

REGULATION ON CONCLUSION OF CONTRACTS FOR PROCUREMENT OF GOODS, SERVICES OR WORKS

CHAPTER I - GENERAL PROVISIONS

Art. 1. – Scope

(1) This Regulation on conclusion by “Compania Națională de Transporturi Aeriene Române – TAROM”, S.A. (*i.e.*, *TAROM Romanian Air Transport Nat. CO, Inc.*) (hereinafter referred to as “TAROM”) of purchase contracts (hereinafter referred to as the “Regulation”) regulate the conditions and stages of the process of carrying out procedures for concluding contracts for the purchase of supplies, services and/or works ancillary to main business, included in the revenue and expenditure budget relating to TAROM’s business. The Regulation on conclusion of purchase contracts include the rules applicable to purchases (procurement) of goods, services or works which are not excluded under par. (2) of Art. 1.

(2) This Regulation shall not apply in following cases:

- a) conclusion of contracts for procurement of goods, services or works in connection with aviation safety, security and/or protection of classified information, including procurement of handling services and aviation fuel for flight operations relating to emergency, humanitarian cases, needs at backup airports, and ad hoc flights;
- b) conclusion of contracts for the supply of products and/or the provision of services necessary for the aircraft maintenance or repair, including those aiming the purchase/rental of engines or equipment intended for carrying out maintenance/repair work on aircraft, aircraft components or suchlike;
- c) conclusion of contracts for procurement of goods and/or services in monopoly (elements and components of aircraft manufacturers, sole airport suppliers of ground handling services, aviation fuel and operation services like passenger access to the business class lounges, fast track, BRS, CUTE, border assistance and the like) situations;
- d) conclusion of contracts for supply of goods, services and/or works that TAROM is required to conclude pursuant to specific procedures adopted by the international bodies that impose certain predetermined prices and conditions of payment;
- e) conclusion of services contracts by TAROM in return for advertising within the limits of the approved budget;
- g) conclusion of contracts for the supply of goods, the object of which is aviation fuel at domestic and international locations (airports), both for regular and charter flights;
- h) conclusion of service contracts, the object of which is the ground handling services for passengers, baggage, cargo and mail at domestic and international locations (airports);
- i) conclusion of contracts for the supply of goods, services and/or works inasmuch as the procedures hereunder could prompt the publication of certain information, the disclosure of which would be contrary to the legitimate interests of the company;
- j) conclusion of service contracts, the object of which is the hiring of maintenance and/or flight personnel only in emergency situations;
- k) conclusion of contracts for hotel and restaurant services for maintenance and flight personnel, as well as for the conclusion of contracts for hotel services for passenger accommodation in case of flight irregularities, in accordance with EC no. 261/2004;
- l) conclusion of service contracts, the object of which is services of training/ schooling and simulator training for the flight personnel;

m) conclusion of contracts, the object of which is the lease of aircraft;

In this case the *Procedural Rules on Lease of Aircraft* shall apply.

n) conclusion of contracts, the object of which is the purchase of aircraft;

In this case the *Regulation on the Conclusion of Aircraft Purchase/ joint Contract* shall apply.

o) consultancy, legal assistance and representation services;

p) for financial services and banking operations such as bank commissions, government securities, bonds and other financial-banking instruments, bank loans and other forms of lending, financial leasing, financial audit, financial consulting, hedging, processing and settlement of bank transactions , monetary intermediation and other like that;

r) for greenhouse gas emission allowances (CO₂);

s) for business and management consulting services as business consulting, information technology consulting, development and integration, outsourcing, communication and any other similar consulting services;

t) for the conclusion of contracts for the supply of on-board catering products, for the provision of handling services related to on-board catering activities, including related on-board sales services and other activities intended to serve passengers during the flight.

Art. 2. – Purposes. Principles

The purpose of this Regulation is to ensure a sound management of TAROM's financial resources and property by observing throughout the operations the principles of legitimacy, regularity, cost-efficiency, effectiveness and efficiency.

Art. 3. – Definitions and legal regime

(1) For the purposes of this Regulation, the words and phrases below have the following meanings:

a) acceptance of winning bid - legal act by which TAROM manifests its agreement to get legally involved in the purchase agreement to be signed with the bidder whose bid was designated as winner;

b) Contract - purchase contract;

c) - purchase contract - contract for pecuniary interest concluded in writing by and between TAROM on one side, and one or more economic operators on the other side, the object of which is the supply of goods, provision of services or execution of works;

d) supply contract - a purchase contract other than contract for works, the object of which is the provision of one or more products by purchase, including by installments, rental or leasing, with or without a purchase option;

e) contract for services - a purchase contract, other than a supply contract or for works, The object of which is the provision of one or more services;

f) contract for works - purchase contract, the object of which is:

(i) the execution of works/ constructions;

(ii) or both the design and execution of works/ constructions;

(iii) or the achievement by any means of a construction that meets the needs and objectives of TAROM, insofar they do not comply with the provisions of subparagraph (i) and subparagraph (ii) hereabove. Construction means the result of a series of construction works of buildings or civil engineering works intended to fulfill in itself a technical or economic function;

- g) contractor- a bidder who, in consequence of carrying out a procurement process in accordance with the provisions hereof, has become a part of a purchase contract;
- h) procurement documentation - documentation containing all information relating to the subject-matter of the purchase contract of and procurement process, the content of which is set forth under Art. 9;
- i) additional stage for the improvement of financial bids - an additional stage to be carried out according to TAROM's decision, within the terms hereof, for the improvement of financial bids by every bidder who submitted admissible bids in the case of procedures of procurement of goods, services and works under a call for bids, open bidding and direct negotiation;
- j) bidding bond - a bond provided by bidder, within the terms hereof, in order to protect TAROM against the risk of his/ her possibly inappropriate behavior throughout the procurement process, pending the conclusion of a purchase contract;
- k) purchase contract good performance guarantee - a guarantee provided by contractor, within the terms hereof, in order to assure TAROM of the quantitative, qualitative and within the time periods provided for in the purchase contract fulfillment of contract obligations;
- l) bidder,- any economic operator that has submitted a bid in compliance with the procurement process;
- m) bid - a legal act by which an economic operator manifests its will to legally enter into a purchase contract; a bid includes both a financial and a technical bid;
- n) economic operator - any supplier of goods, provider of services or performer of works, either an individual or a body corporate, whether governed by public or by private law or a group of persons working in such field, which lawfully offers goods, services and/or performs works in the market;
- o) procurement process - stages to be followed by both TAROM and bidders for the conclusion of a purchase contract;
- p) financial bid means a part of the bid that includes information on prices, tariffs and other financial and commercial/ contract conditions to meet the procurement documentation terms;
- q) technical bid means a part of the bid drawn up based on the requirements of the technical specifications in the procurement documentation;
- r) "written" or "in writing" means any combination of words or figures which can be read, rendered and then released. Such combination includes all information transmitted through e-mail or fax;
- s) purchase the estimated value means a value estimated by TAROM based on calculating and totaling all amounts payable for fulfilling the purchase contract, without a value added tax, taking into account any kinds of options and, inasmuch as they can be anticipated at the time of the estimation, any possible additions or increases in the value of the purchase contract;
- t) formal defects mean those errors or omissions in a document, the rectification/ completion of which is unequivocally supported by the meaning and contents of other information initially existing in other documents delivered by bidder or the rectification/ completion of which has a clarification or confirmation role, they not being likely to produce an unfair advantage in relation with the other participants in the awarding procedure.
- u) days mean calendar days, unless expressly provided they are working days. The time-period expressed in days shall start to run from the beginning of the first hour of the first day of the period and shall end with the expiry of the last hour of the last day of such time-period; the day during which TAROM transmits advises, notifications, requests, information and the like to economic operators shall not be taken in the calculation of such period. If the last day of a time-period expressed otherwise than in hours is a public holiday, a Sunday or

a Saturday, the period shall end with the expiry of the last hour of the following working day.

(2) TAROM is not a contracting authority, it being a public undertaking (a joint-stock company with state capital) operating in a competitive market with the goal of obtaining profit from domestic and international civil air operations and other acts and deeds of commerce required by the preparation and promotion of the main object and secondary objects. Company's main object is to perform domestic and international passenger, baggage, cargo and mail air carriage on its scheduled and charter flights. The public procurement legislation (European directives transposed into acts in the national law) does not apply to companies which seek profit in a competitive market, incurring the risk of losses. In the case of such companies, the purchase contracts are governed by own rules adopted by the statutory bodies to ensure the operation flexibility and effectiveness claimed by that market section.

Art. 4. - Purchase contracts

(1) Purchase contracts are:

- a) supply contracts;
- b) contracts for services.
- c) contracts for works.

(2) The purchase contract, the main object of which is the supply of goods and, as an accessory, operations/ installation works and their commissioning is deemed a supply contract.

(3) The purchase contract, the main object of which is the supply of goods and provision of services is deemed:

- a) a supply contract, if the estimated value of the goods is equal to or greater than the estimated value of the services provided for in such contract;
- b) contract for services, if the estimated value of the services is greater than the estimated value of the goods covered by such contract.

The contract category, should the procurement concern, besides goods and/or services, the execution of works shall be determined according to the contract main object.

In cases where, in connection with certain procurement, the total amount of the company's needs for a certain period of time cannot be determined in advance, TAROM will conclude framework contracts with economic operators.

The framework contract is a written agreement by and between TAROM and one or more economic operators, the object of which is to lay down the terms and conditions that will govern the purchase contracts to be awarded during a specific period of time (named subsequent contracts). A framework contract shall include at least the following information: the operator(s) that will sign the subsequent contracts, the type of services object of subsequent contracts, the method of determining the prices of subsequent contracts and the way of awarding subsequent contracts. Framework contracts are assigned by applying one of the procedures under Art. 5 of the Regulation, in accordance with the provisions of Art. 6 of the Regulation. Subsequent contracts are assigned according to the rules under the framework contract.

CHAPTER II – RULES ON CHOICE OF PROCUREMENT PROCESS

Art. 5 – Procurement processes

The procurement processes covered by this Regulation are:

- a) direct procurement;
- b) call for bids;
- c) open bid;
- d) direct negotiation.

Art. 6. – Choice of kind of procurement process

TAROM chooses the procurement process depending on the following aspects:

- a) estimated value of all purchases of the same object or intended for similar or identical use or aimed at economic operators that are constantly carrying out business in a relevant market section, which it intends to award during a calendar year; and
- b) fulfillment of specific conditions for the application of certain procurement processes.

Art. 7. – Value Thresholds

TAROM applies the procurement processes by reference to the following value thresholds:

- a) direct purchase shall apply for the procurement of goods, services or works, the estimated purchase value of which is at most equal with the equivalent in RON, exclusive of VAT, of an amount of EUR50,000.00 as of the date the purchase contract is concluded;
- b) call for bids shall apply for the procurement of goods, services or works, the estimated purchase value of which is at most equal with the equivalent in RON, exclusive of VAT, of an amount of EUR50,000.00 and is less than the equivalent in RON, exclusive of VAT, of an amount of €1 million;
- c) open bid shall apply for the procurement of goods, services or works, the estimated purchase value of which is equal or more than the equivalent in RON, exclusive of VAT, of an amount of €1 million;
- d) direct negotiation shall apply regardless of the estimated purchase value in all cases in which TAROM intends to extend the duration of an on-going purchase contract or to supplement the object of an on-going contract or to request changes for the benefit of TAROM, without the changes, as agreed upon by the parties, having as a result, as a consequence of concluding an addendum, the thresholds being exceeded of the maximum values corresponding to the type of procurement process following which the initial contract was completed.

Art. 8. – Calculation of the procurement estimated value

TAROM shall calculate the estimated value of a purchase having regard to the total amount payable, net of VAT, forecast for the fulfillment of the purchase contract, taking into account any possible forms of options and the extensions of the contract explicitly set forth in the procurement documents.

Art. 9. – Procurement Documentation

(1) TAROM shall set forth, as part of procurement documentation, any requirements, criteria, rules and other information necessary to provide the bidder with complete, correct and explicit information with regard to the way the procurement process is applied.

(2) Procurement Documentation must include at least:

a) descriptive documentation, including:

(i) TAROM general data (name, legal status, registered address, registration number with the Registrar of Companies, Unique Registration Number, registered paid-in capital, banking account), contact persons (including telephone, fax, e-mail), means of communications etc.;

(ii) instructions regarding the time limits to be observed and the technicalities to be complied with in connection with the procurement process;

(iii) if requested, minimum qualification requirements as well as the documents to be delivered by bidders to prove they have successfully met the qualification criteria;

(iv) technical specifications;

(v) instructions concerning the manner of drafting and presentation of technical and financial bid;

(vi) detailed and complete information about the criterion applied for determining the winning bid;

(vii) instructions regarding remedies;

b) draft purchase contract or, as applicable, particulars of the mandatory contract clauses established by TAROM;

c) forms and document templates, as applicable.

(2) descriptive Documentation, draft contracts and forms or document templates shall be drawn up in compliance with the provisions hereof, after the templates set forth in the Annexes.

Art. 10. - Technical specifications

(1) Technical specifications are requirements, provisions, features of a technical nature which allow every good, service or work to be described objectively, so as to satisfy TAROM's needs.

(2) Technical specifications define, as appropriate and without being limited thereto, features relating to the level of quality, technical and performance level, environmental impact requirements, operation safety, sizes, terminology, symbols, testing and test methods, packaging, labeling, marking and user instructions, technologies and methods of production of goods/ provision of services/ execution of works as well as quality assurance systems and conditions for certifying compliance with relevant standards, requirements relating to the transfer of intellectual property rights or the like. In the case of contracts for works, the technical specifications may also refer to requirements for design and costing, examination, inspection and acceptance conditions for works or techniques, procedures and methods of execution as well as any other technical conditions which TAROM is able to describe, depending on various regulatory statutes and general or specific regulations in relation to finished works and materials or other component elements of such works.

(3) Without prejudice to mandatory national technical regulations, inasmuch as they are compatible with European Union law, TAROM will define the technical specifications:

a) either by reference to, as a rule, in the following order of priority, national standards that adopt European standards, European technical assimilations, international standards or to other technical references

developed by European standardisation bodies; Where they do not exist, then the technical specifications shall be defined by reference to other standards, national technical assimilations or regulations on the use of goods or the design, calculation and execution of works. Any such reference shall be accompanied by the words “or equivalent”;

b) by specifying the performance and functional requirements, which must be enough precisely described so as to allow bidders to determine the object of the purchase contract;

c) or by specifying the performance and functional requirements, as set forth under b) as well as by reference to common standards, technical assimilations and specifications set forth under a), as a means of presumption of conformity with such level of performance and functional requirements;

d) or by specifying the performance and functional requirements, as set forth under b), for certain characteristics and by reference to technical standards or assimilations set forth under a), for other characteristics.

(4) Defining technical specifications by indicating a specific origin, source, manufacture, a special procedure, trademark or trade name, patent, manufacturing licence is permitted if only accompanied by the words “or equivalent” and only where a description sufficiently precise and intelligible of the purchase object is not possible through the application of paragraph (3) above.

(5) Notwithstanding the provisions of paragraph (4) hereinabove it is always allowed giving a certain origin, source, manufacture, special procedure, trademark or trade name, patent, or manufacturing licence without being accompanied by the words “or equivalent” in the case of the acquisition of spare parts and consumables relating to any goods already owned or used by TAROM, for which the supplier/ manufacturer specified forfeiting the warranty or removal of liability for failure to optimum function in the case of using spare parts or consumables other than the genuine ones.

Art. 11. – Technical bid compliance with technical specifications

(1) Should TAROM define the technical specifications and opt for the manner set forth under a) of par. (3) of Art.10, then no bid will be rejected on the grounds that the goods or services covered by the technical bid do not conform to the specifications laid down, if bidder proves, by any suitable means, that the submitted bid meets in an equivalent manner the technical specifications.

(2) Should TAROM define the technical specifications and opt for the manner set forth under b) of par. (3) of Art.10, then no bid will be rejected, if bidder proves by any that are adequate, generally recognized in the market sector means, that the goods, services or works bid provide for meeting the performance or functional requirements, because they comply with:

a) a national standard adopting a European standard;

b) an European technical assimilation;

c) a common technical specification used in the European Union;

d) an international standard accepted by Romania or acceptable to TAROM;

e) other technical regulations devised by European standardisation bodies.

(3) For the purposes of par. (1) and par. (2) hereinabove, an appropriate means of proving compliance with the required technical specifications might be the delivery of a test/ trial report issued by a recognised/ certificated body, such as, as applicable, a neutral test and calibration laboratory or a certification and inspection body providing for compliance with applicable European standards. TAROM shall accept certificates issued by the bodies recognised in any of the Member States of the European Union.

Art. 12. - Qualification criteria

TAROM is entitled to only apply to the procurement process the qualification and selection criteria relating to:

- a) reasons for the exclusion of any candidates/ bidders;
- b) capacity of candidate/ bidder.

Art. 13. - Exclusion reasons

(1) TAROM is entitled to exclude from any procurement processes any bidder/ associated bidder/ subcontractor that falls in any of the following cases:

- a) is registered with outstanding debts in TAROM accounting records;
- b) is a party in any disputes before courts of law or arbitration in which TAROM is a plaintiff/ claimant, regardless of the dispute object;
- c) such economic operator seriously or repeatedly violated its main obligations under a purchase contract previously concluded with TAROM, and such violations led to an early termination of the contract, payment of damages or other comparable penalties;
- d) any other circumstances in which TAROM would record image damages or of any other nature.

Art. 14. - Proving Not-falling in situations leading to exclusion from the procurement process

(1) Any economic operator in any of the situations set forth under Art. 13 that which attract the exclusion from the award process, can provide evidence to show they do not fall in such situations.

(2) A bidder/ associated bidder/ subcontractor not falling in any of the situations liable to result in the exclusion from the procurement process can be proved, as a rule, by delivering a Declaration on Honour. TAROM can, at any time during the procurement process, additionally request the delivery of revealing documents, even though not expressly stated in the procurement documentation as an obligation. (3) Should TAROM regard the proofs submitted by the economic operator under par. (2) as sufficient to demonstrate in concrete terms that bidder does not fall in any of the situations set forth under Art. 13, TAROM shall not exclude such economic operator from the procurement process.

Art. 15. – Qualification criteria relating to the capacity of bidder to carry out the purchase contract

(1) TAROM may apply qualification criteria relating to the capacity of bidder to carry out the purchase contract in respect of:

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

(2) Qualification Criteria must have an obvious connection with the object of the contract to be concluded and observe the principle of proportionality, both in establishing qualification criteria and the level of minimum requirements that the bidders must meet, taking into account the specific nature, the quantity and complexity of the goods, services or works to be the object of the purchase contract.

(3) The criteria relating to the capacity and minimum requirements required to fulfil them, together with appropriate evidence will be provided in the procurement documentation.

Art. 16. - Bidder's capacity to exercise professional activity

TAROM can, by way of the procurement documentation, request any bidder/ associated bidder to demonstrate the ability to engage in business that is the object of procurement, and the subcontractor to demonstrate the ability to exercise the business that is the object of subcontracting by delivering any documents that it considers revealing and prove the registration as an individual or body corporate and, as applicable, any certificates or evidence of professional membership under the regulations of the country in which the bidder resides.

Art. 17. - Bidder's economic and/or financial status

(1) TAROM can, by way of the procurement documentation, request the economic operator participating in the procurement process to satisfy certain requirements relating to the economic and financial status that it deems relevant, in order to make sure that the economic operators have the economic and financial capacity required to carry out the purchase contract and to be protected against a possible risk of default from the contract.

(2) The requirements relating to the economic and financial status may concern the delivery of one or more documents regarded as relevant by TAROM, such as:

- a) corresponding bank statements or, as applicable, proofs of professional risk insurance;
- b) balance sheet or balance excerpts, if the publication of such balances is provided by the laws of the country in which the bidder resides;
- c) overall turnover statements or, if appropriate, of turnover in the business field relating to the object of the contract for a previous period concerning the business of at most the last three years, as far as that information is available;

In the latter case, TAROM will take into account the date at which the operator was established or began its business.

(3) In cases where, for objective, properly justified reasons, the economic operator is unable to deliver the documents requested by TAROM, it shall be entitled to prove its economic and financial status by delivering other documents as TAROM can deem to be revealing, inasmuch as they give a true and fair image of the financial and economic status of bidder.

Art. 18. – Bidder's technical and/or professional ability

(1) TAROM can, by way of the procurement documentation, request the economic operator participating in the procurement process to satisfy certain requirements, as TAROM deems relevant, regarding its technical capacity and/or professional ability, that economic operators have the human and technical resources and experience necessary to carry out the purchase contract to a proper quality standard.

(2) In order to check the technical and/or professional ability of bidders, TAROM can request from them the following documents/ information, as applicable:

- a) a list of main deliveries of similar goods made in the last two (2) years, including values, delivery time, and principals. Deliveries of goods shall be confirmed by submitting certificates/ documents issued or countersigned by each principal. In cases where, for objective reasons, the economic operator lacks the possibility of obtaining certificates/ endorsements on part of principals, demonstrating the delivery of goods is carried out by means of a declaration given by the economic operator;
- b) a list of main similar services rendered in the last two (2) years, including values, rendering periods, and

principals. The provisions of subparagraph a) apply properly;

c) a list of similar works executed during the last 3 (three) years, accompanied by minutes of acceptance upon completion of works, minutes of final acceptance of works, any other relevant certificates of good performance. Documents will include at least information on the value of the work performed, fulfillment of obligations, and principals;

d) a declaration concerning the technical equipment and actions taken to ensure quality as well as, if appropriate, study and research resources;

e) the information regarding information on the expertise, job training, and qualification of the managerial staff as well as of the people responsible for carrying out the contract;

f) a declaration concerning the annual average number of personnel and of persons with leadership positions in the last 3 (three) years;

g) information concerning the equipment, facilities, technical equipment that the economic operator has available for the proper performance of the contract;

h) certificates or other documents issued by bodies empowered for such purpose, certifying the conformity of goods clearly identified by reference to relevant standards or specifications;

i) information about the specialty staff/ technical body available or whose participation commitment was obtained by bidder, especially to ensure the quality control;

j) samples, descriptions, sketches and/or photographs, the authenticity of which can be proved, should TAROM so request;

k) information on environmental protection actions that the economic operator can apply during contract performance;

l) information/ documents on subcontractors nominated in the tender, about their ability to pursue the business and their technical and/or professional capacity as well as the proportion of the contract to be performed by subcontractors;

m) any other information, documents and the like which it deems relevant.

(3) In cases where the goods, services or works, which are the object of procurement, are complex or are intended for a specific purpose, TAROM can check/ control either directly or through a consultant or a proper authority of the State in which the economic operator resides or through a proper authority internationally recognised, provided that such authorities agree, the manufacturing capacities of the good supplier or the technical capacity of the service renderer or of the works performer, study and research methods used as well as the actions taken for quality control.

(4) TAROM can request references/ recommendations from buyers of the supplied goods/ rendered services/ works previously performed by bidder.

Art. 19. – How to satisfy qualification criteria

(1) Economic operators can deliver certificates issued by any proper public authorities or bodies governed by public or private law that comply with European standards of certification, in order to prove they satisfy the qualification criteria.

(2) TAROM will not require bidders to have submitted any specific certifications, the latter being entitled to submit, for the purpose of proving they satisfy certain requirements, any other document equivalent to such certification or conclusively proving they satisfy such requirements. TAROM can request, where it deems appropriate, clarifications or additions to the documents delivered.

Art. 20. - Subcontracting

(1) In cases where TAROM expressly provides in the procurement documentation and without diminishing the responsibility of bidder for carrying out a contemplated purchase contract, it can include, in the technical bid, the possibility of having subcontracted any parts of such contract.

(2) Bidder is required to specify the parts of the purchase contract going to be subcontracted and the recognition data of the proposed subcontractors.

Art. 21. – Assignment of contract or contract rights and/or obligations

Except as otherwise expressly provided for in the purchase contract, the assignment of contract or contract rights and/or obligations is allowed under the law, only with the prior written consent of TAROM.

Art. 22. - Criteria for designating the winning bid

(1) In the procurement documentation TAROM will set forth clearly and detailed the criteria for the designation of the winning bid, bid assessment factors with their relative weightings or the calculation algorithm, as well as specific methodology for scoring benefits that will result from the technical and financial bids submitted by bidders. They cannot change throughout the running of the procurement process.

(2) Evaluation Factors must be actually connected with the specifics of the purchase contract, and their relative weightings should reflect the importance of the advantages that TAROM is seeking to obtain from them both technically and financially.

(3) Criterion for designating the winning bid can be:

- a) either the most economically advantageous bid;
- b) or exclusively, the lowest price.

Art. 23. - “The most economically advantageous bid” Criterion

(1) Should “The most economically advantageous bid” criterion be applied, the winning bid is the bid that meets the highest score resulting from the application of an assessment factor system, for which relative weightings or a specific calculation algorithm shall be determined. In cases where, for objective reasons, it is impossible to determine the exact relative weighting for each assessment factor, TAROM will indicate in the procurement documentation at least the descending order of importance of the assessment factors to be used.

(2) The bid assessment factors set forth under par. (1) hereabove can be, alongside the price (net of VAT): characteristics concerning the qualitative, technical or functional level, environmental characteristics, running costs, cost-effectiveness ratio, after-sales service and technical assistance, delivery or performance time limit, other elements deemed to be significant for the assessment of bids.

Art. 24. – “The lowest price” Criterion

In the event the “lowest price” criterion is used, the determining of the winning bid is only done by comparing prices, net of VAT, submitted as part of admissible bids, without quantifying other technical elements or other benefits set out in bids.

Art. 25. - Setting the bidding bond

(1) TAROM will set forth in the procurement documentation if bidders are required to deposit a participation bond for participating in the bidding process. If the procurement documentation provides for such an obligation, it must also include the following information:

- a) amount of participation bond as a fixed amount;
- b) period of validity of participation bond, which will be at least equal to the minimum period of bid validity, as requested by the procurement documentation.

(2) TAROM shall request to have mandatorily furnished a participation bond for the processes having as their object contracts, the estimated value of which is greater than the RON equivalent of €1 million.

(3) The participation bond amount will be set between 0.1% and 0.5% of the procurement estimated value.

Art. 26. – How to furnish participation bond

(1) The participation bond shall be furnished by bank transfer or by an instrument issued by a banking company or an insurance company that is not in any special situations concerning the authorisation or supervision, under the law.

(2) The participation bond should be furnished in the amount and for the period of validity provided for in the procurement documentation.

(3) The bond shall be irrevocable.

(4) The guarantee instrument should provide that the participation bond payment will be made unconditionally, upon principal's first demand, respectively, based on its declaration concerning a failure on part of the guaranteed person and its original shall be delivered to TAROM at the latest at the date and time limit for submission of bids.

Art. 27 – Realization of participation bond

TAROM will realize the participation bond, so the bidder forfeiting the amount furnished under that title, when it is in any of the following cases:

- a) it withdraws or changes the bid and/or documentation attached to the bid, after the expiry of the time period provided by the documentation for the submission of bids;
- b) its bid is ascertained a winner, but it refuses to sign the purchase contract during the bid validity period;
- c) its bid is ascertained a winner, but it fails to furnish the guarantee of good performance of the purchase contract pursuant to the provisions of the purchase contract.

Art. 28. - Release of participation bond

(1) The participation bond, furnished by the bidder whose bid was ascertained a winner, shall be returned by TAROM within three (3) working days of furnishing the performance guarantee or, as applicable, within three (3) working days of signing the purchase contract, in case the bidder has no obligation of furnishing a performance guarantee.

(2) The participation bond furnished by bidders whose bid was not ascertained winner, shall be returned by TAROM within three (3) working days of receiving a request from them.

(3) The provisions of par. (2) will apply correspondingly if TAROM cancels the procurement process.

Art. 29. – Setting the performance guarantee

(1) TAROM will request to have furnished mandatorily a performance guarantee in processes, the object of which are contracts, the estimated value of each of which exceeds €500,000 per year.

(2) The amount of the performance guarantee should not exceed 10% of the contract price, net of VAT, determined depending on the complexity, value and risks specific to the contract to be performed.

(3) In case the purchase contract value is supplemented during its performance, the contractor shall supplement the performance guarantee to correlate it with the new contract value.

(4) In case a contract for services is awarded to a supplier required under the law to have a professional insurance, TAROM will require, for the performance guarantee purposes, the submittal of an insurance policy with a value at least equal to and at most twice the estimated value of the contract to be awarded.

Art. 30. – Ways of furnishing the performance guarantee

(1) The performance guarantee shall be furnished within five(5) working days of signing the purchase or subsequent contract, as follows:

a) by bank transfer to TAROM account;

b) by a guarantee instrument issued by a bank or an insurance company that is not in special circumstances concerning authorization or supervision, under the law, including by a professional liability insurance policy, which becomes annex to contract; or

c) by successive deductions from amounts due from partial invoices.

(2) In the case provided under c) of para. (1) hereabove, the contractor will open an escrow account. The initial amount to be deposited by contractor in the escrow account shall not be less than 0.5% of the purchase contract price, net of VAT.

(3) Throughout the fulfilment of the purchase contract, TAROM will feed the escrow account set out under par. (2) by successive deductions from the amounts due and payable to contractor, up to reaching the amount set as performance guarantee in the purchase contract and notify the contractor about the payment made, as well as about its usage.

Art. 31. – Realization of performance guarantee

TAROM is entitled to lay claim to the performance guarantee anytime throughout the fulfilment of the purchase contract, to the extent of damages, should the contractor default from its obligations under the contract due to its own misconduct. Prior to laying claim to the performance guarantee, TAROM will notify its claim both to the contractor and issuer of the guarantee instrument, setting forth the obligations that have not been complied with as well as the method for calculating the damages. In case the performance guarantee is realized, partially or totally, the contractor has the obligation to replenish the guarantee in relation to the remainder to be performed.

Art. 32. – Release of performance guarantee

The performance guarantee shall be released as follows:

a) in the case of a supply contract, within fifteen (15) days of the preparation of the minutes of acceptance of the goods object of the purchase contract and/or of the payment of the final invoice, if not demanded until such time;

b) in the case of a contract for services within fifteen (15) days of contractor fulfilling its obligations entered

under the purchase contract, if not demanded until such time;

c) in the case of contracts for works, as follows:

(i) 70% of guarantee value within fifteen (15) days of execution of the minutes of acceptance upon completion of works, if not demanded until such time, and the hidden defects risk is minimum, in the same period calculated from the date of the minutes of acceptance upon completion of works for parts/ items thereof, if they are physically and functionally distinct, in proportion to the value of the works accepted, if not demanded until such time, and the hidden defects risk is minimum;

(ii) the remaining 30% of the guarantee value at expiry of warranty of the works performed, based on a minutes of final acceptance.

CHAPTER IV - GENERAL RULES FOR PROCUREMENT PROCESS

Art. 33. - Starting up the procurement process

The procurement process starting-up is made upon the approval of the procurement and procurement documentation, as applicable, pursuant to the provisions of the Articles and other documents regulating the business of TAROM and the designation of the assessment commission members and of alternates at the recommendation of the internal organizational structure responsible for organising procurement processes.

Art. 34. – Designation of Assessment Commission

(1) TAROM will designate the persons responsible for the assessment of bids, which shall make up an assessment commission headed by a chairperson appointed from within the members of the assessment commission.

(2) The members of the assessment commission must not be in hierarchical relationships to each other, inasmuch as the organizational structure allows.

(3) The replacement of a member of the assessment commission with an alternate member shall only be carried out if the person who is to be replaced is unable, for objective reasons, to perform the duties arising from assessment commission membership.

(4) Following the replacement provided in par. (3), the membership of the assessment commission is taken over by the alternate member, who shall exercise the duties related thereto until the completion of the procurement process.

(5) The assessment commission is responsible for carrying out the following tasks:

a) opening the bids and, as applicable, other documents attached to such bid;

b) checking for bidders having satisfied the qualification criteria;

c) checking the technical bids against the technical specifications;

d) assessing the technical bids pursuant to the awarding criteria;

e) checking the financial bids submitted by bidders, including checking for compliance with the technical bid, checking the calculations, checking for keeping within the funds that can be made available for contract fulfilment as well as, if appropriate, checking for their falling in unusually low price bids;

f) preparing requests for clearing and/or supplements necessary for bid evaluation;

g) ascertaining unacceptable and/or non-conforming bids and the reasons underlying their classification in each of these categories;

h) ascertaining acceptable bids;

- i) application of the award criterion and assessment factors, as set out in the procurement documentation;
- j) ascertaining the winning bid(s) or, as applicable, wording a proposal for process cancellation;
- k) working out the minutes of each session and the report of the procurement process.

(6) TAROM can decide, in order to support the work of the assessment commission, to designate some external experts, named co-opted experts to work with them. The co-opted experts can be designated just from the beginning of the assessment process or during it, depending on the problems that may require their expertise. In the designation deed the co-opted experts shall specify their specific duties and responsibilities held throughout the assessment process.

(7) The co-opted experts do not have the right to vote within the assessment commission, however in carrying out their duties, they shall proceed to preparing specialist reports aimed at facilitating the adoption by the assessment commission of decisions within the process of analysing the bids and establishing a successful bid.

(8) The members of the assessment commission who do not agree to the specialist report of the co-opted expert under par. (7) shall submit their opinions in writing, for which purpose they will prepare an individual note to become an annex to the report on procurement process.

(9) The specialist report shall be enclosed to the report on procurement process and become a part of the procurement file.

Art. 35 – Bid confidentiality

(1) Throughout the process there shall be complied with an obligation of non-disclosure of the information provided by economic operators in their bids.

(2) The assessment commission members are required to keep confidentially the content of the bids.

Art. 36. - Procurement process initiation

A procurement process is initiated, as applicable, depending on the type of process:

- a) by preliminarily checking the conditions used by operators in the market sector (by checking the information available on-line, prices and conditions of similar contracts carried-out previously, bids previously received in processes for awarding similar contracts etc.) and identifying a supplier, contractor or service provider from whom goods, services or works will be acquired directly;
- b) by delivering the invitation to participate in the call for bids process or to negotiate directly;
- c) by publishing the notice of procurement, when a procurement is to be achieved through open bidding.

Art. 37. – Notice of procurement, participation invitation

The notice of procurement and the participation invitation shall be drawn up in compliance with the provisions hereof, after the template set forth in Annex 2 and Annex 3.

Art. 38. –Procurement publicity

(1) The notice of procurement shall be published on TAROM webpage. Moreover, TAROM can decide its publication in print media of national or international circulation or in other media able to provide adequate publicity.

(2) The time period between the date of publication of the notice of procurement or delivery date of the invitation to participate and the closing date for the submission of bids shall be fixed depending on the

complexity of the purchase contract and specific requirements provided for in the procurement documentation, so the interested economic operators would benefit from an adequate time frame for the preparation of bids and enough for preparing the qualification documents, if required under procurement documentation.

(3) The period referred to in par. (2) here above can be successively extended for an equal period, at the most. Any extensions of the time limit for submission of bids shall be brought to the attention of the bidders through an errata to notice of participation, which will be published on its own webpage at least three (3) days before the date fixed for submission of bids, or by providing the bidders with such errata at the invitation to participate when observing the same deadline, in the case of the call for bids or direct negotiations.

(4) The notice of procurement will be kept on TAROM website at least until the closing date for submission of bids.

Art. 39. – Getting the procurement documentation

(1) Any interested economic operator can request and get the procurement documentation based on a written request submitted to TAROM at the address/ contact details set out in the notice of procurement or invitation to participate.

(2) TAROM will provide free procurement documentation for any interested economic operator that submits a written request to this end, by making available a paper and/or electronic copy of the awarding documentation.

(3) In exceptional cases, upon the economic operator's written request, the procurement documentation will be forwarded by post, in which case TAROM shall be entitled to require economic operators who wish to avail of this facility to pay for the related conveyance.

Art. 40. – Procurement documentation clarifications

(1) Any interested economic operator has the right to request clarifications regarding the procurement documentation within the period indicated in the procurement documentation.

(2) TAROM will respond clearly, completely and unambiguously, any clarification requested as quickly as possible, within a period which shall not exceed, as a general rule three (3) days from the receipt of such a request from the economic operator, but not later than three (3) days before the deadline for the submission of bids.

(3) Should the operator fail to send a request for clarification in a timely manner, thereby TAROM being unable to observe the time limit referred to in par. (2) here above, TAROM can respond to a request for clarification only insofar as the period necessary for the preparation and transmission of such response makes it possible for the economic operators to receive it before the closing date for submission of bids.

(4) TAROM shall convey the answers in writing - accompanied by their related questions - to all economic operators that have obtained, within the terms hereof, the procurement documentation, taking proper actions so as not to reveal the identity of the economic operator that has requested the clarifications.

Art. 41. - Communication

(1) Any communications, requests, information, notification and other of the kind provided by this Regulation, should be sent in writing and shall be an integral part of the procurement file.

(2) Information communication, transmission and storage shall be such as to ensure the integrity and

confidentiality of data.

(3) Any communications, requests, information, notifications and others of the kind can be conveyed by any of the following means:

a) by electronic mail;

b) by postal service and/or courier;

c) by fax;

d) by any combinations of the means provided in a) to c) here above.

(4) TAROM will be able to impose, in the awarding documentation, the means of communication to be used during the application of the procurement process. They must not restrict the access of economic operators to the procurement process.

Art. 42. - Procurement process participation right

(1) Any economic operator shall have the right to participate, either individually or in a group of operators, in the procurement process.

(2) In cases where TAROM expressly provides in the procurement documentation and without diminishing the responsibility of bidder for carrying out a contemplated purchase contract, several economic operators have the right to associate for the purpose of submitting a joint bid, without being required to formally legalize their association. TAROM can request from the operators submitting a joint bid documents revealing the existence of the association.

(3) TAROM shall be entitled to request that the association is legalized only if the joint bid is declared winner. In such a case, the association contract shall be drawn up in compliance with the provisions hereof as set out in Annex 4.

Art. 43. – Interdictions on procurement process participation

Bidder is not entitled, within one and the same procurement process to:

a) submit two or more individual and/or joint bids, under penalty of exclusion from the processes of all the bids concerned;

b) submit an individual/ joint bid and be nominated as a subcontractor on another bid, under penalty of exclusion of the individual bid or, as applicable, of that in which the bidder is an associate.

Art. 44. – Actions for avoidance of conflicts of interest and/or unfair competition

(1) During the application of an awarding procedure, TAROM will take all necessary and reasonable actions to avoid situations likely to give rise to a conflict of interests and/or the manifestation of unfair competition.

(2) For the purposes of this Regulation, conflict of interest means any situation where TAROM personnel involved in the procurement process conduct or who can influence its outcome have, directly or indirectly, a financial, economic or another personal interest that could be perceived as an element able to compromise their impartiality or independence in the context of the procurement process.

(3) Where any one of the members designated by the assessment commission finds that he/ she is in one of the cases provided in par. (2), he/ she has the obligation to immediately request to be replaced in such commission membership.

(4) Bidders shall submit a declaration on honor regarding the existence of conflict of interest situations in connection with the procurement process, which will be drawn up following the template enclosed to the

CHAPTER V - SPECIAL PROCUREMENT PROCESS RULES

Art. 45. - Direct procurement

(1) TAROM purchases directly goods, services or works, inasmuch as the estimated value, net of VAT, of such purchase is at the most equal to the threshold value provided in a) of Art. 7 hereof, in compliance with the provisions of Art. 6 hereof.

(2) TAROM shall achieve a purchase from any economic operator, without carrying out any awarding procedure.

(3) Direct procurement is done on the basis of a substantiation memo stating the necessity aimed at being met, the features of goods, services or works to be contracted and the method of prior examination of prices used in the market sector (prices in previously undertaken contracts, information available on the internet etc.)

(4) The legal commitment whereby expenses are undertaken related to the direct procurement can take the form of a proper direct purchase contract or, as applicable, of an order followed by acceptance or other documents specific to procurements initiated by means of payment instruments allowing the holder to use them in his/ her relation with merchants for making payments without using cash, for the purchase of goods, services and/or works via a terminal, such as but are not limited to debit cards and/or electronic wallets.

Art. 46. - Call for bids

(1) TAROM purchases goods, services or works through the procurement process of call for bids, inasmuch as the estimated value, net of VAT, of such purchase falls in the value thresholds laid down under b) of Art. 7 hereof.

(2) The call for bids shall be initiated by delivering a participation invitation to at least three (3) economic operators that supply goods/ render services/ perform works similar to those which are the object of procurement. The participation invitation shall be drawn up in accordance with the template set out in Annex 3 hereto.

(3) The participation invitation shall be sent at least ten (10) days before the closing date for submission of bids.

(4) In duly substantiated cases, when the period referred to in par. (3) cannot be observed for reasons of extreme urgency caused by unforeseeable events which are not in any way due to an action or omission on part of the Company, the participation invitation will be deliverable at least three (3) days before the closing date for submission of bids.

(5) Upon having ascertained the acceptable bids, the stage of financial bid improvements under the provisions of art. 49 shall be carried out.

(6) TAROM will be entitled to cancel the call for bids process if, subsequent to delivery of participation invitation, no admissible bid has been filed.

Art. 47. - Open bidding

(1) TAROM purchases goods, services or works through the procurement process of open bidding, inasmuch as the estimated value, net of VAT, of such purchase is equal to or greater than the threshold value provided

in c) of Art. 7 hereof.

(2) Procurement process through open bidding is initiated by TAROM publishing on its own webpage of a note of procurement. Where deemed appropriate, TAROM can also deliver the notice of procurement to certain economic operators via any of the means set forth under (3) of Art. 41.

(3) The notice of procurement shall be drawn up in accordance with the template set out in Annex 2 hereto.

(4) Interested bidders will get the procurement documentation in accordance with the provisions of Art. 39 hereof.

(5) The period between the date of publication of the notice of purchase on its own page and the closing date for the submission of bids shall be of at least ten (10) business days. Such period can be extended under the provisions of par. (3) of Art. 38.

(6) Upon having ascertained the acceptable bids, the stage of financial bid improvements under the provisions of art. 49 shall be carried out.

Art. 48. - Direct negotiation

(1) Direct negotiation shall apply to the cases provided in d) of Art. 7 hereof.

(2) The procurement process through direct negotiation is initiated by delivering a participation invitation to contractors parties in contracts, the duration of which is intended to be extended, or the object of which is intended to be supplemented or amended in the best interests of TAROM. Should the subject of the contract be intended to be supplemented, the procurement documentation shall be delivered at the same time with the participation invitation.

(3) The participation invitation shall be drawn up in accordance with the template set out in Annex 3 hereto.

(4) As part of the direct negotiation process, TAROM shall arrange meetings with the co-contractor, in which negotiations will take place with regard to the contractual changes that it contemplates. All technical, financial, and legal aspects of the addendum to the existing contract will be determined in such negotiations.

(5) The assessment commission will send an invitation(s) to negotiation meeting(s) to contractor. Assessment commission will hold successive negotiation sessions, and at the end of each negotiation session it will record the discussed and agreed aspects in a minutes of the session, which shall be signed by all participants in the negotiations. TAROM will provide the bidder with a copy of the minutes of the session.

(6) TAROM will request co-contractor to reconfirm the outcome of the negotiations by submitting a final bid, which should cover all the elements agreed in the negotiations.

(7) Contractor shall not be entitled, via a final bid, to bring changes to the items agreed in the negotiating process, under penalty of rejection of the bid as non-compliant.

Art. 49. - Additional stages to improve the financial bid

(1) In the case of carrying out a procurement process through call for bids and open bidding, TAROM can set that, upon having ascertained the acceptable bids but before assigning the winning bid, to go an additional stage for the improvement of financial bid.

(2) The assessment commission shall request, in writing, every bidder who submitted an admissible bid, to submit reduced prices compared to those contemplated in its original/ previous financial bid.

(3) The assessment commission request shall state the date and time limit for the submission of improved financial bids.

(4) In case any of the bidders fail to submit new, improved financial bids by the time limit specified by the

assessment commission, the commission will consider the latest financial bid submitted by such bidders in the procurement process.

(5) In case any of the bidders submit new, improved financial bids by the time limit specified by the assessment commission but setting out prices greater than those stated in the original/ previous financial bids, such bids will be rejected as non-compliant.

(6) Any decisions with regard to the assessment of improved financial bids are to be adopted by the assessment commission, going to be timely brought to the attention of bidders who have submitted admissible bids.

(7) The assessment commission is not entitled to disclose to any bidders any information regarding the identity of the other bidders participating in the additional stages to improve the financial bid and the content of the bids submitted by them.

CHAPTER VI - BID DRAFTING RULES

Art. 50. - Bid drafting

(1) The procurement officer is required to draw up the tender in accordance with the provisions of the procurement documentation.

(2) The tender is mandatory, in terms of content, throughout the period of validity established by TAROM in the procurement documentația. TAROM could request an extension of tender validity as well as, as applicable, of the bid bond in extraordinary circumstances that require such an extension.

Art. 51. – Bid submitting

(1) The economic operator shall submit the bid to the address and in the manner set by TAROM, by the day and time limit for filing as set out in the notice of procurement or in the participation invitation and procurement documentation.

(2) Should TAROM request to have the bid sent by post, the time of submission of the bid will be the day and time at which the bid actually arrives at TAROM.

Art. 52. - Alternative bids

(1) TAROM may allow bidders to submit alternative bids only if the award criterion is “the most economically advantageous bid”. The option of submitting an alternative bid must be mentioned explicitly in the procurement documentation..

(2) If the filing of alternative bids is permitted, TAROM will set forth in the technical specifications the minimum requirements they must comply with and any specific requirements for their submittal.

Art. 53. –Bid with seemingly unusual low price

(1) In the case of a bid that apparently has an unusually low price in relation to what is to be provided, performed or rendered, TAROM will request the bidder, in writing and prior to taking a decision of rejecting that bid, to justify the price by setting out the details, specifications and documents that they consider relevant for it.

(2) The bidder can provide, in order to justify the price, information, explanations and documents referring to it:

- a) economic substantiation of the pricing manner relating to the performing methods used, manufacturing process or rendered services;
 - b) technical solutions chosen and/or any exceptionally favourable conditions extended to the bidder for the execution of work, for providing goods or rendering services;
 - c) the bid originality in terms of fulfilment of the requirements laid down in the technical specifications;
 - d) compliance with the provisions on labour protection and working conditions applicable to work execution, service provision or goods supply;
 - e) possibility that the bidder is entitled to state aid.
- (3) TAROM could take into account the motivations received from bidder under the terms of par. (1) and (2) here above, inasmuch as they adequately warrant the price bid.

CHAPTER VII - BID ASSESSMENT RULES

Art. 54. - Bid opening

TAROM is required to open the bids at the address, day and time stated in the notice of invitation to bid or participation invitation, insofar there is not necessary to postpone the deadline for the submission of bids.

Art. 55 - Bid assessment

- (1) Had TAROM set forth in the procurement documentation an obligation of fulfilment of certain qualification criteria, the assessment commission would check them for fulfillment.
- (2) The assessment commission shall analyse and check every bid, both in terms of technical elements proposed as well as from the point of view of financial aspects they entail.
- (3) The technical bid must comply with the minimum requirements laid down in the technical specifications.
- (4) The financial bid must fit within the funds that may be made available for the carrying out of the purchase contract, but, on the other hand it should not pose an unusually low price.

Art. 56 – How the Assessment Commission works

- (1) The way the assessment commission works shall be set by mutual agreement among its members.
- (2) The progress of the assessment process shall be recorded in the minutes of the meeting.
- (3) The assessment commission decisions shall be taken by vote of at least 2/ 3 of its members with voting rights, except where differences of opinion can not be reconciled, and decisions shall be made by a majority vote of the members with voting rights.
- (4) Every decision of the assessment commission is based on the identification of bid concrete elements in relation to the requirements set out in the procurement documentation and the provisions hereof.

Art. 57. – Bid clarification or additions

- (1) During the analysis and verification of bids, assessment commission can request clarifications or additions to the documents submitted by bidders to demonstrate compliance with the criteria for bid qualification or compliance with award documentation requirements, including but not limited to, demonstrating the veracity of deadlines and details included in the documents submitted by bidders.
- (2) The assessment commission will determine what clarifications and additions are needed for the assessment of each bid as well as the time period allowed for their submission. The notification delivered in

this respect to the bidder must be clear, precise and define explicitly and in sufficient detail what is requested by the assessment commission.

(3) Should the bidder fail to submit within the time stipulated by the assessment commission the requested clarifications/ additions/ answers or the explanations submitted by the bidder are not conclusive, its bid would be regarded as unacceptable.

(4) Should the bidder amend the content of its technical bid by the answers it submits, its bid would be regarded as non-compliant. Changes to the technical bid are accepted inasmuch as they:

a) can be placed in the formal defects or arithmetic errors category; or

b) are fixes for some minor technical deviations.

(5) Should the bidder amend the content of its financial bid by the answers it submits, except for the acceptance of the assessment commission's requests relating to the commercial terms and/or contract clauses as well as except for the improvement of the financial bid within the additional financial bid improvement stage(s), its bid would be regarded as non-compliant. Changes to financial technical bid are accepted inasmuch as they can be placed in the arithmetic errors category, which are to be corrected as follows:

a) should any discrepancies arise between unit price and total price, the unit price would be considered, and the total price would be corrected accordingly;

b) if a discrepancy arises between letters and numbers, the value expressed in letters should be considered, and the numbers would be corrected accordingly.

(6) The assessment commission can request the bidder to correct the arithmetic errors or a formal defects in writing. Should the bidder fail to correct such errors/ vices, its bid would be regarded as non-compliant.

Art. 58. – Ascertaining the winning bid

(1) The assessment commission will determine the winning bid within fifteen (15) days of the closing date for submission of bids. By way of exception, in duly justified cases this period can be extended by TAROM management, on a proposal from the assessment commission. The extension of the assessment period shall be brought to the attention of the economic operators involved in the process within two (2) days thereof.

(2) The assessment commission will determine the winning bid from among the acceptable bids, taking into account the price offered in consequence of carrying out a supplementary stage for the improvement of the financial bid, by applying the criterion set forth in the procurement documentation. An acceptable bid is a bid that is not unacceptable or non-compliant.

(3) The assessment commission will reject the bid as unacceptable in any of the following cases:

a) it was submitted after the date and time limit for submission or at an address different from those set out in the participation notice and/or, as applicable, in the participation invitation;

b) it was not accompanied by a participation bond in the amount, form and with a validity period as required by the procurement documentation;

c) has been submitted by a bidder who does not satisfy one or more of the minimum qualification requirements set out in the procurement documentation;

d) was submitted by a bidder who failed to send the documents/ clarifications/ additions requested by the assessment commission within the time limit it specified;

e) does not include a technical and/or financial bid;

f) is an alternative to the provisions of technical specifications which cannot be taken into account either for in

the participation notice the possibility of bid submission was not specified explicitly or for such alternative bid does not comply with the requirements set forth in the technical specifications.

g) the price, net of VAT, included in the financial bid exceeds the estimated procurement value and there is no possibility of making available additional funds for the fulfilment of the purchase contract;

h) subsequent to checks, it is found that the bidder could not adequately reason the unusually low price/ cost of its bid for what is to be provided/ rendered/ performed, so TAROM deems that it cannot ensure that the contract is fulfilled at the quantitative and qualitative parameters as required by the technical specifications;

i) bidder refuses to extend the bid and participation bond validity time period;

(4) The assessment commission will reject the bid as non-compliant in any of the following cases:

a) it does not satisfy the technical specifications requirements;

b) it is issued for either a lesser or greater quantity of goods, services and/or works than the amount requested by TAROM in the technical specifications;

c) it includes proposals for amendments and/or additions to the contract clauses and/or to other deadlines and conditions that TAROM established in procurement documentation, such bids being disadvantageous or unacceptable for TAROM, and the bidder, although expressly requested in writing by the assessment commission, does not agree to such modifications/ additions;

d) includes in the financial bid prices that are not the result of free competition and which cannot be reasoned;

e) financial bid is not linked to the technical bid elements which could result in a faulty performance of the contract or is a deviation from the applicable laws;

f) when the bidder modifies the content of the technical or financial bid by the answers it submits on request of the assessment commission;

g) when the bidder fails to perform the correction of arithmetic errors or formal defects in accordance with the request of the assessment commission;

h) when, in the stage of financial bid improvement, the bidder submits a financial bid that provides for a higher price than the one stated in its previous/ initial financial bid;

i) when the bid sets forth a subcontracting of purchase contract performance, although the procurement documentation expressly forbids such possibility.

(5) Should two or more bids rank first, TAROM will request from bidders a new financial bid, and the new financial bid with the lowest price will be designated as winner.

Art. 59. – Information for bidders

(1) TAROM shall inform bidders about the decisions on the designation of the winning bid, or, as applicable, the cancellation of the procurement process, in writing, not later than three (3) working days from their issuance.

(2) TAROM shall notify in writing the winning bidder of the acceptance of submitted bid.

(3) TAROM shall notify in writing the bidders whose bids have been rejected and the reasons for such decision, as follows:

a) to each rejected bidder, the concrete reasons underlying its bid rejection decision, with arguments, on the basis of which the bid was deemed unacceptable or non-compliant;

b) to every bidder who submitted an admissible bid, but which has not been declared a winner, the score obtained by its own bid and the score obtained by the bid declared a winner.

(4) TAROM shall notify in writing all bidders of the procurement process cancellation and the reason that

prompted the cancellation decision.

CHAPTER VIII - PROCUREMENT PROCESS COMPLETION

Art. 60. - Procurement process completion

A procurement process shall be completed by:

- a) conclusion of a purchase contract; or
- b) cancellation of the procurement process.

Art. 61. - Conclusion of a purchase contract

(1) TAROM shall conclude the contract with the bidder whose bid has been ascertained a winner.

(2) If TAROM cannot conclude the contract with the bidder whose bid has been ascertained a winner, as a result of the concerned bidder being in a force majeure or fortuitous impossibility to perform the contract or for any other reason, TAROM will declare the second best bid a winner, given that it exists and is admissible.

(3) In the circumstances provided under par. (2), should a second best acceptable bid not exist, TAROM will cancel the procurement process.

Art. 62. - Cancellation of procurement process

(1) TAROM shall cancel the procurement process before the date of sending the notification on the outcome of the process or, anyway, before the date of contract conclusion, only in the following cases:

- a) only unacceptable and/or non-compliant bids have been submitted;
- b) no bids have been submitted, or acceptable bids have been submitted, but they cannot be compared due to the uneven approach of the technical and/or financial solutions;
- c) in the procurement documentation and/or in the way the procurement process is applied errors or omissions are found, which result in breaches of the principles set out under Art. 2;
- d) conclusion of the purchase contract is not possible.

Art. 63 – Amendment of purchase contract

Notwithstanding the provisions of Art. 48 hereof, the purchase contracts can be amended without organizing a new awarding procedure, in any of the following cases:

- a) when the changes, regardless of whether or not they are evaluable in money and regardless of their value, have been provided in the initial procurement documentation in the form of clear, precise and unequivocal revision clauses that may include price or any other option revision clauses;
- b) when it becomes necessary to purchase from the original contractor some additional goods, services or works that were not included in the initial contract but that became strictly necessary for its fulfilment;
- c) when such amendments became necessary as a result of circumstances that TAROM could not foresee at the time of conclusion of the original contract;
- d) any increase in the contract price for the value of additional goods/ services/ works shall not exceed 50% of the original contract value.

Art. 64. - Procurement file

The procurement file shall include any and all documents issued by TAROM or received in connection with the procurement process.

Art. 65 – Confidentiality

(1) TAROM shall not disclose any information submitted by economic operators and designated by them as confidential.

(2) TAROM can impose certain requirements on the economic operators in order to preserve the confidential nature of information which they make available throughout the awarding procedure.

CHAPTER IX – CONTESTATIONS

Art. 66. – Right to contest

Any economic operator interested in taking part in the procurement process, which obtained the procurement documentation according to the provisions hereof, can file a contestation concerning the procurement documentation and the manner in which the procurement process was carried out, insofar as it proves that by participating in the process it will suffer damages, as a consequence of the manner the procurement documents were drawn up.

Art. 67. – Contestation content

(1) A contestation shall be filed in writing and must include the following elements:

- a) first name and surname, domicile or residence, the tax identification code of the individual contestant or, as applicable, for body corporates, name, head office, unique registration code, registration number with the Registrar of Companies, the persons representing them and in what capacity. It shall also be stated the e-mail address, telephone and fax numbers, as applicable, for service of documents/ communication during the contestation solutioning. A contestant living abroad shall also state, in order to speed up the process, its Romanian domicile of choice or residence, for service of documents concerning the contestation resolution;
- b) contract object designation, applied procurement procedure, as applicable, number and date of the participation notice or participation invitation;
- c) stating the challenged document;
- d) contestation object;
- e) factual and legal reasoning of the contestation, stating the article hereof and/or provision in the procurement documentation on which the contestation is based, rights violated and/or damages it would suffer by participating in the contract award procedure;
- f) evidence on which the contestation is based;
- g) signature of the individual contestant or body corporate representative.

(2) The contestation object can be, as applicable, a deed cancellation, request for issuing any deeds or a request for taking any other remedial actions.

Art. 68. - Deadline for filing contestation

The deadline for filing contestation will be of:

- a) at the most three (3) days from the receipt of procurement documentation or from the day it is posted, as the case may be;

b) at the most three (3) days from the receipt of communication regarding the procurement result.

Art. 69. - Contestation filing

The contestation shall be sent to TAROM address: 224F Calea Bucurestilor-Rd., Otopeni, Ilfov County, Fax No.: (021)201 4761, (021)204 1993 and (021)201 4993.

Art. 70. - Contestation resolution

(1) Receiving a contestation shall not entail the suspension of the procurement process.

(2) Upon receipt of as contestation, TAROM is entitled to adopt any remedial actions it deems necessary. Should TAROM adopt remedial measures, they will be imparted to both the contestant and the other bidders not later than two (2) working days from them being adopted.

(3) The contestations will be resolved by a settlement commission, whose members will be nominated by a decision of the Director-General of TAROM.

(4) Depending on complexity, the contestations will be resolved, as a rule, within ten (10) days of their receipt. In order to solve a contestation, TAROM can request explanations from the contestant, as well as any other data/ documents, inasmuch as they are relevant in relation to the subject matter of the contestation. TAROM can request any data required for the resolution of contestations from any other individuals or body corporates, too.

(5) The time limit set forth under the preceding paragraph of this article may be extended, but by not more than five (5) days, in which case TAROM will advise of its decision to all bidders.

(6) Depending on the solution given, TAROM will be able to reasonably decide on either the continuation or cancellation of the procurement process.

(7) The solution given by the contestation resolution commission is final. No other contestation can be filed against it.

CHAPTER IX¹ - SANCTIONS

Art. 70¹. – Sanctions

The violation of the provisions of this regulation by the employees, as the case may be, may attract their civil or criminal liability, for the material damages caused to the company due to their fault. The procedural provisions are in accordance to the common law.

CHAPTER X - FINAL PROVISIONS

Art. 71. - Regulation

The Regulation includes this document and the following annexes that form an integral part hereof:

Annex 1 – Procurement Documentation;

Annex 2 – Notice of Procurement;

Annex 3 – Participation Invitation;

Annex 4 – Association Agreement;

Annex 5 – Contract Template for Procurement of Goods;

Annex 6 - Contract Template for Procurement of Services, other than design services.

In the case of contracts for design, design and performance of works or solely performance of works, there shall be used, depending on the object of contract that is going to be awarded, one of the FIDIC (International Federation of Consultant Engineers) contract templates, adapted in advance to the concrete conditions of the

project.

Art. 72. - Regulation Entry into Force

(1) This Regulation shall become effective as of the day it is adopted by TAROM management and shall supersede any other previous versions.

(2) Any award processes being carried out at the date that this Regulation becomes effective shall be completed under the regulations effective at the time of their initiation.

Art. 73. – Regulation Publishing

This Regulation will be published on TAROM webpage (www.tarom.ro).

PROCUREMENT DOCUMENTATION

(Standard template)

(It should be adjusted, depending on the characteristics of the contract to be concluded)

1. DEFINITIONS, INTERPRETATION

In the procurement documentation the following words and expressions shall have their respective meanings set out in TAROM's Procurement Regulation applicable to the procedure and this chapter:

-

1.1. INTERPRETATION

Unless the Procurement Documentation context otherwise requires:

- a) words importing gender include all genders;
- b) words importing the singular include the plural and vice versa;
- c) provisions including the words "to agree", "agreed" or "agreement" require the written form of the agreement.

2. INFORMATION ABOUT PRINCIPAL

Name: COMPANIA NAȚIONALĂ DE TRANSPORTURI AERIENE ROMÂNE TAROM S.A. (i.e., TAROM Romanian Air Transport Nat. CO, Inc.)

Address: 224F Calea Bucurestilor-Rd., Otopeni, Ilfov County, Romania *(fill in with Principal's full address)*

Contact information: *(fill in with the name and first name of Principal's contact person, the department where he/ she is employed and his/ her position, telephone number and email address where such person can be contacted)*

Tel.: *(fill in with Principal's telephone number)*

Fax: *(fill in with Principal's fax number)*

e-mail: *(fill in with Principal's email address)*

Website: *(fill in with Principal's Internet address)*

TAROM is a national airline established under Government Ordinance 45/ 1997 on establishment of "Compania națională de transporturi aeriene române - TAROM" - S.A. Airline, as subsequently amended.

TAROM is a private law body corporate. Information about the objects of TAROM can be found on the airline website.

3. GENERAL INFORMATION ABOUT PROCUREMENT GOAL AND PROCUREMENT PROCEDURE ACHIZIȚIE

3.1. PURPOSE OF APPLYING THE PROCEDURE

The aim of applying the procedure is the procurement of _____ *(briefly describe the object of contract)*.

3.2. PROCUREMENT PROCESS TYPE

Own procedure - _____ (the procedure type is to be identified)

3.3.CONTRACT ESTIMATED VALUE

The contract estimated value is: _____ (state the value, should TAROM so decide)

3.4.APPLICABLE LAWS AND REGULATIONS:

The procedure shall be carried out pursuant to the **Regulation on conclusion of contracts for procurement of goods, works or services.**

The main applicable EU regulations are the following: _____ (fill in with the listing of EU regulations applicable to that particular field)

The main statutes and administrative measures are as follows: _____ (fill in with the statutes and administrative measures applicable to that particular field)

4. PROCEDURAL DEADLINES

Deadline for submitting bids is: _____ (state the deadline)

The deadline for filing clarification requests for the Procurement Documentation or the way the procedure is carried out is: _____ (state the deadline)

Deadline for answering the requests for clarification is: (state the deadline)

Bid assessment time period is: _____ (state the period)

5. COMMUNICATION

Any communications, requests, information, notification and other alike can be conveyed by _____ at the following contact data: _____ (state both the means of communication and contact details)

6. PARTICIPATION CONDITIONS

6.1.PARTICIPATION BOND

There shall be stated whether a participation bond is required.

Should a participation bond be required to be furnished, the amount in RON or the EUR or USD equivalent shall be stated at the RON/ EUR or RON/ USD exchange rate published by RNB on _____ (state the date of reference)

The participation bond shall be furnished by bank transfer or a guarantee instrument issued by a bank or an insurance company that is not in special circumstances concerning its authorization or supervision, under the law.

The participation bond validity period shall be at least equal to the bid validity period.

The bond shall be irrevocable and shall stipulate that payment will be made unconditionally, upon principal's first demand, respectively, based on its declaration concerning a failure on part of the guarantor.

The participation bond shall be submitted in original, at the latest at the date and time limit for the submission of bids.

A failure to submit the participation bond in the amount, form and with the validity period as required by the procurement documentation shall result in a rejection of the bid as unacceptable.

In justified situations, TAROM can require to have extended the validity of the participation bond.

A denial to extend the validity period of the bond or failure to transmit an appropriate proof within the stated period shall result in a rejection of the bid as unacceptable.

6.2.QUALIFICATION CRITERIA

There shall be stated whether the bidders are requested to fulfil any qualification criteria.

If the fulfilment of some qualification criteria is required, the minimum qualification requirements will be specified, and in what way their fulfillment should be proved.

A. Exclusion Reasons

There shall be specified whether there are certain requirements regarding the following reasons for exclusion or only some of the reasons for exclusion.

1) Bidder's Personal Circumstances

If appropriate, the required conditions will be stated with regard to the personal circumstances of the bidders, which will include a description of the requirement and how to comply with it.

2) Non-Falling in Conflict of Interest

Bidder/ associated bidder/ sub-contractor should not be in a situation of conflict of interest, as defined by Art. _____ (state the letter and article number, as applicable) in the *Regulation on conclusion of contracts for procurement of goods, works or services*, under penalty of elimination from the procurement process, if a substitution is not possible of the persons responsible for the assessment of bids, when their impartiality is affected.

How to comply:

Bidder/ associated bidder/ sub-contractor shall submit a Declaration on honor in original, accompanied by an authorized translation, as applicable.

Note: If the economic operator is represented by a proxy, other than that stated in the proof of registration and facts certificate issued from the Registrar of Companies/ Decision to establish the form of professional practice, it will submit an original copy of the Authorization of the person signing the Declaration on honour and the rest of the documents submitted in the context of the bid.

In the case of an association, the requirement shall be deemed satisfied insofar as it is carried out by all members of the association.

3) Capacity to Pursue a Professional Activity

If appropriate, the required conditions will be stated with regard to the capacity to pursue an activity, which will include a description of the requirement and how to comply with it.

B. Qualification Criteria Relating to Economic and/or Financial Capacity of Bidder

There shall be stated if there are certain qualification requirements to be met concerning the economic and/or financial capacity. .

If appropriate, required conditions will be stated with regard to the economic and/or financial capacity of bidder including a description of the requirement and how to meet it.

C. Qualification Criteria relating to Technical and/or Professional Capacity of Bidder

There shall be stated if there are certain qualification requirements to be complied with concerning the technical and/or professional capacity.

1) Similar Experience

If appropriate, the required conditions will be stated with regard to similar experience of bidders, which will include a description of the requirement and how to comply with it.

2) Specialized staff

If appropriate, the required conditions will be stated with regard to the specialized staff that the bidder must provide for the performance of the contract, which will include a description of the requirement and how to

comply with it.

3) Machinery/ Equipment

If appropriate, the required conditions will be stated with regard to machinery/ equipment that the bidder must have available for the performance of the contract, which will include a description of the requirement and how to comply with it.

4) Quality/ Environmental Standards

If appropriate, the certifications should be specified that the bidder must have for the performance of contract under requested quality conditions, which will include a description of the requirement and how to comply with it.

7. WINNING BID DETERMINATION CRITERION

The criterion for determining the winning bid considered for designating the winning bid is _____ (state the winning bid determination criterion that can be, at TAROM's choice, the technically and economically best bid. the life-cycle cost or lowest price).

In the case of the technically and economically best bid criterion, the bid assessment factors shall be identified: _____. The assessment factors will mandatorily include price, too.

The final score will be calculated by applying the following calculation algorithm: (describe the winning bid determination criterion).

The choice of the award criterion shall have to be justified, whereas the procurement carried out by TAROM must be of good quality, timely and capable in all aspects of responding to the needs of the company.

Contracts whose implementation is essentially determined by the training and specialized experience of the bidder's staff will not be awarded on the basis of lowest price criterion.

8. TECHNICAL SPECIFICATIONS

A. Contract Goals and Expected Outcome

The general goal of the contract _____ is _____

State in this section the general goal pursued through the contract performance.

Specific goals (if applicable) are as follows:

_____;

_____;

The content of this section shall be adapted according to concrete needs, depending on the goals of the activities described in the technical specifications, respectively.

The results expected under conditions of performance at high standards and in relation to best practice in the field of the contract object are as follows:

_____;

_____.

The content of this section shall be adapted according to concrete needs, depending on the goals of the activities described in the Technical Specifications, respectively.

B. Goods/ Services/ Works Description

Requirements described in this section of the Procurement Documentation should be regarded as **minimum requirements**, and if other related goods/ services/ works are necessary in order to attain the goals and

obtain the expected results, they will be part of contractor's responsibility.

The contractor will comply with effective statutes throughout the contract duration.

Describe, as applicable, the goods/ services/ works that are the object of contract, stating, by reference to the type/ quantity/ features/ functionality of goods/ services/ works, deadline/ schedule of delivery/ rendering/ performance, necessary personnel (experts, support staff) and specific reporting requirements in the case of contracts for services, necessary machinery, required technical standards etc.

C. Acceptance Requirements

Describe the requirements for the acceptance of goods/ services/ works.

D. Intellectual Property Requirements

Describe, if appropriate, the requirements relating to intellectual property rights.

E. Requirements for subcontracting and assignment of contract and/or contract rights and obligations

State whether subcontracting is or not allowed/ what percentage or part of contract cannot be subcontracted.

F. Specific Requirements in the Event that the Bidder is a Partnership

If the joint bid is declared winner, TAROM is entitled to request that the partnership should be legalized.

Under the partnership agreement, the partners are jointly liable for the performance of the purchase contract.

G. Contract Management

1) Management Structure

If appropriate, give information concerning the persons/ departments responsible for contract management and their duties.

2) Facilities provided by Principal

If appropriate, give information regarding the facilities/ equipment/ information/ assistance that will be provided by Principal during the contract.

H. Logistics and Activity Planning

1) Place of contract performance

Give information about the place of delivery of goods/ service rendering/ performance of works and logistics/ equipment to be provided by the contractor during the contract.

2) Contract Start Date and Duration

Give information on the date of commencement of contract performance and duration.

3) Facilities provided by Contractor

During the contract performance, Contractor shall provide the following facilities: *List, as applicable, the facilities to be provided by Contractor.*

Contractor shall include in the Contract Price stated in the Financial Bid all the costs for headquarters, offices, accommodation, transportation, equipment and any other equipment and fixtures necessary for contract performance.

Contractor shall ensure that its staff has the necessary logistics for the activities in which they are involved.

Contractor shall provide administrative, secretarial, and translation/ interpretation services, as applicable, in order to allow its staff to focus on the duties.

Contractor will be responsible for and shall bear all costs associated with the _____ (itemize the costs included in the price, which may concern staff accommodation, meals, daily allowances, its own personnel transportation, professional insurance, if appropriate, communication expenses, secretarial services, including those of interpretation/ translation, printing/ hard copying).

I. Reports

Describe the reporting requirements.

J. Price Payment

Describe how the price payment will be made during the contract performance.

K. Performance Guarantee

If appropriate, Set out the details of the Performance Guarantee - (specify the Contract Price percentage and how to provide it)

9. BID DRAFTING, SUBMITTING AND ASSESSMENT

The participants in the procurement procedure shall have to draft their bids under the conditions specified in the Procurement Documentation, under the sanction of rejection of bid.

The procurement process participants shall have to keep their bids valid for a period of ____ days (*State the bid validity period*). TAROM is entitled to request, under justified circumstances, an extension of this period before the expiry of the bid validity period.

The bid must be accompanied by a written authorization, by which the bidder's representative is authorized to represent the bidder and sign on its behalf.

9.1. BID SUBMISSION

Describe how the bids are to be submitted.

A. Technical Bid Submittal

Specify the requirements for the content of the Technical Bid.

Failure to submit the Technical Bid shall lead to bid rejection as unacceptable.

B. Financial Bid Submittal

Specify the requirements for the content of the Financial Bid.

Failure to submit the Financial Bid shall lead to bid rejection as unacceptable.

C. Alternative Bids

state whether submission of alternative bids is allowed.

9.2. BID OPENING

The bids will be opened at TAROM head offices: _____ (*state the place where bids will be opened*).

9.3. ADDITIONAL STAGE TO IMPROVE THE FINANCIAL BID

Upon having ascertained the acceptable bids, but before designating the winning bid, an additional, financial bid improvement step shall be run.

Bidders who submitted admissible bids must submit reduced prices over those set out in their original/previous financial bids.

In case any of the bidders fail to submit new improved financial bids by the time limit specified by the assessment commission, the commission shall consider the latest financial bid submitted by such bidders in the procurement process.

In case any of the bidders submit new financial bids by the time limit specified by the assessment commission, but they set out prices greater than those stated in their original financial bids, such bids will be rejected as non-compliant.

9.4. SCORE

If appropriate, depending on the awarding criterion, state the method of setting the Technical and Financial

Bids scores.

Technical Bid Score:

Technical Bid Score shall be calculated as follows:

Set out the assessment factors, the score assigned to them and the algorithm for calculating the final score of the technical bid.

Financial Bid Score:

Financial Bid Score shall be calculated as follows:

Set out the assessment factors, the score assigned to them and the algorithm for calculating the final score of the Financial Bid.

Final Score

In order to rank the qualified bids, the financial bid score obtained shall be added to the technical bid score.

The bidder with the highest score shall rank first.

Should several bids rank first, winner will be declared the bid that achieved the highest final score for the Technical Bid.

In case a tie-break cannot be achieved based on this criterion, TAROM will request a closed envelope price re-bidding within ____ hours.

9.5. OTHER INFORMATION

TAROM is entitled to cancel the application of procurement process under the provisions of TAROM Procurement Regulation.

In case the process is cancelled, the bidders will be notified thereof.

Within one and the same procurement process, a bidder cannot:

- a) submit two or more individual and/or joint bids, under penalty of exclusion of all concerned bids from the process;
- b) submit an individual/ joint bid and be nominated as a subcontractor on another bid, under penalty of exclusion of the individual bid or, as applicable, of that in which the bidder is an associate.

Contestations can be filed pursuant to the provisions of Art. _____ set forth in TAROM's Procurement Regulation.

_____ PROCUREMENT NOTICE

1. Purchaser: COMPANIA NAȚIONALĂ DE TRANSPORTURI AERIENE ROMÂNE TAROM S.A. (*i.e.*, *TAROM Romanian Air Transport Nat. CO, Inc.*) ("TAROM")
2. Technical specifications of the goods/ services/ works:
3. Quantity of goods/ services/ work that are to be acquired:
4. Place of delivery of goods/ provision of services/ performance of works:
5. Deadline for delivery of goods/ rendering of services/ performance:
6. The price of goods/ services/ works shall be expressed in:
7. Other mandatory terms for delivery of goods/ rendering of services/ performance of works:
8. Further information can be obtained upon a written request by any concerned economic operator to TAROM at the email address:
9. Address for submitting bids (email/ mailing address):
10. Date limit for transmission of bids:
11. Bid selection criterion:

**PARTICIPATION INVITATION
IN THE AWARD PROCEDURE FOR PROCUREMENT OF _____**

COMPANIA NATIONALA DE TRANSPORTURI AERIENE ROMANE TAROM S.A. (*i.e., TAROM Romanian Air Transport Nat. CO, Inc.*), with head offices in the Town of Otopeni, 224F Calea Bucurestilor-Rd., Ilfov County, Romania, registered with the Registrar of Companies with Ilfov County Court with No. J23/ 1298/ 2003 and VATIN RO477647/ 10-12-1992, as an acquirer,, would like to extend to you this

INVITATION TO PARTICIPATE

in the award procedure organized for the award of the purchase contract _____

COMPANIA NATIONALA DE TRANSPORTURI AERIENE ROMANE TAROM S.A.

PARTNERSHIP AGREEMENT

For participation in the award procedure of the purchase contract _____

Art. 1. Parties

The undersigned _____, represented by _____, as a _____ (economic operator designation, registered address, telephone no.)

and

The undersigned _____, represented by _____, as a _____ (economic operator designation, registered address, telephone no.)

Art. 2. Object

2.1. Partners agreed to jointly pursue the following activities:

a) participation in the procurement process organized by COMPANIA NAȚIONALĂ DE TRANSPORTURI AERIENE ROMÂNE TAROM S.A. (i.e., TAROM Romanian Air Transport Nat. CO, Inc.) for awarding the purchase contract for (object)

b) joint performance of the purchase contract in case their joint bid is designated a winner.

2.2. Other activities to be run jointly:

1. _____
2. _____
- ... _____

2.3. The financial/ technical/ professional contribution of each party in fulfilling the purchase contract is of:

1. _____ % partner _____
2. _____ % partner _____

2.4. The distribution of benefits or losses arising from joint activities undertaken by partners will be proportional to the share of participation of each partner, i.e.:

1. _____ % partner _____
2. _____ % partner _____

Art. 3. Duration

3.1. The duration of partnership set up under this agreement shall be equal to the period of the award procedure and will be extended accordingly with the period of contract performance (in case the partnership is designated as winner of the procurement process).

Art. 4. Partnership Administration and Management Terms:

4.1. There is authorised partner _____, in his/ her capacity as partnership leader

for the joint bid preparation, execution and submitting for and on behalf and of the partnership set up hereunder.

4.2. There is authorised partner _____, in his/ her capacity as partnership leader, for the execution and submitting for and on behalf and of the partnership set up hereunder, *in case the partnership is designated as winner of the procurement process.*

Art. 5. Termination

5.1. Partnership shall cease its activity due to the following:

- a) expiration of the period for which the agreement was concluded;
- b) failure or inappropriate fulfilment of any of those provided under Art. 2 of the agreement;
- c) other causes provided by law.

Art. 6. Communications/ Notices

6.1. Any communication between the parties shall only be valid if it is in writing and sent to the addresses set out under Art. 1.

6.2. In mutual agreement, the partners can agree to other ways of communication.

Art. 7. Disputes

7.1. Any disputes which may arise between the parties shall be amicably settled, failing which they will be decided by a court holding jurisdiction upon.

Art. 8. Other Clauses

The parties may introduce any clauses they deem appropriate and relevant for achieving the object of the partnership agreement and the procurement process object, respectively.

This agreement was concluded in original copies, one copy for each party, this (*date of signature*)

PARTNER #1 and Leader of Partnership

(*economic operator designation*)

PARTNER #2

(*economic operator designation*)

PARTNER #3

(*economic operator designation*)

TEMPLATE
GOODS PURCHASE CONTRACT
 No. _____ concluded on _____

Art. 1. PARTIES

COMPANIA NAȚIONALĂ DE TRANSPORTURI AERIENE ROMÂNE TAROM S.A. (*i.e.*, *TAROM Romanian Air Transport Nat. CO, Inc.*) (“**TAROM**”),

with head offices in the Town of Otopeni, 224F Calea Bucurestilor-Rd., Ilfov County, Romania, registered with the Registrar of Companies with Ilfov County Court with No. J23/ 1298/ 2003 and VATIN RO477647/ 10-12-1992, legally represented by Mr. _____,

as a “PURCHASER”, hereinafter referred to as the Purchaser,

and

_____,

with head offices in _____, _____, _____ -St. _____ County,

registered with the Registrar of Companies with _____ with No. J _____ / _____ / _____ and

VATIN _____, legally represented by Mr./ Mrs. _____ - _____, as a

“SUPPLIER”, hereinafter referred to as the Supplier,

each of them being a “Party” and together the “Parties” agreed as follows:

Art. 2. DEFINITIONS

In this Contract, unless the context otherwise requires, the words and phrases below have the following meanings:

- (a) Addendum: means any written agreement amending this Contract and its Annexes; The addenda are an integral part of this Contract;
- (b) Contract: means the contract for pecuniary interest concluded in writing by and between TAROM and one or more economic operators, the object of which is the supply of goods;
- (c) Force Majeure: means any event beyond the control of the parties, which is not due to their fault or guilt, unforeseeable at the time of Contract signing and that makes impossible the performance and fulfilment of contract, respectively; such events are deemed to be: wars, revolutions, fires, floods or any other natural disasters, constraints arising due to quarantine, embargo, the enumeration being not exhaustive, but declarative. There is not regarded as a force majeure an event like those here above that, without rendering impossible the performance, makes highly expensive the performance of obligations of either party;
- (d) Performance Guarantee: means a guarantee furnished by Supplier for purposes of ensuring Purchaser of a quantitative, qualitative performance and within the period agreed in Contract (applicable in the case of supply contracts of a value of over €500,000.00);
- (e) Applicable Law: means any rules, mandatory regulations relating to the Romanian statutes and also to the EU legislation or case law, also, to the obligations arising from treaties to which Romania is a party;

- (f) Month: means a calendar month (12 months per year)
- (g) Contract Price: Means the price payable to Supplier by Purchaser based on Contract, for the full, adequate and timely fulfillment of all the obligations undertaken under the Contract;
- (h) Goods: means the equipment, machinery, tools, spare parts and any other goods set out in the annex(es) to Contract that Supplier has to supply under Contract;
- (i) Technical Specifications: means all requirements, specifications, standards required by Purchaser and set forth in the Procurement Documentation and Technical Bid;
- (j) Standards: means the standards, technical regulations or the like, set forth in the Procurement Documentation and Technical Bid;
- (k) Day: means a calendar day.

(add any other terms that the parties understand to have defined for the contract)

Art. 3. DOCUMENTS

3.1. The following Annexes are attached to Contract and are an integral part thereof:

- a) Annex 1 – Procurement Documentation;
- b) Annex 2 – Technical Bid;
- c) addenda, if any;

(Set out the precise names of the annexes to Contract)

3.2. In cases where, during the Contract performance, it is noted that certain elements of the Technical Bid are inferior or do not meet the requirements set out in the Procurement Documentation, the Procurement Documentation provisions shall prevail.

Art. 4. OBJECT

4.1. Supplier pledges itself that, based on Contract, supply to Purchaser the goods described in Supplier's Bid attached as Annex 2 to Contract, accepted by Purchaser in consequence of having gone through the procurement process pursuant to the provisions of Art. _____ of the Regulation and the Award Documentation.

(this clause shall be adapted to the actual circumstances and may include references to the good types covered by the contract)

Art. 5. PRICE

5.1. Purchaser pledges itself to pay the Contract Price to Supplier.

5.2. Contract Price is of RON _____ to which VAT shall add. *(state the price value in numbers)*

(this clause shall be adapted to the actual circumstances and may include references to rates, prices relating to certain types of goods covered by the contract etc.)

5.3. The Contract Price is firm and will not be reviewed throughout the duration of Contract. Contract Price includes all Supplier's direct and indirect costs relating to conclusion and performance of Contract.

5.4. Should Supplier default from its obligations under the contract, Purchaser would be entitled to derive, from Contract Price as penalties, an amount equivalent to _____ % per day of delay from _____.

(specify the percentage and amount to which the penalty applies)

Art. 6. PAYMENT METHODS

6.1. The payment of the Contract Price shall be made by bank transfer, on the basis of the invoice issued by Supplier for the amount to which it is entitled under the contract, directly to Supplier account stated on the invoice within _____ days of its receipt by Purchaser. *(this clause shall be adapted to the actual circumstances and can be noted as a payment condition alongside with the invoice issue, submittal of a document/ report approved by Purchaser or of a partial acceptance certificate for the goods)*

6.2. The invoices must be issued and filled in pursuant to the Romanian effective statutes. Sending invoices inappropriately drawn up for settlement shall cause a denial of payment on part of Purchaser and suspension of the payment deadline, if Purchaser notifies Supplier and returns the invoices, in original, within the payment period. A new payment deadline shall start to run from the submittal by Supplier of invoices sent again with the correct dates, under statutory provisions and the Contract.

6.3. Payments are to be made _____ *(describe the payment terms, respectively monthly, quarterly etc., specify the due date etc.)*

6.4. The payment currency is _____ *(specify the payment currency) (this clause can be adapted to the situation, by reference, for instance, to the exchange rate at which the payment is made)*

Art. 7. DURATION

7.1. The Contract duration is of _____ (_____) months and begins to run from the Contract date of signature by both parties.

7.2. *If appropriate, description of how to supplement the contract object, to extend the duration, to renegotiate in favour of Purchaser, respectively, pursuant to Regulation provisions _____*

Art. 8. SUPPLIER'S OBLIGATIONS

8.1. Supplier pledges itself to deliver the goods stipulated in Contract at the standards and or performances set forth by the Procurement Documentation and Technical Bid enclosed to Contract.

8.2. Supplier pledges itself to indemnify Purchaser against any:

a) claims and actions at law, arising out of the violation of intellectual property rights (patents, trade names, trademarks etc.), relating to equipment, materials, installations or machinery used for or in connection with the purchased goods and

b) damages, costs, charges and expenses of any nature, related thereto, except the case in which such a breach arises from compliance with the Procurement Documentation drawn up by Purchaser.

(this clause shall be adapted to the actual circumstances)

8.3. Supplier is fully responsible for delivering the goods in accordance with the schedule agreed by _____ *(specify the annex setting out the delivery schedule).*

8.4. Supplier shall have to deliver the goods within _____ days of the contract being signed. *(state the delivery deadline)*

(this clause shall be adapted to the actual circumstances and details can be retrieved relating to the method of delivery set forth in the Procurement Documentation or the Technical Bid)

Art. 9. ACQUIRER'S OBLIGATIONS

9.1. Purchaser pledges itself to pay the Contract Price to Supplier within the period specified in Contract. *(this clause shall be adapted to the actual circumstances and reference can be made to a Payment Schedule that*

can an Annex to Contract etc.)

9.2. Purchaser pledges itself to make available to Supplier any facilities and/or information that it requested in the Technical Bid and that it deems necessary for Contract performance.

(this clause shall be adapted to the actual circumstances)

Art. 10. PERFORMANCE GUARANTEE *(This article shall be included in the case of the procedure of awarding contracts, the estimated value of which is greater than €500,000.00)*

10.1. In order to guarantee the execution in due time as well as the good and quantitative fulfilment of the obligations subject of the Contract, Supplier shall have to furnish and make available to the Purchaser and maintain for the entire duration of the Contract plus _____ days the Performance Guarantee of the Contract amounting to _____ of Contract Price. *(maximum 10% of Contract price)*, net of VAT, i.e., RON _____-- Should the Contract duration be extended, Supplier shall have to extend the validity of the performance guarantee accordingly. *(state the percentage and performance guarantee amount, as well as the number of days needed to have fixed the guarantee validity period)*

10.2. The performance guarantee shall be furnished within five (5) working days of Contract execution, in any of the following ways:

a) by bank transfer to Purchaser's account;

b) by a guarantee instrument issued by a bank or an insurance company that is not in special circumstances concerning its authorization or supervision, under the law, including by a professional liability insurance policy, which becomes annex to contract; or

c) by successive deductions from amounts due from partial invoices.

10.3. Purchaser pledges itself to release the procurement process participation bond within three (3) working days of furnishing the performance guarantee or, as applicable, within three (3) working days of the execution of Purchase Contract, should the bidder not have to furnish a performance guarantee. *(this clause can be removed if not appropriate to the actual circumstances)*

10.4. Purchaser is entitled to lay claim to the performance guarantee to the extent of the actual damages due to any defaults and/or inappropriate performance or delayed fulfilment of Contract obligations on part of Supplier.

10.5. Purchaser pledges itself to return the performance guarantee within fifteen (15) days of Supplier fulfilling its obligations undertaken hereunder, had Purchaser not demanded it by such time.

10.6. Partial payments made under this Contract do not imply a proportional reduction in the performance guarantee.

10.7. During the Contract performance, Purchaser is entitled to lay claim to the performance guarantee to the extent of the actual damages, should Supplier default from its obligations under the Contract due to its own misconduct. Prior to laying claim to the performance guarantee, Purchaser shall notify its claim both to Supplier and the guarantee instrument issuer, setting forth the obligations that have not been complied with as well as the method for calculating the damages.

10.8. In the case of Purchaser realizing, whether partially or fully, a performance guarantee furnished by such time, Supplier shall have to, within _____ days *(state the time period that can be set as calendar or working days)* of the realization for replenishing the guarantee up to the agreed amount. Should Supplier default from such obligation, the Purchaser would be entitled to cancel the Contract by giving a notice of cancellation, without further ado.

(this clause shall be adapted to the actual circumstances, the guarantee having to be possibly furnished by successive deductions from the Price owed to Supplier or by another instrument or being possibly removed if Supplier has a professional liability insurance)

Art. 11. ACCEPTANCE AND CHECKS

11.1. Purchaser can check the delivered goods for compliance with the provisions of the Technical Bid and Procurement Documentation.

11.2. Purchaser shall have to notify Supplier, in writing, of the identity of its authorised representatives for such purpose.

(specify the annex that includes the way of checking and accepting the goods)

Art. 12. CONTRACT TERMINATION

12.1. This Contract can also terminate in any of the following cases:

- a) upon expiry of Contract Duration;
- b) by mutual agreement of the Parties,
- c) by unilateral termination in the terms provided under Art. 12.2;
- d) by cancellation in terms provided under Art. 12.3;
- e) in an event of force majeure.

12.2. Purchaser shall be entitled to unilaterally terminate the Contract by giving a thirty (30) working days written notice before the date on which the Contract is deemed to be terminated, without further ado for putting in default or other prior technicalities and without involving courts of law, in any of the following circumstances:

- a) if Supplier fails to deliver the goods by the deadlines set in Contract;
- b) the occurrence of any other legal incapacity preventing the Contract performance.

12.3. Purchaser shall be entitled to unilaterally terminate the Contract with full effect, by a written notice given to Supplier in the terms of Art. 12.5, without any prior technicalities being required to be fulfilled and without court involvement being necessary, in any of the following circumstances, but not limited thereto:

- a) Supplier defaults from its essential obligations under the Contract, i.e., the obligations set forth under _____ *(state the Art. in the contract or provision in the contract documents that introduces an essential obligation)*;
- b) Supplier fails to comply with the notification given by Purchaser, by which it is requested to correct any non-compliances/ defects in the delivered goods or to correct the faulty way of fulfilling the obligations hereunder;
- c) Supplier repeatedly refuses or fails to carry out any of the contract obligations;
- d) Supplier fails to provide the Purchaser with the proof of furnishing/ maintenance/ extension/ replenishment/ completion of the required guarantees or the guarantee or insurance issuer is unable to fulfill its obligations undertaken by Contract;

12.4. Supplier can cancel the Contract if Purchaser fails to fulfill its obligations incumbent under Contract.

12.5. The party intending to cancel the Contract must notify the other party in writing its intention and the grounds for cancellation. The party notified by the other party of the latter's intention to terminate the Contract may submit comments within _____ days of receipt of notification, including any actions proposed in order to continue to fulfill its contract obligations. Should the notified party fail to respond or the response

submitted not be satisfactory to the other party, the notice of cancellation of the Contract shall take full effect between the Parties upon the expiration of a period of _____ days from the expiry of the time period for submission of comments. *(state the time period)*

Art. 13. CONFIDENTIALITY

13.1. The parties undertake to keep confidential the provisions hereunder and the documentation and information provided by the parties during the execution hereof and to make this confidential information available only to those persons who need to know it for the fulfillment of their tasks and to achieve the purpose hereof.

13.2. Neither party shall publish or disclose any elements of the Contract without the prior written consent of the other party. Should any discrepancies arise with regard to the need of publishing or disclosing the documents and information provided to it for the purpose of performing the Contract, the final decision will belong to Purchaser.

13.3. The confidentiality obligation shall be effective for the entire duration of the Contract, and shall survive it for a period of _____ years. *(this clause shall be adapted to the actual circumstances and the additional time period may be removed)*

13.4. Either Contract party is relieved of responsibility for the disclosure of confidential information (, if – TN):

- a) the information had been known to such party before being received from the other party;
- b) the information was disclosed after the written consent of the other party had been obtained for such disclosure;
- c) The party was legally required to disclose the information.

13.5. The parties shall have to administer safely the provided personal data and only for the purposes stated in the Contract.

Art. 14. ASSIGNMENT

14.1. Supplier shall not transfer any parts or all of its obligations under the Contract, without the prior written agreement of the Purchaser.

14.2. The assignment shall not relieve the Supplier of liability for the guarantee or any other obligations undertaken under Contract.

(this clause shall be adapted to the actual circumstances, it being possible to have specified that an assignment is allowed in any case or that the assignment of the contract or, for example, that if the rights and obligations of the Supplier are taken over by another economic operator, as a consequence of a universal succession or with universal title within a process of reconstruction, including through merger or splitting, it has to notify the Purchaser thereof within a certain time limit)

Art. 15. FORCE MAJEURE

15.1. A force majeure shall exonerate the parties from the fulfillment of their obligations undertaken hereby for the entire period it occurs.

15.2. The Contract fulfillment will be suspended during the force majeure, however without prejudice to the rights to which the parties were entitled until its occurrence.

15.3. The party invoking a force majeure shall notify the other party of its occurrence thoroughly within _____ *(state the time limit, which can be set as calendar or working days)* days of the occurrence of the

event and shall take any actions available to it to mitigate the consequences. The proof of force majeure shall be certified by the Romanian Chamber of Commerce and Industry and will be submitted within _____ days of the commencement of the force majeure. (*state the time limit, which can be set as calendar or working days*)

15.4. The party invoking a force majeure shall notify the other party of the termination of its cause within _____ days of termination. (*state the time limit, which can be set as calendar or working days*)

15.5. If a force majeure is developing for, or is expected to take more than _____ months (*state the time period*), either party shall be entitled to notify the other party of the lawfull termination of this Contract, without any of the parties being entitled to claim damages from the other.

Art. 16. DISPUTE SETTLEMENT

16.1. The parties undertake hereby to make every effort to settle amicably any disagreements or disputes that may arise between the Parties within or in connection with the interpretation or performance of the Contract.

16.2. If no amicable solution can be reached within _____ days (*state the time limit, which can be set as calendar or working days*) of the commencement of negotiation of an amicable settlement, any disputes of any kind will be settled by Romanian law courts having jurisdiction upon Purchaser.

Art. 17. FINAL CLAUSES

17.1. Any communications between the parties regarding the performance of this Contract shall be in writing. Any and all written documents must be recorded at the time of both their transmission and receipt. Communications between parties can also be made by telephone, cable, telex, fax or e-mail, provided a written confirmation is given of receipt of such communication.

17.2. The parties hereto are entitled, throughout the duration of the Contract, to agree to any amendments of Contract clauses by addendum.

17.3. This Contract can be amended but in writing, in compliance with the provisions of the Regulation.

17.4. The Contract language is Romanian.

17.5. The law applicable to this Contract is the Romanian Law.

17.6. This Contract is concluded in _____ counterparts, one copy for each party, this (*specify the date of signature by the parties*)

Purchaser

.....
(*authorized signature*)

Stamp Place

Supplier

.....
(*authorized signature*)

Stamp Place

**TEMPLATE OF
PURCHASE CONTRACT FOR SERVICES**

No. _____ concluded as on _____

Art. 1. PARTIES

COMPANIA NAȚIONALĂ DE TRANSPORTURI AERIENE ROMÂNE TAROM S.A. (*i.e.*, *TAROM Romanian Air Transport Nat. CO, Inc.*) ("**TAROM**"),

with head offices in the Town of Otopeni, 224F Calea Bucurestilor-Rd., Ilfov County, Romania, registered with the Registrar of Companies with Ilfov County Court with No. J23/ 1298/ 2003 and VATIN RO477647/ 10-12-1992, legally represented by Mr. _____,

as a "PURCHASER", hereinafter referred to as the Purchaser
and

_____,

with head offices in, _____ -St. _____,

County/ City District, registered with the Registrar of Companies with _____ with No. J____/

_____/ _____ and VATIN _____, legally represented by Mr./ Mrs. _____ -

_____, as a "PROVIDER", hereinafter referred to as the Provider

each of which is called a "Party" and together the "Parties", agreed upon the following:

Art. 2. DEFINITIONS

In this Contract, unless the context otherwise requires, the words and phrases below shall have the following meanings:

- (a) Addendum: means any written agreement amending this Contract and its Annexes; The addenda are an integral part of this Contract;
- (b) Contract: means the contract for pecuniary interest concluded in writing by and between TAROM and any one or more economic operators, the object of which is the supply of goods.
- (c) Force majeure: means any event beyond the control of the parties, which is not due to their fault or guilt, unforeseeable at the time of Contract signing and that makes impossible the performance and, fulfilment of contract, respectively; such events are deemed to be: wars, revolutions, fires, floods or any other natural disasters, constraints arising due to quarantine, embargo, the enumeration being not exhaustive, but declarative. There is not regarded as a force majeure an event like those here above that, without rendering impossible the performance, makes highly expensive the performance of obligations of either party;
- (d) Performance Guarantee: means a bond furnished by Supplier for purposes of ensuring Purchaser of a quantitative, qualitative performance and within the period agreed in Contract;
- (e) Applicable Law: means any rules, mandatory regulations relating to the Romanian statutes and also the EU legislation or case law and also the obligations arising from treaties to which Romania is a party;
- (f) Month: means a calendar month (12 months per year);
- (g) Contract Price: Means the price payable to Supplier by Purchaser based on Contract, for the full, adequate and timely fulfillment of all the obligations undertaken under the Contract;

(h) Services: means the activities rendered within the scope of the Contract, such as: _____ *(state which are the services subject of the Contract);*

(i) Technical Specifications: means all requirements, specifications, standards required by Purchaser and set forth in the Procurement Documentation and Technical Bid;

(j) Standards: means the standards, technical regulations or the like set forth in the Procurement Documentation and Technical Bid;

(k) Day: means a calendar day.

(Any other terms shall be added that the parties understand to have defined for the contract)

Art. 3. DOCUMENTS

3.1. The following Annexes are attached to Contract and are an integral part thereof:

a) Annex 1 – Procurement Documentation;

b) Annex 2 – Technical Bid;

c) addenda, if any;

(set out the precise names of the annexes to Contract)

3.2. In cases where, during the Contract performance it is noted that certain elements of the Technical Bid are inferior or do not meet the requirements set out in the Procurement Documentation, the Procurement Documentation provisions shall prevail.

Art. 4. OBJECT

4.1. Provider pledges itself that, based on Contract, it shall provide _____ *(briefly describe the contract object)*, pursuant to the provision of the Procurement Documentation and Technical Bid. *(this clause should be adapted to the actual circumstances and may include references to the types of services covered by the contract)*

4.2. Services rendered based on Contract or, if appropriate, any phase of them to be completed within a period stated in _____, should be completed by the time limit agreed by the parties, a time limit to be calculated from the start date of service provision. *(state the document/ annex that sets forth the services rendering deadline)*

4.3. If during the Contract performance Provider fails to observe _____, it shall have to notify Purchaser in due time thereof. Any changes in dates/ performance periods undertaken in _____ shall be subject to the agreement of the parties, by an addendum. *(state the document/ annex that sets forth the services rendering deadline)*

Art. 5. CONTRACT PRICE

5.1. Purchaser pledges itself to pay the Contract Price to Provider.

5.2. Contract Price is of RON _____ to which VAT shall add. *(state the price value in numbers)*
(the clause should be adapted to the actual circumstances and may include references to fares, prices for certain types of goods covered by the contract etc.)

5.3. The Contract Price is firm and will not be reviewed throughout the duration of Contract. Contract Price includes all Provider's direct and indirect costs relating to conclusion and performance of Contract.
(this clause shall be adapted to the actual circumstances. Inasmuch as the price is adjustable, an adjustment formula should be provided)

5.4. Should Provider default from its covenants undertaken by contract, Purchaser would be entitled to derive, from Contract Price, as penalties, an amount equivalent to _____% per day of delay from _____ (specify the percentage and amount to which the penalty applies).

Art. 6. PAYMENT METHODS

6.1. The payment of the Contract Price shall be made by bank transfer, based on the invoice issued by Provider for the amount to which it is entitled under contract, directly to Provider's account quoted on the invoice within _____ days of its receipt by Purchaser (*this clause shall be adapted to the actual circumstances and it can be noted as a payment condition next to the invoice issue, the submittal of a document/ report approved by Purchaser or of a partial acceptance certificate for the services*).

6.2. The invoices must be issued and filled in pursuant to the Romanian effective statutes. Sending invoices inappropriately drawn up for settlement shall cause a denial of payment on part of Purchaser and suspension of the payment deadline, if Purchaser notifies Provider thereof and returns the invoices, in original, within the payment period. A new payment time limit shall start to run from the submittal by Provider of invoices sent again with the correct dates, under statutory provisions and the Contract.

6.3. Payments are to be made _____ (describe the payment terms, respectively monthly, quarterly etc., specify the due date etc.)

6.4. The payment currency is _____ (specify the payment currency) (*this clause can be adapted to the actual circumstances by taking reference to, for instance, the exchange rate at which the payment is made*).

Art. 7. DURATION

7.1. The Contract duration is of _____ (_____) months and begins to run from the Contract date of signature by both parties.

7.2. *If appropriate, description of how to supplement the contract object, extend the duration, renegotiate in favour of Purchaser, respectively, pursuant to Regulation provisions* _____

Art. 8. PROVIDER'S OBLIGATIONS

8.1. Provider pledges itself to render the services set forth in Contract with due professionalism and promptitudeness as per the commitment it undertook, at the standards and/or performance set forth in the Procurement Documentation and Technical Bid enclosed to Contract.

8.2. Provider pledges itself to indemnify Purchaser against any:

a) claims and actions at law arising out of the violation of intellectual property rights (patents, trade names, trademarks etc.), relating to equipment, materials, installations or machinery used for, or in connection with purchased goods, and

b) damages, costs, charges and expenses of any nature, related thereto, except the case in which such a breach arises from compliance with the Procurement Documentation drawn up by Purchaser.

(this clause shall be adapted to the actual circumstances)

8.3. Provider pledges itself to supervise the service rendering, secure the human resources, materials, facilities, equipment and any of the like, whether transiently or definitely required by and for the Contract, inasmuch as the need to secure them is provided for in the Contract or can reasonably be inferred from the Contract.

8.4. Provider is fully responsible for the provision of the services pursuant to the delivery schedule agreed in _____(specify the annex setting out the delivery schedule). At the same time, it is responsible both for the safety of all rendering operations and methods used and the qualification of the personnel employed for the entire Contract duration.

8.5. Provider shall start to render services in the shortest possible time from _____. (specify the moment from which Provider has to begin rendering the services)

8.6. Should Provider suffer delays and/or incur additional costs caused exclusively by the actions and/or omissions of Purchaser, the parties would mutually agree to:

a) extend the service rendering period and

b) the total related expenses, if appropriate, which will add to the Contract Price.

(this clause shall be adapted to the actual circumstances and details can be retrieved relating to the method of service delivery set forth in the Procurement Documentation or Technical Bid)

Art. 9. ACQUIRER'S OBLIGATIONS

9.1. Purchaser pledges itself to pay the Contract Price to Provider within the time period provided in Contract. *(this clause shall be adapted to the actual circumstances and reference can be made to a Payment Schedule that can be an Annex to Contract etc.)*

9.2. Purchaser pledges itself to make available to Provider any facilities and/or information that it requested in the Technical Bid and it deems necessary for Contract performance.

(this clause shall be adapted to the actual circumstances)

Art. 10. PERFORMANCE GUARANTEE *(this article shall be included in the case of process of awarding contracts, the estimated value of which is greater than €500,000.00 and only in cases where Provider does not hold a professional insurance)*

10.1. In order to guarantee the performance in due time as well as the good and quantitative fulfilment of the obligations under Contract, Provider shall have to furnish and make available to Purchaser and maintain for the entire Contract Duration plus _____ days a Contract Performance Guarantee amounting to _____ of Contract Price. *(maximum 10% of Contract price)*, net of VAT, i.e., RON _____--
Should the Contract duration be extended, Provider shall have to extend the validity of the performance guarantee accordingly *(state the percentage and performance guarantee value as well as the number of days needed to have set the guarantee validity period)*

10.2. The performance guarantee shall be furnished within five (5) working days of Contract execution, in any of the following ways:

a) by bank transfer to Purchaser's account;

b) by a guarantee instrument issued by a bank or an insurance company that is not in any special circumstances concerning its authorization or supervision under the law, including by a professional liability insurance policy, which becomes annex to contract; or

c) by successive deductions from amounts due from partial invoices, in the terms of Art. _____ of the Regulation.

10.3. Purchaser pledges itself to release the procurement process participation bond within three (3) working days of furnishing the performance guarantee or, as applicable, within three (3) working days of the Purchase Contract execution, should the bidder not have to furnish a performance guarantee. *(this clause can be*

removed if not matching to the actual circumstances)

10.4. Purchaser is entitled to lay claim to the performance guarantee to the extent of the actual damages due to any defaults and/or inappropriate performance or delayed fulfilment of Contract obligations on part of Provider.

10.5. Purchaser pledges itself to return the performance guarantee within fifteen (15) days of Provider fulfilling its obligations undertaken hereunder, had Purchaser not demanded it by such time.

10.6. Partial payments made hereunder do not imply a proportional reduction in the performance guarantee.

10.7. During the Contract performance, Purchaser is entitled to lay claim to the performance guarantee to the extent of actual damages, had Provider defaulted from its obligations undertaken by Contract due to its own misconduct. Prior to laying claim to the performance guarantee, Purchaser shall notify its claim both to Provider and the guarantee instrument issuer, setting forth the obligations that have not been complied with as well as the method for calculating the damages.

10.8. In the case of Purchaser realizing, whether partially or fully, a performance guarantee furnished by such time, Provider shall have to, within _____ days (*specify the time period that can be set as calendar or working days*) of the realization for replenishing the guarantee up to the amount agreed. Should Provider default from such obligation, Purchaser would be entitled to terminate the Contract by giving notice of cancellation, without further ado.

(this clause shall be adapted to the actual circumstances, the guarantee having to be possibly furnished by successive deductions from the Price owed to Provider or by another instrument, or possibly being removed if Provider has a professional liability insurance)

Art. 11. INSURANCES

11.1. *In case a contract for services is awarded to a provider required under the law to have a professional insurance, Purchaser will require, for the performance guarantee purposes, the submittal of an insurance policy with a value at least equal to and at most twice the estimated value of the contract to be awarded. In such a case Art. 10 will be removed. Article 11 will describe how to seek remedy against a professional insurance according to the specific nature of such insurance.*

(this clause shall be adapted to the actual circumstances)

Art. 12. ACCEPTANCE AND CHECKS

12.1. Purchaser can check the service rendering for compliance with the provisions of the Technical Bid and Procurement Documentation.

12.2. Purchaser shall have to notify Provider, in writing, of the identity of its authorised representatives for such purpose.

(specify the annex that includes the way of checking and accepting services)

Art. 13. TERMINATION

13.1. This Contract can also terminate in any of the following cases:

- a) at the end of Contract Duration;
- b) by mutual agreement of the Parties,
- c) by unilateral termination in the terms provided under Art. 13.2;
- d) by cancellation in the terms provided under Art. 13.3;

e) due to a force majeure.

13.2. Purchaser shall be entitled to unilaterally terminate the Contract by giving a thirty (30) working days notice before the date on which the Contract is deemed to be early terminated, without further ado for putting in default or other prior technicalities and without involving courts of law, in any of the following cases:

- a) if Provider and/or its Subcontractors fail to start the Contract performance on the start date specified in the Contract;
- b) if Provider lose for whatever reason the right to render the Services object of this Contract;
- c) if Provider has been convicted of an offense related to exercise of profession by a final judgment;
- d) the occurrence of any other legal incapacity preventing the Contract performance.

13.3. Purchaser shall be entitled to unilaterally terminate the Contract with full effect, by a written notice given to Provider in the terms of Art. 13.5, without any prior technicalities being required to be fulfilled and without law court involvement being necessary, in any of the following cases, but not limited thereto:

- a) Provider defaults from its essential obligations under the Contract, i.e., the obligations set forth under _____ (*state the Art. in the contract or provision in the contract documents that introduces an essential obligation*);
- b) Provider fails to comply with the notification given by Purchaser, whereby it is requested to remedy the non-conformities/defects of the services rendered or the faulty way of performing the obligations hereunder;
- c) Provider repeatedly refuses or fails to fulfill any of the contract obligations;
- d) Provider subcontracts without a prior written consent of Purchaser; (*this clause could be removed depending on other contract provisions*)
- e) Provider fails to provide the Purchaser with the proof of furnishing/ maintaining/ extension/ replenishment/ completion of the required guarantees or insurances, or the guarantee or insurance issuer is unable to fulfill its obligations undertaken by Contract;

13.4. Provider is entitled to cancel the Contract if Purchaser fails to fulfill its obligations incumbent under Contract.

13.5. The party intending to cancel the Contract should notify the other party in writing of its intention and the grounds for cancellation. The party notified by the other party of the latter's intention to terminate the Contract may submit comments within _____ days of receipt of such notification, including any actions proposed in order to continue to fulfill its contract obligations. Should the notified party fail to respond or the response submitted not be satisfactory to the other party, the notice of cancellation of the Contract shall take full effect between the Parties upon the expiration of a period of _____ days from the expiry of the deadline for submission of comments. (*state the time period*)

Art. 14. INTELLECTUAL PROPERTY RIGHTS

14.1. Intellectual or industrial property rights and copyright to any documents devised by Provider for purposes of performing the Contract will be the sole ownership of Purchaser, who shall be entitled to use, publish, assign or transfer them as it deems fit, without any geographic or other kind of limitations, except where such intellectual or industrial property rights already exist.

Art. 15. CONFIDENTIALITY

15.1. The Parties undertake to keep confidential the provisions hereunder and the documentation and information provided by the parties during the execution hereof and to make this confidential information

available only to those persons who need to know it for the fulfillment of their tasks and to achieve the purpose hereof.

15.2. Neither party shall publish or disclose any elements of the Contract without the prior written consent of the other party. Should any discrepancies arise with regard to the need of publishing or disclosing the documents and information provided to it for the purpose of performing the Contract, the final decision will belong to Purchaser.

15.3. The confidentiality obligation shall be effective for the entire duration of the Contract, and shall survive it for a period of _____ years. *(this clause shall be adapted to the actual circumstances, and the additional time period may be removed)*

15.4. Either Contract party shall be relieved of responsibility for the disclosure of confidential information (, if – TN):

- a) the information had been known to such party before being received from the other party;
- b) the information was disclosed after the written consent of the other party had been obtained for such disclosure;
- c) The party was legally required to disclose the information.

15.5. The parties shall have to administer safely the provided personal data and only for the purposes stated in the Contract.

Art. 16. SUBCONTRACTORS

16.1. Provider shall have to, in case it subcontracts any parts of the Contract, conclude contracts with designated subcontractors in the same terms as the ones in which it concluded the Contract with Purchaser.

16.2. Provider shall have, upon the Contract conclusion and throughout its performance, to submit all the contracts concluded with designated subcontractors.

(this clause shall be adapted to the actual circumstances and it may be specified that subcontracting is not permitted or permitted only for certain parts of the contract, respectively that the subcontracts are to be annexes to Contract)

16.3. Provider is fully liable to Purchaser for how the Contract is fulfilled, even though it has subcontracted parts of the Contract to third parties.

16.4. Provider is entitled to change any of the subcontractors, if they failed to fulfill their parts of the Contract. Provider shall change any of the subcontractors upon reasoned request of Purchaser. The change of subcontractor(s) will not alter the Contract Price and Purchaser shall be promptly notified thereof.

Art. 17. ASSIGNMENT

17.1. Provider shall not transfer any parts or all of its obligations under the Contract, without the prior written consent of Purchaser.

17.2. The assignment shall not relieve Provider of any liability for the guarantee or any other obligations undertaken under Contract.

(this clause shall be adapted to the actual circumstances and it can be stated that the assignment is allowed in any case or that the contract assignment or, for instance, that, in case the rights and obligations of Provider are taken over by another economic operator as a consequence of a universal succession or with universal title within a process of reconstruction, including through merger or splitting, it has to notify the Purchaser thereof within a certain time limit)

Art. 18. FORCE MAJEURE

18.1. A force majeure shall exonerate the parties from the fulfillment of their obligations undertaken hereby for the entire period it develops.

18.2. The Contract fulfillment will be suspended during the force majeure, however without prejudice to the rights to which the parties were entitled until its occurrence.

18.3. The party invoking a force majeure shall notify the other party of its occurrence thoroughly within _____ (state the time limit, which can be set as calendar or working days) days of the occurrence of the event and shall take any actions available to it to mitigate the consequences. The proof of force majeure shall be certified by the Romanian Chamber of Commerce and Industry and will be submitted within _____ days of the commencement of the force majeure. (state the time limit, which can be set as calendar or working days)

18.4. The party invoking a force majeure shall notify the other party of the termination of its cause within _____ days of termination. (state the time limit, which can be set as calendar or working days)

18.5. If a force majeure is developing for, or is expected to take more than _____ months (state the time period), either party shall be entitled to notify the other party of the lawful termination of this Contract, without any of the parties being entitled to claim damages from the other.

Art. 19. DISPUTE SETTLEMENT

19.1. The parties undertake hereby to make every effort to settle amicably any disagreements or disputes that may arise between the Parties within or in connection with the interpretation or performance of the Contract.

19.2. If no amicable solution can be reached within _____ days (state the time limit, which can be set as calendar or working days) of the commencement of negotiation of an amicable settlement, the disputes of any kind will be settled by Romanian law courts having jurisdiction upon Purchaser.

Art. 20. FINAL CLAUSES

20.1. Any communications between the parties regarding the performance of this Contract shall be in writing. Any and all written documents must be recorded at the time of both their transmission and receipt. Communications between parties can also be made by telephone, cable, telex, fax or e-mail, provided a written confirmation is given of receipt of such communication.

20.2. The parties hereto are entitled, throughout the duration of the Contract, to agree to any amendments of Contract clauses by addendum.

20.3. This Contract can be amended but in writing, in compliance with the provisions of the Regulation.

20.4. The Contract language is Romanian.

20.5. The law applicable to this Contract is the Romanian Law.

20.6. This Contract is concluded in _____ counterparts, one copy for each party, this (specify the date of signature by the parties)

Purchaser
.....
(authorized signature)
Stamp Place

Provider
.....
(authorized signature)
Stamp Place