

# LAW ON PUBLIC PROCUREMENT

CONSOLIDATED TEXT [1](#) Law on Public Procurement ("Official Gazette of the Republic of Macedonia" nos. 136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013, 148/2013, 160/2013, 28/2014, 43/2014 and 130/2014).

## **Chapter I**

### **General Provisions**

#### **Part 1**

#### **Subject to regulation**

##### **Article 1**

This Law shall regulate the manner and procedure for awarding public procurement contracts, the competences of the Public Procurement Bureau, the competences of the Public Procurement Council, the establishment and competences of the State Appeals Commission upon Public Procurements and the legal protection in the procedures for awarding public procurement contracts, as well as for concessions and public private partnership.

##### **Article 2**

This Law shall in particular ensure:

- competition among economic operators;
- equal treatment and non-discrimination of economic operators;
- transparency and integrity in the process of awarding public procurement contracts, and
- rational and efficient utilization of the funds in the procedures for awarding public procurement contracts.

#### **Part 2**

#### **Definitions**

##### **Article 3**

The terms used in this Law shall have the following meaning:

1. "Public procurement contract" is a contract of financial interest, which includes the sector contracts, concluded in writing between one or more contracting bodies on one side and one or more economic operators on the other side, the subject of which is the execution of works, delivery of goods or provision of services, in accordance with this Law;
2. "Sector contract" is a public procurement contract awarded for the purpose of performing one or more of the activities as referred to in Article 176 paragraph (1) of this Law;
3. "Procedure for awarding a public procurement contract" is a procedure conducted by one or more contracting bodies whose aim or activity is purchase or acquisition of goods, services or works;
4. "Open procedure" is a procedure whereby any economic operator has the right to submit a tender;

5. "Restricted procedure" is a procedure whereby any economic operator has the right to submit a request to participate, and only the candidates selected by the contracting body are invited to submit a tender;
6. "Competitive dialogue" is a procedure in which any economic operator has the right to submit a request to participate and whereby the contracting body conducts a dialogue with the selected candidates so as to determine one or more appropriate solutions that meet its requirements, and on the basis of which the selected candidates prepares their tenders;
7. "Negotiated procedure" is a procedure whereby the contracting body consults the selected candidates and negotiates the terms of contract with one or more of them;
8. "Simplified competitive procedure" is a simplified procedure for awarding a public procurement contract, carried out in accordance with Chapter V Part 6 of this Law;
9. "Framework agreement" is a written agreement between one or more contracting bodies and one or more economic operators, for the purpose of determining the basic requirements that regulate the public procurement contracts that have to be awarded in a certain time period, in particular regarding the price and, if possible, the planned quantities;
10. "Electronic auction" is a recurrent process of negative bidding realized after an initial full evaluation of tenders, whereby the tenderers have a possibility, exclusively by using electronic means, to revise the proposed prices, wherefore the ranking is made automatically by using electronic means;
11. "Tender documentation" is a set of documents, information and requirements that serve as a basis for elaboration, submission and evaluation of the participation request, i.e. the tender;
12. "Technical specification" is a set of technical requirements, regulations, recommendations and standards that in detail define the minimum requirements from a technical point of view to be met by the goods, services or works which are subject of the public procurement contract;
13. "Economic operator" is any natural person or legal entity or a group of such persons, which offer goods, services or works on the market;
14. "Candidate" is any economic operator which submits a request to participate in a restricted procedure, negotiated procedure or competitive dialogue;
15. "Request to participate" is a proposal of the candidate by which its personal situation, technical and professional qualifications and economic and financial standing is proven, as a requirement for obtaining an invitation to submit a tender in a restricted procedure, negotiated procedure or a competitive dialogue;
16. "Tenderer" is any economic operator that submits a tender;
17. "Participant in an open conceptual solution contest" is any economic operator that submits a project in an open conceptual solution contest;
18. "Tender" is a proposal given by the tenderer prepared on the basis of the tender documentation, representing a basis for concluding the public procurement contract;
19. "Technical proposal" is a part of the tender which proves the fulfillment of the technical requirements and the conditions referred to in the tender documentation;
20. "Financial proposal" is a part of the tender containing the offered price according to the requirements determined in the tender documentation;

21. "Alternative tender" is a tender offering other features of the subject of the public procurement contract than those determined in the tender documentation;

22. "Contractor" is a tenderer or a group of tenderers that concludes a public procurement contract;

23. "Evaluation of a tender" is the evaluation of the tender submitted in the procedure for awarding a public procurement contract;

24. "Acceptable tender" is a tender submitted within the determined time period that fully meets all requirements referred to in the tender documentation and technical specifications, and matches all criteria, requirements and possible requirements regarding the qualification of the tenderers;

25. "Appropriate tender" is an acceptable tender within the limits of the amount defined by the contracting body by the decision on public procurement, or that can be additionally provided, in accordance with Article 28 paragraph (4) of this Law;

26. "Services for research and development" are all the activities that include thorough research, applied research and experimental development which include implementation of technological demonstrators, that is devices that demonstrate the effect of a new concept or of new technologies in an appropriate and representative environment;

27. "Responsible person" is an official heading a state body, a mayor of the local self-government unit or a director of a legal entity, i.e. a person authorized by it;

28. "Special or exclusive right" is a right granted by a competent body arising from a law or regulation based on a law, with the purpose of limiting the performance of activities in certain public services field only to one or to a limited number of legal entities;

29. "Electronic means" is use of electronic equipment for the purpose of processing and storing data (including digital compression), which are transmitted, delivered and received via wire, radio, optical means or via other electromagnetic means;

30. "Electronic system of public procurement" is a single computerized system available on Internet that is used for provision of higher efficiency and effectiveness in the field of public procurement;

31. "Associated economic operator" is the economic operator:

- over which the economic operator with which it is associated has dominant influence,
- which has a dominant influence over the economic operator with which it is associated, or
- which, together with the economic operator with which it is associated, is subject of dominant influence by a third entity;

32. "Dominant influence" exists where:

- one of the economic operators, directly or indirectly, owns more than half of the capital of the other economic operator, and in that manner controls the majority of votes based on the stocks or shares issued by the other economic operator, and may appoint more than half of the members in the governing bodies or the supervisory board of the other economic operator, or
- the founders of the both economic operators are related to the second degree;

33. "Economic operator profile" means functionality of the electronic public procurement system which facilitates the proving of the fulfillment of certain criteria for establishment of the capability of the registered economic operators;

34. "Written or in writing" is any expression consisting of words or figures which can be read, reproduced and subsequently announced, as well as information that is delivered and stored by using electronic means, provided that the security of the content is secured and the signature is identifiable;

35. "Excess of works" are quantities of completed works that exceed the agreed quantities of works under the description contained in the bill of quantities and the calculation;

36. "Shortage of works" are negative deviations of the completed works regarding the agreed quantities of works under the description contained in the bill of quantities and the calculation;

37. "Unpredicted works" are the works that are not covered by the contract, and which must be carried out due to omissions and faults in the project which are established by the supervisory body and the designer, as well as due to other issues determined by law;

38. "Additional works" are the works that are not agreed, but the contracting body requests their execution;

39. "Central procurement body" is a contracting body which in accordance with Article 4 paragraph (1) points a), b) or c):

- acquires on its own behalf and for its own account goods or services intended for one or more contracting bodies or
- awards public procurement contracts and concludes framework agreements on behalf and for the account of one or more contracting bodies, and

40. "Common Procurement Vocabulary - CPV" is the reference nomenclature applicable in the procedures for awarding public procurement contracts and provides unity with the remaining existing nomenclatures.

## **Part 3**

### **Contracting bodies**

#### **Article 4**

(1) Contracting bodies shall be:

- a) state bodies, local self-government units and the City of Skopje;
- b) legal entities established for a specific purpose for meeting the public interest needs, not being of non-industrial or non-commercial nature, and which are mainly financed by the contracting bodies referred to in paragraph (1) point a) of this Article or by other such legal entities, or which are subject to control of their operations by the contracting bodies referred to in paragraph (1) point a) of this Article or by other such legal entities, or in which more than half of their governing or supervisory board members are appointed by the contracting bodies referred to in paragraph (1) point a) of this Article or by other such legal entities;
- c) associations established by one or several contracting bodies referred to in paragraph (1) points a) and b) of this Article;
- d) public enterprises, joint stock companies and limited liability companies wherein the contracting bodies referred to in paragraph (1) points a), b) and c) of this Article have dominant direct or indirect influence through ownership, i.e. if they hold the major part of the company's capital, have majority vote of the stockholders or appoint more than half of the governing or supervisory board members of the enterprise or the company, and which carry out one or more activities referred to in Chapter IX Part 1 of this Law, in the cases when they award public procurement contracts or conclude framework agreements for the purpose of carrying out appropriate activities, and
- e) any legal entity, other than those referred to in paragraph (1) points a), b) c) and d) of this Article, which carries out one or more activities referred to in Chapter IX Part1 of this Law on the basis of special or exclusive right, in the cases when it awards public procurement contracts or concludes framework agreements for the purpose of carrying out appropriate activities.

(2) The Government of the Republic of Macedonia (hereinafter: the Government) shall determine an indicative list of contracting bodies as referred to in paragraph (1) of this Article.

## **Part 4**

### **Application and exemptions**

#### **Article 5**

(1) This Law shall apply when:

- awarding public procurement contracts, including the sector contracts;
- concluding framework agreements;
- awarding contracts by other entities, in cases when the contract is directly financed or subsidized by a contracting body with more than 50%;
- awarding contracts by a contracting body on behalf and on the account of other natural or legal entity, in the cases when the contract is directly financed or subsidized by a contracting body with more than 50%, and
- organizing an open conceptual solution contest.

(2) In the cases referred to in paragraph (1) line 3 of this Article, the contracting body shall be obliged, in the contract on financing or subvention, to introduce an obligation for application of the provisions of this Law when awarding public procurement contracts.

#### **Article 6**

(1) The contracting body in the field of defense shall be obliged to apply the provisions of this Law, except in the cases when:

- it can lead to disclosure of information, which is contrary to the essential security interest of the country, or
- it endangers the essential security interest of the country, which are connected with manufacture or trade with weapons, ammunition and military materials and systems in accordance with law.

(2) With regard to the procurement in the field of defense, the contracting body shall be obliged to inform the Government, by the end of January in current year at the latest, regarding its annual procurement plans in the current year.

(3) The Government shall determine the procurements referred to in paragraph (2) of this Article.

#### **Article 6-a**

(1) Articles 2, 33, 34, 35, 36 and 103 of this Law shall apply when awarding a public procurement contract for the needs of a diplomatic and consular offices of the Republic of Macedonia abroad with estimated value up to Euro 20.000 in Denar counter-value for goods and services, that is Euro 50.000 in Denar counter-value for activities.

(2) The public procurement contracts for the needs of diplomatic and consular offices of the Republic of Macedonia abroad with estimated value exceeding the amounts referred to in paragraph (1) of this Article shall be awarded in accordance with the provisions of this Law.

#### **Article 7**

(1) This Law shall not apply to award of public procurement contracts in the case when:

- the contract is classified as "state secret" by a competent body in accordance with the regulations on classified information or
- the execution of the contract has to be accompanied by special security measures and procedures in accordance with the valid regulations.

(2) The contracting body shall inform the Government about any contract concluded in accordance with paragraph (1) of this Law.

## **Article 8**

This Law shall not apply in the cases of awarding public procurement contracts of services that:

- include purchase or lease of land, buildings or other immovable property and rights arising thereon, except in the case of awarding contracts for procurement of financial services related to the purchase or lease contracts;
- refer to purchase, development, production or co-production of program materials by radio or TV broadcasters, or for broadcasting time of TV and radio programs;
- refer to arbitration and mediation services;
- are financial services related to the issue, trading or transfer of securities or other financial instruments, and especially the transactions of the contracting bodies for acquiring funds or capital and the services of the National Bank of the Republic of Macedonia;
- are notary services;
- are enforcement agent services;
- refer to employment contracts, and
- refer to research and development services, except in the case when the results are used exclusively for carrying out the functions and competences of the contracting bodies, provided that the service is fully paid by the contracting body.

## **Article 9**

(1) This Law shall not apply to:

- public procurement contracts whereby the funds have been provided from international organizations (donors and lenders) or from third countries, provided that special terms and conditions for awarding public procurement contracts are prescribed by them,
- public procurement contracts awarded for the needs of the Army of the Republic of Macedonia sent to military activities and training and in humanitarian or peacekeeping operations and collective defense operations outside the territory of the Republic of Macedonia, in accordance with a ratified international agreement, and
- public procurement contracts of goods or works which are awarded on the basis of an international agreement concluded between the Republic of Macedonia and one or more countries and which are intended for joint implementation or exploitation of a construction by the signatory states or services intended for joint implementation or exploitation of projects by the signatory states, provided that the international agreement anticipates an appropriate procedure for awarding the public procurement contracts.

(2) Prior to carrying out the procurements referred to in paragraph (1) line 2 of this Article, the contracting body shall be obliged to obtain an approval from the Government.

## **Article 10**

This Law shall not apply when awarding public procurement contracts of services to another contracting body or legal entities established by one or more contracting bodies, in case they have exclusive right published in an official gazette to provide such services.

## **Article 10-a**

This Law shall not apply in the cases of awarding a contract to a legal entity by a contracting authority if:

- the legal entity has been established for the purpose of performing an activity within the scope of competences of that contracting authority,
- the legal entity has generated more than 80% of the total turnover in the previous business year for

the needs of the contracting authority,

- the subject of the contract is directly connected to the performance of the activity referred to in line 1 of this Article,
- the contracting entity is the single founder of that legal entity,
- the contracting authority supervises the legal entity, and
- the legal entity applies this Law accordingly in the procurement of goods, services and works necessary for execution of the contract.

### **Article 11**

This Law shall not apply to procurements whose total monthly amount does not exceed Euro 500 in Denar counter-value without value added tax (hereinafter: VAT).

## **Chapter II**

### **Public Procurement Bureau**

#### **Article 12**

(1) The activities in connection with the development of the public procurement system, as well as the provision of rationality, efficiency and transparency in the implementation of the public procurements shall be carried out by the Public Procurement Bureau as a body of the public administration within the Ministry of Finance.

(2) The Bureau shall have the capacity of a legal entity.

#### **Article 12-a**

The Bureau shall be financed by the Budget of the Republic of Macedonia and from its own incomes.

#### **Article 13**

(1) The Bureau shall be managed by a director who represents the Bureau, organizes and provides legal and efficient performance of the work and activities and undertakes measures within the competence of the Bureau in accordance with law.

(2) On a proposal of the Minister of Finance, the Government shall appoint and dismiss the director for a period of four years.

(3) A public announcement for appointment of a director of the Bureau shall be published in at least three daily newspapers that are printed on the whole territory of the Republic of Macedonia one of which is a newspaper printed in a language spoken by at least 20% of the citizens who speak an official language other than the Macedonian. [2](#)

### **[3](#)**

A person who meets the following requirements may be appointed as a director of the Bureau:

- 1) to be a citizen of the Republic of Macedonia;
- 2) at the moment of appointment, not to be issued an effective injunction banning him/her from exercising a profession, business or office;
- 3) to have at least 240 credits under ECTS, that is, completed VII/1 degree in the field of law or economy;
- 4) to have at least five years of work experience out of which at least three years in the field of public

procurements;

5) to hold one of the following internationally recognized certificates for active knowledge of English Language which is not older than five years: [4](#)

- TOEFL IBT - at least 74 points,
- IELTS - at least 6 points,
- ILEC (Cambridge English: Legal) - at least B2 level,
- FCE (Cambridge English: First) - passed,
- BULATS - at least 60 points, or
- APTIS - at least B2 level; and

6) to have passed a psychological test and an integrity test.

## [5](#)

(4) The director can be dismissed before the expiry of the time period referred to in paragraph (2) of this Article, provided that he/she works contrary to this Law and other laws, submits his/her resignation or his/her performance is unsatisfactory.

## **Article 14**

(1) The Bureau shall perform the following activities:

- initiate proposals for the adoption of legal and other acts in the field of public procurement to the Minister of Finance;
- monitor and analyze the enforcement of the law and the other public procurement regulations, the functioning of the public procurement system, and initiate modifications for the purpose of improving the public procurement system;
- provide opinions regarding the provisions and the application of this Law;
- advise and assist the contracting bodies and the economic operators;
- prepare models of tender documentation and model forms for the procedures regulated by this Law;
- keep single records and maintain and update the records of the public procurement contracts, and make them available to the public on ESPP ([www.e-nabavki.gov.mk](http://www.e-nabavki.gov.mk));
- monitor the timely submission of data and disable use of ESPP for users who disobey their obligations with regard to the use of ESPP, as well as the obligation referred to in paragraph (25) of this Article;
- reschedule electronic auction in case of technical mistake, ESPP crash and upon a decision of the State Appeals Commission upon Public Procurement;
- analyze the elaborations on non-implementation of electronic auction, in accordance with Article 123 of this Law and if the same are not well-founded, point the omission to the contracting body and
- propose Code of Ethics upon implementation of public procurement, adopted by the Minister of Finance;
- collect, process and analyze public procurement data and prepare statistical reports;
- immediately inform the contracting bodies, and if necessary, the competent bodies regarding the established irregularities from the received notifications;
- determine minimum requirements regarding the professional qualifications of the persons performing professional activities in the field of public procurement;
- organize and conduct training for civil servants and other competent persons in connection with the public procurement;
- manage and operate its web page and the Electronic System for Public Procurement (hereinafter: ESPP);
- prepare instructions as internal guidelines for preparation and delivery of the public procurement education and training for the public procurement trainers which are published on its website,
- mandatorily remove the published negative reference of an economic operator on the basis of a decision of a competent body, an agreement in the capacity of enforcement document between the contracting authority and the contractor, or at the request of the contracting authority accompanied by a statement of the person that issued the negative reference, given before a competent body for the committed technical mistake,
- analyze the explanations on the non-attachment of the tender documentation to the contract notice pursuant to Article 37 paragraph (2) of this Law, and if they are not well-founded, point out the



omission to the contracting authority.

- cooperate with international institutions and other foreign entities in the activities connected with the development of the public procurement system;
- realize international cooperation in connection with the public procurement system and plan and coordinate the foreign technical assistance in the field of public procurement;
- submit an annual report to the Government regarding its activities in the functioning of the public procurement system;
- give guidelines and prepare manuals and comments on the rules for public procurement and publish an electronic bulletin, and
- perform other activities in accordance with this Law.

(2) The statistical reports referred to in paragraph (1) line 7 of this Law shall contain data referring to:

- number and value of the concluded public procurement contracts;
- classification of the contracts by types of conducted procedures, by subject-matter of the contract and by countries where the head office of the contractor is located, and
- number and value of the concluded contracts and the requirements anticipated by this Law justifying the use of the negotiated procedure with or without prior publication of a contract notice.

(3) The Bureau shall cooperate with the contracting bodies referred to in Article 4 of this Law and with the trade companies, professional research institutions, associations or experts in certain areas in connection with the public procurement.

(4) The Public Procurement Council (hereinafter: the Council), within the framework of the Bureau, shall decide upon the requests for obtaining consent.

(5) The Council shall be composed of five members that shall decide strictly upon requests for obtaining consent and shall decide on issues related to their competence and shall do their work professionally. The members shall select the president from among themselves.

(6) The members of the Council shall be appointed by the Government by means of a public announcement which is published in at least three daily newspapers that are printed on the whole territory of the Republic of Macedonia one of which is a newspaper printed in a language spoken by at least 20% of the citizens who speak an official language other than the Macedonian for a period of four years with the right to be re-elected. The Council shall be held liable for its work before the Government. [6](#)

## [7](#)

(7) A person who meets the following requirements may be appointed as a member of the Council:

- 1) to be a citizen of the Republic of Macedonia;
- 2) at the moment of appointment, not to be issued an effective injunction banning him/her from exercising a profession, business or office;
- 3) to have at least 240 credits under ECTS, that is, completed VII/1 degree;
- 4) to have at least five years of work experience out of which at least three years in the field of public procurements;
- 5) to hold one of the following internationally recognized certificates for active knowledge of English Language which is not older than five years: [8](#)
  - TOEFL IBT - at least 74 points,
  - IELTS - at least 6 points,
  - ILEC (Cambridge English: Legal) - at least B2 level,
  - FCE (Cambridge English: First) - passed,
  - BULATS - at least 60 points, or
  - APTIS - at least B2 level; and
- 6) to have passed a psychological test and an integrity test.

(8) The Government shall dismiss the member of the Council prior to the termination of his/her term of office if:

- he/she so requests;
- he/she permanently loses the capability of carrying out his/her function, which is determined by the Government;
- he/she is sentenced for a crime to unconditional imprisonment of at the least six months by means of an effective court verdict;
- he/she meets the conditions for age pension,
- he/she performs activities which are contrary to the function of a member of the Council, or
- the member of the Council dies.

(9) The Government shall initiate a procedure for appointment of members of the Council at least three months prior to the termination of their term of office. The procedure for appointment should be completed at least 30 days prior to the regular termination of the members' term of office.

(10) The members of the Council cannot be members of organs and bodies, elected or appointed by the Assembly of the Republic of Macedonia or the Government.

(11) The manner of operating and functioning of the Council shall be laid down by rules of procedure adopted by the Minister of Finance.

(12) A separate request for obtaining consent that is distributed among the members and the president of the Council by a random electronic choice shall be submitted for each legal ground and it shall contain in particular:

- data on the entity submitting the request (name of the contracting body, address and head office, personal identification number of the contracting body, contact person with telephone number and e-mail),
- legal ground for the type of consent requested,
- subject-matter of public procurement contract,
- type of the procedure for awarding the public procurement contract,
- type of the public procurement contract,
- estimated value without VAT included, and
- signature of the responsible person and a seal.

(13) In addition to the written request, the contracting authority shall submit a report for the need of providing consent; explanation of the reasons for using the referred criteria, requirements or conditions; minutes of the conducted technical dialogue in the cases where its conducting is obligatory under this Law and tender documentation it intends to use in the contract award procedure. In the case of additional works in accordance with this Law, the contracting authority shall submit an explanation from the contractor and the supervision of the need and the reasons due to which the need for additional works has occurred and shall enable inspection of the complete construction and technical documentation, an additional audited project in the cases where it is necessary, and an insight on-the-spot.

(14) The Council may request the contracting authority to deliver additional documentation or a supplement to the explanation within a period determined by the Council.

(15) The Council shall respond to the request within a period of ten working days as of the day of its receipt, that is, within three working days regarding requests for consent in the negotiated procedure due to urgency, irrespective whether additional documentation or supplement to the explanation is requested.

(16) As an exception to paragraph (15) of this Article, the Council may extend the deadline for responding to the request for a period of an additional five working days in the case where the estimated value of the subject-matter of the public procurement contract exceeds the amount of EUR

500.000 in Denar counter-value, without VAT, and shall inform the contracting authority thereof within a period of three working days as of the day of receipt of the request.

(17) The Council shall decide upon the request by a decision which may be appealed by the contracting authority to the State Appeals Commission upon Public Procurement without any compensation, within a period of five days as of the day of receipt of the decision in a legal protection procedure pursuant to this Law. The Council shall adopt a conclusion for registration and deletion of experts from the Register, extension of the deadline for response to the request, withdrawal of the request for consent by the contracting body, and in other cases of exercising its competences for which adoption of decision is not foreseen under this Law. Any form of influence upon the adoption of the decisions of the Council and in particular any abuse of the public authorizations for the purpose of influencing the course and the outcome of the decision-making shall be prohibited.

(18) Should the Council decide not to grant its consent, the contracting authority must not publish the contract notice, that is, must not conduct the negotiated procedure without a prior publication of a contract notice, or it shall be considered that a contract award procedure pursuant to this Law has not been conducted.

(19) If the Council does not respond to the request within the period referred to in paragraph (15), that is, within the additional time period referred to in paragraph (16) of this Article, it shall be considered that it has given its consent.

(20) In the course of making a decision on granting consent, the Council may invite at least three experts from the Register of Experts in the respective field by a random electronic choice in order to give their opinion, except for the requests for consent for additional works where the Council, by a random electronic choice, shall mandatorily invite at least seven experts. If any of the experts does not accept the invitation regarding the request for consent for additional works, the Council shall mandatorily continue to send invitations until all the experts in the respective field from the list are covered. If the number of experts is not enough after the list is covered, the Council shall engage the ones that have accepted, but not less than three persons.

(21) The expert shall be obliged to review the material and to deliver his/her opinion within a period of three working days as of the day of receipt of the material, except in the cases referred to in paragraph (16) of this Law, where the deadline may be extended for an additional three working days. Regarding the requests for obtaining consent for additional works, the experts shall prepare an opinion for the justification to conduct the negotiated procedure based on the documentation and the conducted inspection of the actual situation which they shall submit to the Council within a period of five working days.

(22) In addition to his/her opinion, the expert shall deliver a statement under full moral, financial, and criminal liability that the opinion is made professionally and conscientiously, pursuant to the rules of the science and the profession, the ethical norms, and professional standards, and that it shall not participate, directly or indirectly, in the contract award procedure which is subject-matter of the request for obtaining consent.

(23) The expert can neither participate, directly or indirectly, nor influence the contracting authority in the contract award procedure for which he/she has granted his/her opinion in the decision-making process of the Council.

(24) The opinions of the experts shall be attached to the decision without revealing their identity, and in the case the opinions are not accepted or they differ, the Council shall elaborate the reasons for their non-acceptance in the decision. If the expert fails to deliver his/her opinion within the legally determined deadline, the Council shall decide without his/her opinion.

(25) The experts shall be entitled to remuneration for the delivered expert opinion which shall be borne by the contracting authority that filed the consent request in an amount set out by a tariff adopted by the Minister of Finance.

(26) The amount of the remuneration in the tariff referred to in paragraph (25) of this Article shall be determined according to the type of the procedure, the estimated value of the contract, its complexity, as well as the time needed for collection of data and preparation of the opinion.

(27) The manner of inclusion and operation of the experts in the work of the Council in the course of the decision-making for granting consent shall be determined in detail by a rulebook adopted by the Minister of Finance.

(28) The Council shall implement and keep an electronic Register of Experts who provide assistance in the decision-making for granting consent. The personal data on the experts who are entered in the Register of Experts shall be the following: name and surname, date and place of birth, citizenship, address of residence, contact telephone, e-mail address, field of specialization, data on education, work experience and informal education. The deadline for keeping the personal data shall be three years as of the day of the notification for deletion from the Register of Experts.

(29) The Council shall publish an open call in which the areas of specialization, the selection requirements, the manner of filing the applications, the documentation needed for proving the fulfillment of the requirements for selection, and other elements determined by the Council shall be laid down.

(30) The entry in the Register of Experts shall be made on the basis of a previously submitted written request to the Council, which shall be accompanied by evidence of the meeting of the general requirements laid down in paragraph (31) of this Article, as well as the special requirements defined in the open call.

(31) For a person to be entered in the Register of Experts, he/she should meet the following general requirements:

- to hold a university degree in the respective field (a degree for completed four-year higher education or a degree of 300 credits according to the European credit transfer system),
- not to be prohibited the performance of a profession, activity, or duty, by means of an effective decision, for the period of duration of the consequences of the prohibition, and
- to have at least five years of work experience in the respective field for which the request is submitted.

(32) The experts shall be entered in the Register of Experts according to specialization areas which shall be determined by the Council. A person may be entered in the Register of Experts in several specialization areas for which he/she has filed a request and meets the requirements pursuant to this Article.

(33) The Council shall delete the person from the Register of Experts if:

- he/she requests it,
- he/she renders an unprofessional opinion two times consequently, that is, he/she prepares the opinion contrary to the rules of the science and the profession, the professional standards, and the regulations on prevention of conflict of interests,
- the person refuses to participate in the work without any justifiable and appropriately documented reasons, although he/she has been duly invited by the Council,
- the person does not deliver an opinion regarding the obtained materials within the deadline referred to in paragraph (21) of this Article, or
- the person dies.

(34) The manner of keeping the Register of entry and deletion of experts shall be laid down by a rulebook adopted by the Minister of Finance.

(35) The Council shall submit an annual report on its operation to the Government.

### **Article 14-a**

(1) The Bureau shall prepare and deliver education on the public procurements and issue certificates for passed exam to a person for public procurement , for which it shall keep records.

(2) Educators who hold a certificate for educators, issued by the Bureau shall have lectures at the education on public procurements.

(3) The participants in the education shall pay a fee intended for covering the costs for organizing and delivering the education.

(4) After completing the education an exam shall be taken in accordance with the program for education on public procurements.

(5) The exam shall be taken in front of an examination commission formed by the director of the Bureau. The Bureau shall issue a certificate to the persons who have passed the exam.

(6) The certificate for passed exam for a person for public procurement shall be valid three years, and the certificate for educator shall be valid two years as of the day of its issuance.

(7) The program for education on public procurements, the program for training of educators for public procurements, the form and content of the certificate for passed exam for a person for public procurements and for an educator, as well as the amount of the fee paid by the participants in the education shall be prescribed by the Minister of Finance.

## **Chapter III**

### **Types of public procurement contracts**

#### **Article 15**

(1) The public procurement contract can be a contract for public procurement of goods, contract for public procurement of services and contract for public procurement of works.

(2) The subject of the public procurement contract may be composed in several separate identical parts, whereas for each part a separate contract may be concluded.

(3) The tenderer may submit a tender for one, several or all the part, whereas the tender has to include at least one whole part.

(4) The tenderer shall state in the tender whether it refers to the whole subject of the public procurement contract or only to separate parts.

(5) If the tenderer submits a tender for two or several parts, the same shall be submitted in a manner that enables evaluation of each part separately.

(6) If the subject-matter of procurement is composed of several items within a single part, the contracting authority must not compose the part in a manner which shall limit the competition solely to one economic operator, irrespective whether the subject-matter of the contract has been composed in one or several parts.

(7) In the procurement of medicaments, medical devices, and/or expendables, the contracting authority must not compose a part of several items, unless where the items within the part are related in case of use or upon a prior consent of the Council.

## **Article 16**

(1) The procurement of one or more goods through immediate purchase, purchase with deferred payment, or lease with or without an option to buy the goods, shall be the subject of the contract for public procurement of goods.

(2) The public procurement contract whose main subject is the procurement of goods, which also covers activities for their setting and installation, shall be a contract for public procurement of goods.

## **Article 17**

(1) Subject of the contract for public procurement of services shall be the provision of one or more services, as follows:

- maintenance and repair services, services for temporary employment, land or air transport services, research and development services, market research and public opinion survey, cleaning services and property management services, insurance, banking and investment, telecommunications, IT, accounting, auditing, bookkeeping, consultant, architectural, engineering, advertising, publishing, printing and sanitation services, or
- railway and water transport services, hotel, catering, legal, investigative, education, health, social, recreational, cultural, sport and other services not covered by paragraph (1) line 1 of this Article.

(2) Articles 2, 33, 34, 35, 36 and 55 of this Law shall apply in the case of awarding a contract for public procurement of services as referred to in paragraph (1) line 2 of this Article with an estimated value exceeding Euro 20.000 in Denar counter-value, excluding VAT.

(3) Articles 2 and 103 of this Law shall only apply in the case of awarding a contract for public procurement of services as referred to in paragraph (1) line 2 of this Article with an estimated value below Euro 20.000 in Denar counter-value, excluding VAT.

(4) The services referred to in paragraph (1) of this Article shall be in detail prescribed by the Government.

(5) The public procurement contract whose main subject is provision of services, which also covers construction activities, shall be considered as a contract for public procurement of services.

(6) The tender documentation and the public services contract for preparation and design of a software solution for the needs of the contracting authority must contain a provision envisaging the ownership of the contracting authority of the original code of the software solution.

(7) The value of the contract for software solution maintenance services at annual basis must not exceed 20% of the value of the contract for procurement of the software solution.

(8) Regarding services for plane tickets booking, the contracting body may, in addition to the conducted procedure for awarding a public procurement contract of services in accordance with this Law, book plane tickets for a cheaper price than the prices under the concluded contract:

- by using Internet at the following service providers: Tripadvisor, Kayak, Skyscanner, Expedia, Orbitz, Priceline, Travelocity and eDreams and/or
- from companies that offer low-budget flights.

(9) In the cases referred to in paragraph (8) of this Article, the contracting body shall be obliged to appropriately document the procedure for plane tickets booking and to keep the documentation at least five years as of the day of the booking.

(10) As an exception to paragraph (8) of this Article, the contracting body may, in the case of urgency, book the cheapest plane ticket for the set date of travel with the least transfers without previously conducting the procedure for awarding a public procurement contract for services.

(11) The value of the booked plane tickets based on paragraph (8) of this Article must not exceed the estimated value of the conducted procedure for awarding a public procurement contract of services.

## **Article 18**

(1) Subject of the contract for public procurement of works shall be:

- carrying out construction activities or construction works;
- design and carrying out construction activities or design and construction works or
- realization, by any means, of a construction corresponding to the requirements determined by the contracting body and which by itself fulfills certain technical and economic function.

(2) The Government shall prescribe the construction activities being subject-matter of the contract for public procurement of works.

(3) The contracting authority shall be obliged to include all the items that are projected in the bill of quantities of the audited project for carrying out the works during the preparation of the technical specifications in the procedure for awarding a public procurement contract, except in the cases where the works are carried out in phases with special procedures for awarding a public procurement contract. [9](#)

(4) The contractor which is a holder of the procurement under the contract for procurement of works shall be liable for the irregularities that may come up during a period of ten years as of the day of commissioning of the works in accordance with the Law on Obligations. This shall also apply to the designer if the irregularity results from an irregularity in the project, as well as to the person who has conducted the supervision if the irregularity results from any irregularity in the supervision.

## **Article 19**

(1) Provided that the subject of a contract for public procurement of services are the services as referred to in Article 17 paragraph (1) lines 1 and 2 of this Law, the provisions of Article 17 paragraph (2) of this Law shall apply only if the estimated value of the services referred to in Article 17 paragraph (1) line 2 of this Law is higher than the estimated value of the services referred to in Article 17 paragraph (1) line 1 of this Law.

(2) When awarding the public procurement contract, the contracting body cannot, within the frame of the same contract, combine the services referred to in Article 17 paragraph (1) lines 1 and 2 of this Law, with the purpose of applying the provisions referred to in Article 17 paragraph (2) of this Law.

## **Article 20**

If the subject of the public procurement contract includes procurement of goods and services, the contract shall be considered as:

- contract for public procurement of goods, if the estimated value of the goods is higher than the estimated value of the services or
- contract for public procurement of services, if the estimated value of the services is higher than the estimated value of the goods.

## **Chapter IV**

### **Joint provisions of the procedures for awarding a public procurement contract**

#### **Part 1**

#### **General rules**

##### **Article 21**

(1) The contracting body shall award a public procurement contract by applying open or restricted procedure.

(2) As an exception to paragraph (1) of this Article, only in certain cases in accordance with this Law, the contracting body can award a public procurement contract by applying other procedures.

(3) The contracting body shall organize an open conceptual solution contest when it acquires a plan or a project, mainly in the area of spatial planning, urban planning, architecture and civil engineering or data processing, selected by a jury based on the open competition.

##### **Article 22**

(1) The contracting body can conduct the open and restricted procedure and the simplified competitive procedure by publishing a contract notice by using electronic means through the ESPP.

(2) The Minister of Finance shall prescribe the manner of use of the ESPP.

(3) In order to use ESPP the contracting bodies and the economic operators shall pay fees in line with the tariff adopted by the Minister of Finance. The funds from payment of the fees shall be income of the Bureau, and shall be used for promotion and development of the public procurement system.

##### **Article 23**

(1) The Government can decide to determine a central procurement body which shall award public procurement contracts for certain goods, service or works.

(2) The contracting bodies can procure goods, services or works from or through the central procurement body, and it shall be considered that they conducted a procedure for awarding a public procurement contract in accordance with this Law.

##### **Article 24**

(1) Joint procurement shall be conducted coordinately through one contracting body on behalf of a group of contracting bodies, upon a previously concluded agreement for conducting a joint procurement.

(2) The agreement for conducting a joint procurement shall define all rights and obligations which the contracting bodies have in respect to the economic operator which is to be awarded the public procurement contract.

##### **Article 25**



The contracting body shall be obliged to ensure protection of the information which the economic operator has designated as confidential, especially when it is a case of a business secret or rights arising from intellectual property.

## **Article 26**

(1) On the basis of determined sources of financing, the contracting body shall adopt a procurement plan covering its total procurement needs for the current year by types of goods, services and works according to the Common Procurement Vocabulary, determining the time period for initiation of the procedure, the estimated value of the contract and the type of procedure to be used when awarding the contract. The total procurement needs shall also include the needs realized as group procurement or through the central procurement body.

(2) The contracting body shall adopt the plan referred to in paragraph (1) of this Article by the end of January of the current year.

(3) If necessary, the contracting body can amend or modify the annual procurement plan during the year, in accordance with the planned and provided funds for public procurement.

(4) The form, content, as well as the manner of preparation of the annual public procurement plan shall be prescribed by the Minister of Finance.

## **Article 26-a**

(1) Prior to the initiation of the procedure for awarding a multi-year public procurement contract, the contracting body shall be obliged to plan the funds necessary for its implementation with the budget, investment program or financial plan for the corresponding year.

(2) The budget beneficiaries and the units beneficiaries of the central authority, shall initiate the procedure for awarding a multi-year public procurement contract, anticipated by a program included in the development part of the Budget, on the basis of an approval issued by the Government of the Republic of Macedonia upon a prior opinion from the Ministry of Finance.

(3) Upon a previously obtained opinion from the Ministry of Finance, the Government of the Republic of Macedonia shall give an approval regarding the change of the dynamics of the implementation and/or payment of the obligations arising from the concluded public procurement anticipated by the program included in the developmental part of the Budget, and for whose change a previous consent of the other contracting party is obtained.

## **Article 26-b**

In case of decrease of the funds by the Budget of the Republic of Macedonia, the budget beneficiaries upon a previously obtained consent from the other contracting party, by concluding an annex to the contract for extension of the time period for the following year or more, can change the dynamics of the implementation and/or payment of the obligations arising from the concluded public procurement contracts. The Government of the Republic of Macedonia shall adopt a decision on consenting the conclusion of annex to the contract, upon previous opinion from the Ministry of Finance.

## **Part 2**

### **Estimating the value of the public procurement contract**

## **Article 27**

(1) The contracting body cannot divide the public procurement contract in multiple separate contracts with lower value, nor use methods for calculation of the estimated value of the contracts in order to obtain a lower value than the real estimated value of the contract, so as to avoid a certain procedure determined by this Law.

(2) When there is a need of procurement for which the procedure for awarding a public procurement contract for the current year has already been implemented, and which could not have been anticipated at the moment of its implementation, the contracting body shall consider the total estimated value of the corresponding need upon selection of the type of procedure.

(3) The manner of estimation of the value of the public procurement contract shall be prescribed by the Minister of Finance.

### **Part 3**

## **Decision on public procurement**

### **Article 28**

(1) The contracting body shall decide on the need for public procurement.

(2) The decision shall determine the subject (type) and quantity of the procurement, the amount and source of funds required to implement the contract, the manner and procedure for awarding the public procurement contract and shall appoint the chairman and members of the public procurement commission, their number and their deputies (hereinafter: the commission), as well as the possible engagement of external experts, if necessary.

(3) The decision shall also state the reasons and the explanation for carrying out the negotiated procedure, i.e. competitive dialogue, if the contracting body conducts a negotiated procedure, i.e. competitive dialogue, as well as the reasons of urgency for reducing the time periods prescribed by this Law.

(4) If during the procedure for awarding a public procurement contract, the most favorable acceptable tender, in accordance with the requirements of the procedure, has higher price than the amount of funds defined by the decision on public procurement, the contracting body may amend the decision and provide additional funds necessary for implementation of the contract, under a condition that the offered price is not less favorable than the actual prices on the market and does not exceed the limit of the value prescribed for the particular type of procedure, in accordance with this Law.

### **Article 29**

(1) The commission, depending on the used procedure for awarding a public procurement contract, shall perform the following activities:

- implement technical dialogue with the economic operators,
- open the tenders,
- keep minutes,
- evaluate the qualifications of the economic operators,
- determine the selected candidates,
- check the technical proposals submitted by the tenderers regarding the conditions and requirements referred to in the technical specifications or the descriptive documentation,
- check the financial proposals submitted by the tenderers regarding the price, appropriate financial and other conditions determined in the tender documentation,
- determine unacceptable tenders, as well as the reasons why those tenders are considered as unacceptable,
- determine the acceptable tenders,

- propose the most acceptable tender,
- prepare a report of the applied procedure,
- notify the participants in the procedure about the outcome of the applied procedure, and
- other activities in accordance with this Law.

(2) The commission referred to in paragraph (1) of this Article shall be obliged to act in accordance with the Code of Ethics in the course of implementation of the public procurements.

### **Article 29-a**

(1) The contracting body shall appoint a person or an organizational form within which limits activities in the area of public procurements are to be performed.

(2) The person referred to in paragraph (1) of this Article shall be a person employed in the contracting body, trained to perform activities in the area of public procurements, in accordance with this Law and holder of a proper certificate for passed exam for a person for public procurement. If the contracting body has appointed an organizational form to perform the public procurement activities, all the persons within the organizational form shall hold a certificate for passed exam for a person for public procurement.

(3) The person or the organizational form referred to in paragraph (1) of this Article shall perform the following activities:

- coordinate the preparation of the public procurement plan,
- prepare the decision on public procurement,
- publish the contract notice for public procurement,
- consult the commission upon implementation of the procedure for awarding a public procurement contract,
- mandatorily participate as a member of the public procurement commission in procedures for awarding a public procurement contract with estimated value exceeding Euro 130.000 in Denar counter-value for goods and services and exceeding Euro 4.000.000 for activities,
- draft the necessary acts pursuant to the report of the implemented procedure,
- update the data submitted to ESPP, in accordance with this Law,
- publish a negative reference in ESPP in accordance with the conditions of this Law,
- give directions and instructions to the contracting body about acting in an appealing procedure, in cooperation with the public procurement commission and
- perform other activities in accordance with this Law.

(4) The person referred to in paragraph (1) of this Article shall be obliged to act in line with the Code of Ethics

### **Article 30**

(1) External experts shall help the commission during the check and evaluation of the technical, financial and other aspects connected with the tenders and shall not have the right to decide.

(2) External experts shall prepare a report regarding the technical, financial and other aspects for the purpose of facilitating the decision making of the commission during the evaluation of the tenders. The report of the external experts shall be part of the report on the conducted procedure.

### **Article 31**

During the evaluation, the commission and the external experts shall be obliged to keep as a secret the content of the tenders and any other information submitted by the tenderers or the candidates.

## **Part 4**

### **Rules for preparation of the tender documentation**

#### **Article 32**

(1) The contracting body shall be obliged to state in the tender documentation the requests, rules, criteria, and other necessary information, so as to ensure that the economic operator has complete, just and precise information regarding the manner of conducting the procedure for awarding a public procurement contract.

(2) The tender documentation shall in particular contain the following:

- general information regarding the contracting body, particularly the address, telephone number, fax number, e-mail, contact person, manner of communication, etc;
- instructions regarding the legal time periods and the necessary requirements for participation in the procedure for awarding a contract;
- if required, the minimum criteria for determining the competence and documents that has to be submitted by the tenderers or candidates so as to prove that they meet the criteria for determining the competence;
- technical specifications or, in case of application of a competitive dialogue or negotiated procedure, a descriptive documentation;
- instructions regarding the preparation and submission of the technical and financial proposal;
- detailed and complete information regarding the criteria for awarding the contract, which are to be applied for selection of the most favorable tender in accordance with the provisions referred to in Chapter VII Part 3 of this Law;
- instructions regarding the legal protection in the procedure for awarding a public procurement contract, and
- information regarding the compulsory provisions of the public procurement contract.

(3) The content of the tender documentation shall be in detail prescribed by the Minister of Finance.

#### **Article 33**

(1) The technical specifications, if necessary, shall define the following characteristics: quality level, technical and performance level, requirements regarding the impact on the environment and safety during use, as well as dimensions, terminology, symbols, testing methods, packaging, marking and labeling, and instructions for the use of the product, quality assurance systems, conditions and procedures for evaluation of the conformity with the relevant standards and other similar requirements. In case of a contract for public procurement of works, the technical specifications can also refer to the conceptual solution and evaluation, examination, inspection and reception requirements of the works or techniques, procedures and methods of execution, as well as other requirements being of technical character that the contracting body is able to describe, in accordance with law or with the general or specific regulations, related to the delivered works, materials or other elements of those works.

(2) The contracting body shall define the technical specifications:

- by reference, as a rule, in the following order: application of Macedonian standards in accordance with the European standards, European technical approvals (European technical attests), common technical specifications used in the European Union, international standards or other technical references established by the European standardization bodies. When the above mentioned are not prescribed, the technical specifications shall be defined by reference to Macedonian standards, national technical approvals or national technical specifications referring to the products use, the conceptual solution or the execution of the works. Each reference shall be accompanied by the words 'or counter-value';
- in regard to the requirements for performance or functional features of the subject-matter of the contract that have to be described sufficiently accurate in order to ensure that the tenderers exactly

understand the subject-matter of the contract, and that the contracting body selects the most favorable tender;

- in regard to the requirements for performance or functional features as referred to in line 2 of this paragraph, by referring to standards, technical approvals, common technical specifications as referred to in line 1 of this paragraph as a possible manner of fulfillment of the features or functionality requirements; or
- by reference to the specifications as referred to in line 1 of this paragraph for certain features, and by reference to the requirements for performance or functional features as referred to in line 2 of this paragraph for the remaining features.

## **Article 34**

(1) In the cases referred to in Article 33 paragraph (2) line 1 of this Law, the contracting body cannot reject the tender if the products, services or works do not comply with the specifications to which the contract refers, and the tenderer proves that the tender meets the requirements of the contracting body in an appropriate manner.

(2) When the contracting body defines the technical specifications by specifying the performance requirements or functional features, it cannot reject the tender if the tenderer proves that the products, services or works ensure fulfillment of the performance requirements or functional features and are in accordance with:

- a Macedonian standard being in compliance with an European standard;
- European technical approval (European technical attest),
- a common technical specification used in the European Union;
- an international standard, or
- other technical reference systems established by European standardization bodies.

(3) The technical book of the manufacturer or the report from the conducted test or calibration issued by an accredited testing or calibration laboratory or by an accredited product and service certification body or an accredited inspection body that ensures the application of the generally accepted standards can be an adequate manner to prove the conformity with the required technical specifications.

## **Article 35**

(1) The performance requirements or functional features as referred to in Article 33 paragraph (2) line 2 of this Law defining the technical specifications can also include requirements in connection with the environment.

(2) When the contracting body indicates requirements in connection with the environment in the performance requirements or functional features, it can use detailed specifications, or, if necessary, parts of them as defined in the European or (multi-)national "eco-labels", or by any other eco-labels, under the following conditions:

- those specifications to appropriately define the characteristics of the procurements or the services representing the subject-matter of the public procurement contract;
- the goods or services to meet the criteria for acquiring „eco-labels“ in accordance with the Law on Environment,
- the „eco-labels“ to be obtained in a manner and procedure in accordance with the Law on Environment, and
- the „eco-labels“ to be available to all interested parties.

(3) The contracting body can indicate that the products and services with "eco-label" would be considered fully compliant with the technical specifications in the tender documentation. The contracting body shall not consider that a certain proposal is non-compliant with the technical specifications solely for the reason that the products or services do not bear an "eco-label", provided that the tenderer proves, by any appropriate means, that the products or services correspond to the

requested technical specifications. The contracting body shall be obliged to accept the certificates by recognized bodies established in any member state of the European Union.

(4) The technical book of the manufacturer or the report from the conducted test or calibration issued by an accredited testing or calibration laboratory or by an accredited product and service certification body or an accredited inspection body that ensures the application of the generally accepted standards can be an adequate manner to prove the conformity with the required technical specifications required,.

## **Article 36**

(1) The contracting body must not define technical specifications referring to a specific manufacture, production, particular process or trademarks, patents, types or specific origin of goods with the effect of favoring or elimination of certain economic operators or certain products.

(2) As an exception to paragraph (1) of this Article, such reference shall be allowed only in an exceptional case when a sufficiently precise description of the subject-matter of the contract for all interested parties in accordance with the provisions of Article 33 and 34 of this Law cannot be provided, and it should be accompanied by the words „or counter-value“.

(3) Regarding the procurement of medicaments, the contracting authority must define the technical specifications by using generic names of the medicaments.

## **Article 36-a**

(1) The contracting authority shall mandatorily ask for consent from the Council before it publishes the contract notice and it shall deliver an appropriate explanation of the need of procurement for which there are not at least:

- three producers on the market of the Republic of Macedonia and three producers on the markets abroad that can meet the requirements of the technical specifications for an individual item regarding the simplified competitive procedures with an estimated value of up to Euro 5.000 in Denar counter value without VAT included;
- four producers on the market of the Republic of Macedonia and four producers on the markets abroad that can meet the requirements of the technical specifications for an individual item regarding the simplified competitive procedures with an estimated value of over Euro 5.000 in Denar counter value without VAT included; or
- five producers on the market of the Republic of Macedonia and five producers on the markets abroad that can meet the requirements of the technical specifications for an individual item regarding the open and restricted procedure.

(2) The contracting authority shall mandatorily ask for consent from the Council prior it publishes the contract notice if it envisages criteria for establishing capability, apart from the personal condition and the capability of performing professional activity, which can be met by:

- three or less than three economic operators on the market of the Republic of Macedonia in the simplified competitive procedures with an estimated value of up to EUR 5.000 in Denar counter-value, without VAT,
- four or less than four economic operators on the market of the Republic of Macedonia in the simplified competitive procedures with an estimated value of more than EUR 5.000 in Denar counter-value, excluding VAT, or
- five or less than five economic operators on the market of the Republic of Macedonia in an open procedure, restricted procedure, a negotiated procedure with prior publication of a contract notice, and a competitive dialogue procedure.

(3) Upon the adoption of a public procurement decision, and prior to the publication of the notice, the persons defining the technical specifications and the criteria on establishment of the capability, shall be obliged to prepare an appropriate explanation on the justification of their use upon a prior analysis

of the market and to present a report to the responsible person with a proposal in terms of the need of providing consent from the Council.

(4) Based on the accepted report by the responsible person which contains a proposal on the need of providing consent, a request for consent shall be submitted to the Council.

(5) The contracting authority shall be obliged, in a written form, at the official contact address, to inform the economic operators that they have been included in the market analysis regarding the subject of the procurement to which the report refers and to invite them to participate in the respective procedure.

(6) The provisions of paragraph (2) of this Article shall accordingly apply to the procedures for awarding contracts for establishment of a public private partnership.

### **Article 36-b**

(1) As an exception to Article 36-a paragraph (1) of this Law, the contracting authority shall mandatorily ask for consent from the Council before it publishes the contract notice which shall end in award of framework agreement and shall submit appropriate explanation for the need of procurement for which there are not at least seven producers, providers of services or contractors of works on the market of the Republic of Macedonia and seven producers, providers of services or contractors of works on the markets abroad that can meet the requirements of the technical specifications for an individual item.

(2) As an exception to Article 36-a paragraph (2) of this Law, the contracting authority shall mandatorily ask for consent from the Council before it publishes the contract notice which shall end in award of framework agreement, provided that it foresees criteria for determination of capability, except personal status and capability for carrying out a professional activity, that may be met by at least seven economic operator on the market of the Republic of Macedonia.

### **Article 37**

(1) The contracting authority shall make the tender documentation available to any interested economic operator by using electronic means for the purpose of providing direct and full access via the ESPP simultaneously with the publication of the contract notice. The tender documentation forms shall be attached in a form which may be directly used by the economic operators.

(2) As an exception to paragraph (1) of this Article, the contracting authority shall make the tender documentation available in hard copy or by using magnetic medium only in the following cases:

- if the ESPP does not support the type of form in which the tender documentation has been prepared or a part of it, and it shall fill in an explanation in the ESPP, or
- in the case of publication of a notice for awarding public private partnership contract.

(3) No fee shall be paid for receiving tender documentation.

### **Article 38**

(1) The contracting body, within the time period referred to in paragraph (3) of this Article, on its own initiative or on the basis of questions for clarification by the economic operators, can amend or modify the tender documentation, which shall be done mandatorily upon a decision of the State Appeals Commission.

(2) The contracting authority shall mandatorily, according to the amendments of the tender documentation, extend the deadline for submission of the tenders or requests to participate for a period of six days at the least.

(3) The contracting body, no later than 6 days before the expiry of the time period for submission of the tenders or requests to participate, i.e. three days in case of a procedure with a request to submit tenders, shall send free of charge the amendments and modifications of the tender documentation to all economic operators that have obtained tender documentation; or, if it is published by using electronic means for the purpose of direct and full access, it shall publish the amendments and modifications in the same manner as it has published the tender documentation.

(4) As an exception to paragraph (1) of this Article, the contracting authority must not amend the elements of the tender documentation for which the Council has given consent.

### **Article 39**

(1) The contracting body shall be obliged to reply to all additional questions asked in connection with the tender documentation by the economic operators, provided that such questions have been submitted at least six days before the time period for submission of the tenders or requests to participate, i.e. three days in case of a simplified competitive procedure.

(2) The contracting body shall, within the shortest possible time period, reply to the questions in writing and shall send the reply to all economic operators that have obtained the tender documentation free of charge, without stating the name of the economic operator that has asked the question; or if the tender documentation has been published by using electronic means for the purpose of direct and full access, it shall publish the reply in the same manner as it has published the tender documentation.

## **Part 5**

### **Participation in the procedure for awarding a public procurement contract**

#### **Article 40**

(1) Any economic operator shall have the right to participate, individually or as a member in a group of economic operators, in the procedure for awarding a public procurement contract.

(2) As an exception to paragraph (1) of this Article, economic operator with one or several negative references in a period of one year as of the day of publication of the last negative reference, in accordance with the requirements referred to in Article 47 and 48 of this Law, shall not have right to participate in a procedure for awarding a public procurement contract.

(3) The submitted data on negative references shall be available to the public on ESPP.

#### **Article 41**

The economic operators can join together and form a group of economic operators with the purpose of submitting a joint request to participate or a joint tender, not having the obligation to assume a legal form.

(2) An integral part of the group tender shall be a contract for filing a group tender by which the members of the group of economic operators oblige themselves and the contracting authority to implement the public procurement contract, which shall particularly contain the following data:

- the member of the group which shall be the contractor, that is, shall submit the tender and shall



represent the group before the contracting authority,

- the member of the group which shall sign the public procurement contract on behalf of the group of economic operators,
- the member of the group which shall, on behalf of the group of economic operators, provide a guarantee of the tender in the form of a bank guarantee or shall deposit funds, if provided for by the tender documentation,
- the member of the group which shall issue the invoice and the account at which the payments shall be made,
- brief description of the responsibilities of each of the members of the group of economic operators for implementing the contract, and
- other data that shall be determined by the contracting authority in the tender documentation.

(3) The members of the group of economic operators shall have an unlimited and joint and several liability before the contracting authority for the obligations taken by the tender.

(4) A member of the group of economic operators cannot withdraw from the group of economic operators until the conclusion of a public procurement contract if:

- it is the contractor of the group of economic operators,
- it provides the guarantee of the tender in the form of a bank guarantee or deposited funds,
- the group of economic operators cannot prove the meeting of the criteria on establishment of the capability which have been required in the procedure without that member, or
- the other members of the group have not jointly assumed the obligations from the member of the group which wishes to withdraw from the group of economic operators.

(5) The withdrawal of a member from the group of economic operators contrary to paragraph (4) of this Article shall be regarded as withdrawal of the group tender.

## **Article 42**

The contracting body, following the selection of the most favorable tender, can require from the group of economic operators to assume a specific legal form, for the purpose of executing the contract.

## **Article 43**

(1) The persons who participate in the preparation of the tender documentation cannot participate as tenderers or members of a joint group in the procedure for awarding a public procurement contract.

(2) In the case of an open and limited procedure for awarding a public procurement contract for goods and services with estimated value exceeding Euro 130.000 in Denar counter-value, after the adoption of the decision on public procurement and before the publication of the contract notice for public procurement, the contracting body shall be obliged to conduct technical dialogue with the economic operators, more particularly to:

- make available to the public the tender documentation it intends to use in the procedure via the ESPP at least five working days upon the day of its publication,
- enable each interested economic operator to give its own proposals and comments to the published tender documentation in the period referred to in line 1 of this paragraph, by using electronic means or by organizing joint meeting in a previously determined time and date and
- after the period referred to in line 1 of this paragraph to review the received proposals and comments, and if they are acceptable to implement them in the tender documentation.

(3) The public procurement commission shall compose minutes for the conducted technical dialogues, that mandatorily contains description of the proposals and comments of the business community, as well as explanation for not accepting those proposals and comments that have not been implemented in the tender documentation. The minutes shall be a part of the procedure dossier.

(4) The contracting authority shall deliver the minutes of the conducted technical dialogue to all economic operators that have made their proposals and comments regarding the published tender documentation.

(5) The contracting body can also conduct a technical dialogue in procedures for awarding public procurement contracts with estimated value lower than the amount referred to in paragraph (2) of this Article.

(6) The participation in the technical dialogue shall not be considered participation in the preparation of the tender documentation, in terms of paragraph (1) of this Article.

## **Article 44**

The persons who participate or assist in the evaluation of the requests to participate or tenders, as well as the responsible person at the contracting body, cannot be candidates, tenderers, subcontractors or members in a group of tenderers in the respective procedure. In such case, the request to participate or the tender of the candidate or the tenderer shall be excluded from the procedure for awarding a public procurement contract.

## **Article 45**

(1) If the tenderer intends to cede a part of the public procurement contract to one or several subcontractors, the tender has to state the data on the part of the contract intended to be ceded to subcontractors, as well as data on all the proposed subcontractors (business name, head office, personal tax number and alike). The tenderer shall be liable with the contracting body for fulfillment of the public procurement contract, regardless of the number of subcontractors.

(2) The contracting body cannot request from the tenderer a part of the public procurement contract to be ceded to subcontractors or to engage particular manufacturers, unless otherwise regulated by a special law or an international agreement.

(3) In the course of implementation of the public procurement contract the contractor can alter the manufacturers for the particular part of the public procurement contract ceded to subcontractors, only upon previous approval from the contracting body.

## **Article 46**

(1) Within the framework of the same procedure for awarding a public procurement contract, the candidate i.e. tenderer can participate only with one request for participation, i.e. tender.

(2) All requests to participate i.e. tenders shall be rejected if the candidate, i.e. the tenderer:

- participates in more than one individual and/or joint request for participation i.e. tender or
- participates as a subcontractor in another individual and/or joint request for participation i.e. tender.

(3) The economic operator can participate as a subcontractor in more than one request for participation i.e.tender.

## **Part 6**

### **Guarantees**

#### **Article 47**

(1) The contracting body can require tender guarantee in the form of a bank guarantee or deposited funds, on the contrary shall require statement about the steadiness of the tender and that shall be mandatorily stated in the tender documentation.

(2) In the cases of bank guarantee or deposited funds the contracting body shall express the required value of the guarantee for the tender as percent of the value of the tender, wherefore it cannot require amount of a guarantee exceeding 3% of the value of the tender, VAT excluded.

(3) In the cases of statement on steadiness of the tender, the tenderer shall state that it shall not take the actions referred to in paragraph (5) of this Article. If the tenderer violates the given statement, the contracting body shall exclude it from the further procedure and shall act in accordance with paragraph (6) of this Article.

(4) The tender guarantee shall be submitted together with the tender in original form and cannot be submitted additionally upon the expiry of the deadline for submission of tenders.

(5) The contracting body shall collect the tender guarantee, retain the deposited funds, i.e. activate the statement on steadiness of the tender, if the tenderer:

- withdraws its tender before the expiry of its validity period;
- fails to accept the correction of the arithmetical mistakes made by the commission;
- fails to sign the public procurement contract in accordance with the requirements from the tender documentation and the submitted tender, or
- fails to provide the guarantee for implementation of the contract in a quality manner, if required by the contracting body in the tender documentation.

(6) If it comes to collecting the guarantee of the tender, retaining the deposited funds or violating the statement on steadiness of the tender, the contracting party shall publish on ESPP a negative reference that results in exclusion of the particular tenderer from all the further procedures for awarding public procurement contracts in a period of one year as of the day of publication, in case of a first negative reference, for which the tenderer shall be informed. The period of exclusion, referred to in this paragraph, shall increase for each additional year for every following negative reference, yet not exceeding five years.

(7) The prohibition to participate in the procedures for awarding public procurement contracts, in accordance with the conditions referred to in paragraph (6) of this Article shall also refer to the group of economic operators having as a member economic operator with a negative reference, as well as economic operator representing an associated company to the economic operator with negative reference.

(8) The public procurement commission shall be obliged, in a written form, to notify the person referred to in Article 29-a of this Law or the managerial person in the organizational form where activities in the field of public procurement are carried out of the fulfillment of the requirements for issuance of a negative reference referred to in paragraph (5) lines 1 and 2 of this Article until the day of submission of the report on the conducted procedure to the responsible person.

(9) If the organizational form does not have a managerial person, the public procurement commission shall be obliged to submit the notification referred to in paragraph (8) of this Article to the responsible person in the contracting authority.

(10) In view of publishing a negative reference pursuant to the conditions referred to in paragraph (5) of this Article, the contracting authority shall decide by means of a decision on the selection or annulment of the procedure, and the economic operator shall be entitled to an appeal in a legal protection procedure pursuant to this Law.

(11) The negative reference referred to in paragraph (6) of this Article shall be published mandatorily by the contracting body within a period of three working days as of the finality of the decision on selection or annulment of the procedure.

(12) The tender guarantee has to be valid for at least 14 days after the expiry of the tender validity period.

(13) In exceptional cases, the contracting body can require from the tenderers to extend the validity period of the tender guarantee.

(14) The tender guarantee shall be returned to the tenderers that have not been chosen as most favorable within the period of its validity.

(15) The tender guarantee of the tenderer whose tender has been chosen as most favorable shall be returned after the public procurement contract is signed and a guarantee for quality implementation, if required, is submitted.

## **Article 48**

(1) The contracting body can require from the tenderer whose tender is chosen as most favorable to provide a guarantee for implementation of the contract in a quality manner in the form of a bank guarantee and it mandatorily states this in the tender documentation.

(2) The amount of the guarantee for implementation of the contract in a quality manner can range from 5% up to 15% of the value of the public procurement contract.

(3) As an exception to paragraph (1) of this Article, the guarantee for implementation of the contract in a quality manner shall not be required when organizing open conceptual solution contest, awarding public procurement contracts for providing consultant services and when awarding a framework agreement.

(4) A guarantee for implementation of the contract in a quality manner can be requested for individual contracts awarded on the basis of a framework agreement.

(5) The guarantee for implementation of the contract in a quality manner shall have to be valid until the public procurement contract is fully implemented.

(6) The guarantee for implementation of the contract in a quality manner shall be returned to the contractor within a time period of 14 days following the full implementation of the public procurement contract.

(7) When the time period for implementation of the contract is extended or its value has been increased, the contractor shall have to respectively extend the validity and value of the guarantee for implementation of the contract in a quality manner.

(8) If it comes to collecting the guarantee for implementation of the contract in a quality manner, the contracting body shall submit to ESPP a negative reference resulting in exclusion of the particular contractor from all the future procedures for awarding public procurement contracts in a period of one year, as of the day of publication in case of first negative reference, for which the tenderer shall be informed. The period of exclusion referred to in this Article shall be extended for one additional year for every following negative reference, thus not exceeding five years.

(9) In the cases referred to in paragraph (8) of this Article the contractor may initiate a dispute before a competent court for settlement of the bank guarantee for a quality implementation of the contract and for publication of the negative reference at the ESPP.

(10) The prohibition to participate in the procedures for awarding public procurement contracts, in accordance with the conditions referred to in paragraph (8) of this Article shall also refer to the group of economic operators with economic operator with negative reference as a member, as well as to an economic operator considered to be an associated company to the economic operator with negative reference.

(11) The negative reference referred to in paragraph (8) of this Article shall be published by the contracting body within a period of three working days as of the day of collecting the guarantee.

## **Article 49**

(1) The contracting body, in accordance with the obligations arising from the of the public procurement contract, can anticipate an advance payment.

(2) The advance payment cannot exceed 20% of the value of the public procurement contract for the contracting bodies referred to in Article 4 paragraph (1) points a) and b) of this Law.

(3) Prior to the advance payment referred to in paragraph (2) of this Article, the contracting body shall mandatorily provide a bank guarantee from the contractor in the amount of the agreed advance payment.

## **Article 50**

*Deleted [10](#)*

## **Part 7**

### **Manner of publication**

#### **Section 1**

### **Publication of contract notices and notifications**

#### **Article 51**

(1) The contracting body shall provide transparency when awarding public procurement contracts, organizing open conceptual solution contest and concluding framework agreements by publishing prior indicative notification, notice for awarding a public procurement contract, notification regarding a concluded contract and/or notification on annulment of the procedure for awarding a public procurement contract in accordance with this Law.

(2) For the purpose of precisely determining the subject-matter of the public procurement contract or the framework agreement, the contracting body shall use the Common Procurement Vocabulary in public procurements contracts whose estimated value, without VAT included, is above:

- Euro 130.000 in Denar counter-value for goods and services and Euro 4.000.000 in Denar counter-value for works with the contracting bodies referred to in Article 4 paragraph (1) points a), b) and c) of this Law or

- Euro 200.000 in Denar counter-value for goods and services and Euro 4.000.000 in Denar counter-value for works with the contracting bodies referred to in Article 4 paragraph (1) points d) and e) of this Law.

(3) The Government shall adopt the Common Procurement Vocabulary.

(4) The Minister of Finance shall prescribe the form and the content of the contract notices and notifications referred to in paragraph (1) of this Article.

## **Section 2**

### **Prior indicative notification**

#### **Article 52**

(1) The contracting body can publish a prior indicative notification, provided it applies the provisions referred to in Article 65 paragraph (2) or Article 75 paragraph (2) of this Law.

(2) The publication of the prior indicative notification shall not oblige the contracting body to conduct the procedure.

(3) The prior indicative notification shall be published on ESPP.

## **Section 3**

### **Notice for awarding a public procurement contract**

#### **Article 53**

The contracting body shall publish a notice for awarding a public procurement contract when:

- it conducts an open procedure, a restricted procedure, a competitive dialogue or a negotiated procedure with a prior publication of a contract notice, or
- it conducts a conceptual solution contest.

(2) The estimated value, excluding VAT, shall be also mandatorily published in the notice for awarding a public procurement contract.

#### **Article 54**

(1) The notice for awarding a public procurement contract by an open procedure, restricted procedure, competitive dialogue, negotiated procedure with prior publication of a contract notice and conceptual solution contest shall be delivered for publication on ESPP and in the "Official Gazette of the Republic of Macedonia".

(2) If the estimated value of the public procurement contract, excluding VAT, exceeds Euro 50.000 for goods and services, i.e. Euro 200.000 for works, the notice for awarding a public procurement contract shall be also mandatorily published in the "Official Journal of the European Union". The contracting body may also publish the notice referred to in paragraph in an appropriate business publication or technical or specialized newspaper available to the broad international professional and other public.

(3) The translation of the notice referred to in paragraph (2) of this Article in English language together with a statement shall be verified by a translator holding an internationally recognized certificate of knowledge of English language at C1 level or its equivalent at least. [11](#)

(4) The procedure for awarding a public procurement contract shall start by publishing the contract notice, that is, by sending the invitation for submission of tenders regarding the negotiated procedure without publication of a contract notice.

(5) The "Official Gazette of the Republic of Macedonia" and the Bureau shall be obliged to publish the notice for awarding a contract within a time period of 5 working days as of the day of receipt of the contract notice.

## **Section 4**

### **Notification regarding a concluded contract**

#### **Article 55**

The contracting body shall mandatorily announce a notification regarding a concluded contract on ESPP within a time period of 30 days after:

- the implementation of the open procedure, restricted procedure, competitive dialogue, or negotiated procedure with or without prior publication of a contract notice, by awarding a public procurement contract or concluding a framework agreement;
- organizing an open conceptual solution contest by selecting the best ranked participant, and
- procurement of services as referred to in Article 17 paragraph (1) line 2 of this Law if the estimated value, excluding VAT, exceeds Euro 20.000 in Denar counter-value.

## **Part 8**

### **Manner of communication**

#### **Article 56**

(1) Any request, information, notification and other documents anticipated by this Law shall be sent in writing.

(2) Any document shall be recorded at the moment of sending, that is, at the moment of receipt.

#### **Article 57**

(1) Documents shall be sent in one of the following manners:

- by post;
- by fax; or
- by electronic means.

(2) The contracting body shall determine the manner of communication that it shall use during the implementation of the procedure in the tender documentation.

(3) The document that has been sent by fax, the submitter shall be obliged to send by post or by electronic means within a time period of two days as of the day the document has been sent by fax.

#### **Article 58**

(1) The means used for electronic communication, as well as their technical characteristics, cannot be discriminatory and have to be generally available to any economic operator and compatible with the information and communication technologies being in general use.

(2) The regulations which regulate the electronic signature shall apply when the documents are submitted by using electronic means.

#### **Article 59**

(1) The economic operator shall submit its tender or request to participate via post or personally on the address indicated by the contracting body, or, if such possibility is anticipated, by using electronic means.

(2) If the contracting body has determined that the tenders or requests to participate are to be submitted only via post or personally, they shall be submitted in a sealed envelope bearing the words "do not open" in the upper left corner, as well as the reference number of the contract notice, name of the contracting body and address.

(3) The tender or the request to participate shall be submitted in one original form that needs to be signed (each page) by the responsible person at the tenderer or by an authorized person by him/her. In the tender documentation, the contracting body can also anticipate submission of certain number of copies of the tender.

## **Article 60**

(1) The contracting body can require the request for participation or the tenders to be submitted by using electronic means only if:

- the information in connection with the electronic transmission of data, including encryption, are available for any interested economic operator, and
- the electronic devices for receipt of data appropriately guarantee integrity and confidentiality of the received documents.

(2) The economic operators can submit certificates, statements and other documents in hard copy for the purpose of establishing their qualifications before the expiry of the time period for submission of the tenders or requests to participate, provided that they are not available in electronic form.

## **Article 61**

The electronic devices shall ensure the integrity and confidentiality of the received documents if their technical characteristics or specifically used procedure meet the following requirements:

- the moment of receiving the tenders or requests to participate can be precisely determined;
- no one can access the received data before the expiry of the time period for submission;
- in case of breach of the access restriction to the received data referred to in paragraph (1) line 2 of this Article, the unauthorized access is easily detectable;
- the access to the received data in all phases of the process is possible only after the opening time established in accordance with this Law, and
- after the date of opening of the received data, the access to the data is possible only for authorized persons.

## **Part 9**

### **Prevention of conflict of interest**

## **Article 62**

(1) The Law on Prevention of Conflicts of Interest shall accordingly apply to the procedures for awarding a public procurement contract for the purpose of preventing a conflict of interests.

(2) In the procedure for awarding a public procurement contract, the president, deputy president, members and deputy members of the public procurement commission, as well as the responsible person shall sign a statement for non-existence of conflict of interests that shall be a part of the dossier for the implemented procedure.



(3) In case of conflict of interests with the president, the deputy, the members and their deputies in the public procurement commission, the same shall withdraw from the work in the commission and shall be substituted by other persons.

(4) In case of conflict of interests in the responsible person, the same shall by a special decision authorized another person from among the officials or employees at the contracting body to adopt the appropriate decisions and to sign the contract.

### **Article 63**

When implementing the public procurement contract, the contractor cannot hire persons involved in the evaluation of tenders submitted in the respective procedure for awarding a public procurement contract. In that case, the public procurement contract shall be considered null and void.

## **Chapter V**

### **Types of procedures for awarding public procurement contracts**

#### **Part 1**

#### **Open procedure**

### **Article 64**

(1) The open procedure shall be carried out in one phase.

(2) As the exception to paragraph (1) of this Article, the contracting body can conduct an electronic auction as an additional phase, wherefore this shall be published in the notice for awarding a public procurement contract and the tender documentation.

### **Article 65**

(1) The final time period for submission of the tenders cannot be shorter than 45 days as of the day of publication on ESPP if the estimated value of the public procurement contract, excluding VAT, exceeds:

- Euro 130.000 in Denar counter-value for goods and service and Euro 4.000.000 in Denar counter-value for works by the contracting bodies referred to in Article 4 paragraph (1) points a), b) and c) of this Law, or
- Euro 200.000 in Denar counter-value for goods and services and Euro 4.000.000 in Denar counter-value for works by the contracting bodies referred to in Article 4 paragraph (1) points d) and e) of this Law.

(2) As an exception to paragraph (1) of this Article, the contracting body can reduce the time period for submission of the tenders up to 36 days at the most, provided that a prior indicative notification has been published.

(3) In case of a prior indicative notification, the reduction of the time period referred to in paragraph (2) of this Article shall be allowed only if this prior indicative notification contains all information anticipated by the notice for awarding a public procurement contract to the extent that this information is available at the time of publication of the prior indicative notification, even if it has been sent for publication at least 52 days, and up to 12 months before sending the notice for awarding a public procurement contract.

(4) As an exception to paragraphs (1) and (2) of this Article, if the contracting body publishes the entire tender documentation by using electronic means with direct access of all economic operators without restrictions, the time periods arising from paragraphs (1) and (2) of this Article can be reduced by 5 days. The tender documentation shall be published simultaneously with the sending of the notice for awarding a public procurement contract.

(5) The reduction of the time periods in accordance with paragraph (4) of this Article shall be allowed only when the notice for awarding a public procurement contract indicates the internet address where the tender documentation is available.

## **Article 66**

(1) If the estimated value of the public procurement contract is below the amount referred to in Article 65 paragraph (1) of this Law, the time period for submission of the tenders cannot be shorter than 20 days as of the day of publication on ESPP.

## **Article 67**

**Any interested economic operator shall have the right to request and receive tender documentation.**

## **Part 2**

### **Restricted procedure**

## **Article 68**

(1) The restricted procedure shall be conducted in two phases:

- first phase (pre-qualification phase), when the contracting body selects candidates on the basis of the criteria for determining the competence, and
- second phase, when the contracting body evaluates the tenders submitted by the selected candidates, on the basis of the criteria for awarding the contract.

(2) As an exception to paragraph (1) of this Article, the contracting body can conduct an electronic auction as an additional phase, wherefore it shall publish this in the notice for awarding a public procurement contract and in the tender documentation.

## **Article 69**

(1) The time period for submission of the requests for participation cannot be shorter than 30 days as of the day of publication on ESPP, if the estimated value of the public procurement contract, excluding VAT, exceeds:

- Euro 130.000 in Denar counter-value for goods and services and Euro 4.000.000 in Denar counter-value for works by the contracting bodies referred to in Article 4 paragraph (1) points a), b) and c) of this Law, or
- Euro 200.000 in Denar counter-value for goods and services and Euro 4.000.000 in Denar counter-value for works by the contracting bodies referred to in Article 4 paragraph (1) points d) and e) of this Law.

(2) As an exception to paragraph (1) of this Article, due to reasons of urgency requiring implementation of the contract within time periods shorter than the ones determined in paragraph (1) of this Article, the contracting body can accelerate the procedure by reducing the time period for 15 days, at the most.

## **Article 70**

If the estimated value of the public procurement contract is below the amount referred to in Article 69 paragraph (1) of this Law, the time period for submission of the requests for participation cannot be shorter than 15 days as of the day of publication on ESPP.

## **Article 71**

(1) Any interested economic operator can submit a request to participate in the first phase of the restricted procedure.

(2) The contracting body, in the notice for awarding a public procurement contract, shall also state the criteria for determining the competence and other applicable rules, the minimum number of candidates it intends to select, and, if required, the maximum number of candidates.

(3) The minimum number of candidates indicated in the notice for awarding a public procurement contract cannot be less than 5.

## **Article 72**

(1) Following the completion of the first phase of the restricted procedure, the number of selected candidates shall have to be at least equal with the minimum number of candidates indicated in the notice for awarding a public procurement contract.

(2) As an exception to paragraph (1) of this Article, when the number of candidates that meet the criteria for determining the competence is lower than the minimum number indicated in the notice for awarding a public procurement contract, the contracting body:

- annuls the restricted procedure, or
- conducts the restricted procedure only with those candidates that meet the criteria for determining the competence, if their number is sufficient to ensure a genuine competition.

## **Article 73**

(1) Following the completion of the first phase, the commission shall prepare an assessment report regarding the competence of the candidates and a list of qualified candidates.

(2) On the basis of the report by the commission, the contracting body shall make a decision on the selected candidates who shall be invited to submit their tenders.

(3) The contracting body shall be obliged to send the invitation for submission of tenders in the second phase of the restricted procedure simultaneously to all selected candidates.

(4) The contracting body cannot in the second phase of the restricted procedure invite an economic operator that has not submitted a request to participate in the first phase or failed to meet the criteria for determining the competence.

## **Article 74**

(1) The invitation to submit a tender in the second phase shall in particular contain:

- the reference number of the contract notice;
- the time period for submission of the tenders;
- the address where tenders are submitted;
- date and place of tender opening, and

- if necessary, any additional documents which the economic operators have to submit with the purpose of verifying the statements or completing the documents submitted in the first phase in order to prove their competence.

(2) The contracting body shall send the tender documentation together with the invitation to submit the tender in the second phase of the restricted procedure.

(3) When the tender documentation is directly available by using electronic means, the manner of access to the documentation shall be stated in the invitation for submission of the tender.

## **Article 75**

(1) If the estimated value of the public procurement contract is above the amount referred to in Article 69 paragraph (1) of this Law, the time period for submission of the tenders in the second phase of restricted procedure cannot be shorter than 40 days.

(2) As an exception to paragraph (1) of this Article, the contracting body can reduce the time period for submission of the tenders to up to 36 days at the most, provided that a prior indicative notification has been published.

(3) In case of a prior indicative notification, the reduction of the time period in accordance with paragraph (2) of this Article shall be allowed only if this prior indicative notification contains all information anticipated in the notice for awarding a public procurement contract to the extent that this information is available at the time of publication of the prior indicative notification, even if it has been sent for publication at least 52 days, and up to 12 months before sending the notice for awarding a public procurement contract.

(4) As an exception to paragraphs (1) and (2) of this Article, if the contracting body publishes the entire tender documentation by using electronic means with direct access of all economic operators without restrictions, the time periods arising from paragraphs (1) and (2) of this Article can be reduced by 5 days. The tender documentation shall be published simultaneously with the sending of the notice for awarding a public procurement contract.

(5) The reduction of the time periods in accordance with paragraph (2) of this Article shall be allowed only in the case when the notice for awarding a public procurement contract indicates the internet address where the tender documentation is available.

## **Article 76**

(1) If the estimated value of the public procurement contract is below the amount referred to in Article 69 paragraph (1) of this Law, the time period for submission of the tenders in the second phase of the restricted procedure cannot be less than 22 days as of the day of sending the invitation for submission of tenders.

(2) As an exception to paragraph (1) of this Article, if the contracting body publishes the entire tender documentation by using electronic means with direct access of all selected candidates without restrictions, the time periods arising from paragraph (1) of this Article can be reduced by 5 days. The tender documentation shall be published simultaneously with the sending of the notice for awarding a public procurement contract.

(3) The reduction of the time periods in accordance with paragraph (2) of this Article shall be allowed only in the case when the notice for awarding a public procurement contract indicates the internet address where the tender documentation is available.

## **Part 3**

### **Competitive dialogue**

#### **Article 77**

The contracting body can conduct the competitive dialogue procedure when awarding a public procurement contract if:

- the respective public procurement contract is considered to be particularly complex, and
- the implementation of an open or restricted procedure would not allow the public procurement contract to be awarded.

#### **Article 78**

The public procurement contract for which the contracting body is objectively unable to:

- define the technical specifications and technical means that can satisfy its needs, or
- determine the legal or financial framework for carrying out the contract, in terms of Article 77 paragraph (1) line 1 of this Law, shall be considered as a particularly complex public procurement contract.

#### **Article 79**

The competitive dialogue shall be conducted in three phases:

- pre-qualification phase of the candidates;
- dialogue phase with the selected candidates after the conducted pre-qualification phase, in order to identify the solution that corresponds to the needs of the contracting body based on which the candidates submit their tender, and
- phase of submission of the tenders.

#### **Article 80**

The time period for submission of the requests for participation cannot be shorter than 30 days as of the day of publication on ESPP if the estimated value of the contract, excluding VAT, exceeds Euro 130.000 in Denar counter-value for goods and services and Euro 4.000.000 in Denar counter-value for works by contracting bodies referred to in Article 4 paragraph (1) points a), b) and c) of this Law.

#### **Article 81**

If the estimated value of the public procurement contract is below the amount referred to in Article 80 of this Law, the time period for submission of the requests for participation cannot be shorter than 15 days as of the day of publication on ESPP.

#### **Article 82**

(1) Any interested economic operator can submit a request to participate in the competitive dialogue.

(2) When selecting the candidates, the contracting body shall be obliged to determine their competence on the basis of objective and non-discriminatory criteria.

(3) The contracting body shall, in the notice for awarding a public procurement contract, state the criteria for determining the competence and the rules to be applied, the minimum number of candidates it intends to select, and, if required, the maximum number of candidates.

(4) The minimum number indicated in the notice for awarding the public procurement contract cannot be less than three.

### **Article 83**

(1) After completing the pre-qualification phase, the number of selected candidates has to be at least equal to the minimum number of candidates indicated in the notice for awarding the public procurement contract.

(2) As an exception to paragraph (1) of this Article, when the number of candidates that meet the criteria for determining the competence is less than the minimum number indicated in the notice for awarding a public procurement contract, the contracting body:

- annuls the competitive dialogue, or
- carries on the competitive dialogue only with those candidates that meet the criteria for determining the competence, only if that number is still sufficient to ensure a genuine competition.

### **Article 84**

(1) Following the completion of the first phase, the commission shall prepare an assessment report regarding the competence of the candidates and a list of qualified candidates.

(2) On the basis of the report by the commission, the contracting body shall make a decision on selected candidates which shall be invited to submit their tenders.

(3) The contracting body shall be obliged to send the invitation for the purpose of participation in the dialogue phase simultaneously to all selected candidates.

(4) The contracting body cannot invite an economic operator that has not submitted a request to participate in the pre-qualification phase or failed to meet the criteria for determining the competence in the dialogue phase.

### **Article 85**

(1) The invitation to participate in the dialogue phase shall in particular include:

- the reference number of the contract notice;
- date and place of holding the dialogue, and
- if necessary, any additional documents which the economic operators have to submit with the purpose of verifying the statements or completing the documents submitted in the pre-qualification phase in order to prove their competence.

(2) The contracting body shall send the invitation for the purpose of participation in the dialogue phase together with the tender documentation, which also contains the descriptive documentation.

(3) When the tender documentation is available through the web page of the contracting body, the manner of access to the documentation shall be stated in the invitation for participation in the dialogue phase.

### **Article 86**

(1) In the descriptive documentation, the contracting body shall include description of the needs, objectives and constraints, on the basis of which the dialogue is to be conducted, in order to identify an appropriate solution, as well as, if anticipated, the compensations that are to be granted to the participants in the dialogue.

(2) In the tender documentation, the contracting body can anticipate for the procedure to take place in successive phases so as to reduce the number of possible solutions. The successive reduction of the solutions shall be made by applying the criteria for awarding the contract anticipated in the tender documentation.

## **Article 87**

(1) The contracting body shall start a dialogue with each selected candidate separately. Subject of the dialogue shall be the variants of the technical and financial arrangements, methods of resolving problems related to the legal framework, as well as any other elements of the future contract, so that the identified solutions correspond to objective needs of the contracting body. For each meeting held, the contracting body shall keep minutes of the issues subject of the dialogue. The minutes shall be also signed by the selected candidate that participated in the dialogue.

(2) During the dialogue, the contracting body shall ensure equal treatment for all candidates. The contracting body must not provide information in a discriminatory manner, which could create a supplementary advantage for any of the selected candidates.

(3) The contracting body must not disclose to the other selected candidates the proposed solutions or other confidential information communicated by the candidate during the dialogue, without its consent.

(4) The contracting body shall conduct the dialogue until it identifies the suitable solution.

(5) Having determined that the dialogue phase is finished and having informed the selected candidates thereon, the contracting body shall invite the selected candidates to submit their tenders in a reasonable time period on the basis of the solution selected in the dialogue phase.

(6) The contracting body shall send the invitation for the purpose of submission of tenders together with the tender documentation, which contains all necessary elements describing the manner of carrying out the public procurement contract.

(7) With consent of the selected candidates, the time period for submission of the tenders cannot be less than the minimum time period determined in the dialogue phase.

## **Article 88**

The invitation to submit a tender shall in particular contain:

- the reference number of the contract notice;
- time period for submission of the tenders;
- address where tenders are to be submitted, and
- date and place of tenders opening.

## **Part 4**

### **Negotiated procedure with a prior publication of a contract notice**

## **Article 89**

(1) The contracting body shall conduct a negotiated procedure with a prior publication of a contract notice:

- in exceptional cases, when the nature of the works, products or services, or the risks arising thereon, do not allow a prior determination of the value of the contract;
- for services, if the service is of such nature, that the technical specifications cannot be determined

with sufficient precision so as to enable the award of a contract by choosing the most favorable tender in accordance with the rules governing open or restricted procedures and

- for works, conducted solely for the purpose of research, testing or technological development, and with the aim of obtaining benefit and recovering of the costs incurred during research and development.

(3) In the report of the conducted procedure, the commission shall provide detailed explanation of the reasons for conducting the negotiated procedure with a prior publication of a contract notice, as well as the manner of conducting the procedure. [12](#)

## **Article 90**

(1) The time period for submission of the invitations to participate cannot be shorter than 30 days as of the day of publication on ESPP if the estimated value of the public procurement contract, excluding VAT, exceeds:

- Euro 130.000 in Denar counter-value for goods and services and Euro 4.000.000 in Denar counter-value for works by the contracting bodies referred to in Article 4 paragraph (1) points a), b) and c) of this Law, or
- Euro 200.000 in Denar counter-value for goods and services and Euro 4.000.000 in Denar counter-value for works by contracting bodies referred to in Article 4 paragraph (1) points d) and e) of this Law.

(2) As an exception to paragraph (1) of this Article, due to reasons of urgency requiring implementation of the contracts within time periods shorter than the ones determined in paragraph (1) of this Article, the contracting body can accelerate the procedure by reducing the time period for 15 days, at the most.

## **Article 91**

If the estimated value of the public procurement contract is below the amount referred to in Article 90 paragraph (1) of this Law, the time period for submission of the requests to participate cannot be shorter than 12 days as of the day of announcing the notice for awarding the public procurement contract on ESPP.

## **Article 92**

Any interested economic operator shall have the right to submit a request to participate in the negotiated procedure with a prior publication of a contract notice.

## **Article 93**

(1) Prior to the commencement of the negotiations, the contracting body solely on the basis of the criteria for determining the competence, shall choose a certain number of candidates to participate in the negotiations.

(2) Following the assessment of the competence of the candidates, the commission shall prepare an assessment report regarding the competence of the candidates and a list of qualified candidates.

(3) On the basis of the report by the commission, the contracting body shall make a decision on selected candidates which shall be invited to submit their initial tenders.

(4) The contracting body, in the notice for awarding a public procurement contract, shall state the criteria for determining the competence and other applicable rules, the minimum number of candidates it intends to select, and, if required, the maximum number of candidates.



(5) The minimum number of candidates indicated in the notice for awarding the public procurement contract cannot be less than three.

### **Article 94**

(1) The number of selected candidates shall have to be at least equal with the minimum number indicated in the notice for awarding the public procurement contract.

(2) As an exception to paragraph (1) of this Article, when the number of candidates that meet the criteria for determining the competence is less than the minimum number indicated in the notice for awarding the public procurement contract, the contracting body can:

- annul the negotiated procedure with a prior publication of a contract notice or
- conduct the negotiated procedure with a prior publication of a contract notice only with those candidates that meet the criteria for determining competence, only if their number is sufficient enough to ensure a genuine competition.

### **Article 95**

(1) The contracting body shall be obliged to simultaneously send the invitation for submission of the initial tender to all selected candidates.

(2) The contracting body, in the negotiation phase, cannot invite an economic operator to submit an initial tender, provided that it has not submit a request to participate or failed to meet the criteria for determining the competence.

### **Article 96**

(1) The invitation to submit an initial tender shall in particular include:

- the reference number of the contract notice;
- date and place of holding the dialogue,
- if necessary, any additional documents which the economic operators have to submit with the purpose of verifying the statements or completing the documents submitted in the pre-qualification phase in order to prove their competence, and
- the criteria for awarding the contract in accordance with the provision of Chapter VII, Section 3 of this Law.

(2) The contracting body shall send the invitation for submission of the initial tender together with the tender documentation, which also contains the descriptive documentation.

(3) The descriptive documentation, which is part of the tender documentation, shall contain description of the need, purposes and limitations of the contracting body, on the basis of which the negotiated procedure with a prior publication of a contract notice is initiated.

### **Article 97**

(1) The contracting body shall start the negotiation process with each selected candidate separately. Subject of the negotiation process shall be the variants referring to technical, financial and legal aspects of the contract. For each meeting held, the contracting body shall keep minutes of the issues subject of the negotiations and for which consent has been reached. The minutes shall be also signed by the selected candidate that participated in the negotiation process.

(2) Each selected candidate shall present its initial tender on the negotiations meeting, which shall be the starting point during the negotiation process, according to the needs, purposes and limitations of the contracting body in accordance with the descriptive documentation.

(3) During the negotiation process, the contracting body shall ensure equal treatment for all selected candidates. The contracting body must not provide information in a discriminatory manner, which could create a supplementary advantage for any of the selected candidates.

(4) The contracting body must not disclose to other candidates the proposed solutions or other confidential information, communicated during the negotiations by the candidate, without its consent.

## **Article 98**

(1) In the tender documentation, the contracting body can anticipate for the procedure to take place in successive stages so as to reduce the number of initial tenders to be negotiated. The reduction of the number of initial tenders shall be made only by applying the previously determined criteria for awarding the public procurement contract.

(2) The contracting body, on the basis of the criteria for awarding a public procurement contract, shall conduct the negotiations until it determines the technically and economically the most favorable tender. The negotiations shall continue until each selected candidate states that its previous tender cannot be improved.

(3) The contracting body shall request from the candidate that provided the most favorable conditions during the negotiations to confirm the results from the negotiations by submitting a final tender.

(4) The tenderer must not alter the conditions agreed during the negotiations in the final tender.

## **Part 5**

### **Negotiated procedure without a prior publication of a contract notice**

## **Article 99**

(1) The contracting body may conduct a negotiated procedure without a prior publication of a contract notice in the following cases:

1) for procurement of goods, services and works:

- when no tender is submitted in two previously conducted open procedures or simplified competitive procedures, that is, no request for participation in the first phase is submitted in two previously conducted restricted procedures, provided that the initial requirements of the tender documentation have not been altered;

- when due to technical or artistic reasons, i.e. for reasons related to protection of exclusive rights (patents and alike), the contract can be carried out only by a particular economic operator; and

- for reasons of extreme urgency caused by events unforeseeable by the contracting body, nor attributable to it as an omission, as a result of which the time period for publication of the open procedure, restricted procedure, simplified competitive procedure, negotiated procedure with a prior publication of a contract notice cannot be applied;

2) for procurement of goods:

- manufactured purely for the purpose of research, experimentation, study or development, but not for goods in mass production by which gain or recovery of the research and development can be realized;

- when the contracting body has to procure additional deliveries from the original contractor for the purpose of partial replacement of common goods or installations or extension of the existing goods or installations, wherefore the change of the tenderer would oblige the contracting body to buy material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. The length of the additional procurements cannot exceed three years as of the day of concluding the basic contract, and their value cannot exceed 30% of the amount of the basic contract, and

- which are procured under particularly favorable terms, from a tenderer which winds-up its business

activities (liquidation or bankruptcy), from an bankruptcy administrator or liquidator upon a prior agreement with the creditors;

3) for procurement of services, when the contract concerned follows after organizing an open conceptual solution contest and is awarded to the best ranked candidate or to one of the best ranked candidates. If the contract is awarded to one of the best ranked candidates, the contracting body shall invite all of them to participate in the negotiations, and

4) for procurement of additional works or services not included in the basic contract, but are necessary due to unanticipated circumstances, provided that the contract is awarded to the contractor of the works or the service provider referred to in the basic contract, when:

- such additional works or services cannot be technically or economically separated from the basic contract without major inconvenience for the contracting body, or
- such works or services, although separable from the implementation of the basic contract, are necessary for its completion.

(2) The total value of the additional works, unpredicted works, excess of works and shortage of works or of the additional services referred to in paragraph (1) point 4 of this Article must not exceed 30% of the value of the basic contract.

(3) In the cases referred to in paragraph (1) point 1) lines 1 and 3 and point 4) of this Article, the contracting authority shall start the negotiated procedure without prior publication of a contract notice only upon receipt of a previous consent from the Council.

(4) In the cases referred to in paragraph (1) point 1) line 1 of this Article, the Council, at the time of issuing the consent, shall check whether the contracting authority has changed the tender documentation in the previously conducted regular procedures and the tender documentation which it intends to use in the negotiated procedure.

(5) As an exception to paragraph (3) of this Article, the contracting authority shall not be obliged to obtain consent before it conducts a negotiated procedure without a prior publication of a contract notice based on paragraph (1) point 1) line 3 of this Article, provided that the safety, life and health of the people are directly endangered.

(6) In the report of the conducted procedure, the commission shall provide detailed explanation of the reasons for conducting the negotiated procedure with a prior publication of a contract notice, as well as the manner of conducting the procedure.

(7) In the cases referred to in paragraph (1) point 1 line 3, point 2 lines 2 and 3 and point 4 of this Article, the contracting body shall not be obliged to determine the ability of the economic operators.

## **Part 6**

### **Simplified competitive procedure**

#### **Article 100**

(1) The contracting body may conduct a simplified competitive procedure by publishing a contract notice on ESPP when the estimated value of the public procurement contract for goods and services is up to Euro 20.000 in Denar counter-value, and for works up to Euro 50.000 in Denar counter-value, VAT excluded.

(2) The provisions of this Law shall accordingly apply to the conduct of the procedure with a request to collect tenders, unless otherwise regulated by this part.

(3) The deadline for submitting tenders in case of a simplified competitive procedure shall not be shorter than:

- five days as of the day of publication of the contract notice on ESPP, when the estimated value of the public procurement contract is up to Euro 5.000 in Denar counter-value, VAT excluded and  
- ten days as of the day of publication of the contract notice on ESPP, when the estimated value of the public procurement contract for goods and services is up to Euro 20.000 in Denar counter-value, and for works up to Euro 50.000 in Denar counter-value, VAT excluded.

### **Article 101**

(1) In the simplified competitive procedure, the contracting body shall prepare a simplified tender documentation, mandatorily containing technical specifications of the subject-matter of the public procurement contract and information on the manner of preparation and the time period for submission of the tenders.

### **Article 102**

(1) Public tender opening shall not be carried out when conducting a simplified competitive procedure where the estimated value of the public procurement contract amounts up to Euro 5.000 in Denar counter-value, VAT excluded.

(2) The contracting body in the simplified competitive procedure where the estimated value of the public procurement contract amounts up to Euro 5.000 in Denar counter-value, VAT excluded, must not require a guarantee for the tender in a form of a bank guarantee or deposited funds.

(3) Public tender opening, with accordingly applied provisions of Chapter VII Part 1 sections 2, 3 and 4 of this Law, shall be carried out in the simplified competitive procedure where the estimated value of the public procurement contract for goods and services amounts up to Euro 20.000 in Denar counter-value, and for works up to Euro 50.000 in Denar counter-value, VAT excluded.

(4) In the simplified competitive procedure the economic operators shall confirm their personal condition by giving a statement.

(5) Before the adoption of the decision on selection of the most favorable tender, the economic operator whose tender has been assessed as most favorable shall be obliged to submit to the public procurement commission the documents for confirming its personal condition, defined by the simplified tender documentation.

(6) The public procurement commission shall accept documents for confirming the personal condition referred to in paragraph (5) of this Article that have been issued even after the day of the public tender opening, but not later than the day of adoption of the decision on selection of the most favorable tender.

(7) If the economic operator fails to submit the documents referred to in paragraph (5) of this Article within the time period defined by the public procurement commission, or the same are not valid or inappropriate for confirming the personal condition, the public procurement commission shall invite the next ranked economic operator or propose annulment of the procedure.

(8) Alternative tenders shall not be allowed in the simplified competitive procedure.

### **Article 103**

(1) The contracting body shall be obliged to keep records of the simplified competitive procedures.

(2) The contracting body shall deliver a copy of the records of the simplified competitive procedure in an electronic form on ESPP by 31st July and 31st January at the latest for the awarded public procurement contracts concluded in the previous six months.

## **Article 104**

The Minister of Finance shall prescribe the form and the content of the contract notice, the notification on annulment of the procedure and the form of the records of the simplified competitive procedures.

## **Part 7**

### **Open conceptual solution contest**

## **Article 105**

In accordance with Article 21 paragraph (3) of this Law, the contracting body shall organize an open conceptual solution contest, as a separate procedure with awarding prizes, or as a part of the procedure for awarding a public procurement contract for services.

## **Article 106**

The contracting body shall state in the contest documentation any information, requirements, rules or criteria so as to provide the potential participants with correct and complete information regarding the conceptual solution contest.

## **Article 107**

The contest documentation shall in particular include:

- information about the contracting body;
- instructions in connection with the time period and the requirements to be met for the purpose of participation in the contest;
- minimum requirements determined by the contracting body necessary for determining the competence, as well as the documents that are to be delivered by the participants in order to prove that they have met the requirements, provided that the contest is part of the procedure for awarding a public procurement contract for services;
- requirements necessary for the participants in order to prepare and present their plans and projects;
- amount of the prizes that are being awarded, if the open conceptual solution contest is organized as a separate procedure;
- an obligation of the contracting body to conclude a public procurement contract of services with the best ranked participant or with one of the best ranked participants, when the contest is organized as part of a procedure for awarding a public procurement contract for services, and
- detailed and complete information regarding the criteria that are to be applied for selection of the best ranked project or projects.

## **Article 108**

(1) The time period for submission of the plans or the projects cannot be shorter than 35 days as of the day of sending the contract notice for publication in the "Official Gazette of the Republic of Macedonia" and on the web page of the Bureau.

(2) Until the expiry of the time period for their submission, the content of the submitted plans and projects shall remain confidential.

## **Article 109**

Articles 60 and 61 of this Law shall appropriately apply if the contracting body requires from the economic operators to send the plans or projects by using electronic means.

## **Article 110**

(1) If the contest is part of the procedure for awarding a public procurement contract for services, the contracting body can, within the framework of the contest documentation, require fulfillment of the minimum requirements by the participants in order to prove their competence for carrying out the contract.

(2) The number of selected participants shall have to be sufficient so that genuine competition is ensured.

## **Article 111**

(1) The assessment of the plans or projects submitted at the conceptual solution contest shall be carried out by a jury appointed by the contracting body. The jury shall be composed of at least three members that are independent from the participants and are persons with relevant professional qualification and experience in that field.

(2) When the participants in the conceptual solution contest are required to possess professional qualifications, at least one third of the members of the jury shall have to possess the same or equivalent professional qualifications as the participants.

## **Article 112**

(1) Until the jury adopts a decision or issues an opinion, the anonymity of the participants shall have to be kept before the jury.

(2) The jury shall be autonomous in the adoption of its decisions.

## **Article 113**

(1) The jury shall assess the submitted plans and projects on the basis of the evaluation criteria indicated in the contract notice.

(2) The jury shall submit a report to the contracting body and the participants signed by its members, that shall comprise the ranking of the plans and projects based on their qualitative, the concrete observations, as well as, if necessary, list of issues that need to be clarified.

## **Article 114**

(1) The jury can invite the participants in the contest to answer the questions referred to in Article 113 paragraph (2) of this Law for the purpose of clarifying all aspects referring to the proposed plan or project.

(2) The jury shall keep minutes of the discussions conducted in accordance with the provisions referred to in paragraph (1) of this Article.

## **Chapter VI**

# Special manners for awarding a public procurement contract

## Part 1

### Framework agreement

#### Article 115

(1) The contracting body shall conclude a framework agreement by conducting open or restricted procedure.

(2) As an exception to paragraph (1) of this Article, only in certain cases in accordance with this Law, the contracting body can conclude a framework agreement by conducting other procedures.

(3) The contracting body cannot use the framework agreements for the purpose of preventing, restricting or distorting the competition.

#### Article 116

(1) The contracting body can conclude a framework agreement with duration appropriate to the nature of the subject-matter of the contract, but not longer than two years.

(2) The public procurement contract awarded on the basis of a framework agreement shall be concluded between the contracting body and the economic operator which is a party to the respective agreement.

(3) The contracting body cannot award public procurement contracts the subject-matter of which is procurement of services, goods or works not anticipated in the framework agreement.

(4) The contracting body shall prescribe the minimum criteria for determining the competence of the candidates or the tenderers on the basis of the estimated value of the largest public procurement contract that is to be awarded during the duration of the framework agreement.

#### Article 117

(1) When the contracting body concludes a framework agreement with one economic operator, the agreement shall in particular include:

- the obligations assumed by the economic operator in accordance with the technical proposal;
- the unit price that the economic operator has anticipated in the financial proposal, on the basis of which the price of each public procurement contract that is awarded on the basis of the agreement is calculated, and
- if necessary, special conditions and formulas for determining the differences in the price.

(2) The contracting body shall award public procurement contracts on the basis of the framework agreement by applying the technical and financial conditions, as well as the maximum quantities anticipated in the framework agreement.

(3) When awarding a public procurement contract on the basis of the framework agreement, the contracting body shall inform the economic operator in writing.

#### Article 118

(1) Where the contracting body concludes a framework agreement with several economic operators, their number cannot be less than seven.

(2) As an exception to paragraph (1) of this Article, the contracting body may conclude a framework agreement with less than seven economic operators only upon a previous consent from the Council.

(3) The framework agreement concluded contrary to the provisions of this Law shall be deemed null and void.

## **Article 119**

(1) When the contracting body concludes a framework agreement with more than one economic operator, the agreement shall in particular include:

- the obligations assumed by each economic operator in accordance with the technical proposal;
- the unit price each economic operator has anticipated in the financial proposal;
- if necessary, special conditions and formulas for determining the differences in the price, and
- other elements considered by the contracting body as necessary.

(2) The contracting body shall award public procurement contracts on the basis of a framework agreement concluded with more than one economic operator:

- without re-opening of the competitive procedure, or
- by re-opening the competitive procedure among all economic operators which are a party in the framework agreement.

(3) In the cases referred to in paragraph (2) line 2 of this Article, the framework agreement shall include conditions:

- that remain unchanged for the entire duration of the agreement, and
- that will be the subject-matter of the re-opening of the competitive procedure.

(4) The contracting body can award a public procurement contract in accordance with paragraph (2) line 1 of this Article only if all the conditions regulating the award of the contract are determined in the framework agreement, whereas the contract is awarded pursuant to the primarily defined conditions and tenders submitted before the conclusion of the framework agreement. If the most favorable tenderer is not able to implement the subject-matter of the contract, the public procurement contract shall be concluded with the next available most favorable tenderer, a party to the framework agreement. Within a period of five days as of the day of conclusion of the contract, the contracting body shall submit a notice for a concluded contract pursuant to the framework agreement to all the tenderers which are parties to the framework agreement.

(5) The contracting body can award a public procurement contract in accordance with paragraph (2) line 2 of this Article in the cases where all the conditions for awarding a public procurement contract are not determined in the framework agreement, by re-submission of tenders and conducting an electronic auction wherefore the tenderers shall re-tender on the basis of the same conditions, and, if necessary, with more precisely determined conditions determined in the framework agreement.

## **Article 120**

(1) When awarding a public procurement contract on the basis of Article 119 paragraph (2) line 2 of this Law, the contracting body shall re-open the competitive procedure according to the following procedure:

- for every public procurement contract, the contracting body shall submit a written request to all tenderers that are a party to the framework agreement, for the purpose of gathering tenders;
- the contracting body shall determine a reasonable time period which must not be shorter than eight working days for goods and works, that is, three working days for service, taking into account the complexity of the subject-matter of the contract and the time period needed for preparation and



submission of the tenders;

- the tenders shall be submitted in writing and the contracting body shall open them within the determined time period. The content of the tenders shall remain confidential until the contracting body informs the tenderers on the selection made, and
- the contracting body shall award each public procurement contract to the tenderer which has submitted the most favorable tender on the basis of the criteria for awarding the contract determined in the framework agreement.

(2) The invitation for re-opening of the competitive procedure shall contain in particular:

- information regarding the quantities and special conditions that constitute the subject-matter of the contract that is to be awarded;
- information on the elements that are subject of the re-opening of the competitive procedure in accordance with the criteria for awarding the contract defined in the tender documentation for the framework agreement, and
- information on the time period for submission of the tenders and the manner of their submission.

(3) Within a period of five days as of the day of conclusion of the contract, the contracting body shall submit a notice for concluded contract pursuant to the framework agreement to all the tenderers that have participated in the repeated simplified competitive procedure.

## **Part 2**

### **Electronic auction**

#### **Article 121**

(1) The contracting body can use an electronic auction:

- as a final phase of an open procedure, restricted procedure, competitive dialogue, or simplified competitive procedure or
- during re-opening of the competitive procedure among the economic operators which are a party to the framework agreement in accordance with Article 119 paragraph (5) and Article 120 of this Law.

(2) In the notice for awarding a public procurement contract and the tender documentation, the contracting body shall define the use of the electronic auction.

(3) The contracting body shall be obliged to use electronic auction in the procedures for competitive dialogue.

#### **Article 122**

The contracting body cannot use electronic auction for the purpose of preventing, restricting or distorting the competition, or changing the subject-matter of the contract determined in the notice for awarding a public procurement contract and the tender documentation.

#### **Article 123**

(1) The electronic auction shall not be mandatory for awarding public procurement contracts for:

- consultancy services;
- intellectual services for conceptualization, design and preparation of concept or other creative solutions;
- services for preparation of studies; or
- craftsmen' services and goods in total estimated value of Euro 20.000 in Denar counter value at annual basis.

(2) In the cases referred to in paragraph (1) of this Article the contracting body shall provide an explanation for the reasons for inability to use electronic auction on ESPP.

## **Article 124**

If the contracting body uses an electronic auctions, it shall be obliged to include the following in the tender documentation or the open invitation for participation in an electronic auction:

- the part of the tender which is the subject-matter of the electronic auction, provided it can be determined and expressed in figures or percentages;
- the limitations of the value up to which the part referred to in paragraph (1) line 1 of this Article can be improved, in accordance with the technical specifications of the subject-matter of the contract;
- the information which is available to tenderers in the course of the electronic auction and when this information will be made available;
- the relevant information concerning the electronic auction process, and
- the requirements under which the tenderers can bid, and in particular the minimum differences allowed in the process of negative bidding.

## **Article 125**

(1) Prior to the commencement of the electronic auction, the contracting body shall conduct a full evaluation of the competence and the initial tender of the tenderers in accordance with the requirements and the criteria referred to in the tender documentation.

(2) The contracting body shall invite all tenderers that have submitted acceptable tenders to submit new prices or new values for the part of the tender which is the subject-matter of the electronic auction. The invitation shall be simultaneously submitted to all tenderers by using electronic means.

(3) The date and time of commencement of the electronic auction, the manner of conducting the auction, as well as all necessary information concerning the connection with the electronic devices used, shall be stated in the open invitation.

(4) If the criterion for awarding the contract is the economically most favorable tender, the invitation shall state the outcome of the full evaluation of the relevant initial tender of the tenderer to which the open invitation is sent.

(5) The electronic negative bidding can start no sooner than two days following the date on which the invitations for participation in the electronic auction have been sent.

## **Article 125-a**

(1) In the case where only one tender has been submitted which is acceptable or only one acceptable tender remained, the contracting authority shall mandatorily invite the single tenderer to present a final price via the ESPP.

(2) In the cases referred to in paragraph (1) of this Article, the invitation to the single tenderer shall particularly include:

- identification of the part of the tender which shall be subject to presenting a final price,
- information which shall be available prior to the presentation of the final price, and
- the time of presenting the final price which cannot be shorter than 48 hours as of the sending of the invitation.

(3) The single tenderer shall present the final price at the time which is set out in paragraph (2) line 3 of this Article only once, and if it does not present a final price, the initially offered price shall be regarded as final.

## **Article 126**

(1) The following can be the subject-matter of the electronic auction:

- only the price, when only the lowest price is a criterion for awarding the contract or
- the price or the new values of the part of the tender which is the subject-matter of the electronic auction indicated in the tender documentation, if the criterion for awarding the contract is the economically most favorable tender.

(2) The electronic auction may be conducted in several successive rounds.

## **Article 127**

(1) During each round of the electronic auction, the contracting body shall deliver to the contracting body all information needed to determine, at any time, their ranking. The contracting body can also deliver other information in connection with:

- the number of the participants in the respective round of the electronic auction, and
- the new prices or values that have been submitted in the respective round of the electronic auction by the other tenderers, provided that the tender documentation anticipates such possibility.

(2) In the course of conducting the rounds of the electronic auction, the contracting body cannot disclose the identity of the tenderers.

## **Article 128**

(1) The electronic auction shall be closed by one, or several from the following manners:

- at a previously determined time for which the tenderers have been informed in the invitation referred to in Article 125 paragraph (2) of this Law;
- when the number of rounds, determined in the invitation referred to in Article 125 paragraph (2) of this Law has been met, wherefore the invitation also includes a time frame for each round or
- when new prices or new values that met the requirements concerning the minimum differences are no longer received, wherefore the contracting body, in the invitation, states the time period which is allowed to elapse after receiving the last tender before the electronic auction is closed.

(2) The contracting body shall award the public procurement contract in accordance with Article 162 of this Law, on the basis of the results obtained after closing the electronic auction.

## **Chapter VII**

### **Awarding the public procurement contract**

#### **Part 1**

#### **Tenders and alternative tenders**

#### **Section 1**

#### **Preparation and submission of the tenders and alternative tenders**

### **Article 129**

(1) The tenderer shall prepare the tender in accordance with the tender documentation.

(2) The tenderer shall mandatorily submit a statement made under full material and criminal liability stating that it has submitted the tender independently, without any kind of agreement with other economic operators contrary to the regulations on protection of competition, as well as that it does not participate in the same procedure, that is, in the same part of the procedure together with other economic operators with which it is associated by capital, ownership, or family.

(3) The statement referred to in paragraph (2) of this Article shall be submitted along with the tender in each procedure individually and cannot be submitted additionally upon expiry of the deadline for submission of tenders.

(4) Should there be a notion that the statement referred to in paragraph (2) of this Article is false, the contracting authority shall immediately inform the competent authorities.

(5) The tender shall be binding for the entire validity period determined by the contracting body.

(6) In exceptional cases, the contracting body can require from the tenderers to extend the validity period of the tenders.

### **Article 130**

(1) The contracting body can extend the time period for submission of tenders in the case when the tenders cannot be prepared without a site visit, as well as in the case when the contracting body is not able to deliver the tender documentation or the answers to the submitted requests for clarifications within the time periods determined by this Law, even though they have been requested in a timely manner. In that case, the contracting body shall extend the time period for submission of the tenders for a period that enables all interested tenderers to obtain complete and relevant information for the preparation of the tender, wherefore they shall be informed in writing by the contracting body.

(2) The risks associated with the submission of the tender, including the *force majeure*, shall be borne by the tenderer.

(3) The tender submitted following the expiry of the time period for submission of tenders shall be rejected as late and shall be returned to the tenderer unopened.

(4) The content of the tenders shall remain confidential until the date of their opening.

### **Article 131**

(1) When the criteria for awarding the contract is the economically most favorable tender, the contracting body can allow the tenderers to submit alternative tenders.

(2) The contracting body shall mandatorily indicate in the contract notice whether the submission of alternative tenders is allowed, otherwise the alternative tenders shall not be taken into consideration.

### **Article 132**

(1) The contracting body that allows the submission of alternative tenders, in the technical specifications, shall determine the minimum mandatory requirements that these tenders have to meet, as well as all other specific requirements in connection with their submission.

(2) The contracting body shall not review the alternative tenders that do not meet the minimum requirements referred to in paragraph (1) of this Article.

## **Article 133**

(1) If the contracting body allows submission of alternative tenders, it cannot reject an alternative tender, provided it has been chosen as most favorable, merely because:

- the contract for public procurement of goods according to the alternative tender chosen as most favorable is transformed into a contract for public procurement of services or
- the contract for public procurement of services according to the alternative tender chosen as most favorable is transformed into a contract for public procurement of goods.

## **Article 134**

(1) The tenderer shall submit the tender with price including all costs and discounts to the total price of the tender, excluding VAT which is shown separately, in Denars or in currency as determined in the tender documentation. The tender price shall be expressed both in figures and letters.

(2) In the case of the contracts for public procurement of consultant services, the technical and financial proposals shall be submitted in separate envelopes or in separate electronic documents provided that the procedure is conducted by using electronic means.

(3) The tender price shall be expressed for the total subject-matter of the public procurement contract. If the subject-matter of the contract is divisible, the price of the tender shall be expressed separately for the respective part of the subject-matter of the contract for which the tender is submitted, according to the tender documentation.

(4) The contracting body shall, in the tender documentation, determine the currency or currencies in which the price of the tender can be expressed, as well as the currency which is to be used during the evaluation of tenders. The exchange rate list that shall be used is the exchange rate list of the National Bank of the Republic of Macedonia, and the exchange rates shall be the ones that have been valid 14 days prior to the time period for submission of the tenders.

## **Article 135**

(1) The tenderer can amend, replace or withdraw its tender before the expiry of the time period for submission of the tenders.

(2) The envelopes for amendment, replacement or withdrawal of the tender shall be delivered sealed with an appropriate mark „amendment“, „replacement“ or „withdrawal“, and shall be delivered in the same manner as the tenders.

## **Section 2**

### **Public opening of the tenders**

## **Article 136**

(1) The opening of the tenders in the open procedure, the second phase of the restricted procedure and the phase of submission of the tenders in the competitive dialogue shall be public.

(2) The public opening of the tenders shall commence in the place and at the time determined in the tender documentation as a deadline for submission of the tenders, except for the procurement of consultant services.

(3) No tender shall be rejected in the course of the public opening of the tenders, except the ones submitted after the time period for submission of the tenders.

(4) Prior to the commencement of the opening of the tenders, the commission shall determine the number of received tenders, check the authorizations of the authorized representatives, and shall determine the amendments, replacements or withdrawals of the tenders, as well as their timely and duly submission of the tenders.

(5) While reading the tenders, the following shall have to be mandatorily read:

- the reference number of the contract notice;
- the name of the tenderer;
- the tender price and the currency in which the tender is expressed;
- the possible discount, and
- the offered guarantee.

(6) The contracting body can, in the tender documentation, define other elements which shall have to be read during the public opening.

### **Article 137**

(1) The commission shall commence the public opening of the tenders even if only one tender has been received.

(2) When the subject-matter of the contract is procurement of consultant services, the commission shall evaluate the technical proposal first, and following the evaluation of the technical proposals in accordance with the requirements referred to in the tender documentation, it shall schedule public opening of the financial proposals of the acceptable tenderers, and all tenderers shall have to be informed about the date, time and place of the public opening of the financial proposals.

### **Article 138**

(1) The representatives of the tenderers shall have to submit a written authorization from the tenderer for their participation in the public opening of the tenders.

(2) The commission shall keep records of the authorized representatives of the tenderers who participate in the public opening of the tenders.

### **Article 139**

(1) The commission shall be obliged to take minutes of the tenders public opening procedure, wherein the following information shall be entered:

- the contracting body;
- the place and time of public opening of tenders;
- the reference number of the contract notice;
- the name and surname of the members of the commission;
- the number of tenders received (including the tenders which are withdrawn, replaced and amended);
- the number of late tenders;
- the name of the tenderers;
- the submitted tender guarantees, if required;
- the offered tender prices and discounts;
- the comments of the tenderers, and
- other information considered as useful.

(2) The minutes shall be signed by all members of the commission, except when the procedure is conducted in electronic form, when the minutes is signed only by the president of the commission or his deputy.

(3) A copy of the minutes of the public opening of the tenders shall be delivered to all tenderers which have requested so and whose tenders have been opened on the public opening of the tenders, within a time period of 5 days as of the day of receipt of the request for delivery of the minutes.

(4) The Minister of Finance shall prescribe the procedure for opening of tenders and the form for keeping the minutes of the opening of tenders.

### **Section 3**

#### **Evaluation of tenders**

##### **Article 140**

(1) Tenders which have not been opened on the public opening of the tenders cannot be subject to evaluation.

(2) The commission, prior to the evaluation of the tenders, shall mandatorily check whether the negative reference is published prior to the termination of the final deadline for submission of the tenders and shall appropriately document it as part of the file of the procedure. The commission, within a period of five working days as of the final deadline for submission of tenders, shall check the validity and completeness of the documentation for determining the competence only of the tenderers for which negative reference is not published.

(3) The commission shall mandatorily require from the tenderers to clarify or supplement the documents for determining the competence within the deadline referred to in paragraph (2) of this Article. The commission must not create advantage in favor of a certain economic operator by using the requested clarifications or supplements.

(4) No changes in the technical and financial tender must be requested, offered or allowed by the commission, except clarification of the tender upon previous written request of the commission and correction of arithmetical errors.

(5) The commission shall set the deadline for submission of additional clarification and supplement which must not be shorter than five working days, that is, three working days regarding the simplified competitive procedure as of the day of receipt of the request by the tenderer.

(6) The commission can directly require from the tenderer, for the purpose of clarifying the tender, to translate the part of the tender connected with the technical documentation for which it allowed, in the tender documentation, to be prepared in a foreign language, and to determine a reasonable time period for completion of such requirement.

(7) The commission shall not evaluate the unacceptable tenders.

(8) The evaluation of the tenders shall be conducted only by applying the criteria stated in the tender documentation and published in the notice for awarding the public procurement contract.

(9) The commission, following the conducted evaluation, shall rank the tenders and prepare a proposal regarding the selection of the most favorable tender.

(10) The members of the commission who do not agree with the proposal for selection of the most favorable tender, shall state their opinion in writing prepared as a comment attached to the report of the conducted procedure.

(11) If the State Appeals Commission upon Public Procurements adopts a decision based on which the procedure is send back for re-evaluation, the commission shall be obliged to make the re-evaluation within a period of five working days as of the day of receipt of the decision by submitting a proposal for selection or annulment of the procedure to the responsible person, not calculating the days for conducting an electronic auction.

(12) In the cases referred to in paragraph (11) of this Article, the commission must not reject a tender because of validity period expiry without asking for extension from the tenderer.

## **Article 141**

When evaluating the applications for participation and the tenders in a restricted procedure, negotiated procedure and competitive dialogue, the commission shall appropriately apply the provisions referred to in Article 140 of this Law.

## **Section 4**

### **Report of the conducted procedure**

## **Article 142**

(1) The commission shall prepare a written report regarding the conducted procedure in the open procedure, restricted procedure, negotiated procedure and competitive dialogue.

(2) Depending on the conducted procedure, the report referred to in paragraph (1) shall in particular contain:

- the name and address of the contracting body, subject-matter and estimated value of the public procurement contract or the framework agreement;
- the names of the selected candidates or tenderers and explanation in connection with their selection;
- the names of candidates or tenderers whose requests to participate or tenders have been rejected and the reasons for their rejection;
- the reasons for the rejection of tenders with unusual low price, and
- the name of the tenderer or the tenderers whose tender is chosen as most favorable and the manner and the reasons of the selection.

(3) The report for determining the competence of the candidate in the restricted procedure, competitive dialogue and negotiated procedure with a prior publication of a contract notice shall be an integral part of the report of the conducted procedure.

(4) The contracting body shall be obliged to undertake all necessary measures to document the conduct of the procedure for awarding a public procurement contract by using electronic means.

(5) During the selection of the most favorable tender, the responsible person shall be obliged to accept the report of the commission, containing the proposal for selection of the most favorable tender, unless he/she determines that the proposal has been prepared contrary to the provisions of this Law.

(6) The responsible person at the contracting body shall adopt a decision on selection of the most favorable tender.

(7) The Minister of Finance shall prescribe the form and content of report of the conducted procedure referred to in paragraph (1) of this Article.



(8) The economic operators that have participated in the procedure shall have right to inspect the report of the conducted procedure.

## **Part 2**

### **Determining the competence**

#### **Section 1**

#### **Criteria for determining the competence**

##### **Article 143**

The following shall be criteria for determining the competence of the economic operators:

- the personal standing;
- the competence to perform a professional activity;
- the economic and financial standing;
- the technical or professional competence;
- the quality assurance standards, and
- the environmental management standards.

(2) The economic operators may use the profile of the economic operator on the ESPP for proving certain criteria on determining the capability, which are provided by the ESPP in the procedures conducted by using electronic means.

##### **Article 144**

(1) For the purpose of applying the criteria for determining the competence referred to in Article 143 paragraph (1) lines 3 and 4 of this Law, the contracting body shall, in the tender documentation, state the minimum requirements that have to be fulfilled by the economic operators in order to qualify in accordance with Sections 4 and 5 of this Part.

(2) The contracting body must not require meeting of certain criteria on determining the capability of the economic operators, which are non-proportional and which are not directly connected to the subject-matter of the public procurement contract.

(3) In case of group of economic operators, all the members of the group shall individually prove their personal condition and the ability to perform professional activity.

(4) Where awarding a public procurement contract on passengers transport services, the subcontractor should meet the same requirements for determination of the competencies as set out for the contractor.

(5) Where awarding a public procurement contract on passengers transport services, the subject of the contract shall be mandatorily divided in parts and each route shall represent a separate part.

(6) The economic operator or the group of economic operators may submit a tender in the procedure for awarding a public procurement contract on passengers transport services for as much routes as they have free vehicles for a special line transport of passengers and they should meet the minimum technical and exploitation standards determined in the tender documentation.

#### **Section 2**

## **Personal standing of the economic operator**

### **Article 145**

(1) As a proof of the fulfillment of criteria for determining the personal standing of the economic operator, the contracting body shall be obliged to accept all documents from the country where the economic operator is registered, issued by the competent authorities of that country.

(2) If the country wherein the economic operator is registered does not issue the documents referred to in Article 147 paragraph (2) of this Law, or if these documents do not cover all cases referred to in Article 147 of this Law, the contracting body shall accept a statement of the economic operator certified by a competent authority.

### **Article 146**

The contracting body shall exclude any economic operator from the procedure for awarding a public procurement contract if it has any information that a legally valid court decision for participation in criminal organization, corruption, fraud or money laundering has been imposed on the economic operator in the previous five years.

### **Article 147**

(1) The contracting body shall exclude any economic operator from the procedure for awarding a public procurement contract, provided that it:

- is under a bankruptcy or liquidation procedure;
- has unpaid taxes, contributions or other public fees, unless the economic operator is approved delayed payment of taxes, contributions or other public fees, in accordance with the special regulations and pays them on regular basis;
- has been imposed a secondary sentence prohibition on participation in open call procedures, awarding public procurement contracts and contracts for public private partnership;
- has been imposed a secondary sentence temporary or permanent prohibition on performing a certain activity;
- is being pronounced a misdemeanor sanction prohibition on practicing profession, performing activity or duty, i.e. temporary prohibition for performing a particular activity, or
- presents false information or does not submit the information required by the contracting body.

(2) The economic operator shall submit the following documents for the purpose of proving its personal situation:

- a statement by the economic operator that it has not been imposed a legally valid court decision for participation in criminal organization, corruption, fraud or money laundering in the last 5 years;
- certificate by a competent body that a bankruptcy procedure has not been initiated;
- certificate by a competent body that a liquidation procedure has not been initiated;
- certificate by a competent body from the country where that economic operator is registered for paid taxes, contributions and other public fees;
- certificate by the Register of Sentences for committed crimes of legal entities that a secondary sentence prohibition on participation in an open call procedures, awarding public procurement contracts and contracts for public private partnership, has not been imposed,
- certificate by the Register of Sentences for committed crimes of legal entities that a secondary sentence temporary or permanent prohibition on performing a certain activity, has not been imposed, and
- certificate that a misdemeanor sanction resulting in prohibition for practicing profession, performing activity or duty, i.e. temporary prohibition for performing a particular activity has not been imposed by a legally valid court decision.

(3) The documents referred to in paragraph (2) of this Article cannot be older than six months, and shall be submitted in original or copies verified by the economic operator.

(4) If the contracting body has doubts about the documents aimed at determining the personal situation of the economic operator, it can require information directly from the competent bodies that have issued the documents aimed at determining the personal standing.

### **Section 3**

#### **Competence of the economic operator to perform a professional activity**

##### **Article 148**

The contracting body shall require from each economic operator to deliver a document for a registered activity in order to prove it is registered as a natural person or legal entity to carry out the activity related to the subject-matter of the public procurement contract or a proof that it belongs to a professional association in accordance with the regulations of the country where registered.

(2) In the course of determining the competence for carrying out a professional activity of the economic operators, the contracting authority shall also request proof issued by a competent body for meeting the special requirements for carrying out the activity prescribed in accordance with law which refer to the subject of the contract.

### **Section 4**

#### **Economic and financial standing of the economic operator**

##### **Article 149**

The contracting body can require from the economic operator to prove its economic and financial standing, wherefore in the tender documentation it shall state which documents are required as a proof.

##### **Article 150**

(1) The contracting body can require from the economic operators to provide one or more of the following documents as a proof of their economic and financial standing:

- appropriate bank statements;
- proof regarding the relevant professional risk indemnity insurance;
- balance sheets certified by a competent body, i.e. audited balance sheets or extracts from the balance sheets, when the announcement of the balance sheet is prescribed by law in the country wherein the economic operator is registered, and
- statement regarding the overall turnover of the enterprise (data on the profit and loss statement issued by a competent body, i.e. audited profit and loss statement) and, where applicable, from the turnover in the field covered by the public procurement contract, for the last three financial years at the most for which such information is available, depending on the date on which the enterprise has been incorporated or commenced its operation and depending on the availability of such information.

(2) If the economic operator is unable to provide the documents required by the contracting body from any justified reason, it can prove its economic and financial standing by any other documents considered by the contracting body as appropriate, provided that they realistically reflect the economic and financial standing of the economic operator.

##### **Article 151**

(1) The economic and financial capacity of the economic operator can be supported by another entity, regardless of the legal relations between the economic operator and that entity, except in the cases of data on the profit and loss statement.

(2) When the economic operator proves its economic and financial capacity referring to the support of another entity in accordance with paragraph (1) of this Article, it shall be obliged to prove the support by presenting a valid proof that the entity will make available the respective financial resources to the economic operator. A legally valid court decision for participation in criminal organization, corruption, fraud or money laundering must not have been pronounced against the entity that provides the financial support.

(3) When economic operators submit a joint tender or request to participate, the economic and financial standing shall be proven by taking into consideration the resources of each member of the group. When the group of tenderers or candidates appears with a financial support from a third entity, the economic and financial standing shall be determined in accordance with paragraph (2) of this Article.

## **Section 5**

### **Technical or professional competence**

#### **Article 152**

(1) The contracting body can require from the economic operator participating in the procedure for awarding a public procurement contract to prove its technical or professional competence.

(2) When the contracting body requires validation of the technical and professional competence, it shall indicate in the tender documentation the documents by which the economic operator is to prove it thereon.

#### **Article 153**

(1) The technical and professional competence of the economic operators in the procedure for awarding a public procurement contract for goods, can be proven in one or more of the following manners:

- list of the principal deliveries by the tenderers or the candidates conducted in the past three years containing values, dates, customers (contracting bodies or economic operators), by providing a statement for the deliveries made issued by the recipients, or if such statements cannot be provided due to reasons beyond the control of the economic operator, only with its statement regarding the conducted deliveries;
- description of the technical equipment and ability of the economic operator, measures used to ensure quality and its equipment and ability for examination and research;
- statement on the engaged technical staff and technical bodies regardless of whether they directly belong to the economic operator;
- samples, descriptions and/or photos of the products subject to delivery, whose authenticity have to be proven by the economic operator provided it is required by the contracting body;
- certificates issued by competent bodies for quality control, with recognized competence, attesting the conformity of the products clearly determined by reference to the specifications and standards;
- in case of procurement of complex products, or in exceptional cases for special purposes, inspection of the production capacities of the economic operator shall be provided, or if necessary, of its study and research capacities, as well as of the quality assurance measures, conducted by the contracting body or on its behalf by a competent body in the country wherein the economic operator is registered, and
- notification about the elements of the contract that the economic operator intends to transfer to a subcontractor.

(2) The technical and professional competence of the economic operators, in the procedures for awarding a public procurement contract of services, can be proven in one or more of the following manners:

- a list of the principal services of the tenderers or the candidates conducted in the past three years containing values, dates, buyers (contracting bodies or economic operators), by providing a statement for the conducted services issued by the recipients, or if such statements cannot be provided due to reasons beyond the control of the economic operator, only with its statement regarding the conducted services;
- educational and professional qualifications of the economic operator or of its expert staff, and especially of the persons responsible for providing the respective service;
- a statement on the engaged technical staff and technical bodies, regardless of whether they directly belong to the economic operator;
- a statement by the economic operator on the average annual number of employees and the number of the managing staff in the past three years;
- a statement on the technical equipment and competence of the economic operator and on other resources available in order to provide the respective services and assure quality;
- in case of procurement of complex services, or in exceptional cases for special purposes, inspection of the production capacities of the economic operator shall be provided, or if necessary, of its study and research capacities, as well as of the quality assurance measures, conducted by the contracting body or on its behalf by a competent body in the country wherein the economic operator is registered, and
- notification about the elements of the contract that the economic operator intends to transfer to a subcontractor.

(3) The technical and professional competence of the economic operators, in the procedures for awarding a public procurement contract of works, can be proven in one or more of the following manners:

- list of works executed in the past five years by enclosing a statement for good performance of the main works, statements containing the value, time and location of the execution of the works and indications whether the works have been executed according to the business operations rules and whether they have been finished according to the regulations;
- educational and professional qualifications of the economic operator or of its managing staff, and especially of the persons responsible for execution of the respective works;
- a statement on the engaged technical staff and technical bodies, especially those in charge of quality control, regardless of whether they directly belong to the economic operator;
- a statement by the economic operator on the average annual number of employees and the number of the managing staff in the past three years ;
- statement on the technical equipment available to the economic operator for the execution of the respective works, and
- notification about the elements of the contract that the economic operator intends to transfer to a subcontractor..

## **Article 154**

(1) The technical and professional competence of the economic operator can be supported by another entity, regardless of the legal relations between the economic operator and the entity, except in the part of the references, the previously concluded contracts and the licenses.

(2) When the economic operator proves its economic and financial capacity referring to the support of another entity in accordance with paragraph (1) of this Article, it shall be obliged to prove the support by presenting a valid proof that the entity will make available the respective technical and professional resources to the economic operator. A legally valid court decision for participation in criminal organization, corruption, fraud or money laundering must not have been pronounced against the entity that provides the technical and professional support.

(3) When economic operators submit a joint tender or request to participate, the technical and professional competence shall be proven by taking into consideration the resources of each member of

the group. When the group of tenderers or candidates appears with technical and professional support from a third entity, or third entities the technical and professional competence shall be determined in accordance with paragraph (2) of this Article.

## **Section 6**

### **Quality assurance standards**

#### **Article 155**

When the submission of certificates issued by independent institutions, confirming the compliance of the economic operator with certain quality assurance standards, is required, the contracting body shall refer to the quality assurance systems based on the relevant European standards or international standards.

#### **Article 156**

According to the mutual recognition principle, the contracting body shall accept the equivalent certificates issued by institutions established in the member states of the European Union.

## **Section 7**

### **Environmental management standards**

#### **Article 157**

If the contracting body requires observation of certain environmental management standards, it shall refer to:

- the Community Eco-Management and Audit Scheme (EMAS) or
- the environmental protection standards based on the relevant European or international standards confirmed by accreditation institutions or attestation bodies or by relevant European or international bodies accredited for certification.

#### **Article 158**

According to the mutual recognition principle, the contracting body shall accept the equivalent certificates issued by institutions established in the member states of the European Union.

## **Part 3**

### **Criteria for awarding a public procurement contract**

#### **Article 159**

The contracting body shall be obliged to specify in the notice for awarding the public procurement contract the criterion for awarding a public procurement contract, which once determined, cannot be changed throughout the procedure for awarding the contract.

#### **Article 160**

(1) Criterion for awarding a public procurement contract shall be the lowest price.

(2) As an exception to paragraph (1) of this Article, criterion for awarding a public procurement contract may be the economically most favorable tender in the cases of procuring consulting and other services of intellectual nature, as well as in the cases where due to the particularity of the subject-matter of the contract it is impossible to determine precisely the quality or other elements as minimum requirements from the technical specifications. The economically most favorable tender criterion shall mandatorily apply to the competitive dialogue procedure and in the event of variants.

(3) The contracting authority shall mandatorily request for consent from the Council before it publishes the contract notice, provided that it envisages application of the economically most favorable tender criterion, except for the cases where it conducts a competitive dialogue procedure or permits the submission of variants.

## **Article 161**

(1) When the criterion for awarding the contract is the economically most favorable tender, the most favorable tender shall be the one that receives the highest points from the different elements which carry relevant number of maximum points.

(2) The elements of the criterion economically most favorable tender referred to in paragraph (1) of this Article can be the price, quality characteristics, technical and functional characteristics, environmental characteristics, operational costs, cost-effectiveness, post-sale services and technical support, delivery or execution time, or other significant elements for evaluation of the tenders.

(3) The elements of the criterion economically most favorable tender, as well as the maximum number of points for each element individually, shall have to be clearly defined in the notice for awarding the public procurement contract, specifically related to the subject-matter of the public procurement contract and, after being determined, they cannot be changed throughout the procedure for awarding a public procurement contract.

(4) The contracting body shall be obliged, in the tender documentation, to provide explanation how it intends to score and apply the elements of the criterion economically most favorable tender.

(5) The methodology for expressing the criteria for awarding the public procurement contract into points shall be prescribed by the Minister of Finance.

## **Part 4**

### **Awarding a public procurement contract**

## **Article 162**

(1) The contracting body shall select the most favorable tender, and shall adopt a decision thereof, on the basis of the criterion for awarding the contract determined in the notice for awarding a public procurement contract and the tender documentation, provided that the tenderer whose tender is the most favorable one meets the prescribed criteria for determining the competence.

(2) The contracting body shall be obliged to adopt a decision for selection or annulment of the procedure in a time period that is not longer than the time period for submission of the tenders, i.e. the requests to participate in the concrete procedure, counting from the day determined as a deadline for submission of the tenders, i.e. the request to participate.

## **Article 163**

(1) When a particular tender contains an unusual low price, significantly lower than the actual market price which makes it suspicious that the contract will be fulfilled, the contracting body shall require from the tenderer, in writing and before rejecting the tender, details of the tender which are considered to be relevant, and it shall check the proofs that have been submitted as a justification regarding the prices of the tender.

(2) The contracting body shall take into consideration the proof submitted by the tenderer in accordance with paragraph (1) of this Article, especially those referring to:

- the economic basis for forming the price which reflects the production process or the provided services;
- the chosen technical solutions or any other exceptionally favorable conditions available to the tenderer when executing the works, or providing the goods or services;
- the originality of the goods, services or works offered by the tenderer;
- the compliance with the regulations regarding the safety at work and the working conditions during the execution of works, provision of services, or for the delivery of goods, and
- the possibility for the tenderer to use a state aid.

### **Article 164**

(1) When the contracting body determines that the price of the tender is unusually low because the tenderer has obtained a state aid, the tender can be rejected on that ground alone, only if, after requiring additional clarifications, the tenderer cannot prove that the state aid has been legally granted within a time period of three days as of the day of receiving the request.

(2) When the contracting body rejects a tender on the basis of paragraph (1) of this Article, it shall be obliged to send a notification to the Bureau.

### **Article 165**

(1) The contracting body shall conclude the public procurement contract with the tenderer whose tender has been chosen as most favorable on the basis of its technical and financial proposal, within the validity period of the tender.

(2) If the chosen tenderer withdraws from concluding or carrying out the contract, the contracting body can conclude the contract with the next ranked tenderer, or can annul the procedure.

(3) The contracting body shall be obliged to keep the documents on the basis of which the most favorable tender has been chosen.

### **Article 166**

Any person having legal interest in connection with the public procurement procedure or the public procurement contract, including the state attorney, can request initiation of a procedure for proclaiming nullity of the public procurement contracts.

## **Part 5**

### **Notifying candidates or tenderers**

### **Article 167**

(1) The contracting body, depending on the type of applied procedure for awarding the public procurement contract, shall notify the candidates, i.e. the tenderers, in writing, about the decisions made in connection with the conducted pre-qualification, the award of the public procurement



contract, the conclusion of the framework agreement or the annulment of the procedure for awarding the contract. The notification shall be sent within a time period of three days as of the day of adoption of the respective decision.

(2) A copy of the respective decision shall be attached to the notification.

(3) The notification referred to in paragraph (1) of this Article shall be sent in a written form.

(4) The form and content of the notification referred to in paragraph (1) of this Article shall be prescribed by the Minister of Finance.

## **Article 168**

Depending on the type of applied procedure for awarding a public procurement contract, the contracting body shall be obliged, in the notification referred to in Article 167 paragraph (1) of this Law, to inform the tenderer or tenderers whose tender has been chosen as most favorable, as well as the candidates or tenderers who have been rejected or those whose tender has not been chosen as most favorable, about the reasons for adopting the decision, as follows:

- each candidate that has not been chosen, about the reasons for rejecting its request to participate;
- a tenderer whose tender has been rejected, about the reasons for rejecting its tender with a detailed explanation why the tender is unacceptable, and
- a tenderer who has submitted an acceptable tender that was not selected as most favorable, about the name of the chosen tenderer or tenderers and the reasons for the selection.

## **Part 6**

### **Annulment of the procedure for awarding a public procurement contract**

## **Article 169**

(1) The contracting body can annul the procedure for awarding a public procurement contract if:

- the number of candidates is less than the minimum number anticipated in the procedures for awarding a public procurement contract in accordance with this Law;
- no tender or no acceptable tender has been submitted;
- no appropriate tender is submitted in a procedure where the subject of the contract is only one part, as well as in procedures where the subject of the contract is divided in several parts and where the appropriateness of the tenders may be determined;
- acceptable tenders have been submitted, but they cannot be compared due to different approaches in the financial or technical proposals;
- unforeseeable changes occurred in the budget of the contracting body;
- the tenderers have offered prices and conditions for implementation of the public procurement contract which are less favorable than the real prices and conditions on the market;
- it assess that the tender documentation contains important omissions or flaws, until the moment of tender opening;
- due to unforeseeable and objective circumstances the needs of the contracting body have changed or
- the contracting body cannot select the most favorable tender due to major violations of the Law in accordance with Article 210 of this Law.

(2) In case of annulment of the procedure for awarding public procurement contract pursuant to paragraph (1) line 8 of this Article, the contracting body cannot conduct new procedure for the same subject matter of the contract, within a period of six months as of the day of adoption of the decision on annulment of the procedure. [13](#)

(3) The responsible person at the contracting body shall adopt a decision on annulment of the procedure for awarding a public procurement contract.

### **Article 170**

(1) The contracting body shall, within a time period of three days as of the day of the annulment at the latest, notify in writing all participants in the procedure for awarding a public procurement contract about the termination of the obligations of the participants arising from the submission of their tenders, as well as on the reasons for annulment of the procedure.

(2) The contracting body shall publish a notification for annulment of the procedure for awarding a public procurement contract on ESPP within a period of 30 days as of the day of annulment of the procedure.

## **Chapter VIII**

### **Completion of the procedure for awarding a public procurement contract**

#### **Article 170-a**

(1) The procedure for awarding a public procurement contract shall be completed on the day of the legal validity of the decision on selection or annulment of the procedure.

(2) As soon as the procedure is completed, the contracting body shall return the samples, models and documents anticipated to be returned to the tenderers in the tender documentation.

#### **Article 171**

The contracting body shall be obliged to keep a dossier of the procedure for each awarded public procurement contract or concluded framework agreement.

#### **Article 172**

The contracting body shall keep the dossier of the procedure for awarding the public procurement contract for at least five years as of the day of implementation of the respective public procurement contract.

#### **Article 173**

Depending on the applied procedure for awarding a public procurement contract, the procedure dossier shall in particular contain:

- public procurement decision;
- prior indicative notification and proof that it has been sent for publication;
- notice for awarding a public procurement contract and proof that it has been sent for publication;
- tender documentation;
- received requests for participation;
- communication between the contracting body and the economic operators;
- report assessing the competence of the candidates;
- decision on the selection of qualified candidates;
- received tenders;
- minutes of the public opening;
- statements on the existence/non-existence of conflict of interest;

- reports by external experts;
- conducted evaluation report;
- decision for selection of the most favorable tender;
- signed public procurement contract or framework agreement and
- notification for a concluded contract and proof that it has been sent for publication.

### **Article 174**

The provisions referred to in Article 173 of this Law shall accordingly apply to the award of sector contracts referred to in Chapter IX of this Law.

### **Article 175**

When the contracting body conducts a procedure for awarding a public procurement contract by using electronic means, or electronic auctions, it shall be obliged to ensure complete monitoring of the activities it carries out during the procedure for awarding the contract, for the purpose of keeping the dossier referred to in Article 173 of this Law.

## **Chapter IX**

### **Sector contracts**

#### **Part 1**

#### **Sector contracts awarded for certain activities**

##### **Section 1**

##### **Scope**

#### **Article 176**

(1) The activities for which the sector contracts are awarded (hereinafter: covered activities) shall be:

- water supply;
- energy;
- transport;
- postal services, and
- other covered activities.

(2) Unless otherwise regulated in this Chapter, the provisions of this Law shall apply to the sector contracts.

#### **Article 177**

When a sector contract for carrying out several covered activities is awarded, the contracting body shall apply the rules referring to the main covered activity for which the contract is intended for.

#### **Article 178**

(1) When the contracting body referred to in Article 4 paragraph (1) points a), b) and c) of this Law awards a public procurement contract for several activities, among which at least one is a covered

activity, and another activity is covered by the provisions referred to in Chapter III of this Law, and objectively, it is impossible to determine for which activity the contract is mainly intended for, such contract shall not be considered as a sector contract and the contracting body shall apply this Law as for the public procurement contracts referred to in Chapter III of this Law.

(2) When the contracting body referred to in Article 4 paragraph (1) points a), b) and c) of this Law awards a public procurement contract for several activities, among which at least one is a covered activity, and another activity is not subject to this Law, and objectively, it is impossible to determine for which activity the contract is mainly intended for, such contract shall be considered as a sector contract.

(3) When the contracting body referred to in Article 4 paragraph (1) points d) and e) of this Law awards a public procurement contract for several activities, among which at least one is a covered activity, and objectively it is impossible to determine for which activity the contract is mainly intended for, such contract shall be considered as a sector contract.

## **Section 2**

### **Water supply**

#### **Article 179**

Covered activities, in terms of the Article 176 paragraph (1) line (1) of this Law, shall be the installation and management of fixed networks intended for provision of public services in connection with the production, transport or distribution of drinking water, or supply of drinking water to such networks.

#### **Article 180**

The contracting body performing some of the activities referred to in Article 179 of this Law shall apply the provisions of this Chapter when it awards a public procurement contract or organizes a conceptual solution contest in connection with:

- installation, management and supply of drinking water to the networks, connected with hydraulic engineering projects, irrigation or land drainage, out of which more than 20% of the total capacity of water is used for drinking or
- installation, management and supply of networks for disposal or treatment of waste waters.

#### **Article 181**

The supply of drinking water to the networks intended for provision of public services carried out by a contracting body referred to in Article 4 paragraph (1) points d) and e) of this Law shall not be considered as covered activity in terms of Article 179 of this Law, if:

- the production of drinking water is necessary for carrying out activities which are not considered as covered activities, and
- the supply to the networks depends only on the entity's own consumption and does not exceed 30% of the entity's total production of drinking water, taking into consideration the preceding 36 months.

## **Section 3**

### **Energy**

#### **Article 182**

Covered activities, in terms of this Article 176 paragraph (1) line 2 of this Law shall be the installation and management of fixed networks intended for provision of public services in connection with the production, transport or distribution, i.e. the supply of gas, heat or electric energy to such networks.

### **Article 183**

The supply of gas or heat energy to networks intended for provision of public services by the contracting body referred to in Article 4 paragraph (1) points d) and e) of this Law shall not be considered as covered activity in terms of Article 182 of this Law if:

- the production of gas or heat energy is a consequence of carrying out an activity which is not considered as a covered activity, and
- the supply of the public network with gas or heat energy is aimed only at the economic exploitation of such production and does not exceed more than 20% of the contracting body's turnover, taking into consideration the average for the preceding 36 months, including the current year.

### **Article 184**

The supply of electric energy to networks intended for provision of public services by the contracting body referred to in Article 4 paragraph (1) points d) and e) of this Law shall not be considered as covered activity in terms of Article 182 of this Law if:

- the electric energy is produced for the purpose of fulfilling the personal consumption necessary for carrying out an activity which is not considered as covered activity, and
- the supply of the public network with electric energy depends only on the contracting body's consumption and does not exceed 30% of the total production of electric energy, taking into consideration the preceding 36 months, including the current year.

## **Section 4**

### **Transport**

### **Article 185**

Covered activities, in terms of Article 176 paragraph (1) line 3 of this Law, shall be the provision of transport services on regular rail and land traffic lines.

### **Article 186**

The provision of transport services by bus shall not be considered as covered activity in the cases when the other entities can provide the same services in the same geographical area under the same conditions as the contracting bodies.

## **Section 5**

### **Postal services**

### **Article 187**

(1) Covered activities, in terms of Article 176 paragraph (1) line 4 of this Law shall be the provision of:

- universal postal services;
- reserved postal services;
- exchange of documents, bills and invoices;
- services concerning mail bearing no address;
- added-value services including transmission of data by using electronic means (including

transmission of coded documents, creation of database of users and transmission and delivery of registered mail via electronic means);

- financial services conducted upon agreement in a post, including banking services, payment of transfer orders, pay cards, payment of public duties, money transfer from current and giro accounts, services related to insurance payment, and alike;
- philatelic services or
- logistics services, including physical delivery and warehousing of postal packages related to other non-postal services.

(2) The services referred to in paragraph (1) lines 3, 4, 5, 6, 7 and 8 of this Article shall be considered as covered activities, provided that the entity which provides these services also provides universal or reserved postal services.

## **Section 6**

### **Other covered activities**

#### **Article 188**

Other covered activities shall be the activities related to exploration of land for the purpose of extracting oil, gas or coal or construction and management of airports or ports (river or lake ports) or other terminal facilities of carriers by air or inland waterway.

## **Part 2**

### **Specific exemptions**

#### **Article 189**

This Law shall not apply to sector contracts awarded for the purpose of procurement of:

- goods for the purpose of resale or lease to third parties, provided that the contracting body enjoys no special or exclusive rights to sell or lease such goods, and the other entities are free to sell or lease them under the same conditions, or
- goods, services or works intended for carrying out covered activities abroad.

#### **Article 190**

(1) This Law shall not apply to contracts awarded by the contracting body referred to in Article 4 paragraph (1) lines d) and e) of this Law, the subject-matter of which is procurement of goods, services or works intended for execution of activities which in accordance with this Chapter are not considered as covered activities.

(2) This Law shall not apply to contracts awarded by the contracting bodies referred to in Article 4 paragraph (1) point e) of this Law if the estimated value of the contract is below Euro 200.000 in Denar counter-value for the contracts for public procurement of goods and services and Euro 4.000.000 in Denar counter-value for the contracts for public procurement of works.

#### **Article 191**

This Law shall not apply to contracts the subject-matter of which is procurement of water if awarded by a contracting body carrying out a covered activity referred to in Article 179 of this Law.

#### **Article 192**

This Law shall not apply to contracts the subject-matter of which is procurement of electric energy or fuels for production of electric energy if awarded by a contracting body carrying out a covered activity referred to in Articles 182 or 188 of this Law.

### **Article 193**

(1) This Law shall not apply to sector contracts awarded:

- by a contracting body to a connected enterprise or
- by a legal entity established by several contracting bodies exclusively for the purpose of carrying out a covered activity to a company which is connected with one or more contracting bodies which are part of that legal entity.

(2) The provisions referred to in paragraph (1) of this Article shall apply only in cases when at least 80% of the average turnover of the connected company for the preceding three years derives from the provision of such goods, services or works to the companies which are connected with it.

(3) A connected company shall be a company:

- over which the contracting body has direct or indirect dominant influence;
- that can dominantly influence the contracting body or
- which, together with the contracting body, is subject to dominant influence of another company.

(4) Dominant influence exists when one entity, directly or indirectly:

- owns the majority of the other company's capital;
- controls the majority of the votes on the basis of the stocks or shares issued by the other entity or
- can appoint more than half of the members of the management bodies or the supervisory body.

### **Article 194**

(1) This Law shall not apply to sector contracts awarded:

- by a legal entity established by several contracting bodies exclusively for the purpose of carrying out a covered activity to a contracting body being within the composition of the legal entity, or
- by a contracting body to a legal entity established by several contracting bodies exclusively for the purpose of carrying out a covered activity, having the contracting body within its composition.

(2) The provisions referred to in paragraph (1) of this Article shall apply only if the legal entity has been established for carrying out the covered activity for a period of at least three years.

### **Article 195**

The Bureau can request from the contracting body to submit a notification regarding any contract awarded on the basis of the provisions referred to in Part 2 of this Chapter, and the contracting body shall be obliged to respond to such request.

## **Part 3**

### **Procedures for awarding sector contracts**

#### **Article 196**

(1) The following shall be procedures for awarding sector contracts:

- open procedure;
- restricted procedure;
- negotiated procedure with prior publication of a contract notice;

- negotiated procedure without prior publication of a contract notice, and
- simplified competitive procedure.

(2) The provisions referred to in Article 21 paragraph (3) of this Law shall accordingly apply when awarding a sector contract.

## **Article 197**

(1) The contracting body shall award sector contracts by conducting an open procedure, restricted procedure or negotiated procedure with prior publication of a contract notice.

(2) As an exception to paragraph (1) of this Article, the contracting body, only in the cases referred to in Article 100 paragraph (1) and Article 198 of this Law, can apply the other procedures anticipated in Article 196 paragraph (1) of this Law.

## **Article 198**

(1) In the case of awarding a sector contract, the contracting body may conduct a negotiated procedure without prior publication of a contract notice, in the following cases:

- where no tender is submitted after conducting two open procedures or simplified competitive procedures, that is, no request for participation in the first phase is submitted after conducting two restricted procedures, provided that the requirements in the tender documentation are not altered;
- when the contract is only intended for research, experimentation, study or development purposes, and not for generation of profit or recovery of research and development costs, and only if the award of such contract does not violate the competitive award of the subsequent contracts for these purposes;
- when the contract can be carried out only by a particular economic operator due to technical or artistic reasons, i.e. due to reasons connected with protection of exclusive rights (patents, and alike),;
- when from reasons of extreme urgency caused by events unforeseeable by the contracting body, the time period for publication of the open procedure, restricted procedure, simplified competitive procedure or negotiated procedure with prior publication of a contract notice cannot be applied,
- when the contracting body has to supply additional deliveries from the original supplier for the purpose of partial replacement of the usual goods or installations or as an extension of the existing goods or installations, wherefore a change of the supplier would oblige the contracting body to purchase material with different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
- for a contract when there is a possibility to be obtained by using particularly advantageous opportunity available for a short period of time at a price considerably lower than the normal market price;
- for a contract for public procurement of goods procured under favorable conditions from a supplier who is closing up its business activities (liquidation or bankruptcy), a liquidation administrator or a liquidator upon prior agreement with the creditors;
- for a contract for public procurement of services, following the open conceptual solution contest, which has to be awarded to the best ranked candidate or one of the best ranked candidates. When the contract has to be awarded to one of the best ranked candidates, the contracting body shall invite all of them to participate in the negotiations, and
- for a contract for public procurement of additional works or services not included in the original contract, but which are necessary due to unforeseen circumstances, provided that the contract is concluded with the contractor referred to in the basic contract, when:
  - a) such additional works or services cannot be technically or economically separated from the basic contract without major inconvenience for the contracting body or
  - b) such works or services, although separable from the implementation of the basic contract, are necessary for its completion.



(2) The total value of the additional works, unpredicted works, excess of works and shortage of works or of additional services referred to in paragraph (1) line 9 of this Article must not exceed 30% of the value of the basic contract.

(3) In the cases referred to in paragraph (1) lines 1, 4 and 9 of this Article, the contracting authority shall start the negotiated procedure without a prior publication of a contract notice only upon receipt of consent from the Council.

(4) In the cases referred to in paragraph (1) line 1 of this Article, the Council, at the time of issuing the consent, shall check whether the contracting authority has changed the tender documentation in the previously conducted regular procedures and the tender documentation which it intends to use in the negotiated procedure.

(5) As an exception to paragraph (3) of this Article, the contracting authority shall not be obliged to obtain consent before it conducts a negotiated procedure without a prior publication of a contract notice based on paragraph (1) line 4 of this Article, provided that the safety, life and health of the people are directly endangered.

### **Part 3-a**

#### **Special manner of awarding sector public procurement contracts**

##### **Article 198-a**

(1) In order to determine the condition of the tenderers, the contracting bodies referred to in Article 4 paragraph (1) points d) and e) of this Law may establish and keep a qualification system of tenderers.

(2) The contracting body may accept and use the qualification systems established by other contracting bodies.

##### **Article 198-b**

(1) The qualification system shall be established by publishing an announcement for establishment of a qualification system on ESPP.

(2) The qualification system shall contain objective criteria and rules for determination of the ability of the tenderers that require inclusion in the system.

(3) The qualification system shall consist of the standard procedures for awarding a public procurement contract with regard to the determination of the ability of the tenderer and shall be in accordance with the standard procedures for awarding a public procurement contract with regard to preparation of the technical specifications or the technical standards, whereas such specifications and standards may be modified as needed.

(4) The qualification system may be operable and applied in phases.

(5) If the qualification system lasts longer than three years, the announcement for establishment of the qualification system shall be published once a year, in accordance with paragraph (1) of this Article.

(6) The form and content of the template for the announcement for establishment of a qualification system shall be prescribed by the Minister of Finance.

### **Article 198-c**

(1) The tenderer may submit a request for inclusion in the qualification system at any time, while the assessment of the ability of the tenderer shall be conducted in the shortest possible time period, not exceeding six months as of the day of submission of the request.

(2) If the assessment of the ability of the tenderer requiring inclusion in the qualification system lasts longer than four months as of the day of submission of the request, within a period of two months as of the day of submission of the request, the contracting body shall be obliged to notify the tenderer thereof, as well as for the date when it is expected for the contracting body to complete the assessment of the ability.

(3) The contracting body shall adopt a written decisions with a detailed elaboration of the reasons for acceptance or rejection of the inclusion of the tenderer in the qualification system.

### **Article 198-d**

(1) The contracting body shall keep a list of qualified tenderers included in its qualification systems, divided in categories according to the type of public procurement contracts referred in the qualification.

(2) The contracting body has to ensure that the list of qualified tenderers is available to the public on its web site.

### **Article 198-e**

(1) Public procurement contracts through the qualification system shall be carried out by means of second phase of limited procedure or second phase of negotiated procedure, by publishing a notice.

(2) An invitation for submitting tenders shall be delivered to all the tenderers included in the qualification system of the contracting body for the specific subject-matter of the contract notice.

### **Article 199**

When two or more tenders differ for less than three points from each other by applying the criteria for award of the public procurement contract, the contracting body can select as most favorable the one wherein over 50% of the goods tendered originate from the Republic of Macedonia, member states of the EU and from countries having concluded an international agreement with the Republic of Macedonia which provides equal treatment of the economic operators from the Republic of Macedonia on the market of that country.

## **Chapter X**

### **Legal protection**

#### **Part 1**

### **State Appeals Commission upon Public Procurement**

#### **Article 200**

(1) The State Appeals Commission Upon Public Procurement (hereinafter: State Commission) shall be competent for:

- deciding upon appeals in the contract award procedure prescribed by this Law,
- deciding upon appeals in the contract award procedure for concession and public private partnership,
- deciding upon appeals against a decision adopted by the Council pursuant to Article 14 paragraph (17) of this Law, and
- other matters pursuant to this Law.

(2) The State Commission shall decide on the legality of the actions and the omissions to undertake actions, as well as the decisions as individual legal acts adopted in the procedures referred to in paragraph (1) of this Article, as well as other activities in accordance with Law.

(3) The State Commission shall also decide upon other requests allowed to be submitted in the procedure for legal protection, by the parties to the procedure.

(4) The provisions of this Chapter shall accordingly apply in the provision of legal protection in the procedures for awarding contracts for concessions and public private partnership.

## **Article 201**

(1) The State Commission shall be a state body which is independent in its operation and shall have a capacity of a legal entity.

(2) The State Commission shall have an expert service.

(3) General secretary of the State Commission shall manage the expert service and he/she shall participate in the session of the State Commission without the right to vote.

(4) The Law on Administrative Servants and the Law on Public Sector Employees shall apply to the employees in the expert service. [14](#)

(5) The head office of the State Commission shall be in Skopje.

(6) The State Commission shall be financed from the Budget of the Republic of Macedonia.

## **Article 202**

(1) The State Commission shall be composed of a president and four members, who carry out their office professionally, for a full-time hours, and they cannot hold another office and be employed at another job or receive another remuneration, except the salary and occasional educative and copyright fees.

(2) The president and the members of the State Commission shall be appointed at a public announcement which is published in at least three daily newspapers that are printed on the whole territory of the Republic of Macedonia one of which is a newspaper printed in a language spoken by at least 20% of the citizens who speak an official language other than the Macedonian and shall be dismissed by the Assembly of the Republic of Macedonia, upon a proposal of the Commission for Election and Appointment Matters of the Assembly of the Republic of Macedonia. [15](#)

(3) The president and the members of the State Commission shall be appointed for a time period of five years with the right to be re-appointed.

(4) A person who meets the following requirements may be appointed as a member of the State Commission:

- 1) to be a citizen of the Republic of Macedonia;
- 2) at the moment of appointment, not to be issued an effective injunction banning him/her from exercising a profession, business or office;
- 3) to have at least 240 credits under ECTS, that is, completed VII/1 degree in the field of law;
- 4) to have at least five years of work experience out of which at least three years in the field of public procurements;
- 5) to hold one of the following internationally recognized certificates for active knowledge of English Language which is not older than five years: [17](#)
  - TOEFL IBT - at least 74 points,
  - IELTS - at least 6 points,
  - ILEC (Cambridge English: Legal) - at least B2 level,
  - FCE (Cambridge English: First) - passed,
  - BULATS - at least 60 points, or
  - APTIS - at least B2 level; and
- 6) to have passed a psychological test and an integrity test.

## [18](#)

(5) A person who meets the following requirements may be appointed as a president of the State Commission:

- 1) to be a citizen of the Republic of Macedonia;
- 2) at the moment of appointment, not to be issued an effective injunction banning him/her from exercising a profession, business or office;
- 3) to have at least 240 credits under ECTS or completed VII/1 degree in the field of law;
- 4) to have passed the bar exam;
- 5) to have at least five years of work experience out of which at least three years in the field of public procurements;
- 6) to hold one of the following internationally recognized certificates for active knowledge of English Language which is not older than five years: [19](#)
  - TOEFL IBT - at least 74 points,
  - IELTS - at least 6 points,
  - ILEC (Cambridge English: Legal) - at least B2 level,
  - FCE (Cambridge English: First) - passed,
  - BULATS - at least 60 points, or
  - APTIS - at least B2 level; and
- 6) to have passed a psychological test and an integrity test.

(6) The president and the members of the State Commission shall select a deputy president from among themselves by majority of votes.

(7) The president and the members of the State Commission cannot be members in other bodies elected or appointed by the Assembly of the Republic of Macedonia or the Government.

(8) During the term of office, the president and the members of the State Commission shall be entitled to a salary. The coefficient for calculating the salary of the president of the State Commission shall be 3,8, and for the members 3,7.

## **Article 203**

(1) The Assembly of the Republic of Macedonia shall dismiss the president or a member of the State Commission before his/her term of office expires if he/she:

- requires to be dismissed;
- permanently loses his/her ability to perform the office, which is determined by the Assembly of the Republic of Macedonia;
- has been convicted by a legally valid court decision for a criminal offense to an unconditional

imprisonment of at least six months;

- meets the requirements for age pension;
- performs other activities incompatible with his/her office as a president or a member of the State Commission or
- the president or a member passes away.

(2) The Government can also give a proposal for dismissal of the president or a member of the State Commission.

(3) The president of the State Commission (or the deputy in case of dismissal of the president) shall be obliged to inform the Assembly of the Republic of Macedonia about the existence of reasons for dismissing the president or a member of the State Commission.

(4) The Assembly of the Republic of Macedonia shall initiate a procedure for appointment of a president and members of the State Commission at least three months before the expiry of the office. The procedure for appointment shall have to be completed at least 30 days before the expiry of the office of the president and the members.

## **Article 204**

The manner of operation and the decision making process of the State Commission shall be regulated by the Rules of Procedure.

## **Article 205**

(1) The State Commission shall submit an annual report of its activities to the Assembly of the Republic of Macedonia by the end of March in the current year for the previous year.

(2) Upon a request of the Assembly of the Republic of Macedonia, the State Commission shall be obliged to submit a report for a time period shorter than one year.

(3) The annual report shall contain in particular:

- number of cases received;
- number of cases resolved (dismissed, rejected and accepted appeals);
- number of annulled procedures;
- number of unresolved cases;
- number of cases for which an administrative dispute has been initiated (rejected and accepted cases);
- statistical analysis of the legal protection procedures, and
- evaluation of the condition of the legal protection and the public procurement system as a whole.

(4) The expert service of the State Commission shall prepare the annual report on the work of the State Commission.

(5) The State Commission shall adopt financial, strategic plans and an annual program for the work of the State Commission and shall deliver them to the Assembly of the Republic of Macedonia until the end of March in the current year at the latest and shall organize their implementation.

(6) The Assembly of the Republic of Macedonia shall give consent for the financial and strategic plans, as well as for the annual program for work of the State Commission.

## **Article 206**

Any form of influence on the decision making process of the State Commission shall be forbidden, and in particular any misuse of the public authorizations in order to influence the course and the outcome of the procedure.

### **Article 207**

(1) Any economic operator having legal interest in the procedure for awarding a public procurement contract, and which has suffered or could suffer damage by possible violation of the provisions of this Law, can require legal protection against the decisions, actions and omissions to undertake actions by the contracting body in the procedure for awarding a public procurement contract.

(2) The state attorney of the Republic of Macedonia can also require legal protection when he/she protects the interests of the state or the public interest.

### **Article 208**

(1) The contracting body must not sign the public procurement contract and proceed with its implementation within a time period of 12 days, that is five days in case of a simplified competitive procedure, as of the day of receipt of the decision for an individual right in the procedure for awarding the public procurement contract, except:

- in the cases referred to in Articles 99 and Article 198 of this Law,
- in case when only one tenderer whose tender is selected as most favorable participated in the procedure or
- in case of individual public procurement contracts pursuant to a framework agreement.

### **Article 209**

(1) In the course of the legal protection procedure, the parties shall be obliged to present all facts used as grounds for their requests, as well as the actions or omissions to undertake actions by the contracting body in the procedure for awarding a public procurement contract, and to provide respective proofs thereof.

(2) In the course of the legal protection procedure, the contracting body shall be obliged to prove the facts and circumstances on the basis of which it has adopted its decision, undertook actions or omitted to undertake actions in conducting the procedure for awarding a public procurement contract, which is the subject-matter of the legal protection procedure.

(3) In the course of the legal protection procedure, the appellant shall be obliged to prove or to render possible the existence of facts and reasons referring to the right for submitting the appeal, the violation of the procedure or the violation of the material right, which are raised in the appeal.

### **Article 210**

Major violations of the law in the procedures for awarding a public procurement contract shall occur if:

- the procedure for awarding a public procurement contract has been conducted without adopting a decision on public procurement containing the elements prescribed in Article 28 paragraphs (2) and (3) of this Law;
- the procedure for awarding a public procurement contract has been conducted without a technical dialogue in the cases where it is mandatory, in accordance with this Law;
- the tender documentation for the procedure for awarding a public procurement contract is not in accordance with this Law, and led or could led to discrimination of the economic operators or limitation of the competition;
- it is not acted in accordance with Article 54 paragraph (2) of this Law;
- major violations have been made with reference to the public opening of the tenders;

- major violations have been made with reference to the evaluation of the tenders;
- it is not acted in accordance with Article 140 paragraphs (11) and (12) of this Law;
- it is not acted in accordance with Article 215, and in connection with Article 222 paragraphs (4) and (5) of this Law;
- a contract notice for awarding public procurement contract has been published without obtaining consent in the cases where the granting of consent is mandatory pursuant to this Law,
- it has not been acted pursuant to the decision of the State Commission,
- the chosen tender is not the most favorable one, and
- the chosen tender is not acceptable.

## **Article 211**

In the course of the legal protection procedure, the State Appeals Commission shall act within the framework of the appealing allegations, and *ex officio* with reference to the major violations as prescribed in Article 210 of this Law.

## **Part 2**

### **Appeal**

## **Article 212**

(1) The appeal shall contain the following elements:

- data on the appellant (name and surname, name of the economic operator, address of temporary residence and head office);
- data of the legal representative or the attorney-in-fact;
- name and head office of the contracting body;
- number and date of the procedure for awarding a public procurement contract and data on the notice for awarding a public procurement contract;
- number and date of the decision on selection of the most favorable tender, annulment of the procedure or other decisions adopted by the contracting body;
- data about the actions or the omissions to undertake actions by the contracting body;
- description of the actual situation;
- description of the irregularities and explanation thereof;
- proposed proof;
- appeals request and/or request for compensation of the procedural costs, and
- signature of the authorized person.

(2) The appellant shall be obliged to provide proof that it has paid the fee for conducting the procedure.

(3) The appellant whose head office is not on the territory of the Republic of Macedonia shall be obliged to appoint an attorney-in-fact for the purpose of receipt of the writs.

## **Article 213**

(1) If the submitted appeal does not contain some of the data referred to in Article 212 paragraph (1) lines 1, 3, 4, 5 and 9 of this Law, the State Commission shall request the appellant to supplement its appeal and shall determine a time period which cannot be longer than five days.

(2) If the appellant fails to act upon the request referred to in paragraph (1) of this Article, the appeal shall be dismissed as incomplete, unless its contents allows for the procedure to be conducted, and it contains an appeals request.

## **Part 3**

### **Manner of filing an appeal**

#### **Article 214**

- (1) The appeal shall be filed with the State Commission.
- (2) The appeal shall be filed in person or via registered mail simultaneously to the contracting body and to the State Commission.
- (3) The day of filing the appeal via registered mail shall be considered as the day of filing.
- (4) If the appeal is filled in person, the contracting body shall be obliged to issue the appellant a certificate of the time of receipt.
- (5) The received appeals shall be recorded in the business records, shall be posted on the website of the State Commission the same day they are received, and cases shall be opened for them.
- (6) The case to be dealt with shall be distributed to the members and the president of the State Commission by a random electronic choice.

#### **Article 215**

The contracting body shall, within a time period of five working days as of the day of receipt of the appeal at the latest, submit the following to the State Commission:

- the appeal with all attachments, data and proof of the date of receipt;
- the reply to the appeal with an explanation of the facts and the legal indications, as well as the appeals requests, chronology of the procedure for awarding a public procurement contract, with indications of the major elements of the procedure for public procurement (estimated value, contract notice data, the procedure of tender opening, evaluation of the tenders, selection decision, and other);
- the entire documentation from the procedure with a listing of the attachments;
- the tenders, and at least the tender of the appellant, the chosen tender, and the tenderers which have a chance to be chosen, and
- other proofs for the existence of the circumstance for adoption of the legal decisions, actions or omissions to undertake actions in the procedure for awarding a public procurement contract.

- (2) In the case of an appeal against a decision of the Public Procurement Council, the Council shall submit the necessary documentation and the provisions of this Chapter shall accordingly apply, except Articles 228 and 229 of this Law.

#### **Article 216**

- (1) The legal protection procedure shall commence by filing the appeal, i.e. by submitting the request for annulment of the procedure for awarding a public procurement contract because of the failure to submit the documentation to the State Commission in accordance with Article 222 of this Law.

- (2) The appeal shall be filed within a time period of eight days, i.e. three days for the simplified competitive procedure as of the day of:
  - receipt of the minutes of the conducted technical dialogue, related to actions or omission of actions related to the conducting of a technical dialogue,
  - publication of the notice for awarding the public procurement contract, regarding the data, actions or omissions to undertake actions referred to in the contract notice;



- opening of tenders, regarding the actions or omissions to undertake actions related to the tender documentation, i.e. the tender opening procedure;
- expiry of the time period for adoption of a decision for selection or annulment of the procedure in accordance with Article 162 paragraph (2) of this Law in respect to the omission for adoption of decision for selection or annulment of the procedure in the corresponding deadline;
- receipt of the decision for an individual right in the procedure for awarding a public procurement contract regarding the determination of the competence of the requests for participation or the evaluation of tenders and the decision; or
- acknowledgment of the illegal conduct of the procedure for awarding a public procurement contract, within a time period of one year at the latest as of the day of completing the conducted procedure.

(3) An appeal shall be filed within a period of three days as of the receipt of the notification for concluded contract pursuant to a framework agreement.

(4) When the procedure ends with an electronic auction, the time period for filing an appeal in regard to determining the competence of the tenderers and the evaluation of the initial tenders shall be counted as of the day of receipt of the decision of an individual right in the procedure for awarding a public procurement contracts following the competition of the electronic auction.

(5) The economic operator that has failed to file an appeal in accordance with the provisions in paragraph (2) of this Article shall not have the right to file an appeal for the same legal basis in the latter stage of the procedure.

(6) In the course of establishing a qualification system, the appeal related to the actions or omissions of actions related to the tender documentation shall be filed within a period of eight days as of the day of receipt of the decision on inclusion or rejection to include a tenderer in the qualification system.

## **Part 4**

### **Effect of the appeal and continuation of the procedure for awarding the public procurement contract**

#### **Article 217**

(1) The filed appeal shall suspend the signing of the public procurement contract and its implementation until the decision of the State Commission becomes final.

(2) As an exception to paragraph (1) of this Article, upon a request of the contracting body, the State Commission can approve the continuation of the procedure for awarding the public procurement.

(3) The public procurement contract signed contrary to the paragraphs (1) and (2) of this Article shall be null and void.

#### **Article 218**

(1) The contracting body can submit a request for continuation of the procedure for awarding a public procurement procedure. The request shall be submitted simultaneously with the reply to the appeal.

(2) The request for continuation of the procedure for awarding a public procurement contract submitted contrary to paragraph (1) of this Article shall be dismissed.

(3) The request for continuation of the procedure for awarding a public procurement shall refer to the signing of the public procurement contract which is the subject-matter of the appeal.

(4) The request for continuation of the procedure for awarding a public procurement contract can be submitted due to reasons that can cause damages if the procedure is not conducted, and which are not disproportional to its value.

## **Article 219**

Upon the request for continuation of the procedure for awarding the public procurement contract, the State Commission shall decide within a time period of three days as of the day of the submission.

## **Part 5**

### **Deciding on the appeal**

## **Article 220**

(1) In the legal protection procedure, the State Commission may:

- annul the decision of the Council or abolish the decision of the Council and remand the case;
- stop the procedure due to withdrawal of the appeal;
- dismiss the appeal due to incompetence, impermissibility, incompleteness, untimeliness, because it is submitted by unauthorized persons, and in case of non-fulfillment of the obligation referred to in Article 212 paragraph (2) of this Law;
- reject the appeal because it is unfounded;
- abolish the decision, or annul the actions in the part where they are illegal;
- oblige the contracting body to undertake the actions referred to in Article 162 paragraph (2) of this Law, that it omitted to undertake in accordance with this Law;
- annul the decision and annul the whole procedure in the case where the violation made in the procedure for awarding a public procurement contract is considered as a reason for annulment according to the provisions of this Law and the laws regulating the administrative procedure, and where it is not acted in accordance with Article 215, in connection with Article 222 paragraph (4) of this Law;
- decide on the requests for compensation of procedural costs or
- decide on the proposals for continuation of the public procurement procedure.

(2) The State Commission shall adopt a decision on the main subject, and reach a conclusion on the other issues.

(3) The decision of the State Commission shall be final.

(4) The contracting authority shall be obliged to act upon the decision of the State Commission, or it shall be considered that the a contract award procedure pursuant to this Law has not been conducted.

(5) The contracting authority shall mandatorily notify the State Commission about the actions taken upon its decision based on which the appeal is approved within a period of ten days as of the adoption of the decision based on which it takes actions upon the approved appeal, that is, as of the day of taking the action that it has omitted to take.

## **Article 220-a**

(1) In the procedure for legal protection, the State Commission shall annul the public procurement contract or the framework agreement, completely or partially, if the contracting body has concluded:

- a public procurement contract or a framework agreement without previously conducting a procedure for awarding a public procurement contract, in case it is contrary to the provisions of this Law,
- a public procurement contract or a framework agreement contrary to Article 208 of this Law,
- a public procurement contract or a framework agreement contrary to Article 217 of this Law and

- an individual public procurement contract pursuant to a framework agreement, contrary to Articles 119 paragraph (4) and 120 of this Law.

(2) Depending on the reasons for annulment referred to in paragraph (1) of this Article, considering all the relevant circumstances, including the gravity of the violation of this Law and the action of the contracting body, the State Commission shall annul the public procurement contract or the framework agreement, including all its legal consequences as of the moment it is established, or only with regard to its contractual obligations which have not been fulfilled yet.

(3) The State Commission can decide the public procurement contract or the framework agreement to remain into force completely or partially although concluded contrary to the conditions referred to in paragraph (1) of this Article, if considering all the relevant circumstances it confirms that justified reasons related to the general interest for the Republic of Macedonia dominate, because of which the contract or framework agreement shall remain into force.

(4) The economic interests may be considered justified reasons in terms of paragraph (3) of this Article, only in exceptional cases when the annulment of the contract or the framework agreement would lead to disproportionate consequences.

(5) The economic interests directly related to the subject-matter of the public procurement contract or the framework agreement, such as the expenses incurred due to delay in realization, expenses for conducting the new procedure for awarding a public procurement contract, expenses possible to incur due to change of the contractor and expenses for legal obligations resulting from annulment of the public procurement contract or the framework agreement, shall not be considered justified reasons in terms of paragraph (3) of this Article.

## **Article 221**

(1) If after the receipt of the appeal, the contracting body finds that it is fully or partially grounded, it can put the existing decision out of force, i.e. adopt a new decision, or annul the procedure for awarding a public procurement contract, correct its action, undertake the action it has omitted to undertake, or conduct a new procedure for awarding a public procurement contract, by notifying the participants in the procedure for awarding a public procurement contract in the manner prescribed by this Law, within a time period of five days as of the day of receipt of the appeal.

(2) The appellant shall have the right to file an appeal against the new decision, action or omission to undertake action under the conditions prescribed by this Law.

(3) The contracting body that exercises the authorizations prescribed by this Article shall be obliged to notify the State Commission thereof by submitting the new decision, i.e. proofs that it has been submitted to the appellant.

## **Article 222**

(1) If the contracting body fails to act in accordance with Article 215 of this Law, the appellant shall have the right, within a time period of 30 days as of the day of filing the appeal with the contracting body, to request from the State Commission to adopt a decision for annulment of the whole procedure for awarding a public procurement contract.

(2) The request referred to in paragraph (1) of this Article shall be submitted to the State Commission and shall contain the proofs for submitting the appeal to the contracting body, data about the contracting body, subject-matter of the public procurement contract and the reference number of the contract notice, if available.

(3) The State Commission shall adopt the request of the appellant if the conditions determined in paragraph (2) of this Article are met.

(4) Following the expiry of the time period of 30 days, in which the appellant could ask for annulment of the complete procedure, the State Commission can *ex officio* annul the complete procedure, provided that the contracting body failed to act in accordance with Article 215 of this Law.

(5) If the Council does not act in accordance with Article 215 of this Law, the State Commission shall *ex officio* abolish the decision of the Council and shall remand the case.

### **Article 223**

(1) The appellant, the contracting body and the chosen tenderer shall be parties in the legal protection procedure.

(2) The State Commission shall *ex-officio* inform the chosen tenderer about the initiation of the legal protection procedure.

(3) Each party shall have the right to present its opinion regarding the requests and the indications by the other party, and to propose evidence. The State Commission shall deliver the submissions received in the appeals procedure on the main subject-matter of the appeal or the submissions proposing new facts and proofs to each party in the procedure.

(4) Each party shall have the right to review the writs, except the part of the tender and the documents containing confidential information determined by law.

(5) The parties in the procedure can be represented by attorneys-in-fact.

(6) In the course of the legal protection procedure, the contracting body, upon a request of the State Commission, shall be obliged to submit all documentation within a time period determined by the State Commission.

(7) For the purpose of adopting the decision on the procedural costs in the legal protection procedure, the value of the case shall be calculated according to the estimated value of the procurement.

### **Article 224**

(1) The State Commission shall decide upon the appeals on a session with majority of the total number of members.

(2) The State Commission can work only if at least three members are present at the session. The president and/or his/her deputy shall mandatory attend the sessions of the State Commission.

(3) A member of the State Commission cannot sustain from voting.

(4) The sessions of the State Commission shall not be public.

(5) Separate minutes shall be kept for the discussion and the voting. The minutes shall be signed by all present members of the State Commission and the minute-taker.

(6) The State Commission shall adopt a decision within a time period of 15 days as of the day of submission of the documentation for the appeal, unless in the cases referred to in Articles 14 paragraph (17) and 216 paragraph (2) line 1 of this Law when deciding within a period of 15 days as of the day of receipt of the appeal.

(7) The decisions shall be published on the website of the State Commission.

### **Article 225**

(1) In the course of the decision making upon the appeals, the State Commission shall keep minutes.

(2) The minutes shall have to contain important data on the actions taken, i.e. the decisions adopted during the hearing.

(3) The minutes shall be signed by the president, the members present and the minute-taker, and it shall be an integral part of the appeals file.

### **Article 226**

(1) The parties can propose a hearing for the purpose of clarifying the complex actual situation or certain legal issues, with an explanation of the reasons for such proposal.

(2) The State Commission shall decide upon the proposal for holding a hearing.

(3) The State Commission can also decide for holding a hearing when it finds that the hearing is necessary to clarify the complex actual situation or certain legal issues.

(4) Minutes shall be kept during the hearing.

(5) The hearing shall be public, but the public can be excluded for the purpose of protecting confidential information in accordance with law.

### **Article 227**

The Law on Prevention of Conflict of Interest shall accordingly apply to the exemption of the president and the members of the State Commission.

## **Part 6**

### **Procedural costs**

#### **Article 228**

(1) Each party shall bear the costs resulting from its own actions in the procedure before the State Commission.

(2) The State Commission shall decide on the costs in the legal protection procedure, determine who shall bear the costs, the amount, to whom and in what time period they should be paid.

(3) The request for compensation of procedural costs shall be fully determined, specified and submitted before the adoption of the decision.

(4) The party that initiated and lost the procedure shall be obliged to compensate the justified costs incurred during the procedure to the other party.

(5) In case the appeal is withdrawn or dismissed, the appellant shall be obliged to compensate all costs incurred by submitting the appeal to the contracting body.

(6) In case the appeal is partially accepted, the State Commission can decide each party to cover its own costs, to split the procedural costs of the legal protection procedure to equal portions or proportionally to the degree of acceptance of the appeal.

(7) In case the appeal is fully accepted, the contracting body shall be obliged to compensate all justified incurred procedural costs to the appellant.

## **Article 229**

(1) In the procedure before the State Commission, the appellant, in addition to the administrative fee, shall pay fee for conducting the procedure which depends on the value of the tender, as follows:

- up to Euro 20.000 in Denar counter-value, the fee is Euro 100 in Denar counter-value;
- from Euro 20.000 to EURO 100.000 in Denar counter-value, the fee is Euro 200 in Denar counter-value;
- from Euro 100.000 to Euro 200.000 in Denar counter-value, the fee is Euro 300 in Denar counter-value or
- exceeding Euro 200.000 in Denar counter-value, the fee is Euro 400 in Denar counter-value.

(2) In case there is no tender, the amount of the fee for conducting the procedure shall be calculated on the basis of the estimated value of the public procurement contract, whereby the State Commission shall inform the appellant about the amount of the fee and the time period in which the appellant shall have to submit proof of the payment.

(3) The fee for conducting the procedure shall be revenue of the Budget of the Republic of Macedonia.

## **Part 7**

### **Court protection and subsidiary application of the regulations**

#### **Article 230**

(1) An administrative dispute can be initiated before a competent court for resolving administrative disputes against the decision of the State Commission.

(2) The competent court for resolving administrative disputes shall resolve the cases concerning the public procurement in an urgent procedure.

#### **Article 231**

The Law on General Administrative Procedure shall apply to the procedures before the State Commission that are not regulated by the provisions of this Law.

## **Chapter XI**

### **Audit**

#### **Article 232**

The audit over the use and spending of public procurement funds by the contracting bodies referred to in Article 4 paragraph (1) points a), b) c) and d) of this Law shall be conducted by the State Audit Office.

## **Chapter XI-a**

### **Penalty provisions**

#### **Article 232-a**

(1) The person who deliberately composes the subject-matter of procurement which is composed of several items within a single part in a manner which limits the competition to solely one economic operator contrary to Article 15 paragraph (6) of this Law, and by doing so it gains a greater material benefit for itself or for another, or causes a greater damage, shall be sentenced to imprisonment of up to one year.

(2) If the offender by committing the act referred to in paragraph (1) of this Article has gained a substantial material benefit for itself or for another, or has caused substantial damage, shall be sentenced to imprisonment of one to three years.

(3) If the offender by committing the act referred to in paragraph (1) of this Article has gained material benefit of a larger scale for itself or for another, or has caused a larger scale damage, shall be sentenced to imprisonment of three to five years.

(4) The person who committed the act referred to in paragraph (1) of this Article due to negligence shall be sentenced to imprisonment of up to six months, the act referred to in paragraph (2) of this Article to imprisonment of up to one year, and the act referred to in paragraph (3) of this Article to imprisonment of one to three years.

#### **Article 232-b**

(1) The person who deliberately composes a part of the subject-matter of procurement of medicaments, medical devices, and/or expendables with several items without the consent of the Council contrary to Article 15 paragraph (7) of this Law and by doing so it gains a greater material benefit for itself or for another, or causes a greater damage, shall be sentenced to imprisonment of up to one year.

(2) If the offender by committing the act referred to in paragraph (1) of this Article has gained a substantial material benefit for itself or for another, or has caused substantial damage, shall be sentenced to imprisonment of one to three years.

(3) If the offender by committing the act referred to in paragraph (1) of this Article has gained material benefit of a larger scale for itself or for another, or has caused a larger scale damage, shall be sentenced to imprisonment of three to five years.

(4) The person who committed the act referred to in paragraph (1) of this Article due to negligence shall be sentenced to imprisonment of up to six months, the act referred to in paragraph (2) of this Article to imprisonment of up to one year, and the act referred to in paragraph (3) of this Article to imprisonment of one to three years.

#### **Article 232-c**

(1) The person who deliberately defines the technical specifications of the procurement of medicaments by using a trademark or name of the producer/holder of a marketing authorization contrary to Article 36 paragraph (3) of this Law, and by doing so, it gains a greater material benefit for itself or for another, or causes a greater damage, shall be sentenced to imprisonment of up to one year.

(2) If the offender by committing the act referred to in paragraph (1) of this Article has gained a substantial material benefit for itself or for another, or has caused substantial damage, shall be sentenced to imprisonment of one to three years.

(3) If the offender by committing the act referred to in paragraph (1) of this Article has gained a material benefit of a larger scale for itself or for another, or has caused a larger scale damage, shall be sentenced to imprisonment of three to five years.

(4) The person who committed the act referred to in paragraph (1) of this Article due to negligence shall be sentenced to imprisonment of up to six months, the act referred to in paragraph (2) of this Article to imprisonment of up to one year, and the act referred to in paragraph (3) of this Article to imprisonment of one to three years.

### **Article 232-d**

(1) The person who deliberately has taken actions contrary to this Law or has deliberately omitted to take actions it has been obliged to take pursuant to this Law for the reasons of which a public procurement contract award procedure has been published without the consent of the Council in the cases where the technical specifications may be met by less than the minimum number of producers referred to in Article 36-a paragraph (1) of this Law, and by doing so it gains a greater material benefit for itself or for another, or causes a greater damage, shall be sentenced to imprisonment of up to one year.

(2) If the offender by committing the act referred to in paragraph (1) of this Article has gained a substantial material benefit for itself or for another, or has caused substantial damage, shall be sentenced to imprisonment of one to three years.

(3) If the offender by committing the act referred to in paragraph (1) of this Article has gained a material benefit of a larger scale for itself or for another, or has caused a larger scale damage, shall be sentenced to imprisonment of three to five years.

(4) The person who committed the act referred to in paragraph (1) of this Article due to negligence shall be sentenced to imprisonment of up to six months, the act referred to in paragraph (2) of this Article to imprisonment of up to one year, and the act referred to in paragraph (3) of this Article to imprisonment of one to three years.

### **Article 232-e**

(1) The person who deliberately has taken actions contrary to this Law or has deliberately omitted to take actions it was obliged to take pursuant to this Law, due to which a contract award procedure has been published without the consent of the Council, in the cases where criteria on determining the capability which can be met by less than the minimum number of economic operators referred to in Article 36-a paragraph (2) of this Law have been envisaged, and by doing so it gains a greater material benefit for itself or for another, or causes a greater damage shall be sentenced to imprisonment of up to one year.

(2) If the offender by committing the act referred to in paragraph (1) of this Article has gained a substantial material benefit for itself or for another, or has caused substantial damage, shall be sentenced to imprisonment of one to three years.

(3) If the offender by committing the act referred to in paragraph (1) of this Article has gained a material benefit of a larger scale for itself or for another, or has caused a larger scale damage, shall be sentenced to imprisonment of three to five years.



(4) The person who committed the act referred to in paragraph (1) of this Article due to negligence shall be sentenced to imprisonment of up to six months, the act referred to in paragraph (2) of this Article to imprisonment of up to one year, and the act referred to in paragraph (3) of this Article to imprisonment of one to three years.

### **Article 232-f**

(1) The person who deliberately has taken actions contrary to this Law or has deliberately omitted to take actions it has been obliged to take pursuant to this Law for the reasons of which a contract award procedure has been published without the consent of the Council, in the cases where the criterion on economically most favorable tender is applied contrary to Article 160 paragraph (3) of this Law, and by doing so, it gains a greater material benefit for itself or for another, or causes a greater damage, shall be sentenced to imprisonment of up to one year.

(2) If the offender by committing the act referred to in paragraph (1) of this Article has gained a substantial material benefit for itself or for another, or has caused substantial damage, shall be sentenced to imprisonment of one to three years.

(3) If the offender by committing the act referred to in paragraph (1) of this Article has gained a material benefit of a larger scale for itself or for another, or has caused a larger scale damage, shall be sentenced to imprisonment of three to five years.

(4) The person who committed the act referred to in paragraph (1) of this Article due to negligence shall be sentenced to imprisonment of up to six months, the act referred to in paragraph (2) of this Article to imprisonment of up to one year, and the act referred to in paragraph (3) of this Article to imprisonment of one to three years.

### **Article 232-g**

The person acting contrary to the decision by which the State Commission decides upon an appeal shall be sentenced to imprisonment of one to five years.

### **Article 232-h**

If the contracting authority has asked for consent from the Council in line with the requirements of this Law, and the Council has not responded to the request within the deadlines determined by this Law, whereby it is regarded that it has granted consent pursuant to Article 14 paragraph (19) of this Law, and it is determined, at a later date, that the requirements needed for granting it have not been met, due to which damage has been caused, the members of the Council shall be sentenced to imprisonment of one to five years.

### **Article 232-i**

The expert who, directly or indirectly, participates or influences the contracting authority in the contract award procedure on which he/she has given his/her opinion in the course of the decision-making of the Council contrary to Article 14 paragraph (23) of this Law, shall be sentenced to imprisonment of one to five years.

### **Article 232-j**

(1) The person who deliberately does not include all the items in the tender documentation that are projected in the bill of quantities of the audited project for carrying out the works contrary to Article 18 paragraph (3) of this Law and thereby derives considerable material benefit for itself or for another, or causes considerable damage, shall be sentenced to imprisonment of up to one year.

(2) If the offender by committing the act referred to in paragraph (1) of this Article derives considerable material benefit for itself or for another, or causes considerable damage, shall be sentenced to imprisonment of one to three years.

(3) If the offender by committing the act referred to in paragraph (1) of this Article derives a material benefit of a larger scale for itself or for another, or causes a larger scale damage, shall be sentenced to imprisonment of three to five years.

(4) The person who has committed the act referred to in paragraph (1) of this Article due to negligence shall be sentenced to imprisonment of up to six months, the act referred to in paragraph (2) of this Article to imprisonment of up to one year, and the act referred to in paragraph (3) of this Article to imprisonment of one to three years.

### **Article 232-k**

(1) The person who deliberately awards a public procurement contract in a negotiated procedure without a prior publication of a contract notice without consent of the Council contrary to Article 99 paragraphs (3) and (5) and Article 198 paragraphs (3) and (5) of this Law and thereby derives considerable material benefit for itself or for another, or causes considerable damage, shall be sentenced to imprisonment of up to one year.

(2) If the offender by committing the act referred to in paragraph (1) of this Article derives considerable material benefit for itself or for another, or causes considerable damage, shall be sentenced to imprisonment of one to three years.

(3) If the offender by committing the act referred to in paragraph (1) of this Article derives a material benefit of a larger scale for itself or for another, or causes a larger scale damage, shall be sentenced to imprisonment of three to five years.

(4) The person who has committed the act referred to in paragraph (1) of this Article due to negligence shall be sentenced to imprisonment of up to six months, the act referred to in paragraph (2) of this Article to imprisonment of up to one year, and the act referred to in paragraph (3) of this Article to imprisonment of one to three years.

### **Article 232-l**

(1) The person who does not make re-evaluation in accordance with a decision of the State Commission based on which the procedure is sent back for re-evaluation within a period of five working days contrary to Article 140 paragraph (11) of this Law with the intention the validity period of the tenders to expire in order not to be possible to make a selection of the most favorable tender and thereby derives considerable material benefit for itself or for another, or causes considerable damage, shall be sentenced to imprisonment of up to one year.

(2) If the offender by committing the act referred to in paragraph (1) of this Article derives considerable material benefit for itself or for another, or causes considerable damage, shall be sentenced to imprisonment of one to three years.

(3) If the offender by committing the act referred to in paragraph (1) of this Article derives a material benefit of a larger scale for itself or for another, or causes a larger scale damage, shall be sentenced to imprisonment of three to five years.

(4) The person who has committed the act referred to in paragraph (1) of this Article due to negligence shall be sentenced to imprisonment of up to six months, the act referred to in paragraph (2) of this Article to imprisonment of up to one year, and the act referred to in paragraph (3) of this Article to imprisonment of one to three years.

### **Article 232-m**

(1) The person who deliberately does not publish the notice for public procurement contrary to Article 54 paragraph (2) of this Law, and it has been obliged to do so in accordance with the provisions of this Law and by doing so it gains a greater material benefit for itself or for another, or causes a greater damage, shall be sentenced to imprisonment of up to one year.

(2) If the offender by committing the act referred to in paragraph (1) of this Article derives considerable material benefit for itself or for another, or causes considerable damage, shall be sentenced to imprisonment of one to three years.

(3) If the offender by committing the act referred to in paragraph (1) of this Article derives a material benefit of a larger scale for itself or for another, or causes a larger scale damage, shall be sentenced to imprisonment of three to five years.

(4) The person who has committed the act referred to in paragraph (1) of this Article due to negligence shall be sentenced to imprisonment of up to six months, the act referred to in paragraph (2) of this Article to imprisonment of up to one year, and the act referred to in paragraph (3) of this Article to imprisonment of one to three years.

### **Article 232-n**

(1) The person who deliberately has taken actions contrary to this Law or has deliberately omitted to take actions it has been obliged to take pursuant to this Law for the reasons of which a procedure for awarding a public procurement contract with a framework agreement has been published without the consent of the Council, in the cases where there is no seven producers, service providers or contractors on the market of the Republic of Macedonia and on the markets abroad that can meet the requirements under the technical specifications for an individual item, contrary to Article 36-b paragraph (1) of this Law and by doing so it has gained a greater material benefit for itself or for another, or has caused a greater damage, shall be sentenced to imprisonment of up to one year.

(2) If the offender by committing the act referred to in paragraph (1) of this Article gains considerable material benefit for itself or for another, or causes considerable damage, shall be sentenced to imprisonment of one to three years.

(3) If the offender by committing the act referred to in paragraph (1) of this Article gains a material benefit of a larger scale for itself or for another, or causes a larger scale damage, shall be sentenced to imprisonment of three to five years.

(4) The person who has committed the act referred to in paragraph (1) of this Article out of negligence shall be sentenced to imprisonment of up to six months, for the act referred to in paragraph (2) to imprisonment of up to one year, and for the act referred to in paragraph (3) to imprisonment of one to three years.

### **Article 232-o**

(1) The person who deliberately has taken actions contrary to this Law or has deliberately omitted to take actions it has been obliged to take pursuant to this Law for the reasons of which a procedure for awarding a public procurement contract with a framework agreement has been published without the consent of the Council, in the cases where criteria for determining the competence that can be met by less than seven economic operators on the market of the Republic of Macedonia are determined, contrary to Article 36-b paragraph (2) of this Law and by doing so it has gained a greater material benefit for itself or for another, or has caused a greater damage, shall be sentenced to imprisonment of up to one year.

(2) If the offender by committing the act referred to in paragraph (1) of this Article gains considerable material benefit for itself or for another, or causes considerable damage, shall be sentenced to imprisonment of one to three years.

(3) If the offender by committing the act referred to in paragraph (1) of this Article gains a material benefit of a larger scale for itself or for another, or causes a larger scale damage, shall be sentenced to imprisonment of three to five years.

(4) The person who has committed the act referred to in paragraph (1) of this Article out of negligence shall be sentenced to imprisonment of up to six months, for the act referred to in paragraph (2) to imprisonment of up to one year, and for the act referred to in paragraph (3) to imprisonment of one to three years.

### **Article 232-p**

(1) The president of the public procurement commission, his/her deputy, the members and their deputies who have omitted to take the actions referred to in Article 47 paragraphs (8) and (9) of this Law for the reasons of which a negative reference against an economic operator is not published, shall be sentenced to imprisonment of one to five years.

(2) The person or the managerial person in the organizational form where activities in the field of public procurement are carried out omits to publish a negative reference in accordance with the requirements of this Law and by doing so it acts contrary to Article 29-a paragraph (3) line 8 of this Law, shall be sentenced to imprisonment of one to five years.

(3) The responsible person in the contracting authority shall be fined for the act referred to in paragraph (2) of this Article.

### **Article 232-q**

(1) The person who deliberately has taken actions contrary to this Law or has deliberately omitted to take actions it has been obliged to take pursuant to this Law for the reasons of which a framework agreement has been awarded without the consent of the Council with less than seven economic operators, in the cases of framework agreement with several economic operators, contrary to Article 118 paragraph (2) of this Law and by doing so it has gained a greater material benefit for itself or for another, or has caused a greater damage, shall be sentenced to imprisonment of up to one year.

(2) If the offender by committing the act referred to in paragraph (1) of this Article gains considerable material benefit for itself or for another, or causes considerable damage, shall be sentenced to imprisonment of one to three years.

(3) If the offender by committing the act referred to in paragraph (1) of this Article gains a material benefit of a larger scale for itself or for another, or causes a larger scale damage, shall be sentenced to imprisonment of three to five years.

(4) The person who has committed the act referred to in paragraph (1) of this Article out of negligence shall be sentenced to imprisonment of up to six months, for the act referred to in paragraph (2) to imprisonment of up to one year, and for the act referred to in paragraph (3) to imprisonment of one to three years.

### **Article 232-r**

(1) The president of the public procurement commission, his/her deputy, the members and their deputies who have omitted to establish a negative reference against a tenderer which participates in

the procedure and by doing so they act contrary to Article 140 paragraph (2) of this Law, shall be sentenced to imprisonment of one to five years.

(2) The responsible person who adopts a final decision on selection of tenderer for which a negative reference is issued contrary to the provisions of this Law shall be fined.

### **Article 232-s**

The person who does not submit the documents referred to in Article 215 paragraph (1) lines 1, 3 and 4 of this Law to the State Commission within a deadline of five working days as of the day of receipt of the appeal and by doing so it acts contrary to Article 215 of this Law, shall be sentenced to imprisonment of one to five years.

### **Article 232-t**

If the State Commission does not decide within the deadlines set in Article 224 of this Law, the president of the State Commission and its members shall be sentenced to imprisonment of one to five years.

## **Chapter XII**

### **Final and transitional provisions**

#### **Article 233**

The regulations anticipated by this Law shall be adopted within a time period of three months as of the day this Law starts to apply, except the Common Procurement Vocabulary which shall be adopted within a time period of one year as of the day this Law starts to apply.

#### **Article 234**

Up until the day the regulations anticipated by this Law start to apply, the existing regulations, provided that they are in accordance with this Law, shall be applied.

#### **Article 235**

(1) The State Commission shall be established and shall commence its operations by November 30th, 2008 at the latest.

(2) Up until the establishment and the commencement of the operation of the State Commission, the Commission on Appeals upon Public Procurement within the Government of the Republic of Macedonia shall continue to perform the activities related to legal protection in the public procurement procedures referred to in Chapter IX of the Law on Public Procurement ("Official Gazette of the Republic of Macedonia", no. 19/2004 and 109/2005).

#### **Article 236**

The public procurement procedures commenced before this Law starts to apply shall be completed in accordance with the regulations that were in force prior to the start of application of this Law.

#### **Article 237**

As of the day this Law starts to apply, the Law on Public Procurement ("Official Gazette of the Republic of Macedonia", no. 19/2004 and 109/2005) shall cease to be valid.

## Article 238

This Law shall enter into force on the eight day of its publication in the "Official Gazette of the Republic of Macedonia", and shall start to apply as of January 1st, 2008.

### PROVISIONS OF OTHER LAWS

Law Amending the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" nos. 130/2008 and 97/2010):

#### Article 24

The contracting body shall be obliged to use electronic auction in accordance with Chapter VI Part 2 of the Law on Public Procurement, as follows:

- in at least 30% of the estimated value of the planned procedures for awarding public procurement contracts as of January 1st, 2010,
- in at least 70% of the number of published contract notices for an open procedure, restricted procedure, negotiated procedure with prior publication of a contract notice and competitive procedure without publication of a contract notice as of January 1st, 2011, and
- 100% of the number of published contract notices for an open procedure, restricted procedure, negotiated procedure with prior publication of a contract notice and competitive procedure without publication of a contract notice as of January 1st, 2012.

Law Amending the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" no. 130/2008):

#### Article 25

Article 4 of this Law shall be applied as of September 1st, 2009

#### Article 26

Article 6 of this Law shall be applied as of January 1st, 2010.

Law Amending the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" no. 97/2010):

#### Article 9

The public procurement procedures commenced up until the day this Law starts to apply shall be completed in accordance with the regulations applicable until the day this Law enters into force.

Law Amending the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" no. 97/2010 and 185/2011):

#### Article 10

*Deleted [20](#)*

#### Article 11

*Deleted*

Law Amending the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" no. 53/2011):

#### Article 6

The bylaw referred to in Article 224 paragraph (7) of this Law shall be adopted within a time period of 15 days as of the day this Law enters into force.

Upon the adoption of the bylaw referred to in paragraph (1) of this Article, the same shall be published on the web page of the Ministry of Finance, The Public Procurement Bureau and the State Appeals Commission upon Public Procurements forthwith and in a period of 24 hours at the latest.

Law Amending the Law on Public Procurement ("Official Gazette of the Republic of Macedonia no. 185/2011):

**Article 68**

The regulations whose adoption is determined by this Law shall be adopted in a period of six months as of the day this Law enters into force.

The Code of Ethics when conducting public procurement and the tariff for determination of the amount of the fees for using the ESPP shall be adopted in a period of two months as of the day this Law enters into force.

**Article 69**

The certificates for passed exam issued in accordance with the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" number 136/2007, 130/2008, 97/2010 and 53/2011), as well as the certificates for passed exam for confirming the acquired knowledge of the module for training educators shall continue to be valid during the period they have been issued for, but not longer than one year as of the day this Law enters into force.

**Article 70**

The procedures for awarding public procurement contracts commenced as of the day this Law enters into force shall be completed in accordance with the regulations valid before the day this Law enters into force.

Law Amending the Law on Public Procurement ("Official Gazette of the Republic of Macedonia no. 185/2011):

**Article 72**

This Law shall enter into force on the eight day as of its publication in the "Official Gazette of the Republic of Macedonia", except Article 44 of this Law that applies as of 1st January, 2012, Articles 13, 17, 18, 20, 21, 37, 38, 39, 43 and 59 of this Law that apply as of 1st July, 2012, Article 14 that applies as of 1st September 2012 and Article 60 of this Law that applies as of the commencement of application of the Law on Concession and Public Private Partnership.

Law Amending the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" no. 148/2013):

**Article 29**

The Government shall appoint the members of the Council no later than 31 December 2013. The contract award procedures initiated until the day of entry into force of this Law shall terminate pursuant to the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" nos. 136/2007, 130/2008, 97/10, 53/11, 185/11 and 15/13).

Law Amending the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" no. 148/2013):

**Article 30**

This Law shall enter into force on the eight day as of the day of publication in the "Official Gazette of the Republic of Macedonia", except for the provisions of Articles 9, 10, 15, 16, and 17 of this Law which shall start to apply as of 1 January 2014, and Article 4 paragraph 2, Articles 5, 8, 22, 23, 24, and 26 paragraph 1, and Article 28 of this Law which shall start to apply as of 1 May 2014.

Law Amending the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" no. 28/2014):

**Article 14**

The procedures for awarding public procurement contracts initiated up to the day of entry into force of this Law shall end in accordance with the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" nos. 136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013 and 148/2013).

Law Amending the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" no. 28/2014):

**Article 15**

This Law shall enter into force on the eight day as of the day of its publication in the "Official Gazette of the Republic of Macedonia", except the provisions of Articles 1, 3 and 13 that shall start to apply as of 1 May 2014.

Law Amending the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" no. 43/2014):

**Article 9**

The director of the Public Procurement Bureau, the members of the Public Procurement Council, and the president and the members of the State Appeals Commission upon Public Procurements who have been appointed before the beginning of application of this Law, shall continue to exercise the office until the expiry of the term of office for which they have been appointed.

**Article 11**

The procedures for awarding public procurement contracts initiated before the day of application of this Law shall end in accordance with the regulations that have been valid up until the day of entry into force of this Law.

Law Amending the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" no. 43/2014):

**Article 10**

The provisions of Articles 1, 2 and 6 of this Law that refer to the requirement for knowledge of a foreign language shall start to apply two years as of the day of entry into force of this Law. The provisions of Articles 3 paragraph (1), 7 and 8 of this Law shall start to apply as of 1 May 2014.

The provisions of Article 3 paragraph (2) of this Law shall start to apply as of 1 January 2015. The provisions of Article 5 of this Law shall start to apply as of the day of beginning of application of the Law on Administrative Servants ("Official Gazette of the Republic of Macedonia" no. 27/2014).

**Article 12**

This Law shall enter into force on the eight day as of the day of its publication in the "Official Gazette of the Republic of Macedonia" and shall start to apply one year as of the day of entry into force of this Law.

Law Amending the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" no. 130/2014):

**Article 42**

The president and the members of the State Commission appointed to the day of entry into force of this Law shall continue to hold the office until the expiry of the term of office for which they have been appointed.

**Article 44**

The procedures for awarding public procurement contracts initiated before the day of entry into force of this Law shall end in accordance with the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" nos. 136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013, 148/2013, 28/2014 and 43/2014).

Law Amending the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" no. 130/2014):

**Article 43**

The provisions of Article 29 of this Law which amend Article 201 of the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" nos. 136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013, 148/2013, 28/2014 and 43/2014) with regard to the application of the Law on Administrative Servants and the Law on Public Sector Employees to the employees in the expert service of the State Commission shall start to apply as of the day of application of the Law on Administrative Servants and the Law on Public Sector Employees.



