/2016 regarding electricity, and the expenses are borne by the Beneficiary. The control of the measuring equipment and of the seals applied to it shall be carried out by the system operator, as necessary, and only in the presence of the Beneficiary's representative. The reading of the indices of the measuring equipment for the purpose of billing the electricity consumed by the Beneficiary, shall be performed by the monthly system operator. The personnel of the system operator and the system user shall be entitled to determine, by mutual agreement, the period for performing the activities for reading the indices of the measuring equipment. The quantity of electricity supplied to the Beneficiary shall be determined on the basis of the indices of the measuring equipment, read at each consumption place or, in cases provided for in the Regulation on the supply of electricity, shall be calculated by estimation. In case of damage of the measuring equipment or if the Beneficiary finds a violation of the Law on electricity, which led to the consumption of electricity by avoiding the measuring equipment, by distorting the indications of the measuring equipment or other unrecorded consumption the measuring equipment, the equivalent value of the consumed electricity shall be calculated according to the provisions of the Regulation for the supply of electricity. The equivalent value of electricity losses in power transformers and in power lines belonging to the Beneficiary, shall be calculated based on the Instruction on calculating active and reactive electricity losses in the network elements on the consumer balance, approved by ANRE Decision no. 246/2007.

46. In tender specifications the contracting authority shall specify the method of calculating the cost/ price of the good/ service, by reference to the normative acts in the field.

**a) petroleum products for refueling cars**

The price of a liter of fuel bided will be the one displayed at the fueling stations of the tenderer with the application of the discount bided.

The provider shall provide the contracting authority with the possibility to set individual value limits for each card, including modifying them in the sense of increasing or decreasing them. The unit price bided is the average price calculated by the tenderer using the prices displayed on the information panels in all stations in the locality/ region indicated in the award documentation, within 15 days until the date of publication of the Procurement Notice in the Public Procurement Bulletin, which the discount is applied against.

The calculation of the unit price is performed according to the formula:

$$P_u = \frac{(M_1 + M_2 + \dots + M_{15})}{15} - D\%$$

Where,

$P_u$  - represents the unit price bided;

$M_1$  - represents the average of the prices displayed at **all stations in the locality/ region specified in point 1** for the first day;

M<sub>2</sub> - represents the average of the prices displayed at **all stations in the locality/ region specified in point 1** for the next day;

M<sub>15</sub> - represents the average of the prices displayed at **all stations in the locality/ region specified in point 1** for the fifteenth day;

D% - represents the discount applied.

The discount is expressly specified in the bid and subsequently in the Annex no. 2 to the Contract, remaining unchanged for its entire period of validity. The financial proposal shall be accompanied by confirmatory documents regarding the prices presented (tax receipt). The supplier invoices the value of the products at the end of each month, for the consumption carried out, according to a centralization with the quantity fed on each vehicle. The consumption bill for each card shall be accompanied by a consumption report containing detailed information on the transactions carried out on each card and car, location, date, time of refueling, fuel type and, where applicable, the subtotal of the card and the total amount of fuel after each transaction.

In case of purchasing petroleum products for refueling cars, according to the art. 26 of Law no. 131/2015 on Public Procurement, the best value for money criterion is applied, of which the price evaluation factor is at least 60%, and the rest of the factors are at the decision of the contracting authority (e.g. discount, location of CEEC stations, etc.).

In the rest of the cases related to the purchase of liquid and/ or gaseous fuels in bulk, oils, etc. the general principle of procurement of goods shall be used.

#### **b) electricity**

The technological consumption of electricity, caused by the power factor from the Beneficiary's electrical installations, is billed only if the power factor  $\cos \phi$ , calculated at the delimitation point, is less than \_\_\_\_\_ (0.92 for the use installation connected to voltage 0.4 kV and 0.87, at voltage 10 (6) kV). The amount of technological consumption of electricity caused by the power factor in the electrical installations of the Beneficiary is calculated based on the Instruction on calculating the technological consumption of electricity in distribution networks, depending on the value of the power factor in use installations, approved by the Decision no. 89 as of 13/2003 of the Administrative Council of the Agency. If the supplier calculates the price based on the ANRE tariff minus - discount, the method of calculating the price is indicated in the special conditions of the Contract and also the cases of its modification are indicated. The reduction and/ or increase of the price and value of the Contract is carried out by additional agreement to the Contract.

47. In case of application of the provisions of art. 33 para. (7) and para. (11) of Law no. 131/2015, the economic operator interested in participating in the public procurement procedure is obliged to submit a request for participation until the expiration of the deadline established by the contracting authority in this sense. In other cases, it shall be submitted with the bid.

48. The bid shall include the following forms:

1) Technical proposal - the tenderer elaborates the technical proposal, so that it fully complies with the qualification requirements, as well as the requirements provided for in the specifications. The technical proposal contains - Technical specifications (Annex no. 22);

2) Financial proposal - the tenderer prepares the financial proposal, so that it provides all the requested information concerning prices, tariffs, as well as other financial and commercial conditions related to the object of the public procurement contract of goods and services. The financial proposal contains - Price specifications (Annex no. 23);

3) ESPD/ESPD/DUAE;

4) bid Security Form, as the case may be (Annex no. 9).

49. All the documents referred to in point 48 shall be completed without any modification or deviation from the form, the blanks being completed with the information requested. Failure to complete the forms will result in the rejection of the bid.

50. Economic operators prepare bids according to the requirements set out in the Procurement Notice, published by the contracting authority in the Public Procurement Bulletin, and submit bids in electronic form, using the interactive workflows provided by electronic platforms, except in cases provided in art. 33 para. (7) and para. (11) of Law no. 131/2015 on Public Procurement.

51. The tenderer submits the bid Security Form according to the provisions of the Law no. 131/2015 on Public Procurement.

52. In case of an association, the Bid Security Form bid shall be submitted by the leader of the association.

53. The tenderer has the obligation, by submitting the declaration on bid validity (Annex no. 8), to maintain the bid valid for the entire period of validity provided in the award documentation. The bid validity starts from the moment of the deadline for submission of bids. Any bid valid for a period shorter than that provided in Annex no. 2 shall be rejected by the working group as inappropriate.

54. In the event of an extension of the bid validity period, the validity of the Bid security shall be extended accordingly.

55. The tenderer has the obligation to notify the contracting authority whether or not he agrees to the extension of the bid validity. The tenderer who does not agree with the extension of the tender validity period shall be deemed to have withdrawn his tender, without this entailing the loss of the tender security.

56. The bids containing a guarantee period shorter than the validity period of the bids provided for in Annex no. 2 shall be rejected by the working group or, as the case may be, by the certified specialist in the field of public procurement.

57. The contracting authority shall establish the maximum period of delivery/ provision of goods/ services in the Annex no. 2.

58. The prices for the requested goods/ services are indicated in Moldovan lei, with two digits after the comma, except for the cases in which annex no. 2 provides otherwise.

## **Section 4**

### **Submission and opening of bids**

59. A bid in written form (on paper) and signed in electronic form, by the company's administrator indicated in the Extract of the State Register of legal entities or by the authorized person both in case of delegation or a Power of Attorney, shall be accompanied by a Power of Attorney/ any other authorizing document and is presented according the requirements set out in Annex no. 2 according to the existing instruments in SIA RSAP, except for the cases provided in art. 33 para. (7) and para. (11) of the Law no. 131/2015 on Public Procurement.

60. The tenderer shall take all measures in order to ensure that the bid is received and registered in SIA RSAP by the deadline for submission of bids, taking into account the time required to upload the tender to the system. In case of bids on paper (in hard copy), the contracting authority shall issue a receipt indicating the date and time of receipt of the bid to the economic operator.

61. The justifying documents in support of the information declared in the ESPD/DUAE, which contain personal data, shall be presented separately, on paper or in scanned form, with the application of the electronic signature, using electronic means of communication or other means at the tender evaluation stage, at the request of the contracting authority.

62. SIA RSAP does not accept bids submitted after the deadline for submission of bids.

63. In cases provided for in art. 33 para. (7) and para. (11) of the Law no. 131/2015 on Public Procurement, the bids submitted after the deadline for bids opening shall be registered by the contracting authority and returned to the tenderer, without being opened.

64. In case of an association, according to p. 15, each of them shall assume the obligation for the joint tender and shall be liable for any consequences of the future public procurement contract. The information regarding the association is presented by completing the Annex no. 11.

65. The tenderer has the right to submit only one bid. Associated tenderer are not entitled to submit other bids, individually, in addition to the joint bid. Alternative bids shall be submitted only if the contracting authority has explicitly stated in the Procurement Notice that it allows or requests the submission of alternative bids.

66. Legal entities nominated as subcontractors in one or more bids shall not be entitled to submit the tender in their own name or in association.

67. The tenderer shall have the right to amend or withdraw the tender before the expiry of the deadline for submission of bids, without losing the right to withdraw the tender guarantee.

## **Section 5**

### **Evaluation and comparison of bids**

68. If the bids contain technical, commercial or intellectual property protection secrets, the contracting authority shall ensure the confidentiality of the content of the tender, as well as of any information concerning the tenderer and at the same time ensure the right of the economic operator not to disclose these data by applying the provisions of the art. 33 para. (7) and para. (11) of the Law no. 131/2015 on Public Procurement, but the application of this article refers only to the part containing the data listed above.

69. The examination of the documents by the contracting authority shall be carried out on the basis of the information submitted by the economic operators in the ESPD/DUAE, and in accordance with the requirements set out in the Procurement Notice stating that:

1) is eligible to participate in public procurement procedures and there are no grounds for exclusion from the public procurement procedures for the award of the public procurement contract;

2) meets the criteria relating to the economic and financial situation and/ or the technical and professional capacity established by the contracting authority in the Procurement Notice or in the award documentation.

3) undertakes to ensure and comply with quality assurance standards and environmental protection standards.

70. ESPD/DUAE of economic operators is verified as appropriate, directly by the contracting authority through automated procedures carried out in SIA RSAP, by accessing a database of public authorities or third parties in the Republic of Moldova, and when necessary in other states.

71. If the evaluation reveals discrepancies between the information submitted by the economic operator in the ESPD/DUAE and the requirements set by the contracting authority, the economic operator shall be disqualified, leading to the rejection of the tender, being found as unacceptable and non-compliant, and the documents of the next tenderer/ candidate shall be examined.

72. The economic operator whose information presented in the ESPD/DUAE corresponds to the requirements/ conditions specified by the contracting authority in the notice/ invitation to participate has the obligation to present the supporting documents upon request and without any delay.

73. The tenderer ranked first after the application of the award criterion shall present the supporting documents demonstrating that he fully meets the requirements corresponding to the qualification and selection criteria, in accordance with the information contained in the ESPD/DUAE, except for the procedures performed in several stages, when the supporting documents are requested before the invitations for the second stage are sent to the selected candidates.



74. Bids shall be examined by the working group set up by the contracting authority or, as the case may be, by the certified public procurement specialist.

75. The working group or, as the case may be, the certified public procurement specialist shall have the obligation to determine the clarifications required for the evaluation of each tender, as well as the period granted for the transmission of clarifications.

76. In case of a tender which has an abnormally low price in relation to the estimated purchase price, the contracting authority is obliged to control the calculation of the price elements and also to check certain elements of the financial proposal established as being abnormally low as well as compliance by the tenderer with the technical requirements indicated in the tender specifications, and to request in writing, and before taking a decision to reject that tender, details and clarifications which he considers relevant to the tender, as well as, and to verify the answers justifying that price.

77. The working group or, as the case may be, the certified public procurement specialist shall reject the tender in any of the following cases:

- 1) the tenderer does not meet the qualification and selection requirements;
- 2) the bid does not comply with the requirements provided in the award documentation for the elaboration and presentation of the bids;
- 3) the tenderer does not send the requested clarifications within the established period;
- 4) the financial bid does not have a fixed price;
- 5) the tenderer modifies, through the clarifications he presents, the content of the technical bid and/ or of the financial bid, except for the situation in which the modification is determined by the correction of arithmetical errors or insignificant deviations;
- 6) the bid is abnormally low according to art. 70 of Law no. 131/2015 on Public Procurement;
- 7) when the explanations submitted by the tenderer, at the request of the contracting authority, are not conclusive and/ or are not supported by the justifying documents required by the working group or, as the case may be, the certified specialist in the field of public procurement;
- 8) it was found that acts of corruption, acts related to acts of corruption or corrupt deeds confirmed by a final decision of the court were committed.

78. If the bid, including the forms accompanying it, does not meet the requirements set out in the invitation to tender, including the award documentation or is not completed, electronically signed and, where appropriate, signed and stamped accordingly, it shall be rejected by the contracting authority, and may not be rectified in order to meet the requirements, by correcting or extracting inappropriate deviations or reservations, except to correct only arithmetical errors or minor deviations.

79. The contracting authority may, at its discretion, request clarification of its bid from any of the tenderers in order to facilitate the examination, evaluation and comparison of bids. No changes in the prices or content of the tender shall be requested or allowed, except for the correction of arithmetic errors discovered by the contracting authority during the evaluation of the bids.

80. Arithmetic errors are corrected as follows: if there is a discrepancy between the unit price and the total price (which is obtained by multiplying the unit price by the total quantity), the unit price is considered and the total price is corrected accordingly.

81. The working group, as the case may be, the certified specialist in the field of public procurement has the right to correct arithmetical errors only with the consent of the tenderer. If the tenderer does not accept the correction of these errors, his bid shall be considered inappropriate and, consequently, is rejected by the working group.

82. The economic operator is obliged to respond to the request for clarification of the contracting authority within 3 working days or, if the procedure used is the request for bids, at most one

working day from the date of its dispatch, and in case if the tenderer does not supplement, clarify or complete the information or documents requested by the contracting authority within the time limits set by it, the tender shall be rejected and the next one shall be selected after ranking among the remaining bids in force.

**83.** The bid that corresponds to all the terms, conditions and specifications in the award documents, without essential deviations or with insignificant deviations, errors or omissions that can be removed without affecting its essence, shall be considered compliant.

**84.** The contracting authority disqualifies the tenderer who submits documents containing false information for the purpose of qualification, or confuses or makes false representations in order to demonstrate his compliance with the qualification requirements. If this fact is proven, the contracting authority shall declare the tenderer ineligible for subsequent participation in public procurement contracts, following his inclusion in the Prohibited List of Economic Operators.

**85.** The contracting authority requires tenderers to demonstrate the mandate to conclude public contracts and the composition of the founders, associations, shareholders, administrators and the beneficial owners.

**86.** The successful tenderer/ associate tenderer shall be obliged to complete and submit the declaration regarding the final beneficiaries according to the Order of the Minister of Finance no. 145/2020 on the approval of the Declaration on the confirmation of the identity of the beneficial owners and their non-compliance with the situation of conviction for participation in activities of a criminal organization or group, for corruption, fraud and/ or money laundering.

## **Section 6**

### **Contract award**

**87.** The contracting authority cancels the procedure for awarding the public procurement contract according to art. 71 of Law no. 131/2015 on Public Procurement.

**88.** The cancellation decision does not create any obligation on the part of the contracting authority towards tenderers, except for the return of the tender guarantee. The decision to cancel the award procedure shall be sent to the Public Procurement Agency no later than the date of information on the results of the award procedure provided in art. 31 para. (1) of the Law no. 131/2015 on Public Procurement.

**89.** If the application of the procedure for awarding the public contract is canceled, the contracting authority has the obligation to communicate in writing to all participants in the public procurement procedure, within 3 days from the date of cancellation of the procedure, both the termination of the obligations they created them by submitting bids, as well as the reason for cancellation.

**90.** The report on the cancellation of the public procurement procedure shall be drawn up by the contracting authority and shall be published in the Public Procurement Bulletin no later than the date of issuance of the decision to cancel the public procurement procedure.

**91.** At the time of concluding the contract, but not later than the expiration date of the tender guarantee, as the case may be, the winning tenderer shall present the performance bond, according to the requirements stipulated in art. 68 of the Law no. 131/2015 on Public Procurement.

**92.** If the parties agree, the performance bond, shall consist of:

- 1) successive deductions from the payment due for the submitted tax invoices, with the transfer of the respective amount to a special account opened by the economic operator, made available to the contracting authority, to a licensed bank, agreed by both parties;
- 2) successive direct deductions from the payment due for the submitted fiscal invoices;
- 3) transfer to the contracting authority's account;
- 4) form of bank guarantee from a licensed institution, (Annex no. 10).

**93.** The refusal of the successful tenderer to submit the performance bond or to sign the contract constitutes a reason for the cancellation of the award of the contract and withholding the guarantee for the tender. In this case, the contracting authority may award the contract to the next tenderer with the highest ranked tender, whose tender complies with the requirements and which is considered by the contracting authority to be qualified in performance of the contract. At the same time, the contracting authority has the right to reject all other bids.

**94.** Upon expiry of the waiting period or, as the case may be, after the settlement of any appeals, or monitoring the compliance of public procurement procedures by the Public Procurement Agency, the contracting authority shall conclude the public procurement contract in accordance with the terms and conditions specified in the award documentation.

**95.** At the date of concluding the public procurement of goods/ services, it is forbidden to modify some elements of the winning bid, to impose new requirements on the winning tenderer or to involve any tenderer other than the one who submitted the most advantageous bid.

**96.** The contract for which the financial sources are allocated from the state/ local budget shall be obligatorily registered at one of the regional treasuries of the Ministry of Finance and enters into force on the date of registration or at a later date provided by it after registration at one of the regional treasuries of the Ministry of Finance.

**97.** The contracting authority shall use the sample of the contract (Annex 24) to this standard documentation, including for subsequent contracts concluded in accordance with the framework agreement (Annex 26), for low value contracts, for contracts awarded as result of the request for bids procurement procedure, as well as for contracts awarded as result of the negotiated procedures. The contract may be concluded between one or more contracting authorities and one or more economic operators, which has as purchase object the delivery/ provision of goods/ services.

**98.** The contract is composed of two parts: the general Part I which is mandatory, and which does not change, only with the exception of public procurement contracts that do not fall under the scope of the Law no. 131/2015 on Public Procurement and Part II regarding the special conditions of the contract which shall be completed only if necessary, where the contracting authority has the right to establish special conditions/ requirements depending on the object of the procurement, complexity of the procedure, as well as to establish the conditions of payment (especially for the purchase of fuel, electricity, gas, water and sewerage, sanitation, electronic communications services, etc.), as well as to establish the conditions of payment in advance. In case of procurement of services in the field of energy and water supply and sewerage, the public procurement contract contains the mandatory clauses established by sectoral laws and regulatory acts approved by ANRE. At the same time, the mandatory provisions established by its decisions, which are not found in the general Part I of the contract, are indicated in Part II related to the special conditions of the contract.

**99.** The terms for assuming the commitments in the public procurement contracts by the budgetary authorities/ institutions are established in accordance with the provisions of art. 66 of the Law no. 181/2015 on Public Finances and Budgetary-Fiscal Responsibility.

**100.** In case of the audit services, the contracting authority shall indicate in Part II relating to the special conditions of the contract the rights/ obligations of the Beneficiary and the rights/ obligations of the Provider, according to the provisions of the Order of the Minister of Finance no. 160/2020 on the approval of the Regulation on internal audit activity on a contract basis in the public sector.

**101.** Draft contracts deviating from the Annex no. 24, prepared by the provider/ supplier except cases when the services are provided outside the country and are concluded according to the local legal framework (for example: training services, hotel services, etc.) shall not be accepted within public procurement procedures.

**102.** Any economic operator who considers that, in procurement procedures, the contracting authority, by the decision issued or by the procurement procedure applied in violation of the law, has infringed a right recognized by law, as a result of which he has suffered or may suffer damage, has the right to challenge the decision or procedure applied by the contracting authority, in the manner established by the Law no. 131/2015 on Public Procurement.

**103.** Complaints shall be submitted directly to the National Agency for Settlement of Complaints. All appeals are submitted, examined and resolved in the manner established by Law no. 131/2015 on Public Procurement.

**104.** The economic operator, according to art. 83 of the Law no. 131/2015 on Public Procurement, within 5 days, or 10 days from the date on which he found out about the circumstances that served as grounds for appeal, has the right to submit to the National Agency for Settlement of Complaints a reasoned appeal against actions, decision or procedure applied by the contracting authority.

**105.** Appeals against Procurement Notice and standard documentation shall be submitted within the time limits indicated in p. 104, but not later than the date of opening of bids by the contracting authority.

**106.** Each tenderer who participates, individually or as an associate, in the procedure for the award of the public procurement contract for goods/ services shall be obliged to submit the annexes provided in this documentation, duly completed and signed by the authorized persons, according to the requirements set out in Annex no.2.