

PROPOSAL

Pursuant to Article IV 4 a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, on the 64th session of the House of Representatives, held on March 13, 2014, and on the 37th session of the House of Peoples, held on April 29, 2014, adopted

LAW

ON PUBLIC PROCUREMENT

PART ONE - GENERAL PROVISIONS

Article 1

(Scope of the Law)

- (1) The Law shall regulate the public procurement system in Bosnia and Herzegovina, shall establish the rules for public procurement procedures, by defining the rights, obligations, responsibilities, and legal protection of participants in public procurement procedures, as well as competencies of the Public Procurement Agency of Bosnia and Herzegovina (hereinafter: the Agency) and the Procurement Review Body of Bosnia and Herzegovina (hereinafter: the PRB).
- (2) Public procurement procedure shall refer to procedures of procurement of supplies, services, or works, conducted by the contracting authority or sectoral contracting authority referred to in Articles 4 and 5 of this Law, in compliance with the provisions set forth in this Law and its Implementing Regulations.

Article 2

(Definitions)

- (1) Certain terms used in this Law shall have the following meanings:
 - a) **Public procurement contract** shall mean a contract for pecuniary interest concluded in written form between one or more suppliers and one or more contracting authorities for the purpose of procurement of supplies or services, or execution of works in the context of this Law, as follows:
 - 1) **Public supplies contract** shall mean a public procurement contract involving the purchase, lease, rental or leasing, with or without an option to buy, as well as a contract that incidentally includes the installation and/or setting and/or mounting, in addition to the supplies;
 - 2) **Public services contract** shall mean a public procurement contract having as its subject matter the procurement of services referred to in Annex II Parts A and B of this Law, which shall represent an integral part of this Law. Services exempt from the application of this Law shall be listed in Annex II part C which shall represent an integral part of this Law. A public services contract shall be:
 - A public procurement contract having as its subject matter both supplies and services shall be considered to be a public services contract, if the

value of the services in question exceeds that of supplies covered by the contract, or

- A public procurement contract having as its subject matter services and works shall be a public services contract if it includes works in the context of Annex I, which shall represent an integral part of this Law, that are only incidental to the principal subject matter of the contract;
 - 3) **Public works contract** shall mean a contract having as its subject matter design and execution of works or execution of works related to one or more than one of activities referred to in Annex I, which shall represent an integral part of this Law, or works or the execution, by whatever means, of works corresponding to the requirements specified by the contracting authority or sectoral contracting authority. The term “works” shall refer to the outcome of building or civil engineering works taken as a whole, that is sufficient of itself to fulfill an economic or technical function.
- b) **Contracting authority** in the context of this Law shall be:
- 1) contracting authority referred to in Article 4 of this Law conducting a public procurement procedure for supplies, services, and/or works;
 - 2) sectoral contracting authority referred to in Article 5 of this Law performing activities in the area of water supply or energy or transport or postal services, and conducting a public procurement procedure for supplies, services, and/or works;
- c) **Economic operator** shall mean a legal or physical person, or a group of such persons, that offer supplies, services, and/or works on the market, and are registered for performance of the given activity, and may be participate in the public procurement procedure as:
- 1) **Bidder** that has submitted a bid;
 - 2) **Candidate** that has submitted a request for participation in a restricted, negotiated procedure, or competitive dialogue;
 - 3) **Group of candidates/bidders** (two or more candidates/bidders) that have submitted a joint request for participation or a joint bid;
 - 4) **Supplier** that has been awarded a public procurement contract after a public procurement procedure.
- d) **Bidding documentation** shall mean documentation that contains the minimum of clear and appropriate information that refers to the selected contract award procedure, and is published or provided to the candidates/bidders by the contracting authority; that documentation shall include a procurement notice, an invitation to submit requests for participation/bids (initial and final), technical specifications, criteria for qualification and selection of the most successful bid, draft contract or basic elements of the contract, and other relevant documents and explanations;

- e) **Open procedure** shall mean the procedure whereby any interested bidder may submit a bid;
- f) **Request for participation** shall mean a written document that the economic operator submits in the first phase of a restricted procedure, negotiated procedure, or competitive dialogue;
- g) **Pre-qualification** shall mean the phase of the procedure whereby the contracting authority, on the basis of qualification criteria defined in the bidding documentation, performs the selection of qualified candidates to be invited to submit their bids in a restricted procedure, negotiated procedure, or competitive dialogue;
- h) **Restricted procedure** shall mean a procedure in which an economic operator may request participation and in which, following the publication of qualification, the contracting authority invites all qualified candidates to submit bids;
- i) **Negotiated procedure** shall mean the procedure whereby the contracting authority negotiates the contract terms with one or several invited bidders. This procedure may be conducted with or without prior publication of a procurement notice, exclusively under the conditions set out in this Law;
- j) **Competitive dialogue** shall mean a procedure whereby any interested economic operator may request participation in procedure and the contracting authority leads a dialogue with participants invited to the procedure with the purpose of developing one or more adequate solutions that may satisfy the needs of the contracting authority, and based on which the selected bidders shall be invited to submit bids;
- k) **Design contest** shall mean the procedure which enables the contracting authority to ensure, in the fields of spatial planning, town planning, architecture and civil engineering or data processing, a plan or a solution that shall be selected by a jury in a public competition procedure, with or without the award of prizes;
- l) **Bid** shall mean a document submitted by a bidder offering delivery of supplies, provision of services or execution of works, under the conditions set fixed by the contracting authority in the bidding documentation. A bid can be:
 - 1) acceptable - if it meets all conditions set in the bidding documentation;
 - 2) unacceptable – if it does not meet the conditions set in the bidding documentation.
- m) **Variant** shall mean a bid offering characteristics of the subject matter of the contract that differ from those specified in the bidding documentation, provided that the bid meets the minimal conditions set by the contracting authority;
- n) **Framework agreement** shall be an agreement between one or several contracting authorities and several suppliers, concluded in writing, that defines the conditions under which contracts may be awarded in a determined time period, in accordance with the foreseen price, and where possible, in foreseen quantities;

- o) **Exclusive or special right** shall be a right to perform activities listed in Article 5 of this Law, that has been granted by a competent authority in Bosnia and Herzegovina by a special law, other regulation, or appropriate contract to one or several legal entities and that significantly impacts the opportunity for other operators to perform the given activities. The holder of that exclusive or special right shall be under obligation to apply the provisions of this Law when procuring supplies, services or works required for the performance of the activity which has been granted as the exclusive or special right;
- p) **Common Procurement Vocabulary (CPV)** shall mean a referent nomenclature applied in public procurement procedures, providing at the same time harmonization with other existing nomenclatures;
- r) **Electronic means** shall refer to the use of electronic equipment for processing and storing of data that are being sent, transferred, and received by wire or radio link, optical or other electromagnetic means;
- s) **Written or in writing** shall mean any expression consisting of words or figures that can be read, reproduced, and subsequently communicated, as well as information that is being transmitted and stored by electronic means, provided the security of content is ensured and the signature is identifiable;
- t) **Lot (group)** shall be a part of the subject matter of procurement that onset as a result of dividing the subject matter of procurement into separate, related units that are marked in the bidding documentation as such.

Article 3

(General Principles)

- (1) The contracting authority shall be under obligation to act transparently, to treat candidates/bidders equally and without discrimination in public procurement procedures, in a manner that will ensure just and active competition, with the aim of ensuring the most efficient spending of public funds, taking into account the subject matter of procurement and its purpose.
- (2) General principles shall also be mandatorily applied and respected in the legal protection procedure.

Article 4

(Contracting Authorities)

- (1) Contracting authority in the context of this Law shall be:
 - a) Every institution in Bosnia and Herzegovina, the entities, Brčko District of Bosnia and Herzegovina, at the cantonal, city, or municipal level (hereinafter: institution at State, entity, or local level);
 - b) legal persons established for a specific purpose with the objective of meeting the needs of general interest, not having an industrial or commercial character and meeting at least one of the following conditions:
 - 1) financed, for the most part, from public funds, or

- 2) subject to management supervision by the contracting authorities defined in items a) and b) of this paragraph, or
 - 3) having an assembly, managerial or supervisory board, more than half of whose members are appointed or elected representatives of contracting authorities referred to in items a) and b) of this paragraph;
- c) Association established by one or more institutions or legal persons defined in items a) and b) of this paragraph.
- (2) Contracting authorities may adopt a decision to conduct a public procurement procedure jointly or may establish a central procurement authority. The rules for conducting joint procurement and the establishment of the central procurement authority shall be regulated by the Council of Ministers of Bosnia and Herzegovina (hereinafter: BiH Council of Ministers) in an implementing regulation.
- (3) The Agency shall adopt a rulebook comprising a list of categories of contracting authorities, by categories, that shall be under obligation to apply this Law. All contracting authorities included in the definition of this Article shall have the duty to apply this Law even if they are not included in the list of contracting authorities.

Article 5

(Sectoral Contracting Authorities)

- (1) Sectoral contracting authorities shall be under obligation to apply this Law if they are performing activities in water supply, energy, transport, and postal services, as follows:
- a) contracting authority referred to in Article 4 of this Law, when procuring supplies, services, or works for the needs of performing activities listed in Articles 78 through 83 of this Law;
 - b) company in which a contracting authority or several contracting authorities may have direct or indirect prevailing influence on the basis of ownership, financial share, or regulations applicable to the company, and that performs one or several activities listed in Articles 78 through 83 of this Law when procuring supplies, services, or works for the needs of performing those activities. Prevailing influence in the context of this item shall exist in cases when contracting authorities, directly or indirectly:
 - 1) own a clear majority of registered equity in that company; or
 - 2) hold a clear majority of votes related to shares in that company; or
 - 3) may appoint more than half of the members of the management, managerial or supervisory board in that company.
- (2) A company that, based on an exclusive or special right, performs one or several activities listed in Articles 78 through 83 of this Law when procuring supplies, services, or works for the needs of performing those activities, and is not a contracting authority in the context of this Law or a company in the context of item b) paragraph (1) of this Article shall be under obligation to apply this Law.

- (3) Where an activity defined in this Article is performed by several companies not covered by the provisions of paragraphs (1) and (2) of this Article, the Competition Council of Bosnia and Herzegovina shall, upon an application of the Agency and on the basis of a request of the concerned contracting authority, assess whether the relevant market for the activity in question is open for competition. Where that relevant market is declared to be open for competition by a decision of the Competition Council of Bosnia and Herzegovina, the company performing the given activity shall be exempted from the application of this Law concerning the performance of that activity.

Article 6

(Contracts Subject to this Law)

Contracting authorities shall be under obligation to award their public supplies, services, and works contracts by applying the procedures defined in this Law and its Implementing Regulations.

Article 7

(Subsidized Contracts)

- (1) The provisions of this Law shall also apply to contracts that the contracting authority directly subsidizes with more than 50%:
 - a) if the contracts include works in the context of Annex I of this Law;
 - b) if the contracts include works in hospitals, facilities intended for sports, recreation, and pastime, school and university buildings, and buildings used for administrative purposes.
- (2) The provisions of this Law shall also apply to contracts directly subsidized by the contracting authority with more than 50% in case of contracts for provision of services related to the works referred to in paragraph (1) of this Article.
- (3) The contracting authority that grants such subsidies shall be under obligation to ensure compliance with provisions of this Law in cases when the subsidized contract is being awarded by some other physical or legal person, i.e. shall be under obligation to comply with the provisions of this Law in cases when they are granting a subsidized contract for or on behalf of those physical or legal persons.

Article 8

(Award of Contracts Pursuant to Special Regime)

- (1) Provisions of this Law that define the general principles, preparation of technical specifications, contract duration, legal protection, contract award notice and voluntary *ex ante* transparency notice publication shall apply the award of contracts having as their subject matter services referred to in Annex II Part B, which shall represent an integral part of this Law.
- (2) Contract award procedure referred to in paragraph (1) of this Article shall be regulated by a rulebook to be adopted by the BiH Council of Ministers.

- (3) Procedures, conditions, requirements, definitions, exemptions and other material issues regarding the award of contracts in the field of defense and security shall be regulated by a rulebook to be adopted by the BiH Council of Ministers upon the proposal of the Agency.
- (4) The contracts in the fields of defense and security referred to in paragraph (3) of this Article shall relate to the procurement of:
 - a) military equipment, including any parts, components and/or subassemblies thereof;
 - b) equipment that is sensitive from the security aspect, including any parts, components and/or subassemblies thereof;
 - c) works, supplies and services directly related to the equipment referred to in Items 1) and 2) of this paragraph for any and all elements of its life cycle;
 - d) works and services for specifically military purposes;
 - e) works sensitive from the security aspect and services sensitive from the security aspect.
- (5) Contracts awarded by diplomatic and consular representative offices and missions of Bosnia and Herzegovina, whose value is below the threshold values referred to in Article 14, paragraphs (2) and (3) of this Law, shall be regulated by a special rulebook to be adopted by the BiH Council of Ministers, upon the proposal of the Ministry of Foreign Affairs of Bosnia and Herzegovina pending prior consent of the Agency.

Article 9

(Reserved Contracts)

- (1) Contracting authorities may define in a procurement plan the public procurement procedures that are reserved only for candidates or bidders that employ, compared to the total number of employed persons, more than 50% of persons with disabilities who are not able to perform tasks under normal conditions.
- (2) In the public procurement notice, the contracting authority shall have to note that the public procurement procedure is reserved exclusively for economic operators referred to in paragraph (1) of this Article.

Article 10

(Contracts Exempted from this Law)

- (1) The following contracts shall be exempted from the application of this Law:
 - a) public procurement contract declared as state secret by laws in Bosnia and Herzegovina;
 - b) public procurement contract the execution of which must be accompanied by special security measures in accordance with laws in Bosnia and Herzegovina;
 - c) contract awarded in accordance with an international agreement according to which special procedure applies in terms of international, loan, or donor

arrangements, or a public procurement contract concluded on the basis of special rules defined by an international agreement between Bosnia and Herzegovina and one or several other countries for projects that will be jointly executed or used by contracting parties, or based on international agreements on troop stationing concluded by Bosnia and Herzegovina;

- d) public procurement contract for natural and legal monopolies, that may include procurement of water, electricity, gas, heating, and other services, until the relevant market is opened for competition;
 - e) contract on acquisition or rental of existing buildings, other real estate, land or rights resulting from them, by whatever financial means, under the obligatory condition that the contracting authority ensures transparency of the procedure, provided that procurement of financial services for acquisition or rental of existing buildings, other real estate, land or rights resulting from them, simultaneously, prior to or after the contract on acquisition or rental, in any form, shall be subject to the conduct of one of the procedures defined under this Law;
 - f) contract having as subject matter a service referred to in Annex II Part C of this Law.
- (2) Concession contracts shall be awarded in line with laws on concessions in Bosnia and Herzegovina.
- (3) Public-private partnership contracts shall be awarded in line with public-private partnership legislation.

Article 11

(Confidentiality)

- (1) The following data may not be considered confidential:
- a) total and unit price stated in the bid;
 - b) procurement subject matter, i.e. the offered supplies, services or works upon which the comparison with technical specifications and evaluation shall depend when deciding whether a bidder has offered the supplies, services or works in line with technical specifications;
 - c) confirmations, certificates upon which the qualification relating to the personal state of the candidate/bidder shall depend.
- (2) If a candidate/bidder marks as confidential data that according to provisions of paragraph (1) of this Article may not be proclaimed confidential data, they shall not be treated as confidential.
- (3) After the public opening of the bids, no information relating to examination, clarification, and evaluation of the bids shall be disclosed to any participant in the procedure or any third party until the award decision is communicated to the participants in the procedure.

- (4) Participants in a public procurement procedure may not in any way misappropriate, use for own purposes, or forward to third parties the data, solutions or documentation (information, plans, drawings, drafts, models, samples, computer programs etc.) that have been put at their disposal or that they have acquired in any other manner during the public procurement procedure.
- (5) After the receipt of the decision on the selection of most successful bidder or decision on cancellation of a public procurement procedure, and at the latest before the expiry of the time limit for appeal, the contracting authority shall immediately upon receipt of the bidder's request, and not later than two days following the day of the receipt of the request, enable insight into each bid, including the documents submitted in compliance with Article 45 paragraph (2) of this Law, as well as explanations of original documents in compliance with Article 68 paragraph (3) of this Law, except for information provided by bidders that are marked as confidential in compliance with this Article.

Article 12

(Language)

- (1) Contracting authority shall prepare the bidding documentation relating to public procurement procedures in one of the languages in official use in Bosnia and Herzegovina.
- (2) Contracting authority may additionally prepare the bidding documentation in English or another foreign language, but shall keep the integrity of the information content from the bidding documentation that has been prepared in one of the languages in official use in Bosnia and Herzegovina.
- (3) Bidders shall submit their bids in one of official languages in Bosnia and Herzegovina. Publications, brochures, catalogues, and the like shall be submitted without translation, unless the contracting authority, in bidding documentation, requires translation of those parts also.

Article 13

(Procurement Commission)

- (1) For open procedure, restricted procedure, negotiated procedure with and without publication of notice, design contest, competitive dialogue, and competitive request for quotations, the contracting authority shall be under obligation to appoint a Procurement Commission.
- (2) Establishment and conduct of the Procurement Commission shall be regulated in the Implementing Regulations to be adopted by the BiH Council of Ministers.

PART TWO - COURSE OF PUBLIC PROCUREMENT PROCEDURE

CHAPTER I. INITIATION, TYPES AND SELECTION OF PUBLIC PROCUREMENT PROCEDURE

Section A. Start of Public Procurement Procedure

Article 14

(Threshold Values)

- (1) When the value of procurement is below KM 50,000.00 in case of supplies and services, or KM 80,000.00 in case of works, the contracting authority may apply one of the procedures defined in this Law, except for direct agreement, and shall have to meet the requirements regulated for each specific procedure.
- (2) Application of open or restricted procedure, or negotiated procedure with or without publication of notice, or design contest or competitive dialogue shall be obligatory when the value of procurement for supplies and services amounts to or exceeds:
 - a) KM 250,000.00 for contracting authorities referred to in Article 4 paragraph (1) Items a) and c) of this Law;
 - b) KM 400,000.00 for contracting authorities referred to in Article 4 paragraph (1) Item b) of this Law;
 - c) KM 800,000.00 for sectoral contracting authorities referred to in Article 5 of this Law.
- (3) When the value of procurement, in case of works, amounts to or exceeds KM 9,000,000.00, the contracting authority shall be under obligation to apply open or restricted procedure, or negotiated procedure with or without publication of notice, or design contest, or competitive dialogue.
- (4) When the value of procurement of supplies, services and works amounts to or exceeds the values referred to in paragraph (1) of this Article and is below the values referred to in paragraphs (2) and (3) of this Article, the contracting authority shall not be under obligation to apply open or restricted procedure, or negotiated procedure with or without publication of notice, or design contest, or competitive dialogue.
- (5) When the value of public procurement equals to or exceeds the threshold values referred to in paragraphs (2) and (3) of this Article the contracting authority shall be under obligation to publish additionally a summary of the notice in English on the portal of the Agency and PRB (hereinafter: the public procurement portal).
- (6) The initiative for the amendments and addenda to the Law, in an urgent procedure, with the aim of amending the values of thresholds shall be launched by the Agency pending prior approval of the Board of the Agency, in cases when significant changes occur in:
 - a) inflation rates; and/or
 - b) economic conditions in BiH; and/or
 - c) EU legislation on public procurement.

Article 15

(Estimated Value of Public Procurement)

- (1) Contracting authority shall base the calculation of the estimated value of public procurement contract on the total amount to be paid, excluding value added tax (VAT).

- (2) Determining the estimated value of public procurement shall be performed in the following manner:
 - a) The estimated value of procurement of supplies, services or works shall be equal to the pecuniary amount that the contracting authority pays, excluding the calculated value added tax. This value, in case of a works contract, shall also include the facilities necessary for the execution of such a contract, that the contracting authority shall be under obligation to ensure or cede to the works contractor;
 - b) Estimated value of supplies, services or works shall comprise their estimated market value at the time of the publication of the procurement notice or, in case when such a notice is not required, in the moment when the contracting authority launches the public procurement procedure;
 - c) In determining the estimated value of public procurement of supplies, services or works, the contracting authority shall be under obligation to include all the elements of the price that is paid for the procurement of those supplies, services or works;
 - d) If the public procurement of supplies, services or works is divided into several lots, the estimated value shall represent the sum of all such lots and it shall be used to determine the threshold value of that procurement;
 - e) In determining the estimated value of a framework agreement, the contracting authority shall take into account the maximum estimated value, excluding value added tax, of all foreseen contracts for the entire period of duration of the framework agreement.
- (3) In case of a contract on leasing, lease, hire purchase or rental on installment of various supplies, the value that should be taken as the basis for calculation of the estimated procurement value shall be as follows:
 - a) in case of public procurement contract for a defined period of time, if the time period is shorter than 12 months or equal to 12 months, the total estimated contract value or, if the time period exceeds 12 months, the total value including the estimated remaining value;
 - b) in case of public procurement contract without defined time limits or where the time limits cannot be defined, the monthly value multiplied by 48.
- (4) In case of public procurement contracts for supplies or services that are by nature regular and intended for renewal within the given time period, the calculation of the estimated contract value shall be performed based on the following:
 - a) either the total actual value of consecutive contracts of the same kind that have been awarded over the previous 12 months or, if possible, during the financial year in order to take into account the changes in the amount or value that might occur over the 12 month period following the conclusion of the original contract;
 - b) or the total estimated value of consecutive contracts awarded over the period of 12 months that followed the first delivery, or during the financial year if it exceeds than 12 months.

- (5) In case of a public service contract, the value that needs to be taken as the basis for the calculation of the estimated contract value shall, if needed, be estimated as follows:
 - a) for the following types of services:
 - 1) insurance services: premium payment and other forms of payment;
 - 2) banking and other financial services: fees, commissions, interest rates, and other forms of payment;
 - 3) design contracts: payment of fees, commissions, and other forms of payment;
 - b) for service contracts where the total price has not been stated:
 - 1) in case of contract with a defined time limit, if the time limit is equal to or is shorter than 48 months: total value for the whole time period;
 - 2) in case of contracts without the defined time limit, or with time limit exceeding 48 months, the monthly value multiplied by 48.
- (6) The contracting authority shall not be permitted to divide the subject matter of procurement with the aim of avoiding the application of an appropriate procedure defined in this Law.
- (7) If the proposed contract contains a variant, the basis for determination of the estimated value of the contract shall be the maximum possible total value of the public procurement.

Article 16

(Division of the Subject Matter into Lots)

- (1) In case the contracting authority divides the subject matter of procurement into lots, then all the lots must be marked in the bidding documentation in such a manner as to allow the bidders to submit bids for one lot or for several lots or for all the lots.
- (2) The contracting authority shall clearly and precisely define in the bidding documentation the conditions and manner of submission of bids for lots.
- (3) Public procurement contract shall be concluded separately for each lot. If one bidder is the most successful bidder for two lots or several lots, a single contract may be concluded.

Article 17

(Conditions for the Start of the Public Procurement Procedure)

- (1) The contracting authority may launch the public procurement procedure if the procurement is foreseen in the procurement plan or when the contracting authority adopts a decision on the launch of the public procurement procedure.
- (2) The contracting authority shall have to publish the procurement plan the value of which exceeds the thresholds established in Article 14 paragraph (1) of this Law on its website, within 60 days from the day of adoption of the budget or the financial plan, at the latest.

- (3) If the contract is being awarded for a period exceeding one year, the obligations that shall accrue in the following years shall have to be contracted in the amounts foreseen by the regulations on budget execution or financial plan execution for each year separately.

Article 18

(Decision on the Launch of the Public Procurement Procedure)

- (1) The contracting authority shall launch the public procurement procedure by adopting a decree or a decision in writing that shall have to contain the following:
 - a) legal basis for the conduct of public procurement procedure;
 - b) subject matter of the public procurement;
 - c) estimated value of the public procurement;
 - d) data on the source - manner of financing;
 - e) type of the public procurement procedure.
- (2) In case of an exemption from application referred to in Article 10 of this Law or for contract award for procurement of services referred to in Annex II Part B, the contracting authority shall make a decision that, besides the legal basis for the exemption from the application of this Law, shall contain the basic elements referred to in paragraph (1) items b), c), and d) of this Article.

Section B. Procurement Procedures

Article 19

(Public Procurement Procedures)

- (1) The contracting authority referred to in Article 4 of this Law shall apply the open or restricted procedure for the public procurement contract award, as the basic and regular procedures. Negotiated procedure with or without publication of notice, and competitive dialogue may be applied exceptionally, provided the legal conditions for that stipulated by this Law are met.
- (2) Sectoral contracting authorities referred to in Article 5 of this Law shall apply open or restricted or negotiated procedure with publication of notice on an equal basis. Negotiated procedure with or without publication of notice, and competitive dialogue may be applied exceptionally, provided the legal conditions for that stipulated by this Law are met.
- (3) The contracting authority may award a contract after the conduct of the design contest for the tasks in the area of spatial planning, architecture, construction, data processing, planning or design.

Article 20

(Conditions for Application of Negotiated Procedure with Publication of Notice)

- (1) Public contract for procurement of supplies, services or works may be awarded in a negotiated procedure with publication of notice:

- a) if all the bids submitted in open or restricted public procurement procedure or competitive dialogue failed to meet qualification requirements, and the basic conditions for contract award have not altered significantly, the contracting authority shall not be under obligation to publish the procurement notice again, under the condition that it invites all the bidders, i.e. candidates, to remove the deficiencies in their bids, and render their bids acceptable;
 - b) in exceptional cases when due to the nature of supplies, services or works, or risk related to contract subject matter execution, it is not possible to perform prior determination of the total price.
- (2) Public contract for procurement of services may be concluded in a negotiated procedure with publication of notice in case the procurement subject matter concerns intellectual services, such as design services or services listed in Annex II Part A Category 6 of this Law, the description of which cannot be determined with satisfactory precision to allow the contract to be concluded by selecting the most successful bid in an open or restricted procedure.
- (3) Public contract for procurement of works may be concluded in a negotiated procedure with publication of notice if the subject matter of the contract are works executed exclusively for the purposes of research, testing, or development, and not to gain profit or recovery of research and development costs.

Article 21

(Conditions for Application of Negotiated Procedure without Publication of Notice)

The contracting authority may, exceptionally, award public procurement contracts by applying the negotiated procedure without publication of the procurement notice, in the following cases:

- a) when no bid or no acceptable bid has been submitted in the open or restricted procedure and when the contract terms have not been altered significantly compared to the terms from the preceding procedure;
- b) when no request for participation has been submitted in the restricted procedure and no qualified candidate requested participation in the restricted procedure, and when the contract terms have not altered significantly compared to the terms from the previous procedure;
- c) when the contract may be awarded only to a specific supplier due to essential, provable technical or artistic reasons, or due to reasons that relate to the protection of exclusive rights;
- d) when, exceptionally, the minimum time limits defined in this Law for open, restricted, or negotiated procedure with publication of notice cannot be complied with due to provable reasons of ultimate emergency caused by events unforeseeable to the given contracting authority. The circumstances that justify the exceptional emergency of the procedure may not be in any way linked with the contracting authority.

Article 22

(Special Conditions for Application of Negotiated Procedure without Publication of Notice for Procurement of Supplies)

Contract on public procurement of supplies may be concluded in a negotiated public procurement procedure without publication of notice in the following cases:

- a) when supplies being procured are produced exclusively for the purposes of: research, experiment, study, or development; this provision shall not refer to serial production, with the aim of executing earnings or compensating for the costs of research and development;
- b) for additional deliveries from the supplier under the basic contract, intended either as partial replacement of regular deliveries or installation, or as an expansion of existing deliveries or installation, if the change of supplier would result in an obligation upon the contracting authority to procure supplies with different technical characteristics, resulting in disproportion and inconsistency, and leading to significant technical difficulties in operation and maintenance, under the condition that the duration of basic contract as well as repeated contracts cannot exceed one year and cannot exceed 10% of the value of the basic contract;
- c) for supplies sold and bought on the stock market;
- d) for supplies under particularly advantageous terms, when procured either from an economic operator which is in the process of liquidating its business activities, or from bankruptcy creditors or bankruptcy trustees in the process of bankruptcy, or from a creditor on the basis of a business, or in similar procedures.

Article 23

(Special Conditions for Application of Negotiated Procedure without Publication of Notice for Procurement of Services)

Contract on public procurement of services may be concluded in a negotiated procedure without publication of notice in the following cases:

- a) in case of a contract on public procurement of services, when the contract is being awarded after the conduct of a design contest, conducted in compliance with provisions of Articles 33 and 34 of this Law, and the contract shall be awarded to the winner, i.e. to one of the winners of the contest; in case of several winners, all of the winners of the contest shall be invited to participate in negotiations;
- b) in case of a contract for public procurement of services for additional services that had not been included in the initially considered project or in the initially concluded contract but that have become, due to unforeseen circumstances, necessary for the completion or execution of the services thereon, and when such additional services cannot be, technically or economically, separated from the basic contract without significant disadvantages to the contracting authority. Such a contract may be concluded with the supplier that had been awarded the

basic contract, and the total value of the contracts awarded for additional services may not exceed 30% of the value of the basic contract;

- c) for new services that represent the repetition of similar services entrusted to the supplier that had been awarded with the previous contract by the contracting authority, under the condition that such services are in compliance to the basic project for which the basic contract was awarded, after the conducted open or restricted procedure. The contracting authority shall be under obligation to indicate the possibility of application of such a procedure in the course of performance of the open or restricted procedure for the basic project, and the total estimated costs of subsequent services shall be taken under consideration by the contracting authority when estimating the value of the public procurement. This procedure may be applied only within the period of three years from the day of conclusion of the basic contract.

Article 24

(Special Conditions for Application of Negotiated Procedure without Publication of Notice for Procurement of Works)

Contract on public procurement of works may be concluded in a negotiated public procurement procedure without publication of notice in the following cases:

- a) in case of a contract for public procurement of works for additional works that had not been included in the initially considered project or in the initially concluded contract but that have become, due to unforeseen circumstances, necessary for the completion or execution of the works thereon, and when such additional works cannot be, technically or economically, separated from the basic contract without significant disadvantages to the contracting authority. Such a contract may be concluded with the supplier that had been awarded the basic contract, and the total value of the contracts awarded for the additional works may not exceed 20% of the value of the basic contract;
- b) for new works that represent the repetition of similar works entrusted to the supplier that had been awarded with the previous contract by the contracting authority, under the condition that such works are in compliance with the basic project for which the basic contract was awarded, after the conducted open or restricted procedure. The contracting authority shall be under obligation to indicate the possibility of application of such a procedure in the course of performance of open or restricted procedure for the basic contract, and the total estimated costs of new works shall be taken under consideration by the contracting authority when estimating the value of the public procurement. This procedure may be applied only within the period of three years from the day of conclusion of the basic contract.

Section C. Types of Procedures

Article 25

(Open Procedure)

In conducting an open procedure the contracting authority shall be under obligation to:

- a) prepare bidding documentation;
- b) publish a procurement notice;
- c) provide the economic operators with bidding documentation;
- d) carry out the public opening of bids received in due time;
- e) perform the verification of the bidders' qualifications according to the participation criteria fixed in the bidding documentation and evaluate the bids according to contract award criteria;
- f) inform the bidders about the outcome of the public procurement procedure;
- g) offer the contract to the most successful bidder;
- h) publish the notice and submit a report to the Agency pursuant to Article 75 of this Law.

Article 26
(Restricted Procedure)

- (1) In conducting a restricted procedure the contracting authority shall be under obligation to prepare the bidding documentation. Bidding documentation shall be prepared and submitted in two phases, specifically:
 - a) in the prequalification phase, and
 - b) in the phase of invitation to submit bids that shall obligatorily contain contract award criteria also.
- (2) Restricted procedure shall be conducted in the following manner:
 - a) publishing the procurement notice in which the contracting authority invites all interested candidates to request the documentation for pre-qualification phase;
 - b) providing or rendering accessible the documentation for pre-qualification phase to the candidates;
 - c) performing the verification of the candidates' qualifications;
 - d) informing the candidates that have not qualified;
 - e) providing the qualified candidates simultaneously with the bidding documentation together with the invitation to submit bids;
 - f) carrying out the public opening of bids received in due time;
 - g) evaluating the bids according to the contract award criteria fixed in the bidding documentation;
 - h) informing the bidders about the outcome of the public procurement procedure;
 - i) offering the contract to the most successful bidder;
 - j) publishing the notice and submitting the report to the Agency pursuant to Article 75 of this Law.

Article 27

(Negotiated Procedure with Publication of Procurement Notice)

In conducting a negotiated procedure with the publication of procurement notice the contracting authority shall be under obligation to:

- a) publish the procurement notice;
- b) render accessible the prequalification documentation to candidates;
- c) perform the verification of the candidates' qualifications and inform the participants in the procedure about the results of the qualifications;
- d) simultaneously send an invitation to selected candidates to participate in negotiations on technical, economic, legal, and other aspects of the contract;
- e) negotiate with each candidate/bidder separately. Equal requirements shall be set and equal information shall be provided to all candidates/bidders. Contracting authority shall be under obligation to keep minutes on the negotiating procedure with each bidder that shall be signed by both parties once the negotiations are finalized. Neither any information received from a candidate/bidder, nor the information on the solutions the candidates/bidders proposed may be disclosed to third parties without prior consent of the candidate/bidder in question;
- f) based on negotiation results, deliver bidding documentation for the final bid and invite bidders to submit their final bids;
- g) conduct the public opening of bids received in due time;
- h) select the most successful bidder in compliance with contract award criteria fixed in the bidding documentation;
- i) publish the notice and submit the report to the Agency pursuant to Article 75 of this Law.

Article 28

(Negotiated Procedure without Publication of Procurement Notice)

- (1) If it is possible, based on the conditions for selection of negotiated procedure without publication of procurement notice defined in Articles 21 through 24 of this Law, the procedure shall be conducted with a single bidder with due respect of the principles of this Law, except in cases referred to in Article 21, paragraph (1), items a) and b) of this Law when the procedure may be conducted with several bidders.
- (2) In a negotiated procedure without publication of procurement notice the conditions for qualification shall have to be determined in advance. After the verification of the candidates' qualifications, only the qualified candidates may proceed to the subsequent part of the procedure. Minutes shall be compiled on the outcome of the qualification of candidates that shall contain all important facts and that shall be delivered to those candidates that have not qualified.
- (3) For cases referred to in Article 21 paragraph (1) item d) and Article 22 paragraph (1) item d) of this Law, the contracting authority shall not be under obligation to request documents relating to the verification of the personal ability of the candidates referred to in Article 45 paragraph 1 items b), c) and d) of this Law.

- (4) Contracting authority shall publish on its website information on the negotiated procedure without publication of procurement notice that it intends to conduct by making the bidding documentation available to all interested candidates/bidders.
- (5) Qualified candidates shall be invited to submit initial bids. The submission of initial bids shall represent the basis for negotiations. Contracting authority shall be under obligation to keep minutes on the negotiating procedure with each bidder that shall be signed by both parties once the negotiations are finalized. The final bid may be submitted only by one or several invited bidders. Contracting authority shall select the bid in compliance to the contract award criteria fixed in the bidding documentation.
- (6) In case when two or several bidders have been invited to submit the final bids, the contracting authority shall organize the public opening of final bids.
- (7) After the selection of the bid the contracting authority may publish a voluntary *ex ante* transparency notice in which it shall elaborate the fulfillment of conditions stipulated by this Law which justify the application of the negotiated procedure without publication of notice and express its intention to conclude a contract to the most successful bidder. If it publishes the voluntary *ex ante* transparency notice, the contracting authority shall not be able to sign the public procurement contract within 15 days from the day of publication of the notice.
- (8) After the finalized procedure the contracting authority shall be under obligation to:
 - a) conclude a contract with the most successful bidder or cancel the public procurement procedure;
 - b) publish the notice on the outcome of the procedure;
 - c) submit a report to the Agency pursuant to Article 75 of this Law, as well as a detailed explanation upon a request of the Agency.

Article 29

(Competitive Dialogue)

- (1) Contracting authority shall be under obligation to state in the invitation to submit bids in competitive dialogue and/or in descriptive documentation its needs and requirements concerning the given procurement.
- (2) Candidates that have, following the publication, submitted requests for participation in due time and that have proven their ability, pursuant to this Law, shall be provided with the invitation to participate as bidders in competitive dialogue.
- (3) Minutes shall be compiled on the ability of candidates and all circumstances relevant for the evaluation of requests for participation shall be entered there. The minutes shall have to be compiled in such a manner as to provide candidates with an insight into the part of the minutes that refers to their request for participation.
- (4) Contracting authority shall be under obligation to deliver the decision on their participation being inadmissible to candidates that shall not be invited to participate in the competitive dialogue, within seven days at the latest from the day of its

adoption. The decision on inadmissibility shall have to contain the reasons for inadmissibility of participation.

- (5) Contracting authority shall send simultaneously to all selected candidates a written invitation to participate in competitive dialogue. The invitation shall have to contain attached descriptive documentation and potential additional documentation, or information that the descriptive documentation shall be made available electronically.
- (6) Invitation to participate in competitive dialogue shall have to contain data on:
 - a) notice based on which request for participation in bid submission, or competitive dialogue, shall be sent;
 - b) additional documents to be submitted;
 - c) ranking or the order of contract award selection criteria – in descending order of importance, if not published in the notice;
 - d) date and place of the launch of the phase of dialogue, and working language(s).
- (7) Contracting authority shall lead the dialogue with candidates with the aim of identifying one or several solutions that would meet the needs and requirements of the contracting authority. In the course of the dialogue with candidates, the contracting authority may discuss all aspects of the procurement contract.
- (8) Contracting authority may not provide data in a discriminatory manner that would put certain candidates in advantage during the dialogue procedure.
- (9) During the course of the dialogue, the contracting authority shall discuss with candidates only the solution(s) they submitted. The solution(s) of other candidates may be discussed only if the requirement referred to in paragraph (10) of this Article is met.
- (10) Contracting authority may, pending the consent of the candidates, make available their solutions or parts of solutions or confidential information to other candidates.
- (11) If contracting authority is applying the option of performing the competitive dialogue in numerous consecutive phases, then the number of discussed solutions in an individual phase may be reduced based on the contract award criteria published in the notice or descriptive documentation. The contracting authority shall foresee that option in the notice or descriptive documentation. The contracting authority shall be under obligation to deliver the decision on rejection of a solution in a given dialogue phase, containing the reasons, to the candidate by registered mail or electronically, provided that this manner of submission is verifiable, within seven days at the latest from the day the phase ends.
- (12) Contracting authority may continue the dialogue until the most adequate solution(s) is/are identified to meet its needs and requirements. At the end of dialogue phase there must be a sufficient number of solutions to ensure market competition.
- (13) Contracting authority shall be under obligation to deliver the decision on conclusion of the dialogue phase, stating the main characteristics of the selected solution(s),

without delay, to all candidates in the dialogue, by registered mail or electronically, provided that this manner of submission is verifiable.

- (14) Following the end of dialogue, the contracting authority shall, by sending an invitation to submit final bids, invite the remaining candidate(s) to submit their final bids, based on the main characteristics of selected solution(s) in dialogue phase. The contracting authority shall be under obligation to state in the invitation the final time limit for accepting the bids, the address for the submission of bids and language(s) in which the bids shall have to be compiled.
- (15) Bids shall have to contain all necessary elements in line with the needs and requirements of procurement subject matters set by the contracting authority.
- (16) Upon a request of the contracting authority, the bidder may clarify, explain and amend its bid, unless these interventions change the main elements of the bid, or are contrary to the principles of market competition or may have a discriminatory effect.
- (17) Contracting authority shall be under obligation to select the most economically advantageous bid based on contract award criteria determined in invitation to participate or descriptive documentation and that have been amended or adjusted during the invitation to participate in competitive dialogue.

Article 30

(Conditions for Applying Competitive Dialogue)

- (1) Selection of competitive dialogue shall be allowed if the procurement subject matter is particularly complex and if the conclusion of the contract would not be possible following open or restricted public procurement procedure.
- (2) Procurement subject matter in the context of provision of paragraph (1) of this Article shall be deemed particularly complex if the contracting authority is not able to state:
 - a) technical specifications (technical description of procurement subject matter) that can meet its needs and requirements, and/or
 - b) legal and/or financial conditions of the contract.
- (3) When concluding a contract based on competitive dialogue, the decision on selection shall be made exclusively according to the criterion of the most economically advantageous bid.

Article 31

(Participants in Competitive Dialogue)

- (1) Contracting authority shall have to state in the notice the number of candidates to whom the invitation to competitive dialogue shall be sent, and the number shall be determined in accordance with procurement subject matter and cannot be fewer than three. The rules shall have to be objective and non-discriminatory and shall have to be published.
- (2) If the contracting authority determines that the number of capable candidates is higher than the published number of candidates to whom the invitation to participate

in competitive dialogue shall be sent, the contracting authority may invite them all or select the best candidates, among the capable ones, in line with the number and rules stated in the notice. The reasons for selection shall be stated in the minutes.

- (3) Contracting authority may continue the procedure by inviting one or several capable candidates if it determines that the number of capable candidates is lower than the published number of candidates to whom the invitation to participate in competitive dialogue shall be sent, and if there are no capable candidates, the contracting authority shall have to cancel the procedure.

Article 32
(Framework Agreement)

- (1) Framework agreement may be concluded after conducting an open procedure or restricted procedure or negotiated procedure with publication of notice or the competitive request for quotations. In exceptional cases, framework agreement may also be concluded following a negotiated procedure without publication of notice after a cancelled open or restricted procedure due to fact that no bids have been received or no acceptable bids have been received. One or several bidders with whom the framework agreement shall be concluded shall be selected in accordance with the award criteria set in Article 64 of this Law.
- (2) After the conclusion of the framework agreement its provisions may not be amended.
- (3) Duration of framework agreement may not be longer than four years, except if there are justified reasons, particularly related to the subject-matter of procurement under the framework agreement.
- (4) Framework agreement shall be concluded with several bidders for the same procurement subject matter, and the number of bidders that framework agreement shall be concluded with may not be fewer than three, under the condition that there exists a sufficient number of bidders. Framework agreement may also be concluded with two bidders in case of repeating the procedure for the reason of not having a sufficient number of received bids.
- (5) Contracts that are concluded with bidders with whom the framework agreement has been concluded may be awarded:
 - a) by applying the conditions established in the framework agreement without repeating the request for bid submission, when the contract shall be awarded to the most successful bidder, except in case when the most successful bidder is not capable of delivering the supplies or service, or conducting the works, the contract may be awarded to the next most successful bidder with whom the framework agreement has been concluded, or
 - b) if all conditions are not established in the framework agreement and when the bidders are invited to submit their bids again based on same, or more precisely defined conditions within the conditions from the framework agreement, the procedure shall be conducted in accordance to the following:
 - 1) for each contract the contracting authority shall contact in writing all bidders with whom it has the framework agreement concluded;

- 2) the contracting authority shall determine the time limit for submission of bids, taking into account the complexity of the procurement subject matter and time needed for submission of bids;
 - 3) bids shall be submitted in writing, and their content shall remain confidential until the expiry of the time limit foreseen for the submission of bids;
 - 4) the contracting authority shall open the bids publicly and submit the bid opening minutes to all bidders who submitted their bids;
 - 5) the contracting authority shall award the contract to the bidder that submitted the most successful bid, in compliance with conditions from the framework agreement, i.e. in compliance with the precisely defined conditions within the scope of conditions from the framework agreement.
- (6) Contracting authority may stipulate conclusion of framework agreement in competitive request for quotations.

Section D. Design Contest

Article 33 (Conducting a Design Contest)

- (1) Design contest (hereinafter: contest) shall be conducted in order for the contracting authority to select the participant or participants that have offered the best solution, i.e. concept design with the aim to:
 - a) award a public services contract to the winner of the contest or one of the winners of the design contest, or
 - b) award a prize to the winner or winners of the design contest.
- (2) In case referred to in paragraph (1) item a) of this Article, the contracting authority shall, following the successful design contest, conduct a negotiated procedure without publication of notice in compliance with Article 23 paragraph (1) item a) of this Law, by inviting one or several winners of the contest to negotiate the terms of contract.
- (3) The contracting authority shall, in the decision on the launch of the procedure and in the procurement notice, determine the aim of the design contest.
- (4) Contest shall be conducted based on the contest documentation that shall have to contain data about:
 - a) subject matter of the contest/description of the project;
 - b) evaluation criteria in the order of importance;
 - c) time limits;
 - d) number of winners of the contest (one or several);
 - e) rights to apply and use the contest works;
 - f) financial rewards, if awarded;
 - g) return of documentation;

- h) method of operation of the contest jury.
- (5) Any interested legal or physical persons may apply to a design contest in the context of Article 2 paragraph (3) of this Law, as well as physical persons who are not registered as economic operators.
- (6) The contracting authority may decide to conduct pre-qualification selection of candidates to be invited to submit their concept solutions. In such an event, the contracting authority shall fix non-discriminatory qualification criteria capable of ensuring genuine competition and include them in the bidding documentation.

Article 34

(Contest Jury)

- (1) Contest jury shall conduct the procedure and adopt a decision on the selection of the most advantageous solution(s) in compliance with appropriate competences that the contracting authority shall be under obligation to ensure in due time.
- (2) Contest jury shall be appointed by the contracting authority. It shall comprise exclusively of physical persons with recognized expert reputation. Contest jury may not have members whose private interests influence or might influence the impartiality of the jury members during their work in the jury. If certain professional qualification is required from the participants in the contest, then most members of the contest jury must have equal or equivalently valuable qualifications.
- (3) The content of works received for the contest may not be opened before the time limit for their submission expires, and anonymity must be ensured at all times prior to decision-making.
- (4) Contest jury shall be fully independent when selecting one or several winners amongst the works that have been submitted to the contest anonymously. The contest jury may find out the names of participants in the contest only after the adoption of the selection decision.
- (5) Works received in due time shall be evaluated and ranked in line with evaluation criteria determined in contest documentation. It shall not be mandatory that the criteria imply the lowest price or the most economically advantageous solution.
- (6) Contest jury shall compile minutes on its sessions that shall be signed by all present members and that shall represent an integral part of the final Report on Procedure.
- (7) Contest jury shall adopt the decision on selection of most advantageous solution(s) in the Report on Procedure that shall also be signed by all its members and that the jury shall deliver to the contracting authority for further actions upon the finalization of the procedure.

Section E. Procurement Notice and Time Limits in Public Procurement Procedure

Article 35

(Procurement Notice)

- (1) The contracting authority shall publish the procurement notice for open, restricted, negotiated procedure with publication of notice, design contest, competitive dialogue, and competitive request for quotations.
- (2) The procurement notice shall give all interested economic operators sufficient information to enable them to assess whether it is in their interest to participate in the public procurement procedure and to submit the request to participate, or the bid.
- (3) The procurement notice shall include brief information in line with the relevant elements of the bidding documentation.
- (4) The summary which is published in English shall contain only the minimum of information from the procurement notice, referred to in paragraph (3) of this Article.

Article 36

(Publication of Procurement Notice)

- (1) All procurement notices, contract award notices, public procurement cancellation notices, voluntary *ex ante* transparency notice, and prior information notices, as well as notice summaries on procurement in English, shall be published by the contracting authority on the public procurement portal. The summary of all procurement notices shall be published in the Official Gazette of BiH.
- (2) The notices, referred to in paragraph (1) of this Article shall be prepared and sent for publication electronically in the form, in the manner and within time limits defined in an implementing regulation, adopted by the Agency.
- (3) In addition, the contracting authority may publish the notices referred to in paragraph (1) of this Article in other publications or on other websites, under the condition that these notices cannot be published prior to the day of their publication on the public procurement portal. Such, additionally published, notices may not contain information other than those published on the public procurement portal.
- (4) In the case of public procurement procedure the value of which is defined in Article 14, paragraph (5) of this Law, the summary of procurement notice in English shall obligatorily be published on the public procurement portal.
- (5) The contracting authority may also use additional publication, referred to in paragraph (4) of this Article, in the case when the value of public procurement is lower than the amount referred to in Article 14, paragraph (5) of this Law.

Article 37

(Prior Information Notice)

- (1) Contracting authority may publish by means of prior information notice:
 - a) for procurement of supplies - the total estimated value of all contracts or framework agreements by product area which the contracting authority intends to award within the following 12 months. The product area shall be established by the contracting authority by reference to the Common Procurement Vocabulary nomenclature;

- b) for procurement of services - the total estimated value of all contracts or framework agreements in each of the categories referred to in Annex II Part A which the contracting authority intends to award within the following 12 months;
 - c) for procurement of works - essential characteristics of the contracts or framework agreements which the contracting authority intends to award.
- (2) The notice referred to in items a) and b) of paragraph (1) of this Article shall be published at the beginning of calendar year.
 - (3) The notice, referred to in item c) of paragraph (1) of this Article shall be published immediately following the decision by which the planned works contract or framework agreements, which the contracting authority intends to award, are being approved.

Article 38

(Application of Common Procurement Vocabulary - CPV)

- (1) When describing the subject matter of procurement in the procurement notice and bidding documentation, the contracting authority shall be under obligation to refer to designations and terms from the Common Procurement Vocabulary (hereinafter: CPV).
- (2) BiH Council of Ministers shall, upona proposal of the Agency, regulate the CPV and conditions of its application by special decision.

Section F. Time Limits

Article 39

(Method of Defining Time Limits)

- (1) Contracting authority shall be under obligation to define the time limits for the receipt of the requests for participation and bids, taking into account the complexity of the procurement subject matter and the time necessary to prepare requests for participation and bids, and these may not be shorter than time limits defined by this Law.
- (2) Time limit for receipt of bids in open procedure, i.e. requests for participation in restricted procedure, negotiated procedure with publication of notices and competitive dialogue shall be calculated as of the day of dispatching the procurement notice for publication on the public procurement portal. Time limit for receipt of bids in restricted procedure and negotiated procedure with or without publication of notice shall be calculated as of the day of dispatching the request for submission of bids to qualified candidates.
- (3) In case of correction or alteration of the procurement notice, or the bidding documentation, the time limit for receipt of bids, i.e. requests for participation shall be calculated as of the day of dispatching the correction for publication on the public procurement portal, i.e. sending of correction to bidding documentation to all bidders who had, up to that moment, obtained the bidding documentation.

Article 40

(Regular Time Limits for Submission of Requests for Participation and Bids)

- (1) Contracting authority shall be under obligation to determine in open procedure with threshold values referred to in Article 14 paragraphs (2) and (3) of the Law, the minimum time limit for receipt of bids of 45 days as of the day of dispatching for publication of procurement notice on the public procurement portal.
- (2) In case of restricted procedure, negotiated procedure with publication of notice and competitive dialogue for threshold values referred to in Article 14 paragraphs (2) and (3) of this Law, the contracting authority shall be under obligation to determine:
 - a) minimum time limit for receipt of requests for participation not shorter than 30 days from the day of dispatching for publication of the notice on the public procurement portal, and
 - b) in case of restricted procedure, minimum time limit for receipt of bids not shorter than 35 days from the day the invitations were sent to qualified candidates to submit their bids.
- (3) In open procedure for threshold values referred to in Article 14 paragraph (4) of this Law, the time limit for receipt of bids may not be shorter than 20 days as of the day of dispatching for publication of procurement notice on the public procurement portal.
- (4) In restricted and negotiated procedures with publication of notice and competitive dialogue, for the threshold value referred to in Article 14 paragraph (4) of this Law, the time limit for receipt of requests for participation may not be shorter than 15 days as of the day of dispatching for publication of procurement notice on the public procurement portal, and time limit for receipt of bids in restricted procedure may not be shorter than 15 days as of the day of dispatching of request to submit bids.

Article 41

(Shortened Time Limits for Submission of Bids)

- (1) If the contracting authority has published a prior information notice, it may determine:
 - a) the time limit for receipt of bids referred to in Article 40 paragraphs (1) and paragraph (2) item b) of this Law that may not be shorter than 25 days as of the day of dispatching for publication of procurement notice on the public procurement portal in open procedure, or dispatching the invitation to submit bids to qualified candidates in restricted procedure, and
 - b) the time limit for receipt of bids referred to in Article 40 paragraphs (3) and (4) of this Law that may not be shorter than 13 days as of the day of dispatching for publication of procurement notice on the public procurement portal in open procedure or dispatching the invitation to submit bids to qualified candidates in restricted procedure.
- (2) Contracting authority may use the shortened time limits referred to in paragraph (1) of this Article provided that:

- a) the prior information notice has included all the information required for the procurement notice, insofar as that information were available at the time the notice was published, and
 - b) the prior information notice was sent for publication at least 52 days, but at most 12 months before the date on which the procurement notice was sent to public procurement portal.
- (3) Time limits for receipt of bids referred to in Article 40, paragraph (1), paragraph (2) item b) and paragraphs (3) and (4) of this Law may be shortened by five days, if the contracting authority enables unlimited and direct access to bidding documentation and other additional documentation electronically, not requiring a fee, as of the day of publication of notice on the public procurement portal. In the procurement notice the contracting authority shall specify the Internet address on which this documentation is accessible.

Article 42

(Other Time Limits)

The contracting authority shall define the other time limits in negotiated procedure with and without publication of notice, competitive dialogue, and in design contest in the way that the candidates/bidders to whom these time limits apply have enough time to take appropriate actions and prepare bids, depending on the complexity of the procurement subject matter.

Article 43

(Calculation of Time Limits)

Provisions of the Law on Administrative Procedure shall duly apply to time limits that have not been defined by this Law.

CHAPTER II. CONDUCT OF THE PUBLIC PROCUREMENT PROCEDURE

Section A. Qualification of Candidates and Bidders

Article 44

(Verifying Candidates' and Bidders' Qualifications)

- (1) The contracting authority shall assess and verify whether a candidate / bidder is reliable and capable of executing the contract in compliance with the requirements defined in the bidding documentation.
- (2) The contracting authority shall define in the bidding documentation the qualification requirements in such a manner that it establishes the minimum criteria required for qualification of candidates / bidders, with regard to their personal capacities, economic and financial standing, and their technical and/or professional ability.
- (3) The minimum of qualification requirements for candidates/bidders, defined by the contracting authority, as well as the documents required to prove them shall mandatorily be proportionate to the procurement subject matter and in compliance with it. The set requirements may not have a restrictive effect upon competition and shall have to be clear and precise.

- (4) The contracting authority shall request from the candidates/bidders only those evidences that are necessary to establish whether the candidate/bidder meets the qualification requirements set by the contracting authority.
- (5) The contracting authority shall not be allowed to reject a request for participation or a bid on the sole ground that it was submitted either by a legal or a physical person referred to in Article 2 paragraph (1), item c) of this Law or a group of candidates/bidders.
- (6) Only those candidates/bidders whose qualifications meet the criteria set in bidding documentation shall be allowed to proceed in the public procurement procedure.

Article 45

(Personal Ability)

- (1) Contracting authority shall, except in cases referred to in Article 21 paragraph (1) item d) and Article 22, paragraph (1), item d) of this Law, be under obligation to reject the request for participation or the bid if the candidate/bidder:
 - a) has been convicted in criminal proceedings by final judgment for criminal offences of organized crime, corruption, fraud or money laundering, in compliance with existing regulations of Bosnia and Herzegovina or of its country of establishment;
 - b) is bankrupt or is the subject of bankruptcy proceedings, except in the case when there is a valid decision on confirmation of bankruptcy plan or is the subject of liquidation procedure, meaning that it is in the procedure of winding down its business activity, in compliance with existing regulations of Bosnia and Herzegovina or of its country of establishment;
 - c) has not fulfilled its obligations relating to the payment of pension and disability insurance, and health insurance in compliance with relevant regulations of Bosnia and Herzegovina or the regulations of its country of establishment;
 - d) has not fulfilled its obligations relating to payment of direct and indirect taxes in compliance with relevant regulations of Bosnia and Herzegovina or the regulations of its country of establishment.
- (2) The candidate/bidder who was awarded the contract shall be under obligation to provide the following documents, which will confirm that the cases referred to in paragraph (1) of this Article do not apply to it:
 - a) a certificate of the competent court, which confirms that the final judgment was not rendered in the criminal proceedings, by which one would be sentenced of criminal offence of participation in criminal organization, corruption, fraud or money laundering;
 - b) a certificate of the competent court or administrative authority where the candidate/bidder is registered, confirming that it is neither bankrupt nor subject to bankruptcy procedure, that it is not subject to liquidation procedure, i.e. it is not in the process of winding down its business activities;

- c) certificates of the competent institutions which confirm that the candidate/bidder has met its accrued liabilities concerning the contributions for pension and disability insurance, and health insurance;
 - d) certificates of the relevant institutions that the candidate/bidder has met its accrued liabilities concerning the payment of direct and indirect taxes.
- (3) In view of evidence of meeting the conditions referred to in paragraph (2) items c) and d), an agreement between the bidder and the competent tax authorities on reprogrammed, i.e. delayed payment of liabilities of the bidder on the basis of taxes and contributions and indirect taxes, shall also be acceptable, along with a confirmation of the tax authorities that the bidder is meeting its reprogrammed liabilities in line with the envisaged pace.
 - (4) Candidate/bidder shall be under obligation to submit a statement verified by competent authority to prove that it meets the requirements referred to in paragraph (1) of this Article, in the manner and form regulated in an implementing regulation of the Agency.
 - (5) The request for participation or the bid shall be rejected if the candidate/bidder has been guilty of grave professional misconduct committed during the period of three years prior to the onset of procedure which the contracting authority may prove by any means, in particular, significant and/or repeated faults in performing essential requirements under the contract which led to its early termination, damage or other similar consequences due to wrongful intent or negligence of a certain gravity of an economic operator.
 - (6) If the contracting authority has doubts related to existence of the circumstances listed in paragraphs (1) and (4) of this Article, it may contact the relevant authorities with the objective of obtaining the necessary information in the subject procedure.
 - (7) The contracting authority shall be under obligation to define, in the bidding documentation, the documents that shall be requested from the candidate/bidder who, as a physical person registered to perform activity which is the subject matter, shall submit them attached to the bid, as evidence that it meets the requirements of this Article.
 - (8) No specific additional verification of the documents, which are required by paragraph (2) of this Article, shall be required from candidates/bidders with headquarters outside of Bosnia and Herzegovina.
 - (9) In the procedure of a design contest, physical persons shall only be required to submit a certificate issued by the competent court proving that no final verdict has been issued in criminal proceedings against them, convicting them for a criminal act of participation in a criminal organization, corruption, fraud, or money laundering.

Article 46

(Ability to Pursue Professional Activity)

- (1) In the bidding documentation, the contracting authority may request from the candidates/bidders to prove their registration in the relevant professional or other registers of the country in which they are established, or to provide a special

statement or confirmation from the competent entity proving their right to pursue the professional activity, which is relevant to the procurement subject matter.

- (2) Documents referred to in paragraph (1) of this Article shall be recognized in the territory of Bosnia and Herzegovina, regardless of the level of authority that issued them.

Article 47

(Economic and Financial Standing)

- (1) In the bidding documentation, the contracting authority may specify the minimum requirements in relation to economic and financial standing of the candidate/bidder, as well as the evidence which is required, and that may be:
 - a) appropriate document issued by a bank or other financial institution, proving the economic and financial standing in view of the facts that may be proved from the document issued by a bank or another financial institution in compliance with positive regulations;
 - b) guarantee for coverage of liability insurance for execution of the given contract, in the field of its registered activity;
 - c) profit and loss account or an abstract of profit and loss accounts for a period that shall not exceed three preceding financial years, or since the date of registration, or the commencing of business operations in the area concerned, if the candidate/bidder had been registered, or had commenced activities less than three years ago, if the publication of the profit and loss account is a legal obligation in the country where the candidate/bidder is registered; in case there is no such legal obligation in the country where the bidder is registered, it shall be under obligation to submit a statement verified by a competent entity;
 - d) statement on the overall turnover of the candidate/bidder and, where appropriate, of turnover in the area of operations covered by the contract, for a period that shall not exceed three preceding financial years, or since the date of registration or commencement of the activity, if the candidate/bidder had been registered, or had commenced the activity less than three years ago; the statement attached shall be verified by a competent entity.
- (2) If the contracting authority is requesting one or several documents referred to in paragraph (1) of this Article, it shall, in bidding documentation, clearly and precisely define the evidence that the candidate/bidder shall be under obligation to provide to prove its economic and financial standing.
- (3) Candidate/bidder may, where appropriate and for a specific contract, state in the bid that it has at its disposal capacities of other operators, regardless of the legal nature of mutual relations it has with them. In that case, it must prove to the contracting authority that the necessary resources shall be at its disposal. Under same conditions, a group of candidates/bidders may rely on capacities of members of the group or other economic operators.

- (4) Documents referred to in paragraph (1) shall be submitted as regular copies, together with the statement verified by the candidate/bidder in the form and manner regulated by the Agency in an implementing regulation.

Article 48

(General Requirements for Technical and Professional Ability)

- (1) The contracting authority may, depending on the type, quantity, or volume, or purpose of the procurement subject matter, request evidences relating to technical and professional ability.
- (2) If the contracting authority is requesting evidence on orderly executed contracts, such proof shall be submitted in the form of list of executed contracts with the confirmation provided by other contractual party on the implementation of these contracts. In case that such certificate, due to objective reasons, cannot be obtained from the contractual party which is not the contracting authority, the statement of economic operator on appropriately executed contract, with presented evidence that attempts had been made to provide such certificates, shall be a valid document.
- (3) Certificate on execution of the contract in orderly manner shall have to include the following information:
- a) corporate name and headquarters of contractual parties or economic operators;
 - b) subject matter of the contract;
 - c) value of the contract;
 - d) time and place of execution of the contract;
 - e) statements on orderly executed contracts.
- (4) Candidate/bidder may, where appropriate and for specific contracts, indicate in the bid that it has at its disposal the capacities of other operators, regardless to the legal nature of relations it has with them. In such a case, it shall have to prove to the contracting authority that it shall have the necessary resources available. Under the same terms, a group of bidders may rely on the capacities of the participants in the group or other economic operators.
- (5) The contracting authority may request from candidates/bidders to clarify the submitted references in writing.
- (6) If the submission of certificates issued by independent bodies is requested in the bidding documentation, and by virtue of which it is confirmed that the candidate/bidder meets certain standards of quality assurance, the contracting authority shall be under obligation to refer to the systems of quality assurance based on corresponding European series of standards confirmed by bodies that are compliant to European series of standards on certificate issuance. The contracting authority shall also be under obligation to accept other evidences on equivalent measures of quality assurance from candidates/bidders that do not have access to such certificates.

- (7) If the contracting authority requests one or more documents by which the candidate/bidder proves its technical and professional ability, it shall be under obligation to define those requirements clearly and precisely in the bidding documentation.

Article 49

(Technical and Professional Ability in Case of Public Supply Contracts)

In case of public supply contracts, the contracting authority may request one or more evidences on technical and professional ability of candidate/bidder, as follows:

- a) a list of executed contracts in line with Article 48 paragraph (2) of this Law, which are relevant to the procurement concerned, for the period that shall not exceed three years, or since the date of registration, or commencing the activity if the candidate/bidder had been registered, i.e. had commenced with its activities less than three years ago;
- b) description of technical facilities and capacities of the candidate/bidder, measures for quality assurance and level of study and research equipment and its capacity for it;
- c) indications on technical staff and technical bodies engaged, for the activities of mounting and installing of supplies being purchased, and for whom it cannot be required that they are employed with the candidate/bidder;
- d) samples, descriptions and/or photographs of the goods to be supplied, the authenticity of which must be certified by the candidate/bidder, if the contracting authority so requests;
- e) certificate issued by the competent institution or quality control agency attesting that specifically marked goods are in conformity with certain specifications or norms;
- f) confirmation of candidate/bidder in which it accepts the procedure of control of more complex types of goods or goods that are especially intended for some special purpose, performed by contracting authority or, on its behalf, the relevant authority of the country where the economic operator has its headquarters, and which relates to production capacities of the economic operator, and where appropriate, on the method of elaboration of the studies and research, as well as measures for quality control used by the economic operator.

Article 50

(Technical and Professional Ability in Case of Public Service Contracts)

In case of public service contracts, the contracting authority may request one or more evidences on technical and professional ability of candidate/bidder, as follows:

- a) a list of executed contracts in line with Article 48 paragraph (2) of this Law, which are relevant to the procurement concerned, for the period that shall not exceed three years, or since the date of registration, or commencing the activity if the candidate/bidder had been registered or had commenced the activity less than three years ago;

- b) educational background and professional qualifications of service provider and/or qualifications of its managerial staff, and particularly qualifications of the persons responsible for provision of specific services;
- c) statement on engaged technical staff or technical bodies, for whom it cannot be required that they are employed with the candidate/bidder;
- d) statement of service provider of average annual number of employees and number of managerial staff in the last three years;
- e) statement on technical equipment and capacities and measures which are at the disposal of the service provider to deliver specific services and ensure quality;
- f) confirmation by candidate/bidder in which it accepts the procedure of control of more complex types of services or service that is especially intended for some special purpose, performed by the contracting authority or, on its behalf, the relevant authority in the country where the economic operator has its headquarters, and which relates to production capacities of economic operator, and where appropriate, on the method of elaboration of the studies and research and measures for quality control used by the economic operator;
- g) statement of the candidate/bidder on the measures of environmental protection management and measures of energy efficiency that the economic operator shall apply in the course of provision of the services.

Article 51

(Technical and Professional Ability in Case of Public Work Contracts)

In case of public work contracts, the contracting authority may request one or more evidences on technical and professional ability of candidate/bidder, as follows:

- a) a list of executed contracts in line with Article 48 paragraph (2) of this Law, which are relevant to the procurement concerned, for the period that shall not exceed five years, or since the date of registration, or commencing the activity if the candidate/bidder had been registered or had commenced the activity less than five years ago;
- b) educational background and professional qualifications of the contractor and/or qualifications of its managerial staff, and in particular, the qualifications of the persons responsible for execution of specific works;
- c) statement on engaged technical staff or technical bodies, in particular the staff responsible for supervision and quality control, for whom it cannot be required that they are employed with the candidate/bidder;
- d) statement of the contractor on average annual number of employees and number of managerial staff in the last three years;
- e) statement on construction machinery and technical equipment which is at the disposal of the contractor for the purpose of executing the contract;

- f) statement of the candidate/bidder on the measures of environmental protection management and measures of energy efficiency that the economic operator shall apply in the course of performance of the works.

Article 52

(Disqualification on Grounds of Conflict of Interest or Corruption)

- (1) In compliance with current regulations in Bosnia and Herzegovina, the contracting authority shall be under obligation to reject a request for participation in public procurement procedure or a bid if the candidate/bidder has given or is prepared to give a current or former employee of the contracting authority bribe in the form of cash or in any non-cash form whatsoever, with the aim to exert influence on an action, decision or the course of public procurement procedure. The contracting authority shall inform the bidder and the Agency in writing on the rejection of such a request or bid and on the reasons for rejecting it.
- (2) Each candidate/bidder shall be under obligation to submit attached to the bid a separate written statement saying that it did not offer bribe or participate in any action that had corruption as its objective in the course of the subject public procurement procedure.
- (3) In case a request or bid received during the public procurement procedure by the contracting authority causes or may cause any conflict of interests in compliance with current regulations on the conflict of interest in Bosnia and Herzegovina, the contracting authority shall be under obligation to act in compliance with the legislation in Bosnia and Herzegovina.
- (4) The contracting authority may not conclude public procurement contracts with an economic operator if the manager of the contracting authority or a member of the steering or supervisory board in the contracting authority is at the same time:
 - a) performing managerial tasks in the economic operator, or
 - b) the owner of business stocks, shares i.e. other rights based on which he/she participates with more than 20% in the management, i.e. in the capital of the economic operator.
- (5) Where certain economic operator has participated directly or indirectly in technical consultations during the preparation of the public procurement procedure, the contracting authority shall have to take appropriate measures to ensure that competition is not distorted by the participation of that economic operator as a candidate/bidder in public procurement procedure in relation to other candidates/bidders. Such measures shall include the provision to the other candidates/bidders of all information communicated during the technical consultations or resulting from the technical consultations and the fixing of adequate time limits for the receipt of requests for participation and bids. The measures undertaken shall be documented by the contracting authority in the minutes on bid evaluation referred to in Article 65 of this Law.
- (6) Economic operator referred to in paragraph (5) of this Article may not participate in that public procurement procedure as a candidate/bidder only where there are no other ways to ensure compliance with the principle of equal treatment.

- (7) Prior to the rejection of the request for participation, i.e. its bid, the candidate/bidder shall have to be given an opportunity to prove that its participation in technical consultation does not distort competition.

Section B. Bidding Documentation

Article 53

(Essential Information)

- (1) The contracting authority shall be under obligation to prepare bidding documentation in compliance with the provisions of this Law and Implementing Regulations. In the bidding documentation, the contracting authority shall provide comprehensive information about the terms of the contract and award procedures sufficient for the preparation of requests for participation, i.e. bids on a genuinely competitive basis.
- (2) Procurement notice prepared in compliance with Article 35 of this Law shall represent an integral part of the bidding documentation.
- (3) Bidding documentation shall include the following information, at the minimum:
- a) name and address of the contracting authority, as well as contact person from whom the candidates/bidders may request information or clarification;
 - b) the award procedure chosen, and data on whether a framework agreement is envisaged to be concluded;
 - c) description of the supplies, services or works, and the stating of the code and description from the CPV;
 - d) bills of quantity for supplies or terms of reference or task description for services and works, and technical specifications;
 - e) place of delivery of supplies or provision of services or execution of works;
 - f) indication of possibility to submit bids by lots;
 - g) time limits for delivery of supplies; provision of services; execution of works;
 - h) statement on the possibility to submit variants and minimum requirements that shall have to be met in case of variants;
 - i) minimum requirements for the qualifications of candidates, i.e. bidders, as well as the evidence on which the evaluation shall be based;
 - j) contract award criterion fixed as “the most economically advantageous bid” with sub-criteria or "the lowest price";
 - k) bid validity period;
 - l) bid security; performance security, and any other securities required for interim payments;
 - m) place, date and hour for receipt of requests for participation or receipt of bids;
 - n) place, date and hour for opening of bids;
 - o) information on price calculation, if applicable;

- p) language related requirements;
 - r) draft contract or main contract elements.
- (4) The bidding documentation shall be drawn up according to the models of the standard bidding documentation, regulated by the Agency.
- (5) In the course of preparation of the bidding documentation, the contracting authority shall be under obligation to observe the principles of equal treatment and non-discrimination between candidates/bidders. The contracting authority may not use advice of any person who may have any direct or indirect interest in the outcome of the award procedure, if that is likely to affect the genuine competition for the subject matter of the contract.
- (6) The contracting authority may make amendments to the bidding documentation provided that they are delivered to the interested candidates/bidders on one and the same day, and not later than five days before the date fixed for the receipt of requests or bids. Where such amendments imply substantial change to the subject matter of the procurement, the contracting authority shall extend the time limit for the receipt of request for participation or bids depending on the complexity of the procurement subject matter. The extended time limit may not be shorter than seven days.

Article 54

(Technical Specifications)

- (1) Technical specifications shall have to provide all candidates/bidders with equal and non-discriminatory access to competition. Technical specifications shall include, whenever possible, the criterion of accessibility for disabled persons or criterion of design for all users.
- (2) Technical specifications shall be determined, adhering to obligatory technical rules of Bosnia and Herzegovina, as follows:
- a) by reference to technical specifications and, with due respect of the following order, to standards of Bosnia and Herzegovina that are transposing the European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardization bodies or, should these not exist, standards of Bosnia and Herzegovina, technical approvals of Bosnia and Herzegovina or technical specifications of Bosnia and Herzegovina of Bosnia and Herzegovina that refer to project design, calculations and execution of works, as well as usage of products, where every guideline must be marked by words “or equivalent”; or
 - b) in form of performance or functional requirements that may include environmental features and features regarding energy efficiency; or
 - c) in form of performance or functional requirements referred to in item b) paragraph (2) of this Article, with reference to technical specifications referred to in item a) paragraph (2) of this Article as a means for assuming compliance with performance or functional requirements; or

- d) by reference to technical specifications referred to in item a) paragraph (2) of this Article in terms of certain features and by reference to performance or functional requirements referred to in item b) paragraph (2) of this Article in terms of other features.
- (3) If technical specifications are determined in line with item a) paragraph (2) of this Article, the contracting authority may not reject the bid with an explanation that the supplies or services offered do not respond to specifications it had stated, if the bidder applies appropriate means (technical dossier, report on testing performed by an authorized body and other similar documents issued by competent institutions) in its bid to prove that the solutions it had proposed in the bid correspond, in equal measure, to the technical specifications to which the contracting authority is referring.
- (4) If technical specifications are determined in form of performance or functional requirements in line with paragraph (2) item b) of this Article, the contracting authority may not reject the bid that is compliant to a standard of Bosnia and Herzegovina that is transposing a European standard, or European technical approval, common technical specification, international standard, or technical system of standards established by a European standardization body, if those specifications refer to performance or functional requirements required by the contracting authority. The bidder shall have to prove in its bid, by appropriate means, that the offered supplies, services or works that comply with the standard, also comply with the performance or functional requirements of the contracting authority.
- (5) Entity authorized to assess compliance in light of this Article shall be an independent laboratory, a body that shall attest to conformity, a supervisory or other body participating in the procedure for compliance assessment authorized by the state administration authority to conduct procedures of compliance assessment according to corresponding standards that are transposing European standards. Contracting authority shall accept certificates issued by authorized authorities in other countries if they are issued in compliance with international agreements concluded by Bosnia and Herzegovina.
- (6) Appropriate means, in the context of this Article, shall be technical dossiers elaborated by the producer or reports on testing prepared by the body authorized for compliance assessment.
- (7) If the environmental requirements for procurement subject matters determined in form of performance or functional requirements are in line with paragraph (2) item b) of this Article, contracting authorities may, for the purpose of describing procurement subject matter, refer to technical specifications or their parts determined by European, Bosnian and Herzegovinian, multinational or other environmental quality features:
- a) if specifications are appropriate for the definition of characteristics of supplies or services that represent the subject matter of the procurement contract;
 - b) if the requirements set for environmental quality marks are established on information based on scientific grounds;

- c) if the environmental quality marks are made and issued within the procedure in which all interested parties may participate, such as: consumers, producers, traders, and environmental protection organizations, and
 - d) if the environmental quality mark is accessible and available to all interested parties.
- (8) Contracting authority may state in bidding documentation the assumption that supplies and services marked with a certain environmental quality mark correspond to technical specifications determined in bidding documentation.
- (9) Unless justified by the procurement subject matter, technical specification may not indicate a specific producer, origin or specific procedure, brands, patents, types or specific origin, if that would favor or exclude any economic operators or any products. Such indications shall be exceptionally allowed only when the procurement subject matter cannot be defined in a sufficiently precise and comprehensible manner, but they must be, without exception, marked by the adage “or equivalent”. Lack of knowledge about the subject matter of the procurement shall not exempt the contracting authority from the obligation of defining the procurement subject matter on a genuinely competitive basis.
- (10) If, exceptionally, a notice is published for a certain product using the adage “or equivalent”, the bidder shall have to state, in empty spaces reserved for that purpose, in line with adequate items, data on the product and type of the corresponding product that it is offering, and, if required, other data relating to that product. Criteria relevant for the assessment of equivalence shall be stated in the description of the procurement subject matter. Evidence of equivalence in terms of meeting the requirements of the procurement subject matter shall be mandatorily provided by the bidder in line with requirements defined in bidding documentation. Products stated in bidding documentation as examples shall be considered offered unless the bidder states any other products in the places reserved for that information.
- (11) Contracting authority may determine special conditions regarding contract execution, under the condition that these are in line with relevant regulations in Bosnia and Herzegovina and that they have been stated in the notice or in technical specifications. Conditions that regulate contract execution may particularly refer to social and environmental matters.

Article 55

(Provision of Bidding Documentation)

- (1) Except in the case referred to in item d) of this paragraph, the contracting authority shall have to make the bidding documentation available to the candidates/bidders in the manner preferred by the candidate/bidder, specifically:
- a) in person, in the premises of the contracting authority;
 - b) upon candidate's/bidder's written request;
 - c) together with the invitation to submit bids;

- d) by placing the bidding documentation on the procurement portal, which will be pointed out in the procurement notice, in compliance with implementing regulation adopted by the Agency.
- (2) When the candidate/bidder dispatches a request for the provision of the bidding documentation, the contracting authority shall dispatch the bidding documentation immediately, within 3 (three) days at the latest after the date of the receipt of the request. If the contracting authority has set a reduced time limit for the delivery of bids or requests to participate, in accordance with this Law, the time limit for dispatching the bidding documentation shall be two days.
 - (3) The contracting authority may not make the bidding documentation available to any of the candidates/bidders before the procurement notice is published.
 - (4) The contracting authority may fix for all candidates/bidders a single pecuniary fee payable for the bidding documentation. In that case, the pecuniary fee shall cover only the actual costs of paper, printing, copying, data holder, as well as the compensation of possible postal costs. If a certain pecuniary fee is laid down for the bidding documentation, then the candidate/bidder shall be under obligation to submit, along with the request to participate, i.e. the bid, evidence of payment of the fee for the bidding documentation, except in cases referred to in paragraph (1) items c) and d) of this Article.
 - (5) All interested candidates/bidders shall have the right to inspect the bidding documentation before purchase, except in the case referred to in paragraph (1) item d) of this Article. Upon a written request of the economic operator, the contracting authority shall be under obligation to enable insight into the bidding documentation in the manner preferred by the candidate/bidder, specifically:
 - a) in the premises of the contracting authority; or
 - b) delivery via registered mail to the interested candidate/bidder with a return notice; or
 - c) via electronic mail in secured, non-amendable form sent to the interested candidate/bidder.

Article 56

(Clarification of Bidding Documentation)

- (1) Interested candidates/bidders may seek clarification of the bidding documentation from the contracting authority in writing in a timely manner, and not later than ten days before the expiry of the time limit for the submission of requests for participation or bids.
- (2) The contracting authority shall prepare a written answer, and the answer containing clarification shall be delivered to all the candidates/bidders that have bought the bidding documentation, or for which it is known that they received it in one of the ways specified in Article 55 of this Law, within three days and not later than five days before the expiry of the time limit for the submission of requests for participation or bids.

- (3) If the contracting authority's response gives rise to amendments to the bidding documentation, and these amendments require the candidates/bidders to change and/or adjust their bids significantly, the contracting authority shall extend the time limit for the submission of requests for participation or bids for at least seven days.
- (4) If after the provision of bidding documentation it transpires that bids can be drafted only after a visit to the site of service provision or works, or after the inspection of the documents on which the preparation of the bidding documentation was based, the time limits for the receipt of bids shall be extended for a period of seven days at the minimum, so that all bidders concerned are enabled to gain knowledge of all the information necessary to prepare a bid.
- (5) When bidding documentation is published on the public procurement portal, any clarification of bidding documentation referred to in this Article shall be defined in an implementing regulation referred to in Article 55, paragraph (1), item d) of this Law.

Section C. Bid

Article 57

(Bid Preparation)

- (1) In public procurement procedure, candidates/bidders shall comply with the requirements and terms of the bidding documentation.
- (2) A bidder may change, amend or withdraw the bid before the expiry of the time limit for the submission of the bids. Should this change or amendment cause a change in the total price of the bid, the new price shall have to be stated mandatorily. The change or amendment of the bid shall be supplied in the same way as the bid, in the time limit specified in the procurement notice and bidding documentation. In case of withdrawal of the bid, before the expiry of the time limit for the submission of the bid, the bidder may demand, in writing, the return of the unopened bid.
- (3) Each bidder may submit only one bid.

Article 58

(Contents of the Bid)

- (1) Each bid shall contain the following elements obligatorily:
 - a) name and headquarters of the bidder, and for a group of bidders information on each member of the group of bidders, as well as a clearly identified member of the group who shall be the representative of the group of bidders in the public procurement procedure, for communication and for conclusion of the contract;
 - b) evidence of security, if requested;
 - c) the price, including all the elements comprising it, as well as necessary explanations, in the manner defined in the bidding documentation;
 - d) evidence of personal, business, financial, technical, and professional ability, except in the phase of bid submission in restricted and negotiated procedure with or without publication of notice, and competitive dialogue, in accordance with requirements stated in bidding documentation;

- e) indications that the bid concerned is a variant, if variants are permitted;
 - f) date of the bid;
 - g) signature of the bid submitter or of the person authorized by power of attorney, which in that case has to be attached in original or in a verified copy;
 - h) the bid shall have to be verified by the stamp of the bid submitter, if the law applicable in the country where the headquarters of the submitter are located provides for the submitter of the bid to have a stamp, or evidence to the fact that the law of the country where the headquarters of the bid submitter are located does not require for the submitter of the bid to have a stamp;
 - i) list of the documents attached to the bid.
- (2) Bids shall have to be firmly bound and all pages of the bid shall have to be numbered (except for evidence of security referred to in item b) paragraph (1) of this Article and published literature, brochures, catalogues etc).

Article 59

(Variant)

- (1) Variant shall be a bid in which a bidder gives an alternative proposal for the subject matter of the public procurement. The contracting authority shall be under obligation to indicate in the bidding documentation whether or not it authorizes variants. Variant shall be allowed only where the criterion for the award of the contract is the most economically advantageous bid. If the bidding documentation does not contain a provision that permits submissions of variants, then they shall not be permitted, and as such they shall be rejected.
- (2) Contracting authority shall be under obligation to state in the bidding documentation the minimum obligatory requirements to be complied with by the variant, as well as other requirements for its presentation. The contracting authority shall take into consideration only those variants that comply with the minimum requirements and ensure the realization of the appropriate subject matter of procurement.
- (3) The bidder shall be under obligation to supply evidence that the variant complies with the minimum requirements set in the bidding documentation in all the elements.
- (4) Contracting authority that has allowed the submission of variants may not reject a variant on the sole grounds that it would lead to a change in the type and character of the contract.

Article 60

(Bid Validity Period)

- (1) The bid validity period shall be specified by the contracting authority in the bidding documentation. The validity period may not be shorter than the period set in the bidding documentation, and the contracting authority may not set a time limit shorter than 30 days. If the bidder fails to specify in the bid the period of its validity, it shall be considered that the bid shall be valid for the period indicated in the bidding documentation.

- (2) As long as the bid validity period has not expired, the contracting authority may request from the bidders, in writing, to extend the validity period until a specified date. Any bidder is entitled to reject such a request, without, in that case, losing the right to return of the bid security.
- (3) If a bidder fails to respond to the written request made by the contracting authority as regards extension of the bid validity period, or fails to agree to extend the bid validity period or fails to provide an extended bid security, then it shall be deemed that such bidder rejected the request of the contracting authority, and its bid shall not be considered in the further course of the procedure.
- (4) A bidder who agrees to extend the bid validity period and notifies the contracting authority thereof in writing, shall extend the bid validity period and provide an extended bid security. During the extended bid validity period, the bid cannot be changed.

Article 61

(Bid Securities)

- (1) Types of securities shall be as follows:
 - a) bid security shall be the security in case the bidder withdraws the bid during the bid validity period;
 - b) performance security shall be the security in case the bidder that is awarded the contract fails to carry out its obligations under the contract or carries them out sloppily.
- (2) Contracting authority may request that bids are guaranteed by appropriate bid securities. Bid securities may not be requested if the procurement value is less than KM 100,000.00.
- (3) When the procurement value is equal to or exceeds the value referred to in paragraph (2) of this Article, bid security may not exceed 1.5 % of the estimated contract value. A group of bidders shall submit a security that corresponds to the request amount, regardless of whether it is submitted by one member, several members or all members of the group of bidders.
- (4) The contracting authority may request that the performance of the contract be guaranteed by the appropriate performance securities. Performance security may not be requested in an amount exceeding 10% of the contract value. A group of bidders shall submit a security that corresponds to the request amount, regardless of whether it is submitted by one member, several members or all members of the group of bidders.
- (5) The contracting authority may not reject the bid security or the performance security on the grounds that the security was not issued in Bosnia and Herzegovina, provided that the bid security and the performance security conform to the requirements set forth in the bidding documentation.
- (6) Forms of bid securities and performance securities shall be defined in an implementing regulation adopted by the Agency.

Article 62

(Group of Candidates/Bidders)

- (1) Contracting authority shall specify in the bidding documentation the documents that a group of candidates/bidders, i.e. each member of the group shall submit.
- (2) Contracting authority cannot require from groups of candidates/bidders to form a new legal person in order to submit a request or bid, however, it may, after the selection, require from the group a specific legal form to the extent to which that is necessary for the satisfactory performance of the contract. The group of candidates/bidders shall be under obligation to submit all information that the contracting authority demands in the bidding documentation.
- (3) The candidate/bidder that independently submitted a request for participation, i.e. a bid, cannot be a member of a group of candidates/bidders in the same public procurement procedure. A member of a group of candidates/bidders may not be a member of another group of candidates/bidders in the same public procurement procedure.
- (4) A group of bidders shall be jointly liable for all the obligations.

CHAPTER III. CONDUCT OF CONTRACTING AUTHORITY

Section A. Bid Evaluation

Article 63

(Bid Opening)

- (1) Bids shall be opened at the public opening of bids immediately after the expiry of the time limit for receiving the bids. Bids received after the time limit set for the submission of bids shall be returned to the bidders unopened.
- (2) Bids shall be opened at the session of Procurement Commission on the day and time which are stated in bidding documentation. All bidders that have delivered the bids in a timely manner, or their representatives, as well as all other interested parties, shall be entitled to attend the procedure of bid opening. Changes of time limits for receiving bids shall influence the change of date of bid opening.
- (3) Chairperson of Procurement Commission, or another member of the Commission shall open the envelopes at the open session, regardless of whether the bidders or their authorized representatives are present at the meeting.
- (4) At the bid opening the present bidders shall be informed on:
 - a) bidder's name;
 - b) total price quoted in the bid;
 - c) discount stated in the bid, which shall have to be stated separately; if the discount is not stated separately, it shall be considered not offered;
 - d) sub-criteria that shall be evaluated under the criterion of the most economically advantageous bid.

- (5) Results of the bid opening procedure shall be entered into the minutes that shall obligatorily contain all elements referred to in paragraph (4) of this Article. The form of the minutes shall be regulated by the Agency in an implementing regulation.
- (6) Copy of minutes on bid opening shall be delivered immediately to all bidders or within three days at the latest from the day of bid opening.
- (7) Procedure of candidates', i.e. bidders' qualifications verification and evaluation of bids shall be performed at the closed sessions of the Procurement Commission.

Article 64

(Criteria for Contract Award)

- (1) Contracting authority shall award the contract on basis of one of following criteria:
 - a) the most economically advantageous bid, or
 - b) the lowest price.
- (2) Contracting Authority shall be under obligation to elaborate in the bidding documentation the criterion of the most economically advantageous bid in the manner of defining and elaborating in details the sub-criteria for evaluation in accordance with the nature and purpose of the specific subject matter of procurement. Sub-criteria could be: quality of subject matter of procurement, price, technical ability of subject matter of procurement, functional and environmental characteristics, operating costs, cost-effectiveness, service after sale and technical assistance, period of delivery or period of execution, etc, with obligation that precise methodology of each sub-criteria evaluation is defined in the bidding documentation.
- (3) Requirements for qualification of candidates referred to in Articles 45 through 51 of this Law cannot be sub-criteria for bid evaluation.

Article 65

(Bid Evaluation)

- (1) Contracting authority shall evaluate the bids that are submitted by qualified bidders by applying the criteria for contract award defined in bidding documentation.
- (2) After bid evaluation, the contracting authority shall be under obligation to draft minutes on bid evaluation which shall contain the following data, at the minimum:
 - a) name of contracting authority;
 - b) procurement subject matter;
 - c) name of bidders whose bids were rejected and reasons for their rejection;
 - d) points allocation under sub-criteria for bid evaluation if the criterion is the most economically advantageous bid, according to the methodology defined in the bidding documentation;
 - e) rank-list of evaluated bids, starting with the most successful toward the least successful;
 - f) name of the bidder whose bid is assessed as the most successful;

- g) contract or framework agreement value.
- (3) In open and restricted procedure, negotiations between contracting authority and bidders shall not be allowed.

Article 66

(Abnormally Low Price Offered)

- (1) When the contracting authority assesses that the price offered is abnormally low, it shall request a written explanation from the bidder on the offered price. If the bidder fails to provide a satisfactory explanation, which may, inter alia, contain a comparison with market prices, the contracting authority shall dismiss the bid.
- (2) Bidders shall be under obligation to deliver in writing detailed information on relevant building elements of the bid, including price elements, i.e. the reasoning of the offered price. Contracting authorities shall consider the explanation that might respectively refer to:
 - a) cost-effectiveness of the production process, provided services, or method of construction;
 - b) selected technical solutions and/or especially favorable conditions that the bidder enjoys for the delivery of supplies or provision of services, or execution of works;
 - c) originality of supplies, services or works offered by the bidder;
 - d) compliance with valid provisions that relate to safety at work and working conditions in place where supplies are delivered, services are provided, or works are executed;
 - e) possibility that the bidder is a state aid recipient.
- (3) If the contracting authority determines that the bid is abnormally low due to the fact that the bidder is a state aid recipient, the bid may be dismissed only if the bidder is not able to prove, within a reasonable time limit determined by the contracting authority, that state aid had been awarded in line with a valid law.

Article 67

(Domestic Preferences)

Application of domestic preference for domestic bidders shall be defined in a special implementing regulation, which shall be adopted by BiH Council of Ministers within 30 days from entry into force of this Law.

Article 68

(Reasons for Rejection of Request for Participation or Bid)

- (1) Contracting authority shall reject the request for participation or bid if candidate/bidder fails to submit requested evidence or submits incomplete evidence, or falsely presents information that are the evidence of fulfillment of requirements referred to in Articles 45 through 51 of this Law.
- (2) Request for participation or bid of a candidate/bidder, or group of candidates/bidders that directly or indirectly participated in the preparation of the public procurement

procedure shall be dismissed in the case referred to in Article 52 paragraph (7) of this Law.

- (3) Contracting authority may invite candidates/bidders to explain delivered documents in compliance with Articles 45 through 51 of this Law within three days, or to deliver original documents by reason of comparison with the copy that was delivered attached to the bid, all with the aim of elimination of formal lack of any of the documents.
- (4) Contracting authority shall also be under obligation to reject the request for participation, or bid in following cases:
 - a) the bidder fails to quote the price in its bid, and instead only states that it shall offer the price that is by a certain percentage or value lower than the bid with the lowest price, or a bid in which the price is not shown in total amount, in accordance with the requirements stated in the bidding documentation;
 - b) bid for which the bid security is requested, and it is not delivered with the bid;
 - c) the shortcoming referred to in paragraph (3) of this Article has not been removed;
 - d) bid that relates to more lots than allowed by the contracting authority in bidding documentation and procurement notice;
 - e) bid that provides a variant, and it is not allowed;
 - f) bid in which imperfection or obscurity are not eliminated by written explanation of bidder;
 - g) bid for which the bidder did not accept correction of a calculation error in writing;
 - h) bid that is not complete and fails to meet the requirements from the bidding documentation;
 - i) and in other justified cases.

Section B. Result of Public Procurement Procedure

Article 69

(Completion of Public Procurement Procedure)

- (1) Public procurement procedure may be completed:
 - a) by conclusion of contract on public procurement or framework agreement; or
 - b) by cancellation of the public procurement procedure.
- (2) Contracting authority shall be under obligation to cancel the public procurement procedure in the following cases:
 - a) no bid was submitted within the defined time limit;
 - b) no request for participation in restricted procedure, negotiated procedure with or without publication of notice or in competitive dialogue was submitted;

- c) number of bids stipulated in Article 32 paragraph (4) of the Law was not submitted, if conclusion of framework agreement was foreseen;
 - d) none of the received bids are acceptable;
 - e) prices of all acceptable bids are significantly higher than the funds ensured for procurement.
- (3) Contracting authority may cancel the public procurement procedure because of provable reasons that are beyond control of the contracting authority, and could not be foreseen in period of launching the public procurement procedure.

Article 70

(Decision on Selection and Decision on Cancellation)

- (1) Contracting authority shall make a decision on the selection of most successful bidder, or decision on cancellation of the public procurement procedure within the time limit defined in bidding documentation as the period of bid validity, within seven days at the latest from the day the bid validity expires, or in a prolonged period of bid validity in compliance with Article 60, paragraph (2) of this Law.
- (2) Decisions referred to in this Article shall be sent to candidates/bidders within the time limit of three days, and within seven days at the latest from the day they were made, and specifically: by electronic means, or by mail, or directly.
- (3) Decision on selection shall contain: data on contracting authority, number and date of the decision making, data on public notice, type of procurement procedure, number of received bids, name and data on selected bidder, detailed explanation of the reasons behind the selection, instructions on legal remedy, signature of authorized person, and stamp of contracting authority.
- (4) Decision on cancellation of procurement procedure shall contain: data on contracting authority, number and date of the decision, data on public notice, type of procurement procedure, legal basis for cancellation of procurement procedure, detailed explanation of reasons behind the cancellation, instructions on legal remedy, signature of authorized person, and stamp of contracting authority.
- (5) After the completion of prequalification phase the contracting authority shall make the decision on the results of candidates' prequalification in procedure that shall consist of two or more phases. This decision shall contain: data on contracting authority, number and date of the decision, data on public notice, type of procurement procedure, number of received requests for participation, name and data on qualified candidates, data and explanation on nonqualified candidates, instructions on legal remedy, signature of authorized person, and stamp of contracting authority.
- (6) Contracting authority shall publish the decisions referred to in paragraphs (3) and (4) of this Article on its website, if it has one, simultaneously with the delivery of decisions to bidders that participated in the public procurement procedure.

Article 71

(Informing the Candidates and Bidders about the Results)

- (1) Seven days at the latest from the day of making the decision, the contracting authority shall be under obligation to inform, simultaneously, and in writing the candidates/bidders that have submitted requests or bids in a timely manner, about the decisions that were made regarding prequalification, evaluation of bids or cancellation of procedure.
- (2) Together with the notice on results of procedure, the contracting authority shall also be under obligation to deliver the adequate decision referred to in Article 70 of this Law and the minutes on bid evaluation referred to in Article 65, paragraph (2) of this Law.

Article 72
(Contracts)

- (1) The contracting authority shall deliver the contract proposal to the selected bidder after the expiry of the time limit of 15 days, counting from the day when all bidders have been informed on the selection of the most successful bid. The selected bidder shall accept the proposal and conclude the contract.
- (2) Public procurement contracts shall be concluded in compliance with laws on obligations in Bosnia and Herzegovina. Contracts that shall be awarded under open procedure, restricted or negotiated procedure with or without publication of notice, design contest or competitive dialogue, apart from contracts referred to in Article 21 paragraph (1) item d) of this Law, may not be concluded within period of 15 days from the day on which the bidders were informed on the outcome of public procurement procedure.
- (3) Contracting authority shall deliver the contract proposal to the bidder whose bid was ranked second after the bid of the most successful bidder, in case the most successful bidder:
 - a) fails to submit originals or verified copies of the documentation referred to in Articles 45 and 47 of this Law, not older than three months as of the day of submission of the bid or request for participation, within the time limit that shall be established by the contracting authority, or
 - b) fails to submit documentation that is a precondition for conclusion of the contract, and that the bidder was under obligation to submit in line with regulations in Bosnia and Herzegovina; or
 - c) rejects contract award in writing; or
 - d) fails to deliver the bid performance guarantee in accordance with the conditions of bidding documentation within the time limit defined for it by contracting authority; or
 - e) fails to sign the procurement contract within the time limit defined by contracting authority for it; or
 - f) rejects to conclude the contract under the conditions defined in bidding documentation and the bid it had submitted.

- (4) If the selected bidder fails to submit the performance security within the given time limit after contract conclusion, the concluded contract shall be deemed absolutely null and void.
- (5) At the award of procurement contract, the price stated in the most successful bid, as well as the conditions defined in bidding documentation, may not be changed. Exceptionally, if a provision is provided in the bidding documentation on price changeability with objectively defined rules on price changeability, such a provision shall be entered in public procurement contract.
- (6) The contracting authority shall be under obligation to state a condition in the contract that the bidder to whom public procurement contract was awarded shall have no right to employ, for the purpose of execution of public procurement contract, physical or legal persons that had participated in preparation of bidding documentation or had stood in the capacity of members or expert persons engaged by Procurement Commission, for at least six months after contract conclusion, i.e. from the beginning of contract realization.

Article 73

(Subcontracting)

- (1) Contracting authority may not prohibit subcontracting, but may request from the candidate/bidder to state whether there is an intention to subcontract part of the contract to third parties.
- (2) If the candidate/bidder expresses the intention to subcontract part of the contract to third parties, the contracting authority shall be under obligation to incorporate such provision into the public procurement contract, as the basis for subcontracting between the selected bidder and subcontractor.
- (3) The bidder to which the contract was awarded may not subcontract any essential part of contract without previous written approval of contracting authority. Elements of contract that will be subcontracted and subcontractor's identity shall be unfailingly reported to the contracting authority in a timely manner before the subcontract is concluded. Contracting authority may verify qualifications of the subcontractor in accordance with Article 44 of the Law and shall give notice to supplier about its decision within 15 days at the latest from the day of receiving the notice about the subcontractor. In case of rejection, the contracting authority shall be under obligation to state objective reasons for rejection.
- (4) After the contracting authority approves subcontracting in compliance with paragraph (3) of this Article, the supplier that was awarded the contract shall be under obligation to submit to the contracting authority, before the start of contract execution, the subcontract concluded with the subcontractor, as the basis for direct payment to the subcontractor, and it shall have to contain the following elements obligatorily:
 - a) supplies, services, or works to be delivered, provided or executed by the subcontractor;

- b) subject matter, quantity, value, place and time limit for delivery of supplies, provision of services, or execution of works,
 - c) data on the subcontractor, as follows: name of the subcontractor, headquarters, unique identification number of the citizen/ company, transaction account number, name of the bank with which it is held.
- (5) The supplier to whom the contract was awarded shall bear full responsibility for contract execution.

Section C. Obligations of Contracting Authority after Completed Procedure

Article 74

(Notice on Contract Award)

- (1) For open procedure, restricted, and negotiated procedure with or without publication of notice, design contest, and competitive dialogue, the contracting authority shall be under obligation to publish the notice on contract award on the basis of the results of contract award procedure within 30 days at the latest from the day of contract or framework agreement conclusion.
- (2) In case of contract award referred to in Article 8 of this Law and concluded framework agreements, the contracting authority shall publish the notice on award of all contracts during one year, and 30 days at the latest after the expiry of a calendar year.
- (3) Contract award notice referred to in paragraphs (1) and (2) of this Article shall contain information determined by the Agency in implementing regulations.

Article 75

(Report on Public Procurement Procedure)

- (1) The contracting authority shall be under obligation to deliver reports to the Agency for open procedure, restricted, and negotiated procedure with or without publication of notice, design contest, and competitive dialogue, competitive request for quotations, and direct agreement, as well as in case of contract award referred to in Articles 8 and 10 of this Law, in the manner, form and within time limits defined by the Agency in an implementing regulation.
- (2) After submitting the report to the Agency, the contracting authority shall be under obligation to publish on its website, if it has one, the basic contract elements for each public procurement procedure, as well as any contractual changes that might occur during the contract execution, in the manner and form prescribed by an implementing regulation of the BiH Council of Ministers.

Article 76

(Archiving)

Concluded contracts on procurement, requests, bids, bidding documentation, and documents that relate to examination and evaluation of requests and bids, as well as other documents related to procurement, shall be kept in compliance with Bosnia and Herzegovina laws that relate to archiving.

CHAPTER IV. SPECIAL PROVISIONS REFERRING TO SECTORAL CONTRACTING AUTHORITIES PERFORMING ACTIVITIES IN AREAS OF WATER SUPPLY, ENERGY, TRANSPORT, AND POSTAL SERVICES

Section A. General Provisions

Article 77

(Area of Application)

- (1) This chapter of the Law shall contain special provisions applied by sectoral contracting authorities performing activities in the areas of water supply, energy, transport and postal services, and sectoral contracting authorities when concluding contracts for the needs of activities in the aforementioned areas.
- (2) This chapter of the Law shall not apply to contracts concluded by sectoral contracting authorities with purposes that do not include the performance of their activities described in Articles 78 through 84 of this Law or for the purpose of performing these activities in another country under conditions that do not include physical usage of networks or geographical area within Bosnia and Herzegovina.

Article 78

(Water Supply)

- (1) Activities in the area of water supply in the context of this Law shall be:
 - b) putting at disposal (provisions) or management of immovable (fixed) networks for public supply related to production, delivery (transport), or distribution of drinking water;
 - c) delivery (supply) of drinking water to those networks.
- (2) Provisions of this Law shall also be applied by sectoral contracting authorities to public procurements or project competitions it is conducting, i.e. organizing for the purposes of performing the activities referred to in paragraph (1) of this Article, and that are:
 - a) linked to water works projects, projects of irrigation or drainage (drying up) under the condition that the quantity of water to be used for drinking water supply amounts to more than 20% of the overall quantity of water put at the disposal to such projects, or installations for irrigation or drainage (drying up); or
 - b) linked to draining or purification of waste waters.
- (3) Sectoral contracting authority shall be under obligation to apply provisions of this Law when performing activities that relate to supply (watering) of drinking water networks with the purpose of public supply, by an operator that is not the contracting authority, and shall not be considered an activity in the context of paragraph (1) of this Article:
 - a) if the operator produces drinking water because it needs it to perform certain activity that is not an activity referred to in Articles 78 through 84 of this Law, and

- b) if the supply (watering) of public network depends only on own consumption of the operator and does not amount to more than 30% of the overall production of drinking water compared to the average for the three previous years, including the current year.

Article 79

(Gas, Heating, and Electrical Energy)

- (1) Activities in fields of gas and heating energy, to which the provisions of this Law shall apply, shall be:
 - b) putting at disposal (providing) or managing immovable (fixed) public service networks with regard to production, transfer, and distribution of gas and heating;
 - c) supply (feeding) of those networks with gas or heating.
- (2) If the supply (feeding) of networks with gas or heating with the purpose of providing public service is performed by an operator that is not the contracting authority, that shall not be considered an activity in the context of paragraph (1) of this Article:
 - a) if the production of gas or heating by that operator occurs as an inevitable consequence of the performance of an activity that is not included in activities referred to in paragraphs (1) or (3) of this Article or Articles 78 through 84 of this Law;
 - b) if the supply of a public network is a consequence of economic exploitation of supply and if compared to the average for the three previous years, current year included, it does not amount to more than 20% of the revenue of the operator.
- (3) Sectoral contracting authority shall be under obligation to apply the provisions of this Law when performing activities in the area of electrical energy, in particular when:
 - a) putting at disposal (providing) or managing of immovable (fixed) public service networks with regard to generation, transmission, and distribution of electrical energy;
 - b) supply (feeding) of those networks with electrical energy.
- (4) If the supply (feeding) of networks with electrical energy with the purpose of providing public service is performed by an operator that is not the contracting authority, that shall not be considered an activity in the context of paragraph (3) of this Article:
 - a) if the operator generates electrical energy because its consumption is needed for the purpose of performance of a certain activity that is not an activity in the context of paragraphs (1) or (3) of this Article or Articles 78 through 84 of this Law; and
 - b) if the supply (feeding) of public networks depends only on own consumption of the operator and does not amount to more than 30% of the overall generation of electrical energy, compared to the average for the three previous years, including the current year,

Article 80

(Exploration and Exploitation of Oil, Gas, Coal, and other Solid Fuels)

Sectoral contracting authority shall be under obligation to apply provisions of this Law when performing activities that relate to exploration and exploitation of oil, gas, coal, and other solid fuels, in particular when the performance of these activities refers to exploitation of geographical areas with the purpose of exploring or exploiting oil, gas, coal, or other solid fuels.

Article 81

(Transport Services)

- (1) Activities in the field of transport in the context of this Law shall encompass:
 - a) putting at disposal (provision) or managing of public transport service network for the services of public transport by railroads, automated systems, tramlines, buses, trolleys or cableway;
 - b) a network in the field of transport shall exist if the services in transport are provided in line with conditions, for example for lines, transport capacities, timetables and the like, determined by a competent entity.
- (2) Provision of public services of bus transport shall not represent an activity in the context of this Article if other operators are able to provide those services generally, or for a specified geographical area, under equal conditions as the sectoral contracting authority.

Article 82

(Air, Sea, and River Ports)

Sectoral contracting authority that performs activities of air, sea, and river ports and that refer to exploitation of a geographical area with the purpose of provision of airports, sea ports, river ports or other transport terminals to transporters in air, sea, or river transport, shall be under obligation to apply this Law.

Article 83

(Postal Services)

- (1) Postal services or other services that not include postal services, shall represent activities performed under conditions stated in this Article.
- (2) Postal services in the context of paragraph (1) of this Article shall be the services of receipt, transfer, and delivery of postal consignments. Those services shall include:
 - a) reserved postal services, which shall be postal services that, pursuant to the laws on post, may only be provided by a public operator;
 - b) postal services provided on the free market, in compliance with the laws on post.
- (3) Postal consignment shall mean letters, postal and wire orders, and packages containing supplies with or without commercial value regardless of weight, addressed to a certain recipient to whom the postal consignment is to be delivered. Postal consignment referred to in paragraph (2) of this Article shall apply also to books, catalogues and press.

- (4) Other services that do not include postal services shall be services performed in the following fields, under the condition that those services are performed by an operator performing postal services in the context of paragraph (2) of this Article, and under the condition that those services have not directly been exposed to market competition, and those shall be:
- a) postal service management services (services prior to and post dispatch, such as management of the registry office);
 - b) added value services with regard to electronic means that are provided fully via electronic means (including safe dispatch of coded documents electronically, address keeping services, and sending registered electronic mail);
 - c) services with regard to consignments that differ from the consignments referred to in paragraph (3) of this Article (e.g. non-addressed consignments, advertising consignments, promotional consignments and the like);
 - d) financial services as defined in category 6 of Annex II Part A of this Law;
 - e) philatelic services;
 - f) logistics services of combined physical delivery and/or storage and other non-postal activities.

Article 84

(Procurement Covering Several Areas)

- (1) In case the procurement subject matter includes several activities, the provisions of this chapter of the Law shall apply to that activity which is the main part of the procurement subject matter.
- (2) If the provisions of this Chapter of the Law apply to a part of the procurement subject matter planned for performance of one of the activities, and none of the provisions of this Chapter or Chapters II and III of the Law apply to the second part, and if it is not possible to determine objectively for which activity the majority of the procurement subject matter is intended, then the public procurement procedure shall be conducted in line with provisions of this part of the Law.
- (3) If a part of procurement subject matter planned for performance of one of activities is subject to provisions of this Chapter of the Law, and the second part of procurement subject matter is subject to provisions of Chapters II and III of this Law, and if it is not possible to determine objectively for which activity the majority of the procurement subject matter is intended, then the public procurement procedure shall be conducted in line with provisions of Chapters II and III of this Law.

Section B. Special Provisions

Article 85

(Qualifications System)

- (1) Sectoral contracting authorities may establish and manage the qualification system of candidates/bidders. Sectoral contracting authorities that establish or manage the qualification system shall be under obligation to state in the notice the purpose of the

qualification system and the manner of requesting the qualification rules, and ensure that economic operators may, at any point in time, request the qualification. If the qualification system lasts for longer than three years, the establishment of the qualification system shall be published each year. In cases of shorter duration, it is sufficient to publish the qualification system in the beginning of the procedure.

- (2) The qualification system, in compliance to paragraph (1) of this Article, may encompass various levels and shall be lead based on objective qualification criteria and qualification rules set by the sectoral contracting authority. Qualification criteria and rules may be updated, if needed.
- (3) Qualification criteria and rules, in compliance with paragraph (2) of this Article, may encompass conditions on financial and economic and/or technical and professional ability. Sectoral contracting authority shall be under obligation to foresee qualification criteria and rules, as well as the reasons for exclusion in each case.
- (4) If qualification criteria and rules contain requirements for financial and economic and/or technical and professional ability, the economic operator may, for the purpose of proving the required ability, rely in a given case on resources of other economic operators regardless of the legal relations between it and that economic operator. In that case, the economic operator shall have to prove that the resources will be at its disposal throughout the duration of the qualification system.
- (5) Under identical assumptions as stated in paragraph (4) of this Article, a group of bidders may rely on the resources of its members or other economic operators.
- (6) Qualification criteria and rules, in compliance with provision of paragraph (2) of this Article, shall be made available to interested economic operators upon their request. Sectoral contracting authority shall inform every interested economic operator on the amendments and addenda to the qualification criteria and rules. If the sectoral contracting authority deems that the qualification system of some other sectoral contracting authorities corresponds to requirements and conditions of bidders, i.e. candidates that are qualified, it shall make available the names of these other sectoral contracting authorities to the qualified candidates.
- (7) Sectoral contracting authority shall be under obligation to inform in due time the submitters of requests on the decision it has made on the qualifications of the submitters of requests. If the decision cannot be made within four months after receiving a request for qualification, the sectoral contracting authority shall be under obligation to inform the submitter of request within two months at the latest from the day of receiving the request for qualification on the reasons for prolonging the processing and state the time when the decision on acceptance or rejection of its request shall be made. Submitter of request shall be informed on the decision on the request for qualification within six months at the latest after the receipt of the request for qualification.
- (8) The submitter of request shall be informed on the negative decisions on qualification immediately, with reasons stated, and 15 days at the latest after the decision is adopted. Reasons must be based on qualification criteria established by the sectoral contracting authority in compliance with paragraph (3) of this Article.

- (9) Successful submitters of requests shall be included in a list, and further categorization shall be possible by procurement subject matter for which individual submitters of requests are qualified.
- (10) Sectoral contracting authority may deny economic operator recognition of qualification only due to reasons based on the criteria established by the sectoral contracting authority in compliance with paragraph (3) of this Article. Sectoral contracting authority that denies an economic operator recognition of qualification shall inform the economic operator thereon in writing, stating reasons, within a time limit that may not be shorter than 15 days counted from the day of denial of qualification.
- (11) If the invitation to competition is published by the establishment of a qualification system, the bidders, i.e. candidates shall be selected in a restricted public procurement procedure or a negotiated public procurement procedure among economic operators that have qualified within the qualification system.
- (12) Establishment of the qualification system shall be published in compliance with Article 36 of this Law in the form that shall be defined in an implementing regulation to be adopted by the BiH Council of Ministers.

Article 86

(Exemptions for Sectoral Contracting Authorities)

- (1) Sectoral contracting authority shall, in addition to exemptions referred to in Article 10 of this Law, also be exempted from the application of this Law, when awarding:
 - a) public supplies or services contracts for further sale or lease to third parties, under the condition that the sectoral contracting authority does not hold a special or exclusive right to sale or lease of subject matter of such contracts, and that other operators can freely sell or lease under equal conditions as the sectoral contracting authority or sectoral contracting authorities;
 - b) contract concluded by sectoral contracting authority for the purposes that do not include the performance of activities defined in Articles 78 through 84 of this Law.
- (2) Sectoral contracting authority that is performing activities defined by Law shall be exempted from the application of provisions of this Law for contracts awarded to a connected enterprise, business partner or sectoral contracting authority that is a part of a business partnership. Terms and conditions of these contracts shall be defined in an instruction adopted by the BiH Council of Ministers, within six months from the day this Law enters into force.

CHAPTER V. OTHER PUBLIC PROCUREMENT PROCEDURES

Section A. Award of Small Value Contracts

Article 87

(Types of Procedure for Award of Small Value Contracts)

- (1) Public procurement procedures for award of small value contracts shall be:

- a) competitive request for quotations; and
 - b) direct agreement.
- (2) The contracting authority shall conduct the procedure of competitive request for quotations in case the estimated value of supplies or service procurement is below KM 50,000, or the estimated value set for the procurement of works is below KM 80,000.
- (3) Contracting authority shall conduct the procedure of direct agreement for the procurement of supplies, services, or works whose estimated value is equal to or below KM 6,000
- (4) For values referred to in paragraphs (2) and (3) of this Article, the contracting authority may apply one of procedures referred to in Articles 25 through 35 of this Law.

Article 88

(Competitive Request for Quotations)

- (1) Competitive request for quotations is a procedure in which the contracting authority shall send a request for bid submission for procurement of supplies, services, or works to a certain number of bidders, where that number cannot be lower than three, and it shall be under obligation to publish an additional procurement notice on the public procurement portal.
- (2) In the course of preparation of this kind of a procedure, the contracting authority shall be under obligation to make a decision on initiating the procedure and use the model of competitive request for quotations regulated by the Agency.
- (3) Request for quotations shall include adequate and sufficient information on the basis of which the bidders may prepare their bids on a genuinely competitive basis. The contracting authority shall be under obligation to quote in its request: the precise time limit and place for receiving the bids, the minimum of documents which prove bidder's eligibility (if required) etc.
- (4) The contracting authority shall be under obligation to provide for a public bid opening.

Article 89

(Contract Award in the Competitive Request Procedure)

- (1) Contract award in the procedure of competitive request for quotations shall be based on the lowest price or the most economically advantageous bid in compliance with provisions of Article 64 of this Law.
- (2) Each bidder may offer only one price, and it must be the total price, which may not be changed after the expiry of time limit for bid submission. The contracting authority shall not be allowed to negotiate the bid, or the price.
- (3) When the contracting authority receives only one acceptable price, the contract shall be awarded to that bidder, and within 10 days at the latest as of the day on which the public procurement procedure is concluded.

Article 90

(Direct Agreement)

Direct agreement shall be the procedure in which the contracting authority, following market analysis, requires a written proposal of price or bid from one or more bidders and negotiates or accepts that price, as the condition for final agreement. The contracting authority shall be under obligation to issue an internal rulebook on procedure of direct agreement that should be harmonized with Direct Agreement Rulebook model stipulated by the Agency.

CHAPTER VI. INSTITUTIONS FOR MONITORING OF LAW IMPLEMENTATION

Article 91

(Institutions)

The Agency and the PRB shall be the institutions competent for the monitoring of implementation of this Law and implementing regulations.

Article 92

(Public Procurement Agency)

- (1) Agency shall be an independent administrative organization with a status of a legal person. The Agency's headquarters shall be in Sarajevo and it shall hold the stamp in compliance with the Law on Stamps of Institutions of Bosnia and Herzegovina (hereinafter: the Law on Stamps of Institutions of BiH).
- (2) Agency shall have two branch offices with headquarters in Banja Luka and Mostar. Branch offices shall not have the status of legal persons. Branch offices shall have the stamps that are identical to the Agency's stamp, and that additionally contain name and the location of the branch office.
- (3) Role of the Agency shall be to ensure regular implementation of this Law. The following competencies shall hereby be defined with the purpose of exercising the role of the Agency:
 - a) to prepare and draft laws, draft amendments and addenda to the Law and accompanying implementing regulations, for the purpose of securing their effectiveness and purposefulness;
 - b) to promote knowledge of contracting authorities and bidders about regulations on public procurements and their goals, procedures, and methods;
 - c) to publish manuals and instruction, as well as to draft and update standard forms and models in compliance with provisions of this Law;
 - d) to provide technical assistance and deliver advisory opinions to contracting authorities and bidders in relation to regular application of this Law and implementing regulations;
 - e) to establish the system of monitoring of procedures that are implemented by contracting authorities for procurement of supplies, services, and works with the

- aim of educating and eliminating irregularities noticed in individual public procurement procedures;
- f) to collect data, perform analysis and publish information in relation with public procurement procedures and awarded public procurement contracts;
 - g) to develop and establish electronic information systems in the area of public procurement in Bosnia and Herzegovina;
 - h) to initiate, support, and create preconditions for the development of practice of electronic procurements and communications in the field of public procurement;
 - i) to organize and hold trainings for accredited trainers and public procurement officers, publish information regarding trainings, and prepare manuals and other accompanying materials for professional development in the field of public procurement in compliance with the implementing regulation adopted by the BiH Council of Ministers;
 - j) to monitor the work of accredited trainers and keep records on accredited trainers in the field of public procurements and public procurement officers;
 - k) to draft annual reports to BiH Council of Ministers.
- (4) The Agency shall have its Director and the Board of the Agency.
- (5) The Agency's Director shall have the status of a secretary with a special task. Selection and appointment of the Agency's Director with one possible reappointment, as well as acquittal of duty of the Agency's Director shall be in the competence of the BiH Council of Ministers, in compliance with the Law on Civil Service in Institutions of BiH.
- (6) The Director of the Agency shall represent and act on behalf of the Agency, manage the Agency, organize and ensure legal and efficient performance of tasks in the competence of the Agency, adopt implementing regulations and other enactments ensuring legal and efficient performance of tasks, and shall be responsible for the work of the Agency.
- (7) Board of the Agency shall be competent to consider issues in relation with public procurement functioning and improvement of the public procurement system, and shall provide prior consent to enactments regulating the public procurement system, which shall be adopted by the BiH Council of Ministers or the Director of the Agency.
- (8) Board of the Agency shall consist of five members. Members of the Board of the Agency shall be representatives of BiH Ministry of Finance and Treasury, entity ministries of finance, Directorate for European Integrations, and a representative of Government of Brčko District BiH. Observers in the Board of the Agency shall be the representatives of: Foreign Trade Chamber of BiH, Associations of Employers of BiH and entities, and the non-governmental sector, the Agency director, and the PRB Chairperson. BiH Council of Ministers shall appoint the members of the Board of the Agency for the period of five years. Board of the Agency shall adopt Rules on Procedure within 30 days from the day of publication of the appointment decision in the Official Gazette of BiH.

- (9) By majority of votes among them, the members of the Agency Board shall select the chairperson and deputy chairperson for the period of two years. The Board of the Agency shall convene at least twice a year. A fee shall be paid to Agency Board members for their work in accordance with the decision of the BiH Council of Ministers.
- (10) The Board of the Agency shall compile minutes on their sessions, and prepare information and initiatives that shall be submitted to the BiH Council of Ministers through the Agency.
- (11) All contracting authorities in Bosnia and Herzegovina shall be under obligation to cooperate with the Agency and the Board of the Agency when performing their activities that originate from scope of competences determined by this Law and implementing regulations.

Article 93

(Procurement Review Body of Bosnia and Herzegovina)

- (1) PRB shall be an independent, autonomous institution with a status of a legal person, with headquarters in Sarajevo. PRB shall have its stamp in compliance with the Law on Stamps of Institutions of BiH.
- (2) PRB shall have six members, of whom two each from the ranks of each constituent people in BiH, one from the ranks of others, taking into account that at least two PRB members shall come from the ranks of peoples in BiH from Republika Srpska, and four members shall come from the ranks of peoples from the Federation of Bosnia and Herzegovina, and one from the ranks of others shall be selected from one or the other entity in alternation.
- (3) Three members of the PRB among whom the chairperson shall be elected shall have to have university degree qualifications in law and shall have to have passed judicial state examination. Remaining three members of the PRB shall be university degree experts in the areas of works construction, public procurement, transport, or strategic business management.
- (4) PRB shall have two branch offices with headquarters in Banja Luka and Mostar. The branch offices shall not have the status of a legal person. The branch offices shall have stamps identical to the PRB stamp, and the only difference allowed shall be in the name and location of the branch office.
- (5) Branch offices in Banja Luka and Mostar shall have five members each, of whom three shall be recognized experts in administrative law and/or administrative procedure, and two members shall be experts in the field of execution of works, public procurement, transport, and strategic business operations and they shall all be selected by a public contest.
- (6) PRB with headquarters in Sarajevo shall be competent to adopt decisions in review procedures for procurement values exceeding KM 800,000.00, as well as for all procurements of institutions of Bosnia and Herzegovina and institutions of Brčko District of BiH, and other contracting authorities of Bosnia and Herzegovina and Brčko District of BiH.

- (7) PRB branch offices in Banja Luka and Mostar shall be competent to adopt decisions in review procedures for procurement values below KM 800,000.00. Branch office competence shall be established according to the headquarters of the contracting authority.
- (8) PRB shall decide on appeals in public procurement procedures.
- (9) Members of the PRB shall be independent and equal in performing their function, and bound exclusively by the BiH Constitution and laws in Bosnia and Herzegovina
- (10) Members of the PRB shall be appointed by the Parliamentary Assembly of Bosnia and Herzegovina (hereinafter: PA BiH). PA BiH shall adopt a decision on the launch and performance of the selection and appointment procedure, establishment of ad hoc commission for the selection and appointment of PRB members. Ad hoc commission shall compile a list of successful candidates and deliver it to the PA BiH that shall appoint to duty and dismisses from duty members of the PRB.
- (11) Term of office of the PRB members shall be five years with an option of one reappointment. In case of relief of duty prior to the expiration of the term of office of one of the PRB members, the new PRB member shall be appointed for the remaining time of the term.
- (12) If the PA BiH fails to appoint PRB members in due time, the term of office of the PRB members shall be prolonged until the appointment of new members, but not for longer than eight months.
- (13) Function of the PRB members may not be combined with any other direct or indirect, permanent or temporary duty, except for academic, scientific, or publicist activities.
- (14) PA BiH may relieve a PRB member prior to expiration of term of office only in cases when a PRB member:
 - a) submits a resignation to the PA BiH;
 - b) has been sentenced to prison for a period of six months or longer by a valid decision for a criminal offence;
 - c) permanently loses the ability to work and perform the function.
- (15) PRB shall have a Rulebook on Internal Organization that shall be adopted at the general session of the PRB with the clear majority of votes of all PRB members.
- (16) PRB shall have PRB Rules of Procedure that shall be adopted at the general session of the PRB with the clear majority of votes of all PRB members.
- (17) PRB members and all other PRB employees shall be under obligation to keep information secret in the course of their work, pursuant to the Law.
- (18) PRB shall submit annual reports on operations to the PA BiH, after they are adopted by clear majority of all PRB member votes.

PART THREE - LEGAL PROTECTION

CHAPTER I. LEGAL PROTECTION PROCEDURE

Section A. General Provisions

Article 94

(Parties to the Procedure)

- (1) The parties to the legal protection procedure shall be: the appellant, the contracting authority and the selected bidder, while other economic operators with legal interest in the relevant public procurement procedure may also have the capacity of a party.
- (2) PRB shall ex officio inform the selected bidder on the conducting of the procedure upon appeal, whereas other persons in the capacity of a party may apply for participation in the procedure upon appeal.
- (3) Each party shall be entitled to present its views on requests and allegations of the other party and to propose evidence. PRB shall deliver to each party to the procedure the submissions received in the case, which argue the main point or present new facts or evidence.
- (4) Each party shall be authorized to review the case file except the part of the bid and documentation that is classified as secret or confidential under the Law.
- (5) In conducting the procedure upon appeal, the contracting authority shall be under obligation to submit the documentation upon the request of PRB, within the time limit set by PRB.

Article 95

(Delivery of Documents Abroad)

PRB may deliver documents by post to the party to the review procedure before the PRB that has its headquarters, residence or permanent residence outside of BiH.

Article 96

(Language of Procedure)

The language of the legal protection procedure shall be one of the languages in the official use in Bosnia and Herzegovina, including the use of Latin and Cyrillic alphabets.

Article 97

(Legal Capacity)

Appeals may be filed by any economic operator having or having had an interest in public procurement contract award, who makes it probable that damage was or could have been caused in the public procurement procedure because of the actions of the contracting authority, and which is expressed in the appeal as an infringement of this Law and implementing regulations by the contracting authority in public procurement procedure.

Article 98

(Prohibition to Conclude Contracts)

- (1) The contracting authority shall not conclude a public procurement contract within the time limit of 15 days from the day on which the bidders were informed on the selection of the most successful bidder.
- (2) Prohibition to conclude contracts referred to in paragraph (1) of this Article shall not apply:
 - a) if only one bidder participated in the open procedure, negotiated procedure without publication of notice and in the procedure for service contract award referred in Annex II Part B, and its bid was selected;
 - b) if only one bidder participated in the second phase of restricted procedure, negotiated procedure with publication of notice or competitive dialogue, and its bid was selected;
 - c) in the case of awarding contracts under framework agreement or dynamic purchasing system.
- (3) The prohibition to conclude the contract referred to in paragraph (2) item 1 of this Article shall not apply in the case when contracting authority publishes voluntary *ex ante* transparency notice in the negotiated procedure without publication of notice and in the procedure for service contract award referred to in Annex II Part B.
- (4) Appeals filed shall not prevent the conclusion of the public procurement contract for all lots that are not the subject of appeal.
- (5) In case that no appeal has been filed against the contract award decision in the small-value procurement, the contracting authority shall be under obligation to conclude the contract within ten days from the day of notice to the bidders on the selection of the most successful bidder.

Section B. Filing Appeals

Article 99

(Manner of Filing Appeals)

- (1) Appeals shall be filed to the contracting authority in writing, directly, electronically if the electronic means are defined as manner of communication in the bidding documentation, or by registered mail.
- (2) Appeals shall be submitted in sufficient number of copies, which cannot be below three, in order for it to be possible to deliver it to qualified candidate or selected bidder, as well as to other parties to the procedure.
- (3) The date of receiving the appeal directly from the contracting authority, i.e. the date of receiving the appeal electronically with ensuring the proof of delivery, i.e. receipt of the appeal, or the date of submission of the registered mail to the post office, shall be deemed the day of filing the appeal.
- (4) In case of direct submission of the appeal, the contracting authority shall be under obligation to provide the appellant with the certificate on date and time of receipt of the appeal.

- (5) If the contracting authority refuses to issue the certificate on date and time of receipt, it shall be deemed that the appeal has been filed within the time limit, unless the contracting authority proves otherwise.

Article 100

(Procedure of the Contracting Authority upon Appeal)

- (1) Within five days of receiving the appeal, the contracting authority shall be under obligation to establish timeliness, admissibility, and whether the appeal was filed by an authorized person.
- (2) Should the contracting authority establish that the appeal is untimely, inadmissible, or filed by an unauthorized person, it shall dismiss the appeal by issuing a conclusion. The appellant shall have the option of filing an appeal against this conclusion to the PRB, specifically within 10 days from the receipt of the conclusion.
- (3) If the appeal is timely, allowed, and filed by an authorized person, the contracting authority may, in consideration of the appeal, determine whether it is partly or fully grounded and correct the action by issuing a decision, take action or put out of force the existing decision or decree and replace it with other decision or decree, or cancel the public procurement procedure and inform all participants in the public procurement procedure thereon in the manner established by this Law, within five days from the day of receipt of the appeal.
- (4) An appeal may be filed against the decision of the contracting authority referred to in paragraph (3) of this Article to the PRB, through the contracting authority, within five days from the day of receipt of the decision.
- (5) Should the contracting authority establish, acting on an appeal, determine that the appeal timely, allowed, and filed by an authorized person, but ungrounded, it shall be under obligation to forward its decision to the PRB within five days from the day of receipt of the appeal, together with its opinion on the allegations in the appeal and full documentation related to the procedure subject to the appeal.

Article 101

(Time Limits for Filing Appeals to the Contracting Authority)

- (1) Appeals may be filed:
 - a) seven days at the latest prior to the expiry of time limit for the submission of requests for participation or bids in relation to the information in notice;
 - b) 10 days at the latest from the day bidding documentation is obtained;
 - c) 10 days at the latest upon receiving the bid opening minutes in relation to the actions, procedures and failures to act in the procedure of bid opening;
 - d) 10 days at the latest upon the receipt of the decision that decides on individual right resulting from public procurement in relation to the procedure of review and assessment of ability, and the procedure of review, assessment and selection of the most successful bidder;

- e) 10 days at the latest after the expiry of time limit for issuance of the decision on individual rights resulting from the public procurement referred in item d) of this paragraph,
- (2) Appeals shall be filed 30 days at the latest upon learning that the contract was concluded without implementing a public procurement procedure, in contravention to this Law, and within one year at the latest from the day of concluding the contract in that procedure.
- (3) In the case of awarding a contract under a framework agreement referred to in Article 32 paragraph (5) of this Law or under the dynamic purchasing system referred to in Article 123 of this Law, the appeal shall be filed within 30 days at the latest if the contracting authority notifies the bidders that the contract based on framework agreement or dynamic purchasing system was awarded in relation to the procedure for awarding a contract under a framework agreement or dynamic purchasing system.
- (4) In case of negotiated procedure without publication of notice and procedure for service contract award referred to in Annex II Part B, appeals shall be lodged at the latest:
 - a) 10 days after the date of publication of the voluntary *ex ante* transparency notice, if this notice was published;
 - b) 30 days after the date of publication of the contract award notice, if the voluntary *ex ante* transparency notice was not published.
- (5) In small-value public procurement procedures referred in Article 88, paragraph (1), item a) of this Law, appeals shall be filed within five days from the day of receipt of the decision on selection of the most successful bidder.
- (6) The appellant who failed to file the appeal pursuant to provisions of paragraphs (1) to (5) of this Article shall lose the right to question the legality on the same grounds in later stages of the procedure.

Section C. Legal Protection before the PRB

Article 102

(Presentation of Evidence in the Procedure upon Appeal)

- (1) The parties to the procedure shall be under obligation to present all the facts on which they based their requests or decisions, actions, acts or defaults, and to present evidence to corroborate these facts.
- (2) In the legal protection procedure, the contracting authority shall be under obligation to prove the existence of facts and circumstances, upon which it has decided on rights, acted or failed to act, and conducted the procedures, which are the subject matter of the procedure upon appeal.
- (3) In the legal protection procedure, the appellant shall be under obligation to prove or, at least, make credible the existence of facts and reasons concerning the legal interest to file the appeal, breaches of procedure or breaches of application of the substantive law indicated in the appeal, for which the appellant knows or ought to have known.

Article 103

(Fundamental Breaches of the Law)

- (1) In public procurement procedures, absolutely fundamental breaches of the Law shall be those breaches that the PRB handles *ex officio* and that may lead to the cancellation of the procedure completely or partially, as follows:
 - a) lack of compliance of bidding documentation with this Law or implementing regulations, that has resulted in impossibility of establishing whether the allegations in the appeal are grounded or that has resulted in the violation of basic principles of this Law, i.e. unlawful contract award;
 - b) conduct of public procurement procedure without adopting the decision on the launch of the public procurement procedure, with content defined in Article 18 of this Law;
 - c) publication of public procurement notices that are not in compliance with this Law or implementing regulations, and bidding documentation;
 - d) violations of procedure in bid opening, or failing to meet the time limit for evaluation of requests to participate.
- (2) Relatively fundamental breaches of the Law shall be the breaches that may lead to cancellation of the public procurement procedure, if the direct link is established between the breach and the outcome of the procedure.

Article 104

(Competences of the PRB)

- (1) In the legal protection procedure, the PRB shall act within the limits of the requests indicated in the appeal, and it shall act *ex officio* in relation to the breaches of the Law as defined in Article 103, paragraph (1) of this Law.
- (2) The PRB shall not be under obligation to check factual and legal situation that was subject of prior appeal in the same public procurement procedure.

Section d. Appeal

Article 105

(Contents of the Appeal)

The appeal shall contain:

- a) name or title of the appellant, residence or headquarters of the appellant, name of representative or power of attorney of the appellant, if any;
- b) name of the contracting authority against which the appeal is being filed;
- c) number and date of the public procurement procedure and data on the publication of the public procurement notice, if the notice was published;
- d) number and date of the decision on selection of the bid, cancellation of the procedure or of other decision of the contracting authority;

- e) other information on acting, failing to act, or the conducts of the contracting authority that are the subject of the procedure, or on the subject matter of procurement;
- f) description of the factual situation;
- g) description of violations of this Law and implementing regulations and reasoning;
- h) proposal of evidence;
- i) proof of paid administrative fee on appeal, in the amount defined in Article 108 of this Law;
- j) signature of the appellant or the signature of the authorized person, i.e. power of attorney (if the appellant has any) and stamp (if the appellant has any).

Article 106

(Procedure for the Irregular Appeal)

- (1) If an appeal filed does not contain the information referred in Article 105, paragraph 1, items a), b), c), d), e), h), and j) of this Law, the PRB shall invite the appellant to supplement the appeal and shall set the time limit for it that may not be longer than three days as of the day of receipt of the request to supplement.
- (2) If the appellant fails to act upon the request of the PRB in accordance with paragraph (1) of this Article, the appeal shall be dismissed as irregular unless it could be acted upon based on its contents and if the appeal has instrument of appeal set and proof that the administrative fee for the appeal has been paid.

Article 107

(Filing an Appeal to the PRB)

The appellant shall file the appeal to the PRB through the contracting authority, within the time limits and in the manner stipulated by this Law.

Article 108

(Administrative Fee for Appeal)

- (1) The appellant shall be under obligation to pay a fee for initiating the review procedure in the following amounts:
 - a) KM 500.00 for estimated procurement value of up to KM 50,000.00;
 - b) KM 800.00 for estimated procurement value between KM 50,000.00 and KM 80,000.00;
 - c) KM 2,000.00 for estimated procurement value between KM 80,000.00 and KM 250,000.00;
 - d) KM 5,000.00 for estimated procurement value between KM 250,000.00 and KM 400,000.00;
 - e) KM 8,000.00 for estimated procurement value between KM 400,000.00 and KM 800,000.00;

- f) 12,000.00 KM for estimated procurement value between 800,000.00 KM and 9,000,000.00 KM;
 - g) KM 25,000.00 when the value of procurement amounts to or exceeds KM 9,000,000.00.
- (2) The appellant shall pay the relevant amount of fee referred to in paragraph (1) of this Article on the basis of data on estimated procurement value stated in the bidding documentation.
 - (3) Before considering the appeal, the PRB shall establish whether the appellant paid the fee in compliance with paragraphs (1) and (2) of this Article.
 - (4) If the estimated procurement value is not known in the moment of lodging the appeal to the PRB or has not been published, the fee for launching the review procedure shall be paid in the amount of KM 2,000.00. PRB shall invite the appellant to pay the balance of the fee within a certain time limit if the review procedure establishes that the fee was paid in an insufficient amount.
 - (5) When an appeal is filed against a decision on selection or cancellation, and does not refer to the overall procurement but only to one or several procurement lots, the fee shall amount to one third of the amounts referred to in paragraph (1) of this Article.
 - (6) The fee shall be paid to the budget of the institutions of Bosnia and Herzegovina and international obligations of Bosnia and Herzegovina and shall be nonrefundable in case the appeal is found to be ungrounded.
 - (7) BiH Ministry of Finance and Treasury shall adopt instructions on manner of payment, control, and reimbursement of the fees stipulated in this Article.

Article 109

(Actions of the PRB upon Appeals)

- (1) Upon receipt of the appeal, the PRB shall establish its timeliness and admissibility and whether the appeal was filed by an authorized person.
- (2) Once the PRB establishes that the appeal is timely, admissible and filed by an authorized person, it shall proceed with consideration of allegations in the appeal.

Article 110

(Suspension Effect of the Appeal)

The filed appeal shall suspend the public procurement procedure, the conclusion and/or execution of the public procurement contract or framework agreement until the PRB reaches its decision.

Section E. Deciding on Appeal

Article 110

(Decisions on Appeal)

- (1) In the legal protection procedure, the PRB may:
 - a) suspend the procedure upon appeal because of the appeal being withdrawn;

- b) dismiss the appeal by issuing a conclusion because of incompetence, inadmissibility, impropriety, untimeliness and because it was filed by a person lacking legal capacity;
 - c) dismiss the appeal because of groundlessness thereof;
 - d) annul the decision, procedure or action in the part violating the Law or implementing regulations;
 - e) decide on request of contracting authority to continue the public procurement procedure;
 - f) annul the procurement contract or framework agreement under the circumstances referred to in paragraph (2) of this Article.
- (2) The PRB shall annul the contract or framework agreement if the contracting authority:
- a) applied the negotiated procedure without publication of a notice or procedure for service contract award referred to in Annex II Part B contrary to the provisions of this Law;
 - b) failed to publish a procurement notice on the public procurement portal if it was required by this Law;
 - c) concluded the contract or framework agreement in contravention to provisions of Article 98 of this Law if this prevents the PRB from examining the appeal before the conclusion of a contract or framework agreement;
 - d) concluded the contract or framework agreement without applying the public procurement procedure, except in cases permitted by this Law.
- (3) A procurement contract or framework agreement shall not be subject of annulment, if in cases referred to in paragraph (2) item a), b), and d) of this Article, the contracting authority had reasonable grounds to believe that it acted in compliance with this Law, has published the voluntary *ex ante* transparency notice and the contract or framework agreement had not been concluded before the expiry of a period of 15 days after the publication of this notice.
- (4) In justified cases referred to in paragraph (5) of this Article the PRB may keep in force the contract or framework agreement being subject of annulment, to the extent the contract or framework agreement has been already performed. In such a case the PRB shall impose a financial penalty on the contracting authority in the amount indicated in paragraph (8) of this Article.
- (5) The PRB shall not annul the contract or framework agreement if it establishes, after having examined all relevant aspects, that overriding reasons related to general interest require that the contract is maintained in force.
- (6) The general interest, in the context of paragraph (5) of this Article shall not concern economic interest directly linked to the contract or framework agreement concerned, encompassing in particular the costs that may be incurred due to a delay in performance of a contract or framework agreement, costs that may result from implementing a new public procurement procedure, costs that may result from the

change of the economic operator performing the contract or framework agreement and costs of legal obligations resulting from annulment of contract or framework agreement. Economic interest in maintaining the contract in force may be considered as an important public interest only where the annulment of the contract or framework agreement would cause disproportionate consequences.

- (7) Annulment of the contract or framework agreement shall be effective from the moment the contract has been concluded.
- (8) Pecuniary penalties referred to in paragraph (4) of this Article shall be imposed on the contracting authority in the amount of up to 5% of the contract value, taking into account the type and scope of violation as well as circumstances under which the violation was committed.
- (9) The penalty specified under the provisions of this Article shall be paid into the account of the State, entity or local level budget where the contracting authority concerned has its headquarters.
- (10) PRB shall decide by issuing a decree on the main matter, and in other cases by issuing a conclusion.
- (11) PRB shall be under obligation to adopt a conclusion or a decision on the appeal within 15 days from the day of completion of appeal by the contracting authority, but not later than 30 days from the day of receipt of the appeal by the contracting authority.
- (12) In exceptionally complex cases, chairperson of the PRB may, by issuing a conclusion, extend the time limit referred to in paragraph (3) of this Article, but not beyond 30 additional days. This conclusion shall be delivered to all parties in the procedure.
- (13) Decision or conclusion of the PRB referred to in this Article shall be final and enforceable.

Article 112

(Joining Procedures)

- (1) In case there are several appeals referring to the same public procurement procedure, the Chairperson of the PRB may adopt a conclusion on joining the procedures, without determining the existence of any other conditions to join procedures. In that case, a single decision shall be issued on appeals in the given public procurement procedure. Time limits shall be counted from the date of receipt of the last appeal.
- (2) Legal remedy in compliance with this Law shall not be allowed against the conclusion of the PRB referred to in paragraph (1) of this Article.

Article 113

(Decision Making by the PRB)

- (1) PRB shall decide the review procedure in panels comprising of panel president and two panel members.

- (2) In complex cases and cases of international threshold values, the panel president shall propose deciding the case in a plenary session.
- (3) Plenary session shall take place in cases when a precedent from all previously taken positions is to be adopted.
- (4) In cases referred to in paragraphs (2) and (3) of this Article, the panel president shall adopt a special conclusion.
- (5) PRB members may not refrain from voting.
- (6) Decree, i.e. conclusion referred to in Article 112 paragraph (2) of this Law shall be signed by the panel president and the enactment shall be certified with the stamp of the PRB.
- (7) Composition of the panel for deciding on appeals shall be defined by the PRB Chairperson by issuing a special decree. PRB Chairperson may preside over the panel in the review procedure.
- (8) Conclusions and decisions of the PRB, as well as judgments of the Court of Bosnia and Herzegovina, shall be publicly disclosed on the portal of the public procurement.

Article 114

(Disqualification on Grounds of Conflict of Interest)

- (1) PRB member or other person involved in a given case may not adopt decisions on it or be involved in decision-making procedure if he is, with the bidder or the contracting authority, legal representative or person authorized by the bidder, contracting authority or their legal representatives, management members or authorized representatives: in a business relation, in direct or indirect family relations (blood relatives up to the fourth degree of kinship inclusive), in marital (even when divorced) or extra-marital relations, or in case of in-laws up to the third degree inclusive.
- (2) PRB member, i.e. another person, that has been in a labor relation, i.e. employed with the bidder or the contracting authority, unless two years have passed since the discontinuation of the labor relation in compliance with paragraph (1) of this Article, may neither adopt decisions in a given case, nor be involved in solving the same case before the PRB.
- (3) In case of reasons referred to in paragraphs (1) and (2) of this Article as well as other grounds for exclusion, the PRB member shall have to inform, without delay, the chairperson of the PRB who shall be under obligation to pass a decision on the exclusion of the PRB member. No appeal shall be allowed against this decision pursuant to this Law. The provisions of this paragraph shall also apply to any other person involved in deciding on the case if, pursuant to the provisions of this Article, he may not be involved in the procedure of resolving of the given case.
- (4) In case the Chairperson of the PRB is subject to reasons referred to in paragraphs (1) and (2) of this Article, the Chairperson of the PRB shall be under obligation to inform of that, without delay, other members of the PRB who shall adopt a decision on exclusion.

- (5) No special legal remedy shall be allowed against this decision referred to in paragraphs (3) and (4) of this Article pursuant to this Law.

CHAPTER II. LEGAL PROTECTION AGAINST PRB DECISIONS

Section A. Court Protection

Article 115

(Administrative Dispute)

- (1) Contracting authority and parties to the procedure may initiate an administrative dispute before the Court of Bosnia and Herzegovina (hereinafter: the Court of BiH) against a PRB decision within 30 days from the day of the receipt of the decision.
- (2) The administrative dispute on the lawsuit filed by parties in a public procurement procedure shall be held according to the emergency procedure.
- (3) Contracting authority or party to the procedure may also submit a request to postpone the final decision or conclusion of the PRB, together with a lawsuit initiating an administrative dispute within the time limit referred to in paragraph (1) of this Article.
- (4) Respecting public interest and taking into account the damages that may be caused by postponing the final PRB decision, the Court of BiH shall adopt a special decree on the request referred to in paragraph (3) of this Article that shall postpone the execution of the final PRB decision for a determined period of time or until a decision is adopted by a court on the lawsuit filed in the administrative dispute.

Article 116

(Infringement Provisions)

- (1) PRB shall submit an infringement report to the competent misdemeanor court in case of determining that violations of the public procurement procedure have occurred that represent an infringement in the context of provisions of this Law. In cases in which review procedure has not been initiated, the Agency shall submit an infringement report to the competent misdemeanor court, once it establishes the violations of this Law that fall within its scope of competence.
- (2) Contracting authority shall be fined for an infringement with a pecuniary penalty amounting to between KM 1,500.00 and KM 15,000.00 in case of:
 - a) procuring supplies, works or services without conducting the public procurement procedures defined by this Law, except in cases allowed by the Law;
 - b) failing to protect information provided to is by an economic operator, who marked them as confidential, and that, pursuant to the provisions of this Law, may be declared confidential;
 - c) failing to comply with conditions and methods of public procurement in terms of estimated values and in case of division of procurement values with the purpose of avoiding the application of the defined procurement procedure;
 - d) applying negotiated procedure without publication of notice in contravention with provisions of Articles 21, 22, 23, 24, and 28 of this Law;

- e) failing to provide bidding documentation at the disposal of all economic operators who requested it, in line with the procurement notice, i.e. failing to provide insight into the documentation;
 - f) failing to respect the time limits for receipt of requests for participation and bids;
 - g) preparing technical specifications disregarding existing technical standards, regulations, or norms;
 - h) failing to deliver the decisions for which this Law prescribes the obligation of submission to the bidders in the public procurement procedure;
 - i) failing to complete the public procurement procedure by concluding a public procurement contract or by adopting a decision on cancellation;
 - j) concluding a procurement contract that is not in compliance with the selected bid and conditions determined in bidding documentation;
 - k) failing to keep documentation on public procurement in compliance with regulations on document archiving;
 - l) ceding a procurement procedure or authorizing a third party or a person that is not a contracting authority in the context of this Law to conduct the procurement with the purpose of avoiding the application of this Law;
 - m) failing, upon request of the PRB, to provide requested documentation or preventing insight into documentation;
 - n) failing to implement a decision of the PRB;
 - o) preparing contract subject matter, bidding requirements, technical specifications, or other elements of the public invitation in such a manner to favor a certain bidder, or in case of awarding a contract to the bidder who participated in the preparation of the bidding documentation or any of its parts, and has not proved in the course of the procedure that its position has not been more favorable;
 - p) failing to submit a contract award report;
 - r) failing to adopt a procurement plan and failing to publish it on the web site of the contracting authority.
- (3) Person responsible in the contracting authority shall be fined for an infringement referred to in paragraph (2) of this Article with a pecuniary penalty amounting to between KM 300.00 and KM 3,000.00.
- (4) A bidder that provides false data in documents proving personal, operative, financial, technical, and professional ability shall be fined for an infringement with a pecuniary penalty amounting to between KM 1,000.00 and KM 10,000.00.
- (5) Person responsible in the bidder shall be fined for an infringement referred to in paragraph (4) of this Article with a pecuniary penalty amounting to between KM 200.00 and KM 2,000.00.
- (6) Request for the launch of an infringement procedure shall be initiated by the PRB before the competent court according to the location of the headquarters of the contracting authority.

(7) In deciding in the procedure upon appeal, PRB may initiate criminal proceedings on the basis of the situation in the case file.

Section B. Subsidiary Application

Article 117

(Subsidiary Application of the Administrative Procedure Rules)

The provisions of the Law on Administrative Procedure shall duly apply to the procedure before the PRB that is not regulated under the provisions of this Law.

Article 118

(Relation to Other Regulations)

The relevant provisions of the Law on Obligations shall duly apply to the liability of the contracting parties as to the fulfillment of obligations from the public procurement contract.

Section C. Reimbursement of Costs of the Procedure

Article 119

(Right to Reimburse Costs in Public Procurement Procedure)

- (1) If the contracting authority breaches any of the provisions of this Law or its implementing regulations, the economic operator shall be entitled to request from the contracting authority to reimburse its costs for the preparation of the bid and the costs of participation in the public procurement procedure.
- (2) The right referred in to paragraph (1) of this Article shall not exist if, upon issuance of the decision on selection or the decision on cancellation of the public procurement procedure, the PRB finds that the candidate/bidder whose bid was not considered would not have had realistic prospects for its bid to be selected, even with compliance to the provisions of this Law and its implementing regulations, or whose appeal was dismissed.

Article 120

(Competence in the Procedure of Reimbursement of Costs)

- (1) PRB shall be competent to solve requests for reimbursement of costs in public procurement procedure referred to in paragraph (1) of Article 119 of this Law.
- (2) The request for reimbursement of costs shall be admissible only if the PRB has found:
 - a) that, because of acting contrary to the provisions of this Law or its implementing regulations, the decision was not issued in accordance with the information from the notice of procurement for the lowest-price bid or the most economically advantageous bid; or
 - b) that the selection of the public procurement procedure without publication of notice was contrary to this Law; or

- c) that the decision on cancellation of the public procurement procedure was contrary to the provisions of this Law or its implementing regulations; or
- d) that the decision on selection, which was adopted in favor of one economic operator without participation of other operators in the procedure, was disallowed pursuant to the provisions of this Law or its implementing regulations; or
- e) that the contracting authority, following a significant overreach of the time limit to adopt the decision and contrary to the request of the bidder to continue the public procurement procedure, failed to continue the procedure and failed to complete it by issuing a decision on the selection of the most successful bidder, i.e. a decision on cancellation.

Article 121

(Compensation of Damages)

Each of the participants in a public procurement procedure that suffered damages as a result of a violation of this Law shall have the possibility to launch the procedure for exercising the right to compensation of damages for the lost profit before the competent court, pursuant to general regulations on compensation of damages.

PART FOUR - TRANSITIONAL AND FINAL PROVISIONS

Article 122

(Transitional Provisions)

- (1) All public procurement procedures that have been launched prior to the beginning of implementation of this Law and in which no public procurement contract has been concluded shall be completed pursuant to the provisions of the Law on Public Procurement that was in force when the public procurement procedure was launched.
- (2) If a review procedure is being held against the decision of the contracting authority adopted in compliance with paragraph (1) of this Article, the decision of the PRB shall be final and enforceable. An administrative procedure may be initiated against the decision of the PRB within 30 days before the Court of BiH.
- (3) Procedures for compensation of damages initiated before the beginning of implementation of this Law shall be finalized pursuant to the provisions of the Law on Public Procurement that was in force when the public procurement procedure was launched.
- (4) In case there are different regulations in Bosnia and Herzegovina regulating identical matters as this Law, the application of this Law shall have precedence over other regulations.
- (5) Unless this Law specifically defines time limits for adoption of implementing regulations adopted by the BiH Council of Ministers and the Agency, they shall be adopted within the timeframe of six months from the entry into force of this Law.
- (6) Director of the Agency whose term of office is ongoing shall remain in the position of the Director until the expiry of the term of five years, counting from the day of his appointment. Members of the Board of the Agency whose term of office is ongoing

shall remain members of the Board of the Agency until the expiry of the term of five years, counting from the day of their appointment.

- (7) PRB members who have been appointed and whose term of office is ongoing shall remain in office until the expiry of the five-year period, counting from the day of their appointment. If the five-year period has already expired since their appointment, PRB members shall continue performing tasks within the scope of competence of the PRB until the appointment of new members. PA BiH shall publish a vacancy notice within 30 days at the latest from the day of entry into force of this Law.
- (8) Until the establishment and beginning of operations of the branch offices, all appeals shall be resolved by the headquarters of the PRB in Sarajevo. BiH Council of Ministers shall be under obligation to ensure financial assets and conditions necessary for the beginning of operations of the branch offices, within the time limit of three months, at the latest, from the date of entry of this Law into application.

Article 123

(Electronic Procurement, Electronic Auctions, and Dynamic Purchasing System)

- (1) The manner of publication of notices in public procurement procedures shall be regulated by the Instructions on Method of Publication of Notices in Public Procurement Procedures.
- (2) Electronic procurement, electronic auction, and dynamic purchasing system, the methods, time limits, and beginning of application shall be defined in an implementing regulation to be adopted by the BiH Council of Ministers within one year at the latest from the beginning of application of this Law.

Article 124

(Termination of Application)

- (1) Law on Public Procurement of Bosnia and Herzegovina (Official Gazette of BiH issues No. 49/04, 19/05, 52/05, 8/06, 24/06, 70/06, 12/09, 60/10, and 87/13) shall cease being effective when this Law enters into force.
- (2) Upon the beginning of application of this Law the following implementing regulations adopted based on the Law referred to in paragraph (1) of this Article shall cease to apply:
 - a) Instructions on Implementation of the Law on Public Procurement of Bosnia and Herzegovina (Official Gazette of BiH issues No. 03/05 and 24/09);
 - b) Instructions on Manner of Keeping Minutes on Bid Opening (Official Gazette of BiH issues No. 17/05 and 27/08);
 - c) List of Contracting Authorities by Category that are under Obligation to Apply the Law on Public Procurement of Bosnia and Herzegovina (Official Gazette of BiH issues No. 03/05 and 86/06);
 - d) Rulebook on Direct Agreement Procedure (Official Gazette of BiH issues No. 53/06 and 20/09);

- e) Instructions on Application and Usage of Standard Bidding Documentation Models for Public Procurement Procedures for Supplies, Services, and Works (Official Gazette of BiH issue No. 56/07).

Article 125

(Final Provisions)

- (1) This Law shall enter into force on the eighth day from the day of its publication in the Official Gazette of BiH, and its application shall start six months from its entry into force.
- (2) This Law shall also be published in official gazettes of entities and Brčko District of BiH.

No: 01,02-02-1-59/13

April 29, 2014

Sarajevo

Chairperson
of the House of Representatives
of BiH Parliamentary Assembly
Milorad Zivkovic, PhD

Chairperson
of the House of Peoples
of BiH Parliamentary Assembly
Dragan Covic, PhD

ANNEX I:

LIST OF WORKS ACTIVITIES REFERRED TO IN ARTICLE 2, PARAGRAPH (12), OF THE LAW ON PUBLIC PROCUREMENT OF BOSNIA AND HERZEGOVINA¹

The activities include construction of new buildings and works, restoring and common repairs.

Group	Class	Subject	Notes
1		Site preparation	
	11	Demolition and wrecking of buildings; earth moving	<p>This class includes:</p> <ul style="list-style-type: none"> -demolition of buildings and other structures; -clearing of building sites; -earth moving: <ul style="list-style-type: none"> ▪ excavation, ▪ landfill, ▪ levelling and grading of construction sites, ▪ trench digging, ▪ rock removal, ▪ blasting, ▪ etc. -site preparation for mining: <ul style="list-style-type: none"> ▪ overburden removal and other development and preparation of mineral properties and sites. <p>This class also includes:</p> <ul style="list-style-type: none"> -building site drainage; -drainage of agricultural or forestry land.
	12	Test drilling and boring	<p>This class includes:</p> <ul style="list-style-type: none"> -Test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes. <p>This class excludes:</p> <ul style="list-style-type: none"> -drilling of production oil or gas wells, -water well drilling, see 25 -shaft sinking, see 25 -oil and gas field exploration, geophysical, geological and seismic surveying
2		Building of complete construction or parts thereof; civil engineering	
	21	General construction of buildings and civil	<p>This class includes:</p> <ul style="list-style-type: none"> -construction of all types of

¹ This list applies the definitions of works activities used in connection with EU procedures.

		engineering works	<p>buildings; -construction of civil engineering constructions:</p> <ul style="list-style-type: none"> ▪ bridges, including those for elevated highways ▪ viaducts ▪ tunnels and subways, ▪ long-distance pipelines, ▪ communication and power lines. ▪ urban pipelines, ▪ urban communication and power lines <p>-ancillary urban works; -assembly and erection of prefabricated constructions on the site. This class excludes: -service activities, incidental to oil and gas extraction -construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 23; -building installation, see 3; -building completion, see 4; -architectural and engineering activities -project management for construction</p>
	22	Erection of roof covering and frames	<p>This class includes: -erection of roofs; -roof covering; -waterproofing.</p>
	23	Construction of highways, roads, airfields and sport facilities	<p>This class includes: -construction of highways, streets, roads, other vehicular and pedestrian ways; -construction of railways; construction of airfield runways; -construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations; -painting of markings on road surfaces and car parks. This class excludes: -preliminary earth moving, see</p>

			11
	24	Construction of water projects	This class includes construction of: -waterways; -harbor and river works; -pleasure ports (marinas) -locks; etc. -dams and dykes; -dredging; -subsurface work.
	25	Other construction work involving special trades	This class includes construction activities specializing in one aspect common to different kinds of structures, requiring specialized skill or equipment: -construction of foundations, including pile driving; -water well drilling and construction, shaft sinking; -erection of non self manufactured steel elements; -steel bending; -bricklaying and stone setting; -scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms; -erection of chimneys and industrial ovens. This class excludes: -renting of scaffolds without erection and dismantling.
3		Building installation	
	31	Installation of electrical wiring and fittings	This class includes installation in buildings or other construction projects of: -electrical wiring and fittings; -telecommunication systems; -electrical heating systems; -residential antennas and aerials; -fire alarms -burglar alarm systems; -lifts and escalators; -lightning conductors; etc.
	32	Insulation work activities	This class includes installation in buildings or other construction projects of thermal, sound or vibration insulation. This class excludes:

			-waterproofing, see 22
	33	Plumbing	This class includes installation in buildings or other construction projects of: -plumbing and sanitary equipment; -gas fittings; -heating, ventilation, refrigeration or air-conditioning equipment and ducts; -sprinkler systems. This class excludes: -installation of electrical heating systems, see 31.
	34	Other buikng installation	This class includes: -installation of illumination and signaling systems for roads, railways, airports and harbors; -installation in buildings or other construction projects of fittings and fixtures not elsewhere classified
4		Building completion	
	41	Plastering	This class includes: -application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.
	42	Joinery installation	This class includes: -installation of non self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials; -interior completion such as ceilings, wooden wall coverings, movable partitions, etc. This class excludes: -laying of parquet and other wood floor coverings, see 43.
	43	Floor and wall covering	This class includes laying, tiling, hanging or fitting in buildings or other construction projects of: -ceramic, concrete or cut stone wall or floor tiles; -parquet and other wood floor coverings; -carpets and linoleum floor

			coverings, including of rubber or plastic; -terrazzo, marble, granite or slate floor or wall coverings; -wallpaper.
	44	Painting and glazing	This class includes: -interior and exterior painting of buildings; -painting of civil engineering structures; -installation of glass, mirrors, etc. This class excludes: Installation of windows, see 42
	45	Other buiking completion	This class includes: -installation of private swimming pools; -steam cleaning, sand blasting and similar activities for building exteriors; -other building completion and finishing work not elsewhere classified. This class excludes: -interior cleaning of buildings and other structures
5		Renting of construction or demolition equipment with operator	
	50	Renting of construction or demolition equipment with operator	This class excludes: -renting of construction or demolition machinery and equipment without operators.

ANNEX II

LIST OF SERVICES REFERRED TO IN ARTICLE 2, PARAGRAPH (10), AND ARTICLE 6, PARAGRAPH (3), OF THE LAW ON PUBLIC PROCUREMENT OF BOSNIA AND HERZEGOVINA²

PART A

Public contracts having as their object the following services shall be awarded according to the rules set forth in Chapter II of this Law when the contract values amounts to or exceeds the primary threshold value fixed in Article 6, paragraph (2), of this Law, and by a procedure open to international competition, when the contract value amounts to or exceeds the international threshold values fixed in Article 6, paragraph (3), of this Law.

Category No.	Subject
1	Maintenance and repair services
2	Land transport services ³
3	Air transport services of passengers and freight except transport, of mail
4	Transport of mail by land ⁴ and by air
5	Telecommunication services
6	Financial services <ul style="list-style-type: none"> a) Insurance services b) Banking and investment services⁵
7	Computer and related services
8	Research and development services ⁶
9	Accounting, auditing and bookkeeping services
10	Market research and public opinion polling services
11	Management consulting services ⁷ and related services
12	Architectural services: <ul style="list-style-type: none"> -engineering services and integrated engineering services; -urban planning and landscape engineering services; -related scientific and technical consulting services; -technical testing and analysis services

² This list applies categories of services used in connection with EU procedures.

³ Except for rail transport services covered by category 18.

⁴ Except for rail transport services covered by category 18.

⁵ Except financial services in connection with the issue, sale purchase or transfer of securities or other financial instruments, and central bank services. Also excluded services involving the acquisition or rental, by whatever financial procedures, of land, existing buildings or other immovable property or concerning rights thereon; nevertheless financial services supplied at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Law.

⁶ Only those services where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting authority.

⁷ Except arbitration and conciliation services.

13	Advertising services
14	Building-cleaning services and property management services
15	Publishing and printing services on a fee or contract basis
16	Sewage and refuse disposal services; sanitation and similar services

PART B

Public contracts having as their object the following services shall be awarded according to the rules set forth in Chapter II of this Law, when the contract value fixed in Article 6, paragraph (2), of this Law.

Category No.	Subject
17	Hotel and restaurant services
18	Rail transport services
19	Water transport services
20	Supporting and auxiliary transport services
21	Legal services
22	Personnel placement and supply services ⁸
23	Investigation and security services, except armoured car services
24	Education and vocational education services
25	Health and social services
26	Recreational, cultural and sporting services
27	Other services

⁸ Except employment contracts.

PART C

Public contracts having as their objects the following services are exempted of the application of this Law.

Category	Subject
A	employment contracts;
B	contracts for financial services connected with the issues, purchase, sale, assignment or transfer of securities or other financial instruments, and central bank services;
C	contracts for arbitration and conciliation services;
D	contracts for the acquisition, development, production or co-production of programs for radio and television broadcasting time;
E	Contracts for research and development services, except for those research and development services the benefit from which is used solely for the needs of the contracting authority and which are fully paid for by the contracting authority.