

**INTERNAL PROCEDURAL RULES/NORMS**  
**ON THE PROCUREMENT OF PRODUCTS, SERVICES AND WORKS,**  
whose main purpose is  
to allow National Radiocommunication Society to provide or operate public electronic  
communications networks or to provide the public with one or more electronic  
communications services

**CHAPTER I**

**PURPOSE. PRINCIPLES**

**Art. 1** The present internal procedural norms, hereinafter referred to as internal norms, aim to establish the principles, general framework and procedures for the awarding procurement contracts, which are exemptions from the provisions of Law no. 98/2016 on public procurement, according to art.27 of this law.

**Art. 2** The principles underlying the award of procurement contracts are: non-discrimination, equal treatment, mutual recognition, transparency, proportionality, responsibility in the efficient use of company funds, respect for confidentiality and guaranteeing the protection of trade secrets and intellectual property of the tenderer.

**DEFINITIONS**

**Art. 3** For the purposes of these norms, the following definitions shall apply:

- a)** procurement or public procurement – the final or temporary acquisition by the company/society of the works, products or services, through a public procurement contract;
- b)** public procurement contract - the contract for consideration, assimilated, according to law, to the administrative act, concluded between the company on the one hand and the contractor, on the other hand, having as object the supply of products / provision of services / execution of works;
- c)** order letter - document concluded in written form, which contains the essential elements of the contract (eg: object, payment, penalties, guarantees....).
- d)** contractor - the tenderer to whom the procurement contract is awarded following the application of one of the procedures provided in these internal norms;
- e)** specifications book - the document by which the purchaser requests, according to his own needs and standards, the object of the contract;
- f)** framework agreement - the agreement concluded, concluded in written form, between the company on the one hand and the contractor, on the other hand, having as object the establishment of the terms and conditions governing the public procurement contracts to be awarded into a certain period, in particular in what regards the price and, where applicable, the quantities in question;
- g)** the order - the request regarding the supply / provision / execution of products / services / works based on the contract.
- h)** candidate - any economic operator who has submitted a request to participate in a competitive negotiation procedure or who has been invited to participate in a negotiation procedure with a single source.

- i)** tenderer - any individual or legal entity who has submitted a tender;
- j)** the tender/ offer - legal act by which the tenderer expresses his will to legally engage in a procurement contract. The offer includes the financial proposal, the technical proposal, as well as other documents established by the procurement documentation.
- k)** technical proposal – document of the offer, elaborated on the basis of the requirements from the specifications book, established by the company;
- l)** financial proposal - document of the offer through which the required information regarding the price, tariff, other financial and commercial conditions is provided;
- m)** technical specifications - requirements of a technical nature of the company, which define characteristics of the products / services / works, described in a manner appropriate to meet the needs of the company
- n)** procurement documentation - document of the procurement containing the requirements, criteria, rules and other information necessary to ensure to the tenderers complete and correct information on the elements of the procurement, the object of the contract and the conduct of the procurement procedure, including technical specifications, the proposed contractual conditions, the formats of presentation of the documents by the tenderers, the information regarding the applicable general obligations;
- o)** participation guarantee - guarantee instrument or other forms of guarantee accepted by the company, made available to the company by the tenderer before the opening of the offer;
- p)** guarantee of good execution of the contract - guarantee instrument or other forms of guarantee accepted by the company, made available to the company by the invited tenderer to conclude the procurement contract;
- r)** economic operator - any individual or legal entity, of public or private law, or group or association of such persons, which lawfully offers on the market the execution of works and / or a construction, the supply of products or the provision of services, including any temporary association formed by two or many of these entities;
- s)** company - Societatea Națională de Radiocomunicații S.A (the National Radiocommunication Society);
- t)** compartment - any organizational structure within the National Radiocommunication Society, such as: department, service, office, etc ..
- u)** the electronic communications network - transmission systems and, where appropriate, switching or routing equipment and other resources, including inactive network elements, which allow the transport of signals by cable, by radio waves, by optical means or by other electromagnetic means, including satellite electronic communications networks, fixed terrestrial, circuit-switched and packet-switched networks, including the Internet, and mobile, electrical networks, insofar as they are used for the transmission of signals, networks used for the transmission audiovisual program services and cable television networks, regardless of the type of information transmitted;
- v)** provision of an electronic communications network - installation, operation, control or provision of an electronic communications network;
- x)** electronic communications service - a service, provided, as a rule, for a fee, which consists, in whole or in part, in the transmission of signals through electronic communications networks, including telecommunications services and those through networks used for the transmission of the audiovisual programs services, but not including the services through which the content of the information transmitted through electronic communications networks or services is provided or the editorial control over this content is exercised; also, the services of the information society are not included, as defined in art. 1 point 1 of Law no. 365/2002 on electronic commerce, republished, which do not consist, entirely or mainly, in the transmission of signals through electronic communications networks;
- z)** negative finding certificate is the document issued at the end of the contract awarded based on the present internal rules, a certificate attesting to the repeated or serious breach of contractual obligations during the execution of the contract.

## FIELD OF APPLICATION

**Art. 4** The provisions of the present internal norms are applied for the acquisition of products, services and works, which have as main purpose to allow the National Radiocommunication Society to provide or operate public electronic communications networks or to provide the public with one or more electronic communications services, as defined in government emergency ordinance no. 111/2011.

## CHAPTER II

### COMMON RULES FOR THE AWARD OF A PROCUREMENT CONTRACT PREPARATION OF THE PROCUREMENT DOCUMENTATION

**Art.5** The company will ensure the elaboration of the acquisition documentation, which must include, as the case may be:

- a) general information about the Company, in particular regarding the address - including telephone, fax, e-mail, contact persons, means of communication etc.;
- b) instructions on deadlines to be observed and formalities to be completed in connection with participation in the procurement procedure;
- c) if required, the minimum qualification requirements, as well as the documents to be submitted by the candidates / tenderers to prove the fulfillment of the qualification and selection criteria; models of declarations regarding the fulfillment of the qualification and selection criteria;
- d) specifications book or technical specifications;
- e) instructions on how to prepare and present the technical and financial proposal;
- f) detailed and complete information regarding the award criterion applied for establishing the winning bid;
- g) contractual clauses;
- h) models, forms.

The procurement documentation is elaborated taking into account the provisions of these internal norms as well as the specifics of the procurement contract to be concluded.

**Art. 6** (1) The company has the obligation to ensure the obtaining of a copy of the procurement documentation by any economic operator interested in participating in the procurement procedure.

(2) The company has the right to establish the manner in which economic operators may obtain the copy of the procurement documentation.

**Art. 7** - (1) The company has the obligation to prepare the procurement documentation, within which to specify any requirements, criteria, rules and other information necessary to ensure the tenderer a complete, correct and explicit information on how to apply the procurement procedure.

(2) The procurement documentation must include, without limitation, the information provided in art. 5 of these Internal Norms.

**Art. 8** - (1) The company has the right to specify in the acquisition documentation the competent institutions from which the economic operators can obtain information regarding the regulations of the taxation, as well as those regarding the environmental protection.

(2) The company has the obligation to specify in the procurement documentation the mandatory rules regarding working conditions and labor protection, which are in force at national level and which must be observed during the performance of the works or services contract or to indicate the competent institutions from which economic operators can obtain detailed information on those regulations. In this case, the Company also has the obligation

to request to the economic operators to indicate in the offer the fact that in its elaboration they took into account the obligations regarding the working conditions and the labor protection.

**Art. 9** - (1) Any interested economic operator has the right to request and obtain the procurement documentation.

(2) The company has the obligation to make the acquisition documentation available to the economic operator as soon as possible, within a period not exceeding 3 days from the receipt of a request from him, in case the documentation cannot be downloaded from the company's website.

**Art. 10** - (1) Any economic operator, which has obtained a copy of the procurement documentation, has the right to request clarifications regarding this documentation.

(2) The company has the obligation to respond, clearly, completely and unambiguously, as soon as possible, to any requested clarification, within a period that must not exceed, as a rule, 3 working days from the receipt of such requests from the economic operator.

(3) The company has the obligation to elaborate the answers, accompanied by the related questions and to post them on its own website, without disclosing the identity of the economic operator that requested the respective clarifications.

**Art.11** - (1) The economic operator has the obligation to send the request for clarification at least 5 working days before the deadline for submission of tenders in order to allow the elaboration and transmission of the company's response within the term specified in paragraph (2).

(2) The company has the obligation to send the answer as soon as possible but not later than 2 working days before the deadline for submission of tenders.

**Art.12** - (1) The company has the obligation to open the offers on the date indicated in the announcement / invitation to participate.

(2) Tenders submitted after the deadline for submission of tenders or submitted at an address other than those specified in the announcement/ invitation to participate, will not be considered.

**Art. 13** - The company has the right to apply qualification and selection criteria regarding:

- a) the personal situation of the candidate or tenderer;
- b) the capacity to exercise the professional activity;
- c) the economic and financial situation;
- d) technical and / or professional capacity;
- e) quality assurance standards;

**Art.14** - The offer of the economic operators participating in the procurement procedure must contain the requested qualification documents according to the applied qualification and / or selection criteria, as well as the technical proposal and the financial proposal, elaborated based on the specifications book.

**Art.15** - The specifications book will be prepared by the department requesting the acquisition.

**Art.16** - (1) The specifications book contain, obligatorily, technical specifications, which represent requirements, prescriptions, technical characteristics that allow each product, service or work to be described, objectively, so as to correspond to the need of the company.

(2) The technical specifications define, as the case may be and without being limited to the following, characteristics related to the qualitative, technical and performance level, requirements regarding the impact on the environment.

(3) The technical specifications shall be defined in such a way as to correspond, where possible, to the needs / requirements of any user, including persons with disabilities.

(4) The technical specifications must allow any tenderer equal access to the procurement procedure and must not have the effect of introducing unjustified obstacles likely to restrict competition between economic operators.

(5) Without prejudice to the mandatory national technical regulations, insofar as they are compatible with the normative acts adopted at the level of the European Union, the Company has the obligation to define the technical specifications in one of the following ways:

a) by specifying the required performance and / or functional requirements, including environmental characteristics, which must be sufficiently accurately described to allow tenderers to determine the subject matter of the procurement contract and the company to award the contract;

b) by reference to technical specifications and, in order of priority, to national standards transposing European standards, European technical assessments, common technical specifications, international standards, other technical reference systems established by European standardization bodies or, in the absence of any of these, national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of works and the use of products;

c) by reference to performance requirements or functional requirements, according to letter a), and by reference to the technical specifications provided in letter b).

d) by reference to the technical specifications provided in letter b) for some characteristics and by reference to performance requirements or functional requirements provided in letter a) for other characteristics.

**Art.17** - (1) Unless this is required by the object of the contract, the technical specifications do not specify a certain producer, a certain origin or a certain process that characterizes the products or services provided by a certain economic operator and does not refer to trademarks, patents, types to a specific origin or production, which would have the effect of favoring or eliminating certain economic operators or products.

(2) By exception from the provisions of paragraph (1), the establishment of technical specifications by specifying the elements provided for in paragraph (1) is allowed in exceptional situations, if a sufficiently precise and intelligible description of the object of the contract is not possible in accordance with the provisions of paragraph (1); in these situations, the specification of the elements provided in par. (1) shall be accompanied by the words "or equivalent", but only if the products in question are no longer manufactured.

**Art.18** - (1) The company has the right to complete on its own initiative, in order to clarify, the acquisition documentation.

(2) Any such addition must be communicated by the company, on its website, at least 2 working days before the deadline for submission of tenders, so that economic operators have sufficient time to prepare tenders.

## **RULES FOR PARTICIPATION IN THE PROCUREMENT PROCEDURE**

**Art. 19** - Any economic operator has the right to participate, individually or in a group of operators, in the procurement procedure.

**Art. 20** - The company has the obligation to grant to the economic operators an equal and non-discriminatory treatment and to act in a transparent and proportional manner.

**Art. 21** - The company also has the obligation to request the following documents from the economic operators:

a) Declaration regarding the observance of the relevant obligations in the fields of environment, social and labor relations.

b) Declaration regarding the observance of the fulfillment of the required parameters and technical characteristics for the products to be purchased.

c) Declaration regarding the acceptance of the contractual clauses.

**Art. 22** - The tenderer who, in accordance with the law of the state in which he is established, is authorized to perform a certain activity, cannot be excluded from a procurement procedure for the sole reason that, in accordance with national law, this type of activity may be provided only by legal entities or only by natural persons.

**Art. 23** - (1) Several economic operators have the right to associate in order to submit a joint candidacy or offer, without being obliged to formally legalize their association.

(2) The company has the right to request that the association be legalized only if the joint offer is declared the winner and only if such a measure is a necessary condition for the proper performance of the contract.

**Art. 24** - (1) Without diminishing his responsibility regarding the way of fulfilling the future public procurement contract, the tenderer has the right to include in the technical proposal the possibility to subcontract a part of the respective contract.

(2) If the Company requests, the tenderer has the obligation to specify the part (s) of the contract to be subcontracted and the recognition data of the proposed subcontractors.

**Art. 25** (1) The tenderer does not have the right, within the same procedure:

a) to participate in two or more associations of economic operators;

b) to submit an individual offer and another joint offer;

c) to submit an individual offer and to be nominated as a subcontractor within another offer.

**Art.26** (1) The tenderer has the right, if necessary, to invoke the support of a third party / parties regarding the fulfillment of the criteria regarding the economic and financial situation and / or the criteria regarding the technical and professional capacity, regardless of the legal nature of the relations existing between the economic operator and the respective third (s) party.

(2) In the case presented in paragraph (1), the tenderer will have to present in the tender the commitment to support the third party supporter from which the support granted will emerge.

## **RULES OF COMMUNICATION AND OF TRANSMISSION OF DATA**

**Art. 27** - (1) Any communication, request, information, notification and the like must be sent in writing.

(2) Any written document must be registered at the time of transmission, respectively at the time of receipt.

(3) The communication, transmission and storage of information shall be carried out in such a way as to ensure the integrity and confidentiality of the respective data.

**Art. 28** - (1) The written documents may be transmitted in any of the following ways:

a) by mail;

b) by fax;

c) by e-mail;

d) by any combination of those provided in let. a) - c).

(2) If, in a procurement procedure, tenders are sent by e-mail, then the following procedure shall be followed:

- the offers will be sent to the address: [achiziții@radiocom.ro](mailto:achiziții@radiocom.ro);

- at this address, tenders will be sent in the form of an archived attachment with password in a "rar" format;

- the password related to the attachment will be sent to the same address [achiziții@radiocom.ro](mailto:achiziții@radiocom.ro) by the tenderer, within 1 (one) hour, starting with the time established for the opening of the tenders.

(3) The company has the right to impose, in the acquisition documentation, the communication methods that it intends to use during the application of the procedure.

**Art.29** - (1) The communication modalities imposed by the Company must not restrict the access of the economic operators to the procurement procedure.

(2) The tools used for electronic communication, as well as their technical characteristics, must be non - discriminatory, readily available to any economic operator and must ensure interoperability with the usual technologies of information and communication.

**Art.30** - (1) The economic operator has the right to send a request to participate in the procurement procedure through any of the modalities provided in art. 28 paragraph (1)

(2) The company has the right to impose that any request to participate in the procurement procedure, which has been sent by fax, be confirmed, within a reasonable time, by letter sent by post or by electronic means. In this case, the Company has the obligation to specify in the notice of participation the respective requirement, as well as the term in which it must be fulfilled.

**Art.31** - The company has the obligation not to discriminate between tenderers in terms of the form in which they send or receive documents, decisions or other communications.

## **RULES OF AVOIDANCE OF CONFLICT OF INTEREST**

**Art.32** - During the application of the award procedure, the Company has the obligation to take all necessary measures to avoid situations likely to determine the occurrence of a conflict of interest and / or the manifestation of unfair competition.

**Art.33** - Natural or legal persons who participate directly in the process of verification / evaluation of applications / offers do not have the right to be a tenderer, associate tenderer or subcontractor, under the sanction of exclusion from the procurement procedure.

**Art.34** - The following persons will not be involved in the process of verification / evaluation of the applications/ offers:

a) persons who hold shares, interests, shares in the subscribed capital of one of the tenderers or subcontractors or persons who are part of the board of directors / management or supervisory body of one of the tenderers or subcontractors;

b) spouse, relative or relative, up to and including the fourth degree, with persons who are part of the board of directors / management or supervisory body of one of the tenderers;

c) persons who are found to have a personal interest likely to affect their impartiality during the offers verification / evaluation process.

**Art. 35** - The contractor does not have the right to hire, for the purpose of fulfilling the public procurement contract, natural or legal persons who have been involved in the process of verification / evaluation of the offers submitted within the procurement procedure, during a period of at least 12 months from the conclusion of the contract, under the sanction of nullity of the respective contract for immoral cause.

## **CHAPTER III**

### **PROCEDURES FOR AWARDING THE PROCUREMENT CONTRACT**

**Art. 36** The application of one of the following procedures, for the award of a procurement contract, will be made on the basis of a **Supporting Note**, approved by the company's management:

a. **competitive negotiation**, respectively the procedure to which any economic operator has the right to submit a request to participate following the publication of a announcement of participation, following that only candidates who meet the qualification and selection criteria established by the company, have the right to submit initial offers, on the basis of which the company will conduct negotiations in order to improve them.

b. **negotiation with a single source**, respectively the procedure by which the company sends an invitation to participate to a single supplier / provider / executor, with which the contractual clauses are consulted and negotiated, including the price.

Usually the acquisition through negotiation with a single source is made on a contract basis. Exceptionally, if the purchase of products, services or works is of low complexity, this purchase can be made on the basis of an invoice or order.

c. **request for offers**, respectively the procedure by which the company requests, without the publication, obligatorily, of a participation announcement, offers from at least 3 (three)

economic operators. The company applies this procedure if the estimated value, excluding VAT, of the acquisition contract is equal to or less than the RON equivalent of 500,000 EURO

d. The company can proceed to **direct purchase** (based on invoice / order letter / contract) if it purchases products / services / works whose estimated value, excluding VAT per purchase, does not exceed the RON equivalent of 30,000 EURO. The direct purchase will take place only after a prior market survey and consultation, including its own database, has been carried out.

## COMPETITIVE NEGOTIATION

**Art.37** - (1) The competitive negotiation is initiated by sending for publication a participation announcement, on the web page: <http://www.radiocom.ro/> and / or in the Electronic Public Procurement System (SEAP), Advertising section - Announcements, by which the company requests the economic operators to submit requests to participate.

(2) The procurement documentation will be published together with the participation notice on the web page: <http://www.radiocom.ro/> and will include the objective and non-discriminatory rules that the company intends to apply, qualification and selection criteria established by the company, the minimum number of candidates it intends to invite to submit initial tenders in the second stage of the procedure.

(3) The procurement documentation shall include the specifications book, in which the company defines the object of the procurement by describing the needs and characteristics required for the products, works or services to be procured and sets out the minimum requirements in relation to them, on which tenders must meet them and the company also specifies the award criteria applied.

**Art. 38** - (1) The competitive negotiation procedure is carried out in 5 stages, as follows:

a) the first stage - the submission of the participation requests in order to provide the information and documents for qualification and selection established by the company, as well as the selection of the candidates.

b) the second stage - the submission of the technical proposals corresponding to the requirements of the specifications book and the evaluation of their conformity with the minimum requirements established by the company in the specifications book. The technical proposals will be submitted only by the candidates selected in the first stage.

c) third stage - submission of financial proposals by the candidates selected in the second stage.

d) the fourth stage - negotiations in order to improve the initial prices offered in the third stage.

e) the fifth stage - establishing the winning bid.

(2) The company, through the evaluation commission, appointed by the decision of the General Manager, reserves the right to limit the number of candidates following the analysis regarding the fulfillment of the established qualification and selection criteria and who will be invited to submit their technical proposals, under the condition that in the first stage of the procedure a minimum number of 3 candidates participate.

(3) Following the completion of each stage, provided in art. 38, letters a), b), c), the company sends simultaneously to all the selected candidates an invitation to participate in the next stage.

(4) If the number of candidates is lower than the minimum number indicated in art. 38, paragraph (2), the General Manager, at the proposal of the Evaluation Commission, has the right to choose between continuing the procurement procedure only with that candidate (s) and cancel the procedure.

(5) The company does not have the right to invite in the second stage an economic operator that has not submitted a request to participate or has not fulfilled the qualification and selection criteria in the first stage.

**Art.39** - (1) In the process of evaluating the participation requests, the qualification and selection criteria specified in the participation announcement shall be applied accordingly.

(2) After completing the selection of candidates, the evaluation commission has the obligation to prepare an interim report, which is approved by the head of the company.

(3) After the approval of the interim report provided in art. 39, paragraph (2), the company has the obligation to communicate to the candidates the result of the selection stage. Selected candidates will be sent invitations to participate in the second stage of the negotiation procedure.

(4) The invitation to participate in the stages of the negotiation procedure must include at least the following information:

a) references regarding the published participation announcement;

b) the date and time limit established for the submission of proposals related to each stage;

c) the address to which the proposals are sent;

d) the language or languages in which the negotiations will take place.

**Art.40** - (1) The period between the date of publication of the participation announcement and the deadline for submitting the participation requests is at least 15 days.

(2) The period between the date of sending the invitation to participate in the second stage of the award procedure and the deadline for submitting the technical proposal is at least 15 days.

**Art.41** - (1) In the second stage of the procedure, according to the provisions of art.38, letter b), the received technical proposals will be evaluated based on the minimum requirements requested by the company through the specifications book and an interim report will be prepared, which is approved by the head of the company.

(2) The evaluation commission may request, during the evaluation of technical proposals, to all qualified tenderers in the second stage, the testing at the company's headquarters of certain equipment from those offered, so that the results obtained confirm some of the parameters required by the specifications book.

(3) Only the tenderers who have been admitted as a result of the assessment of the conformity of the technical proposals submitted by them in the second stage of the procedure with the requirements of the specifications book shall be invited to submit financial proposals.

**Art.42** (1) - According to art.38, letter d), the Company negotiates with the tenderers remained in competition, the financial proposals submitted by them, in order to improve the price.

(2) During the negotiations, the company has the obligation to ensure the observance of the principle of equal treatment towards all tenderers and not to provide information in a discriminatory manner, which could create to one of the tenderers an advantage over the others.

(3) The company has the obligation not to disclose to the other participants confidential information communicated by a tenderer participating in the negotiations, without his written consent.

(4) The company will conduct the negotiations on the same date and in the same time interval with all the tenderers. Negotiations will take place separately with each tenderer, in several rounds.

(5) The lowest price offered, which will be communicated to all tenderers remained in the competition, will be the price level from which the negotiation rounds will start. At the same time, the tenderers will be informed of the price negotiation step.

(6) The price negotiation will take place as follows:

i) each tenderer will be assigned a serial number (by drawing lots), starting with the number 1;

ii) the negotiating commission, appointed by decision of the Director General, will have a number of 3 members and will negotiate the price with each tenderer in ascending order of the allocated numbers;

iii) in case two or more tenderers will have equal prices, the designated winner will be the tenderer which has been assigned with the lowest serial number.

(7) The winning offer will be declared the one that, following the negotiations, will have the lowest price.

## **NEGOTIATION WITH A SINGLE SOURCE**

**Art. 43** - The company has the right to apply the negotiation procedure with a single source only in the following cases:

a) when, for technical reasons, reasons related to the protection of exclusive rights, including intellectual property rights or to the express indication of the Specialized Technical Department, (which justifies the fact that only that type of equipment / service can be integrated in the existing network, both from a technical point of view and from the point of view of network management) the contract can be awarded only to a certain economic operator;

b) as a strictly necessary measure, when the periods of application of the competitive negotiation, of the request for tenders cannot be respected due to extreme urgency, determined by unpredictable events (irreparable equipment failures leading to interruption of emission, difficulties in the implementation of technical solutions, etc.)

c) when it is necessary to purchase additional services / products / works, which were not included in the initial contract, but which due to unforeseen circumstances in the implementation of technical solutions have become necessary to fulfill the contract in question, and only if, in a cumulative way, complies with the following conditions:

- the award to be made to the initial contractor;

- the additional services / products / works cannot be, from a technical and economic point of view, separated from the initial contract without any inconveniences for the Company or, although separable from the initial contract, are strictly necessary for the fulfillment of the contract and the implementation of the approved technical solution;

- the cumulated value of the contracts awarded for additional services / products / works does not exceed 50% of the value of the initial contract;

- obtaining all the approvals that were necessary for drawing up the initial contract.

d) when, following the award of a procurement contract, the Company intends to purchase new services / products / works, which are similar to the services / products / works purchased by awarding the initial contract and only if, in a cumulative way, the following conditions are met:

- the award is made to the initial contractor, and the new services / products / works comply with the requirements provided in the specifications book elaborated on the occasion of the award of the respective contract;

- the initial procurement contract was awarded through the competitive negotiation or request for offers;

- in the announcement of participation in the procedure applied for awarding the initial contract it was specified that the Company has the right to choose the subsequent purchase of new services / products / works, from the economic operator whose offer will be declared winner within the respective procedure;

- The company has the right to apply this procedure within a period that cannot exceed 3 years from the award of the initial contract.

**Art. 44** - The negotiation procedure with a single source assumes that the Company first carries out a market prospecting, also consulting its own database.

## **REQUEST FOR OFFERS**

**Art. 45** - The request for offers is initiated by sending an invitation to participate to economic operators and / or by posting on its own website, [www.radiocom.ro](http://www.radiocom.ro), a participation

announcement. Optionally, the company can also post a participation announcement in the "Advertising - Announcements" section of the Electronic Public Procurement System (SEAP).

**Art. 46** - (1) The invitation to participate will contain information about the Company (name, address, telephone, fax, e-mail), information regarding the object of the acquisition (name, type of contract, estimated value, quantity, deadline for submission of tenders and the address at which tenders are received, the term of validity of the tender, the award criteria, etc.).

(2) Upon request, the procurement documentation shall be sent to any economic operator interested to participate in the procedure.

**Art. 47** - The deadline for submission of tenders must be at least 3 working days from the date of sending the invitation to participate.

**Art. 48** - (1) Any economic operator who has obtained a copy of the specifications book, has the right to request clarifications.

(2) Depending on the complexity of the procurement, the Company has the obligation to send a response to any request for clarification, which was received no later than 5 working days before the deadline for submission of tenders. This period may be reduced to a maximum of 3 working days before the deadline for submission of tenders. The company has the obligation to send the answer as soon as possible but not later than two working days before the date of submission of tenders.

**Art. 49** - The offers sent after the deadline for submission of tenders mentioned in the invitation / announcement of participation, will be returned unopened (will not be taken into account).

**Art. 50** - (1) The company has the obligation to cancel the request for offers procedure if at least one adequate tender has not been submitted.

(2) In the case provided in paragraph (1) after the cancellation of the request for offers procedure, the Company has the obligation that, in case of application of a new request for offers procedure, to send an invitation to participate to other economic operators from which there are chances of obtaining an offer. If, after applying a new procedure, the Company receives only one corresponding tender, it has the right to award the public procurement contract to that tenderer.

## CHAPTER IV

### AWARD OF THE PROCUREMENT CONTRACT

#### CRITERIA FOR AWARDING THE PROCUREMENT CONTRACT

**Art.51** - The company has the obligation to specify in the announcement / invitation to participate the award criterion of the procurement contract, which, once established, cannot be changed for the entire duration of the award procedure.

**Art.52** - The award criterion of the procurement contract can be:

- a) the lowest price;
- c) the best quality-price ratio;

**Art.53** - (1) The best quality-price ratio is determined on the basis of evaluation factors that include qualitative, environmental and / or social aspects, in connection with the object of the procurement contract.

(2) The evaluation factors provided in paragraph (1) may include, among others:

- a) quality, including technical advantages, aesthetic and functional characteristics, accessibility, design concept for all users, social, environmental and innovative characteristics and its marketing and conditions;

b) the organization, qualification and experience of the personnel designated for the execution of the contract, in case the quality of the designated personnel can have a significant impact on the qualitative level of execution of the contract;

c) after-sales services, technical assistance and delivery conditions, such as delivery date, delivery process and delivery or completion date.

(3) The criterion for awarding the best value for money includes a price element; If the company initiates an award procedure with a fixed budget, in which the price element is a fixed price, the evaluation factors refer only to qualitative aspects of the products, services or works that are the object of the acquisition.

**Art.54** - (1) The company does not have the right to use evaluation factors that would lead to an unlimited freedom of assessment.

(2) For the purposes of paragraph (1), the evaluation factors used by the company must ensure real competition between economic operators and be accompanied by provisions that allow the effective verification of the information provided by tenderers , in order to apply the evaluation factors.

(3) When it deems it necessary, the company verifies the accuracy of the information and evidence provided by the tenderers.

**Art.55** - (1) The company specifies in the procurement documents the weight it gives to each evaluation factor that will be applied to determine the most advantageous offer, unless the most advantageous offer is determined by applying the lowest price criterion .

(2) The relative weights provided for in paragraph (1) may be granted by reference to value ranges.

(3) If the establishment of a weighting is not possible for objective reasons, the company shall indicate the valuation factors in descending order of importance.

**Art.56-** (1) The company will not use the lowest price as an award criterion in the case of contracts for the acquisition of works or services that have as object intellectual services, which involve activities with a high level of complexity;

(2) If two or more offers are equivalent, the company may apply an additional criterion, for example: the fight against unemployment, which will be explicitly mentioned in the notice of participation.

## QUALIFICATION AND SELECTION CRITERIA

**Art.57** - The company has the right to apply within the procurement procedure only the qualification and selection criteria regarding:

a) reasons for excluding the candidate / tenderer;

b) the capacity of the candidate / tenderer.

**Art.58** - (1) The company excludes from the award procurement contract procedure any economic operator about which it became aware that it was convicted by a final decision of a court, for committing one of the following crimes:

a) the establishment of an organized criminal group, provided by art. 367 of Law no. 286/2009 on the Criminal Code, with subsequent amendments and completions, or by the corresponding provisions of the criminal legislation of the state in which the respective economic operator was convicted;

b) corruption offenses, provided by art. 289 - 294 of Law no. 286/2009, with the subsequent amendments and completions, and offenses assimilated to the corruption offenses provided by art. 10 - 13 of Law no. 78/2000 for the prevention, discovery and sanctioning of acts of corruption, with subsequent amendments and completions, or by the corresponding provisions of the criminal legislation of the state in which the respective economic operator has been convicted;

c) offenses against the financial interests of the European Union, provided by art. 18<sup>1</sup> - 18<sup>5</sup> of Law no. 78/2000, with the subsequent amendments and completions, or by the

corresponding provisions of the criminal legislation of the state in which the respective economic operator was convicted;

d) acts of terrorism, provided by art. 32 - 35 and art. 37 - 38 of Law no. 535/2004 on the prevention and combating of terrorism, with subsequent amendments and completions, or by the corresponding provisions of the criminal legislation of the state in which the respective economic operator has been convicted;

e) money laundering, provided by art. 29 of Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for the establishment of measures to prevent and combat the financing of terrorism, republished, with subsequent amendments, or the financing of terrorism, provided by art. 36 of Law no. 535/2004, with the subsequent amendments and completions, or by the corresponding provisions of the criminal legislation of the state in which the respective economic operator was convicted;

f) trafficking and exploitation of vulnerable persons, provided by art. 209 - 217 of Law no. 286/2009, with the subsequent amendments and completions, or by the corresponding provisions of the criminal legislation of the state in which the respective economic operator was convicted;

g) fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests of 27 November 1995.

(2) The obligation to exclude from the award procedure an economic operator, in accordance with the provisions of paragraph (1), shall also apply if the person convicted by a final decision is a member of the administrative, management or supervisory body of the respective economic operator or has the power of representation, decision or control within it.

**Art. 59** - (1) The company excludes from the award procedure any economic operator about which it is aware that it has violated its obligations regarding the payment of taxes, fees or contributions to the general consolidated budget, and this has been established by a court decision or administrative decision having a final and binding character in accordance with the law of the state in which the respective economic operator is established.

(2) The economic operator is not excluded from the award procedure if, prior to the exclusion decision, it fulfills its obligations by paying taxes, fees or contributions to the general consolidated budget due or by other means of extinguishing them or, it benefits, under the law, of staggering them or of other facilities in order to pay them, including, as the case may be, any accrued interest or late payment penalties or fines.

(3) The company excludes from the award procedure any economic operator about which it knows that it has breached its contractual obligations regarding another procurement contract concluded and carried out with the company, based on the procedure of internal procurement rules, and which has ended with the issuance of a negative finding certificate attesting the execution of the contract with repeated or serious breaches of the contractual obligations, breaches that led to the early termination of that contract, the calculation of damages or other comparable sanctions/penalties. Serious breach of contractual clauses, involves the delivery or supply with a delay of more than 60 days of the products or services in the contract, delivery or provision of products or services that do not correspond to the technical offer submitted in the procedure, refusal to completely fulfill the object of the contract , as well as other facts likely to harm the company. The period of impossibility to participate in the procedure will last for 3 years from the date of issuance of the certificate.

**Art. 60** - The company excludes from the procedure for awarding the procurement contract any economic operator who is in any of the following situations:

a) has breached environmental, social and labor relations obligations, and the company can demonstrate this by any appropriate means of proof, such as decisions of the competent authorities finding a breach of these obligations;

b) is in insolvency proceedings or in liquidation, in judicial supervision or in cessation of activity;

c) has committed a serious professional misconduct that calls into question his or her integrity, and the company may demonstrate this by any appropriate means of proof, such as a decision of a court or administrative authority;

d) the company has sufficient reasonable indications / concrete information to consider that the economic operator has concluded with other economic operators agreements aimed at distorting competition within or in connection with the procedure in question;

e) is in a situation of conflict of interest within or in connection with the procedure in question, and this situation cannot be effectively remedied by other less severe measures;

f) the previous participation of the economic operator in the preparation of the award procedure led to a distortion of competition, and this situation cannot be remedied by other less severe measures;

g) the economic operator has seriously or repeatedly violated its main obligations under a previously concluded procurement contract, and these violations have led to the early termination of the contract, payment of damages or other comparable sanctions;

h) the economic operator has been guilty of false statements or has tried to illegally influence the decision-making process of the contracting authority, to obtain confidential information that could confer unjustified advantages in the contract award procedure.

**Art 61.** - (1) The company will accept as sufficient and relevant for proving the fact that the economic operator does not fall into one of the situations provided in art. 58, 59 and 60, any document considered edifying, in this respect, in the country of origin or in the country where the economic operator is established, such as certificates, criminal records or other equivalent documents issued by the competent authorities of that country.

(2) If in the country of origin or in the country where the economic operator is established, documents of the nature provided in paragraph (1) or the respective documents do not concern all the situations provided in art. 58, 59 and 60, the company can accept a statement on its own responsibility. At the request of the company, the economic operator has the obligation to present an authentic statement given before a notary, an administrative or judicial authority or a professional association, which has competences in this respect.

(3) The company will verify the non-existence of an exclusion situation provided in art. 58, 59 and 60 in relation to the proposed subcontractors, third party supporters and members of the group of associates.

(4) If a situation of exclusion is identified, the company shall request the tenderer / candidate only once to replace a subcontractor in respect of whom it has been established, following verification, that he is in this situation.

(5) For the purpose of the verification provided for in paragraph (3), the subcontractor, the supporting third party and the members of the group of associates shall submit declarations on their own responsibility, stating that they are not in any of the situations leading to exclusion from the award procedure.

**Art.62** - (1) The company may apply, as the case may be, capacity criteria regarding:

- a) the capacity to exercise the professional activity;
- b) the economic and financial situation;
- c) technical and professional capacity.

(2) All capacity requirements, requested by the company, must be related to the object of the procurement contract and be proportional in relation to its object.

**Art.63** - (1) The company will request any economic operator to present relevant documents proving the form of registration and, as the case may be, of attestation or membership from a professional point of view, in accordance with the legal requirements in the country where the economic operator is established.

(2) In procurement procedures, where it is necessary for economic operators to hold a special authorization or to be members of a particular organization in order to be able to provide the services in question in the state of origin, the company shall have the right to request them to prove that they hold such an authorization or that they are members of such an organization.

**Art.64** - The requirements regarding the economic and financial situation that the company can establish, will aim at:

a) a certain minimum level of annual turnover, including and where appropriate, a certain minimum turnover in the field of the subject of the procurement contract; the minimum annual turnover imposed on economic operators must not exceed twice the estimated value of the procurement contract;

b) certain levels of other relevant economic and financial indicators, such as the level of annual liquidity;

c) an appropriate level of occupational risk insurance.

**Art.65** - The proof of the fulfillment of the requirements regarding the economic and financial situation, by the economic operators will be made by presenting, as the case may be, one or more of the following information and documents:

a) appropriate bank statements or statements or, where applicable, proof of professional risk insurance;

b) the presentation of the financial statements or extracts from the financial statements, in case the publication of the financial statements is provided by the legislation of the country where the economic operator is established;

c) a statement of the total turnover of the economic operator and, where applicable, the turnover in the field of activity covered by the contract, for at most the last three financial years available, depending on the date of establishment or commencement of the economic operator's activity , to the extent that turnover information is available.

**Art. 66** - (1) The requirements regarding the technical and professional capacity shall target the human and technical resources and the necessary experience to execute the procurement contract at an appropriate quality standard.

(2) The economic operator proves the fulfillment of the requirements regarding the technical and professional capacity by presenting, as the case may be, some or more of the following information and documents:

a) a list of works carried out during a period covering at most the last 5 years, accompanied by certificates of good execution for the most important works; when necessary in order to ensure an appropriate level of competition, the company may determine that relevant work done more than 5 years ago is taken into account;

b) the list of the main deliveries of products made or of the main services provided during a period covering at most the last 3 years, with the indication of the values, data and of the public or private beneficiaries; where necessary for the purpose of ensuring an appropriate level of competition, the company may determine that deliveries of relevant products or services rendered more than 3 years ago are taken into account;

c) indication of the technicians or technical bodies involved, regardless of whether or not they are part of the economic operator's organization, especially those responsible for quality control and, in the case of works contracts, those available to the contractor for the execution of works ;

d) description of the technical facilities and of the measures used by the economic operator in order to ensure the quality and of its study and research facilities;

e) specifying the management and traceability systems within the supply chain that the economic operator will be able to apply during the execution of the contract;

f) where the products or services to be supplied are complex or, exceptionally, are intended for a special purpose, the results of an inspection carried out by the company or, on its behalf, by a competent official body of the country in which it is established the economic operator, subject to the agreement of that body, concerning the production capacities of the economic operator supplying the products or the technical capacity of the economic operator providing the services and, if necessary, the study and research facilities available to it and the quality control measures to be applied;

g) the educational and professional qualifications of the economic operator providing services or performing works or of the management personnel of the economic operator, if they do not constitute evaluation factors;

h) specifying the environmental management measures that the economic operator will be able to apply during the execution of the contract;

i) a statement regarding the average annual number of staff of the economic operator providing services or performing works and the number of management staff in the last 3 years;

j) a statement regarding the machinery, installations and technical equipment at the disposal of the economic operator that provides services or executes works for the execution of the contract;

k) specifying the part / parts of the contract that the economic operator intends to subcontract;

l) samples, descriptions or photographs of the products to be delivered, the authenticity of which must be certified at the request of the company;

m) certificates issued by official institutes responsible for quality control or bodies with recognized competencies, attesting the conformity of the products to be delivered, clearly identified by reference to technical specifications or standards.

**Art. 67** - (1) If several economic operators participate jointly in the procurement procedure, the fulfillment of the criteria regarding the technical and professional capacity, as well as the one regarding the economic and financial situation, is demonstrated by taking into account the resources of all group members, and the company requests that they be jointly and severally liable for the execution of the public procurement contract.

(2) The fulfillment of the qualification and selection criteria shall also be demonstrated by the subcontractor or the third party supporter. The third party supporter will submit the supporting commitment, together with the qualification and selection documents.

## **MAIN ACTIVITIES CARRIED OUT BY THE EVALUATION COMMISSION**

**Art.68** (1) The company has the obligation to designate for the award of each procurement contract the person / persons responsible for the evaluation of the offers, which constitute in an evaluation commission.

(2) The evaluation commission is nominated, as a rule, from the department requesting the acquisition and is composed of a person from the department specialized in procurement.

(3) The nomination of the persons responsible for the evaluation of the offers can be made both for the award of each contract and for the award of several contracts, the latter case being applied when the respective contracts are of low complexity.

(4) The chairman of the evaluation commission will also be responsible for the organizational and representation aspects.

**Art. 69** - (1) The attributions of the evaluation commission are the following:

a) the opening of tenders and, as the case may be, of other documents accompanying the tender;

b) verification of the fulfillment of the qualification criteria by the tenderers/ candidates;

c) making the selection of candidates, if applicable;

d) conducting the dialogue with the economic operators, in case of applying the competitive negotiation procedure;

f) verification of the conformity of the technical proposals of the bidders with the provisions of the specifications book;

g) evaluation of the technical proposals of the tenderers in accordance with the award criterion, if applicable;

h) verification of the financial proposals submitted by the tenderers, including verification of compliance with the technical proposals, arithmetic verification, verification of

inclusion in the funds that may be made available for the fulfillment of the procurement contract;

i) elaboration of the requests for clarifications and / or completions necessary in order to evaluate the requests for participation and / or offers;

j) establishing the unacceptable and / or non-compliant offers and the reasons underlying their classification in each of these categories;

k) establishing the admissible offers;

l) application of the award criteria and evaluation factors, as provided in the procurement documentation;

m) establishing the winning tender/ tenders or, as the case may be, formulating the proposal to cancel the procedure;

n) elaboration of the corresponding minutes to each meeting, of the interim reports related to each stage in the case of the negotiation procedure and of the report of the procurement procedure.

(2) The interim reports and the report of the award procedure shall be submitted by the chairman of the evaluation committee to the head of the company for approval.

(3) If he does not approve the report of the award procedure, the head of the company will motivate in writing his decision and may, as the case may be:

a) return the report, once, to the evaluation commission for correction or partial re-evaluation;

b) request a complete re-evaluation, in which case a new evaluation commission will be appointed.

(4) The company has the right to nominate reserve members for the members of the evaluation commission.

(5) The company has the right to replace a member of the evaluation commission with a reserve member only if the person to be replaced does not have the possibility, for objective reasons, to fulfill his attributions resulting from the quality of member of the evaluation commission. After the replacement, the quality of member of the evaluation commission is taken over by the reserve member, who will exercise his / her attributions until the completion of the award procedure.

**Art. 70-** (1) If the evaluation of the requests to participate / offers requires an in-depth expertise of technical, financial, legal nature and / or regarding the specific contractual aspects, the company may designate, in compliance with the legislation in force, evaluation, external specialists or from other departments of the company, appointed co-opted experts.

(2) The attributions and responsibilities of the co-opted external experts shall be reduced, as the case may be, only to:

a) verification and evaluation of technical proposals;

b) the analysis of the financial situation of the tenderers/ candidates or the financial analysis of the effects that may be determined by certain elements of the offer or contractual clauses proposed by the tenderer;

c) the analysis of the legal effects that certain elements of the offer or certain contractual clauses proposed by the tenderer may determine.

(3) The co-opted experts may be nominated together with the appointment of the evaluation commission or later, depending on the issues that may require their expertise.

(4) The co-opted experts for specific problems of the nature of those provided in paragraph (3) do not have the right to vote in the evaluation commission, but have the obligation to draw up a specialized report on the technical, financial or legal aspects, on which they express their point of view.

(5) The specialized report provided in paragraph (4) is intended to facilitate the evaluation committee to take decisions in the process of analyzing the offers and establishing the winning offer (s). The specialized report is attached to the award report and becomes part of the procurement file.

**Art. 71 -** (1) During the evaluation process, the commission and the co-opted experts have the obligation to maintain the confidentiality on the content of the offers, as well as on any

other information presented by the tenderers, whose disclosure could affect their right to protect intellectual property or trade secrets.

(2) The violation of the commitments regarding the confidentiality is sanctioned according to the law.

(3) Except for the opening meeting of the tenders, only the members of the evaluation commission and, as the case may be, the co-opted experts have the right to participate in the meetings of the evaluation commission.

(4) The rules for avoiding the conflict of interests, as provided in Chap. II, of the present internal norms, are equally applicable both to the evaluation commission and to the co-opted experts.

**Art. 72** - (1) The evaluation commission and the co-opted members have the obligation to sign on their own responsibility a declaration of confidentiality and impartiality by which they confirm that they are not in a situation that implies the existence of a conflict of interests.

(2) The declaration provided in paragraph (1) must be signed before taking over the specific attributions, within the evaluation process.

(3) If one of the members appointed in the evaluation commission or one of the co-opted experts finds that he/she is in a situation of incompatibility, then he/she has the obligation to request his/her replacement from the composition of the respective commission with another person. Incompatibility situations may also be reported to the Company by third parties.

(4) In case such situations are notified, the Company has the obligation to verify the indicated ones and, if necessary, to adopt the necessary measures to avoid / remedy any aspects that may determine the appearance of a conflict of interests.

**Art. 73** - (1) The working method of the evaluation commission is established by mutual agreement between its members, taking into account the estimated calendar of application of the procedure and the requested period for the validity of the offers.

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

(3) In case it is reached in the situation that the provisions of paragraph (2) cannot be observed due to possible divergences of opinion between the members of the evaluation commission, then the chairman of the commission will request the reanalysis of the divergence points, in order to complete in due time the evaluation phase of tenders and establish the winning tender. If no agreement is reached on the evaluation committee, the final decision shall be taken by a simple majority of its members.

(4) The process of reanalyzing the points of divergence shall be recorded in a report, justifying the contrary opinions.

(5) The members of the evaluation commission who do not agree with the decision adopted have the obligation to present their point of view in writing, elaborating in this respect an individual note which is attached to the report of the procurement procedure.

**Art. 74** - (1) The evaluation commission does not have the right to allow and request to a tenderer to complete a document that is missing, in any of the following situations:

a) in the procurement documentation it was expressly mentioned that, in case of non-presentation of the respective document, it is not allowed to complete it later, its non-presentation having as effect the rejection of the offer;

b) by accepting the completion of the respective document, an obvious advantage is created in relation to the other tenderers, infringing the principle of equal treatment;

(2) The completion of the offer following the requests for clarifications regarding the technical proposal or the financial proposal, gives the company the right to reject the offer, as being unacceptable.

(3) The evaluation commission has the right to reject any offer whose price exceeds the estimated value of the purchase as unacceptable.

**Art. 75** - The evaluation commission has the obligation to establish which are the formal or confirmatory clarifications and completions, necessary for the evaluation of each offer, as well as the time period granted for the transmission of the clarifications. The communication

sent to the tenderer in this respect must be clear, precise and to define explicitly and in sufficient detail the request of the evaluation committee.

**Art. 76** - (1) If the tenderer does not send the requested clarifications / answers within the period specified by the evaluation commission or if the explanations presented by the tenderer are not conclusive, his tender will be considered unacceptable.

(2) If the tenderer modifies by his presented answers the content of the technical proposal, his tender will be considered non-compliant.

(3) If the tenderer modifies by his presented answers the content of the financial proposal, his tender will be considered non-compliant.

**Art. 77** - (1) By exception from the provisions of art. 77 paragraph (2), the tender will not be considered non-compliant insofar as the changes made by the tenderer in connection with his technical proposal fall into one of the following categories:

a) can be included in the category of formal defects; or

b) represent corrections of some minor technical deviations, and a possible modification of the total price of the offer, induced by these corrections, would not lead to the modification of the ranking of the tenderers participating in the award procedure.

(2) Minor technical deviations are considered those omissions / deviations from the technical proposal that can be completed / corrected in a way that does not lead to the submission of a new offer.

(3) A modification of the technical proposal can be considered a minor technical deviation of the initial offer in the following situations:

a) the theoretical quantification in monetary value of the respective deviation / omission does not exceed 1% of the total offer price;

b) following the correction of the respective deviation / omission, it is found that the ranking of the tenderers would not change;

c) the change would not imply a qualitative decrease compared to the initial offer;

d) the amendment does not cover a part of the tender for which the procurement documentation clearly excluded the possibility for tenderers to deviate from the exact requirements of that documentation, and the initial tender did not comply with these requirements.

(4) By exception from the provisions of art. 77 paragraph (3), the offer will not be considered non-compliant insofar as the changes made by the tenderer in connection with his financial proposal represent arithmetical errors, the elements of the financial proposal will be corrected, implicitly together with the total offer price, by restoring the related calculations, based on the data / information that are known by all participants, because they are provided in the applicable legislation, the procurement documentation, and / or in other documents submitted by the tenderer.

(5) If the tenderer does not agree with the correction of arithmetic errors, his tender will be considered non-compliant.

**Art. 78** - The evaluation commission has the obligation to reject unacceptable offers and non-compliant offers.

**Art. 79** - (1) The evaluation commission has the obligation to establish the winning offer from the admissible tenders.

(2) If the award of the procurement contract is made on the basis of the criterion "best value for money", the evaluation of tenders is performed by awarding, for each tender, a score resulting from the application of the calculation algorithm set out in the procurement documentation.

(3) In descending order of the score awarded, the evaluation commission must draw up the ranking on the basis of which the winning tender is established. The winning tender is the tender ranked first, respectively the one with the highest score.

(4) If in the first place there are two or more offers, which have the same score, the company has the obligation to conclude the procurement contract with the tenderer whose offer has the lowest price.

(5) If the prices offered are equal, the company has the right to request from the tenderers who offered the lowest price a new financial proposal in a sealed envelope, in which case the contract will be awarded to the tenderer whose new financial proposal has the lowest price.

(6) If the award of the public procurement contract is made on the basis of the "lowest price" criterion, the evaluation of the offers is made by comparing the prices in lei, without VAT, of each offer and by drawing up, in ascending order of the respective prices, of the ranking based on which the winning tender is established. The winning tender is the tender ranked first, respectively the one with the lowest price.

(5) If two or more tenders are placed first, the company shall request a new financial proposal from the tenderers and the contract shall be awarded to the tenderer whose new financial proposal has the lowest price.

**Art. 80-** (1) After the completion of the evaluation of the offers, the evaluation commission has the obligation to elaborate the report of the procurement procedure, which is signed by all the members of the evaluation commission, including its chairman.

(2) The report of the procurement procedure shall be submitted to the head of the Company for approval.

(3) After the approval of the Report of the procedure, the communications regarding the result of the procedure will be sent to all the economic operators participating in the procedure.

(4) In the communication regarding the result of the procedure provided in paragraph (3), the Company has the obligation to include:

a) to each rejected candidate, the concrete reasons that were the basis for the decision to reject his / her request to participate;

b) to each rejected tenderer, the concrete reasons that were the basis for the decision to reject its tender;

c) to each tenderer who has submitted an admissible tender but which has not been declared the winner, the characteristics and relative advantages of the tender (s) designated as the winner in relation to his tender, the name of the tenderer to whom the procurement contract is to be awarded or, as the case may be , of the tenderer with whom a framework agreement is to be concluded;

d) to each tenderer who has submitted an admissible tender, information regarding the development and progress of the negotiations with the tenderers.

## **TERM OF VALIDITY OF THE OFFER**

**Art. 81** - (1) The tenderer has the obligation to maintain the tender valid for the entire period of validity of the tender; where a guarantee of participation is required, its period of validity must be at least equal to the period of validity of the offer.

(2) The company has the right to request from the tenderers, in exceptional circumstances, before the expiration of the validity period of the offer, the extension of this period.

(3) The tenderer has the obligation to communicate to the company whether or not it agrees with the extension of the validity period of the offer.

(4) The tenderer who does not agree with the extension of the validity period of the offer shall be considered to have withdrawn his tender, without this fact entailing the loss of the guarantee for participation.

## **ESTABLISHING THE WINNING OFFER**

**Art. 82** - (1) The company has the obligation to establish the winning offer based on the award criterion specified in the announcement / invitation to participate and in the

procurement documentation, provided that the respective tenderer meets the selection and qualification criteria imposed.

(2) The company has the obligation to communicate the result of the procurement procedure to all economic operators participating in the procedure.

## FINALIZING OF THE PROCUREMENT PROCEDURE

**Art. 83** - (1) The company has the obligation to conclude the procurement contract / framework agreement with the tenderer whose offer was established as the winning one within a maximum of 30 days.

(2) If the company cannot conclude the contract the procurement contract / framework agreement for reasons not attributable to it with the tenderer whose tender has been established as the winning one, then it has the right:

a) to invite the tenderers, in descending order of the ranking, in order to conclude the contract; or

b) to cancel the application of the procedure for awarding the procurement contract.

(3) The company has the obligation to conclude the acquisition contract during the validity period of the offers.

**Art. 84** - If the offer that was established as the winning one is an offer submitted jointly by several tenderers, the company has the right to impose, before concluding the procurement contract, the legalization of the association of the respective tenderers in order to fulfill the contract, but without obligation that through this association it will be necessary to form a new legal entity.

**Art. 85** - (1) In the case of an offer that has a seemingly unusually low price, respectively: below 50% of the estimated value of the acquisition to be made, the Company has the obligation to request the tenderer, in writing and before taking a decision to reject that offer, details and clarifications that it considers significant regarding the offer, as well as to verify the answers that justify that price.

(2) The company has the obligation to take into account the justifications received from the tenderer, under the conditions of paragraph (1), in particular those relating to:

a) the economic substantiation of the way of price formation;

b) the technical solutions adopted and / or any particularly favorable conditions from which the tenderer benefits for the provision of products or services or the execution of works;

c) the originality of the offer from the point of view of fulfilling all the requirements provided in the specifications;

d) compliance with the relevant obligations in the fields of environment, social and labor relations, applicable to the provision of products or services or the execution of works;

e) the possibility for the tenderer to benefit from a state aid.

## THE FRAMEWORK AGREEMENT

**Art.86** - (1) The framework agreement will be concluded following the application of any procurement procedure specified in art. 36 of the present Norms.

(2) The duration of the framework agreement shall not exceed, as a general rule, 4 years, except in duly justified cases, in particular by the subject matter of the framework agreement.

**Art.87** - (1) The contracts awarded in the execution of a framework agreement, respectively the subsequent contracts to the framework agreement, can be concluded only with the economic operator designated winner of the procurement procedure.

(2) The terms of a subsequent contract may in no case make substantial changes to the terms and conditions initially laid down in that framework agreement.

**Art.88** - (1) The framework agreement must provide at least:

a) the main obligations that the economic operator has assumed through the offer;  
b) the unit price that the economic operator has provided in the offer and on the basis of which the price of each subsequent contract that will subsequently be awarded, will be determined;

(2) National Radiocommunication Society it has the obligation to award the subsequent contracts to the framework agreement only in compliance with the technical and financial conditions set out in that framework agreement.

## **CANCELLATION OF THE APPLICATION OF THE PROCUREMENT PROCEDURE**

**Art.89** - The company has the right to cancel the application of the procedure for awarding the procurement contract, only if it takes this decision before the date of transmission of the communication on the result of the application of the procurement procedure and only in the following circumstances:

a) no offer / request for participation has been submitted;  
b) the number of tenderers is lower than the minimum provided for the procedure by the present internal norms:

c) none of the tenderers has fulfilled the qualification conditions provided in the procurement documentation;

d) only inappropriate offers were presented, respectively offers that:  
- have not been developed and presented in accordance with the requirements contained in the procurement documentation;  
- contain in the financial proposal prices which obviously do not appear to be the result of free competition and which cannot be duly justified;  
- contain proposals regarding contractual clauses, proposals that are obviously disadvantageous for the company;  
- by the value included in the financial proposal, each of the offers exceeded the value of the funds allocated for the fulfillment of the respective acquisition contract;  
- does not comply with the provisions of the technical specifications in the specifications book;

e) exceptional circumstances affect the procedure for awarding the procurement contract or is impossible to conclude the contract.

**Art.90** - The cancellation decision does not create any obligation of the company towards the participants in the acquisition procedure.

**Art.91** - The company has the obligation to communicate in writing to all participants in the procurement procedure, within 5 working days from the date of cancellation, both the termination of the obligations they have created by submitting the offers, as well as the actual reason which determined the annulment decision.

## **CHAPTER V GUARANTEES THE GUARANTEE FOR PARTICIPATION**

**Art. 92** - (1) The company has the obligation to specify in the procurement documentation whether for the participation in the procedure the obligation of the tenderers to constitute a participation guarantee is provided. If the procurement documentation provides for such an obligation, then it must also contain the following information:

a) the amount of the participation guarantee in a fixed amount, an amount that cannot exceed 2% of the estimated value of the contract;

b) the validity period of the participation guarantee, which will be at least equal to the validity period of the offer.

(2) In the case of awarding a service / product / works contract whose estimated value is less than or equal to the RON equivalent of 100,000 euros, excluding VAT, as well as in the case of a contract awarded following the application of the procedure of negotiation with a single source, the company has the right not to require the tenderers to provide a guarantee for participation.

**Art.93** - (1) The participation guarantee is constituted by bank transfer/ collateral cash at the disposal of the company or by a guarantee instrument issued in accordance with the law by a banking company in the conditions of the law.

(2) The participation guarantee must be constituted in the amount and for the validity period provided in the procurement documentation.

(3) The guarantee must be irrevocable.

(4) The guarantee instrument must provide that the payment of the participation guarantee will be made unconditionally, respectively at the first request of the beneficiary, based on his statement regarding the fault/ guilt of the guaranteed person and shall be presented to the company no later than the deadline and the limit hour for submission of the tenders.

**Art.94** - (1) The company has the right to retain the guarantee for participation, the tenderer thus losing the amount constituted, when the latter is in any of the following situations:

a) withdraws its offer during its validity period;

b) its offer being established as the winning one, does not constitute the guarantee of good execution during the validity period of the offer and, in any case, not later than 15 days from the signing of the contract;

c) his offer being established as the winning one, he refuses to sign the procurement contract during the validity period of the offer.

(2) In case of concluding a framework contract, the provision of paragraph (1) lit. b) is not applicable.

**Art. 95** - (1) The guarantee for participation, constituted by the tenderer whose offer has been established as the winning one, shall be returned by the Company within maximum 5 working days from the date of establishing the guarantee of good execution.

(2) The participation guarantee, constituted by the tenderers whose offer has not been established as winning, is returned by the Company after signing the procurement contract with the tenderer (s) whose offers were designated as the winning ones, but not later than 5 working days from the date of expiration of the period of validity of the offer.

## **THE GUARANTEE OF GOOD EXECUTION**

**Art.96** - (1) The guarantee of good execution of the contract is constituted within maximum 10 working days from the signing of the contract, under the same conditions provided in art.93 and aims to ensure the company the fulfillment of all contractual obligations by contractor.

(2) The company will establish the value of the guarantee of good execution by reference to the complexity of the contract to be executed and must not exceed 10% of the contract price, excluding VAT.

(3) In case of awarding a contract whose estimated value is less than or equal to 100,000 euros, excluding VAT, the company has the right not to require the tenderers to provide a guarantee of good execution.

(4) The guarantee of good execution is annexed to the contract.

(5) The company has the right to make claims on the guarantee of good execution, within the limit of the damage created, if the contractor does not fulfill his obligations assumed by the contract. Prior to making a claim on the guarantee of good execution, the company has the obligation to notify its claim to the contractor and the issuer of the guarantee instrument, specifying the obligations that were not complied with, as well as the method of calculating the damage.

**Art. 97** - (1) The company has the obligation to unilaterally terminate the procurement contract, within 30 days from the occurrence of circumstances that could not be foreseen at the date of concluding the procurement contract and which lead to the modification of the contractual clauses in such a way that the performance of that contract would be contrary to the company's interests.

(2) In this case the contractor has the right to demand the corresponding payment for the part of the procurement contract fulfilled until the date of termination, as well as the recovery of other costs related to its fulfillment, made until the date of unilateral termination of the contract.

**Art. 98** - In case of non-compliance with the contractual obligations by one of the parties, the injured party has the right to request the termination of the acquisition contract and to claim the payment of damages. The company has the obligation to issue a negative finding certificate at the end of the execution of the contract awarded based on the present internal rules, this certificate being communicated ex officio to the economic operator that has breached its contractual obligations during the execution of the contract. The interested person may file an appeal against this document entitled negative finding certificate based on Law 554/2004 on administrative litigation at the legally competent courts.

## **CHAPTER VI PROCUREMENT FILE**

**Art. 99** - (1) The company has the obligation to prepare the procurement file for each awarded contract.

(2) The procurement file must contain at least the following documents:

- a) the announcement / invitation to participate and the proof of transmission;
- b) procurement documentation;
- c) the decision / disposition / order of appointment of the evaluation commission and, as the case may be, of the co-opted experts;
- d) declarations of confidentiality and impartiality;
- e) the minutes of the opening meeting of the tenders, if applicable;
- f) the offer forms submitted within the award procedure;
- g) the qualification documents, when they were requested;
- h) requests for clarifications, as well as clarifications sent / received by the company;
- i) the interim report on the selection of candidates, if applicable;
- j) the minutes of evaluation, negotiation, as the case may be;
- k) the report of the procurement procedure, as well as the annexes to it;
- l) proof of communications regarding the outcome of the procedure;
- m) the public procurement contract, signed, and, as the case may be, the additional documents;
- n) if applicable, complaints made in court, accompanied by court decisions regarding the procurement procedure;

- o) if applicable, the decision to cancel the award procedure, issued by the Evaluation Commission or by the court.

**Art. 100** - The acquisition file is kept by the company as long as the acquisition contract produces legal effects but not less than 5 years from the date of finalization of the respective contract.

**Art. 101** - Upon request, the procurement file is made available to any interested public authority, for consultation, provided that no information is disclosed, if its disclosure would be contrary to law, would prevent the application of the law, would affect the public interest, it would prejudice the legitimate commercial interest of the parties or affect free competition, but without limiting the rights arising, according to the law, for the competent bodies to pick up documents that can serve to prove frauds, contraventions or crimes.

## CHAPTER VII

### WAYS OF ATTACK

**Art.102** - (1) The participant in the procedure, who considers himself injured, may submit an appeal to the National Radiocommunication Society within 3 working days from the receipt of the communication on the result of the procedure. The submission of the appeal does not suspend the procurement procedure.

(2) The appeal will be solved by the evaluation commission appointed in accordance with the present norms, which also has the competence to resolve the appeals, within 3 working days from the receipt.

(3) The decision of the commission will be communicated to the appellant within 1 working day from the adoption.

**Art.103** - In order to resolve the appeals, the commission may decide:

- a) admitting the appeal and granting a time to remedy within the grounds relied on in the appeal, if the Commission finds that those grounds are well-founded;
- b) the rejection of the appeal if the Commission finds that the grounds relied on in the appeal are unfounded;
- c) the rejection of the appeal if the Commission finds that the submission of the appeal was made after the term of 3 working days, provided in art. 102 above;
- d) cancellation of the procurement procedure.

**Art.104** - The tenderer who considers himself harmed by the settlement of the appeal may address the competent court, within 10 days from the communication.

## CHAPTER VIII

### FINAL PROVISIONS

**Art.105** - The company may introduce, depending on the specifics of each acquisition, other provisions in the acquisition documentation even if they are not mentioned in this document but are necessary for the application of the acquisition.

**Art.106** - The provisions of the present Internal Norms are applied exclusively for the acquisition of products, services and works according to Art.27 of Law no. 98/2016, acquisitions that are an exception to Law no. 98/2016, regarding public procurement

**Art.107** - The present norms enter into force on the date of their approval by the Board of Directors, date on which any contrary provisions are abrogated.