

PUBLIC PROCUREMENT LAW

I BASIC PROVISIONS

1. Scope of regulations, covered parties and meaning of terms

Scope of the Law

Article 1

This Law shall govern the rules of public procurement procedures for the purpose of concluding contracts or framework agreements for the public procurement of supplies, works or services, the protection of rights in public procurement procedures and other matters relevant to public procurement.

Entities subject to the Law

Article 2

The entities subject to application of this Law are public and sectoral contracting authorities (hereinafter: a contracting authority).

Public contracting authorities are the following:

- 1) state body;
- 2) local self-government unit;
- 3) public service, that is, an undertaking which fulfils all of the following conditions:
 - it has a capacity of a legal person;
 - it was founded with an aim of meeting the needs of public interest and does not perform an activity of an industrial nor commercial character, and
 - in which the state and/or local self-government unit owns more than 50% of the shares or interest, or which receive more than 50% of their funding from the budget of Montenegro and/or budgets of local self-government units and other public revenues or which are controlled by the contracting authority or which have more than half of their management body or oversight body members appointed by the contracting authority;
- 4) association founded by two or more contracting authorities.

Sectoral contracting authorities are the following:

- 1) a public contracting authority pursuing one of the sectoral activities established by this Law;
- 2) an economic operator in which a public contracting authority has a dominant influence and which performs one of the sectoral activities, or
- 3) other economic operators performing one of the sectoral activities on basis of special or exclusive rights assigned to them by a competent state body or a competent body of a local self-government unit.

A public contracting authority shall have a dominant influence referred to in paragraph 3 item 2 of this Article if it:

- has, directly or indirectly, a major share of registered capital of that economic operator, or
- has a control over majority of votes related to shares issued by the economic operator, or
- may appoint more than half of the members of supervisory, managing or other body in charge of management and conducting business of that economic operator.

Special or exclusive rights referred to in paragraph 3 item 3 of this Article shall be the rights granted by a competent state body or the competent body of a local self-government unit in

accordance with law or other regulation, with the effect to limit the pursuing of a sectoral activity to one or more economic operators and to significantly affect the possibility of other economic operators to pursue such activity.

The rights referred to in paragraph 5 shall not be those granted by means of a publicly conducted procedure involving the definition of objective criteria for the assignment of such tasks.

The procedures referred to in paragraph 6 of this Law are the following:

- 1) procedures conducted in accordance with the provisions of this Law, regulations governing defence and security public procurements, or regulations governing the award of concessions and public-private partnerships, provided that the tender documentation, or the public invitation or a concession act have been published in accordance with law;
- 2) procedures ensuring appropriate prior transparency for granting authorisations on the basis of objective criteria, for:
 - a) granting of authorisation to operate gas installations in accordance with the procedures laid down in separate regulations regulating the field of gas market;
 - b) authorisation or tender documentation for the construction of new electricity production installations in accordance with separate regulations regulating the field of electricity market;
 - c) granting of authorisations in relation to a postal service which is not or shall not be reserved, in line with the procedures established by separate regulations regulating the provision of postal services;
 - d) granting of authorisation to carry on an activity involving the production of hydrocarbons in accordance with separate regulations regulating the field of hydrocarbon production;
 - e) a procedure for concluding public procurement contracts on public passenger transport services by bus or rail which are awarded on the basis of a competitive procedure with negotiations.

The newly established contracting authority shall, within 30 days of acquiring the capacity of a contracting authority, submit an application to the administrative authority responsible for public procurement (hereinafter: the Ministry) for purpose of its registration on the list of contracting authorities.

A contracting authority shall apply this law even if it is not registered on the list referred to in paragraph 8 above.

The entities subject to application of this Law shall also be those natural or legal persons which are not contracting authorities referred to in paragraphs 1 and 2 of this Article, in cases of conclusion of the following procurement contracts:

- 1) for works that are directly subsidized or co-financed by one or more public contracting authorities with more than 50% and where the estimated value of the procurement equals to or exceeds the value referred to in Article 26 item 6 of this Law,
- 2) for services that are related to the works contract within meaning of item 1 of this paragraph, which are directly subsidized or co-financed by one or more public contracting authorities with more than 50% and where the estimated value of the procurement equals to or exceeds the value referred to in Article 26 item 6 of this Law.

A public contracting authority which subsidizes or co-finances the works or services shall control the implementation of procedures and use of funds referred to in paragraph 10 of this Article in accordance with this Law.

Public procurement, public procurement affairs and activities

Article 3

Public procurement is a set of actions and activities implemented by the contracting authority in accordance with this Law, for purpose of procuring supplies, provision of services

or execution of works, for which the funds have been allocated, whether or not the works, supplies or services are intended for a public purpose.

The public procurement affairs include the following: planning of procurement, conducting of a public procurement procedure, preparation of tender documentation and other documents, preparation of a public procurement contract and monitoring the implementation of public procurement contracts, as well as other tasks related to the public procurement procedure.

In case of a centralized public procurement, the implementation of the contract referred to in paragraph 2 of this Article shall be monitored by the contracting authority for whose needs the public procurement has been carried out.

Public procurement activities include providing technical and expert support and advice on the preparation and implementation of public procurement procedures on its own behalf or on behalf and for the account of a certain contracting authority.

Meaning of terms

Article 4

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

1) **state body** is: Parliament of Montenegro, President of Montenegro, Government of Montenegro, Constitutional Court of Montenegro, Judicial Council, State Audit Institution, Protector of Human Rights and Freedoms, State Prosecutor's Office, Prosecutorial Council, Protector of Property and Legal Interests of Montenegro, Central Bank of Montenegro, courts, ministries, administration bodies and other bodies and organisations founded by the state;

2) **local self-government unit body** is: a municipality, a municipality within the Capital City, the Capital City and the old Royal Capital, in accordance with law;

3) **public service** is: University of Montenegro, a public institution, the national fund and other bodies and organizations exercising public authority established by the state or local self-government units;

4) **economic operator** is an undertaking, entrepreneur, institution and other legal or natural person, which offers the supply of products or the provision of services and/or the execution of works on the market;

5) **candidate** is an economic operator that had qualified for the subsequent phase of the multi-phased public procurement procedure;

6) **e-Certis** is an on line database, an electronic system of the European Commission containing a database of the evidence supplied in public procurement procedures and authorities in charge of issuing such evidence in the Member States;

7) **equivalence** means that the offered supplies or services have the same or better technical characteristics than those required by the technical specification of the subject of procurement;

8) **electronic public procurement system** (hereinafter referred to as EPPS) is a public procurement system which is implemented by application of information-communication means;

9) **electronic communications service** is a service provided for a fee or free of charge and which is wholly or mainly consisting in the conveyance of signals via electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, exclusive of the services providing, or exercising editorial control over content transmitted using electronic communications networks and services;

10) **electronic means** is electronic equipment for processing (including digital compression) and storing data which are transmitted, conveyed and received by wire, radio signal, optical or other electromagnetic means;

11) **innovation** is the practical implementation of a new or significantly improved product, property, service, procedure, process, organization and marketing, which contribute to creation of a new value and quality of its implementation;

12) **public communications network** is an electronic communication network which is wholly or mainly used for the provision of electronic communications services;

13) **authorised person of the contracting authority** is the head of an administration body or a public service, executive director of an economic operator or a legal entity or a person empowered by the head or the executive director to take specific actions on their behalf in a public procurement procedure;

14) **authorised person of the economic operator** is the executive director, or a person empowered by the executive director to take specific actions in a public procurement procedure;

15) **military equipment** is the equipment specifically designed or adapted to military purposes and intended for use as arms, munitions or military material, including any part, component or subassemblies thereof;

16) **life cycle** of a procurement subject means all possible consecutive and/or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation;

17) **bidder** is an economic operator who submitted a bid or a group of economic operators having submitted a joint bid in a public procurement procedure;

18) **subcontractor** is an economic operator to which the bidder assigns the implementation of a specific part of the procurement subject or part of a public procurement contract;

19) **centralised purchasing activities** means activities conducted on a permanent basis by an authorised contracting authority for procurement of supplies and/or services intended for other public contracting entities, by conclusion of contracts or framework agreements;

20) **technical reference** is a product standard developed by the European authorities for accreditation, that is different from the European standards, in accordance with procedures adapted to the development of market needs;

21) **security-sensitive equipment, security-sensitive works and security-sensitive services** are the equipment, works and services procured for security purposes, which include, or require data that are labeled by a degree of confidentiality in accordance with law regulating data confidentiality;

22) **Common Procurement Vocabulary** is a nomenclature of supplies, services and works which is applied in a public procurement procedure and ensures compliance with other nomenclatures.

Language in Public Procurement Procedure

Article 5

A contracting authority shall prepare tender documents and conduct procedures in the Montenegrin language, as well as in other languages which are in official use in Montenegro.

A contracting authority may also prepare tender documents or certain parts thereof in the language used in international trade.

Qualification applications and bids shall be drawn up in a language specified by tender documentation.

A contracting authority may allow bids and qualification applications to be partly submitted in a language used in international trade, especially in the section regarding technical characteristics, quality and technical documentation.

If a contracting authority drafted a part of the tender documents in a language used in international trade, it shall, in case of lodging an appeal, provide translations by certified interpreter of all documents that are not made in the language referred to in paragraph 1 of this Article.

Currency

Article 6

The currency used in public procurement procedures shall be euro.

In case where the currency is not specified in tender documents, bid, decision, contract or other act pertaining to the public procurement, it shall be considered that the estimated value, offered price and/or contracted value are expressed in euros.

2. Principles of public procurement

Principle of cost-effectiveness and efficient use of public funds

Article 7

Contracting authorities shall ensure cost-effective, efficient and effective use of public funds and that the supplies, services and works procured have an appropriate quality, taking into consideration the purpose, use and estimated value of the public procurement.

Principle of ensuring competition

Article 8

Contracting authorities shall, in the course of a public procurement procedure, ensure competition among economic operators, in accordance with law.

Contracting authorities may not restrict or prevent competition among economic operators, and in particular they may not disable any economic operator from taking part in a public procurement procedure by way of unjustified application of the negotiated procedure or by using discriminatory conditions and criteria or measures favouring individual economic operators.

Principle of transparency of public procurement procedures

Article 9

Contracting authorities shall conduct public procurement procedures in a transparent manner.

Transparency referred to in paragraph 1 of this Article is ensured by publishing all documentation necessary for conducting and implementation of a public procurement procedure at the EPPS, in accordance with this Law.

Principle of equality, freedom and prohibition of discrimination

Article 10

Contracting authorities shall ensure that all economic operators in a public procurement procedure enjoy equal treatment.

Contracting authorities shall not establish the conditions which would constitute national or territorial, subject-matter or other kind of discrimination against economic operators, or discrimination which would arise from the classification of business activity carried out by an economic operator.

Contracting authorities shall not restrict the freedom of movement of supplies, depending on the place of registration of an economic operator and of provision of services.

In the course of a public procurement procedure, contracting authorities shall not provide information in a discriminatory manner which could provide benefit to the particular participant in the procedure over the other participants.

Principle of environmental protection, social and labour law and ensuring energy efficiency

Article 11

Contracting authorities shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law including collective agreements, in accordance with the law and internationally ratified conventions on environmental protection and social and labour law.

Contracting authorities shall procure supplies, services or works while ensuring the adequate reduction of energy consumption costs, that is, while observing the principles of energy efficiency.

Principle of proportionality

Article 12

Contracting authority shall require the conditions for bidders to participate in a public procurement procedure, related to their economic-financial and professional-technical standing, to be determined in proportion to the complexity of the subject of procurement, the execution of public procurement contracts and the estimated value of the public procurement.

3. Exclusions to the application of the law

Exclusions under concluded international agreements

Article 13

This Law shall not apply to procurements of supplies, services or works that are conducted in accordance with the following:

- 1) particular rules determined by an international organization, on basis of a ratified international agreement with that international organization;
- 2) the procedures different from those laid down in this law, on basis of legal instruments establishing international legal obligations, such as ratified international agreement between Montenegro and one or several third states, for procurements which will be jointly implemented or used by contractual parties;
- 3) particular rules determined by an international organization or an international financial institution, provided that such organization or institution funds or secures funding of the project, unless otherwise agreed.

In case of procurements referred to in item 3 paragraph 1 of this Article which are co-financed by more than 50% by an international organization or international financial institution, the contractual parties shall agree on the rules pertaining to the public procurement procedure they will apply.

Legal instruments establishing the international legal obligations and procedures applicable for the award of contracts referred to in paragraph 1, item 2 of this Article shall be

conducted in accordance with the principles of equal treatment of bidders, non-discrimination and transparency.

Contracting authority shall notify the competent authority on contracts or agreements concluded on basis of this Article within 30 days of signing thereof.

The Government of Montenegro (hereinafter: the Government) shall notify the European Commission of conclusion of the agreement referred to in paragraph 1 item 2 of this Article.

Exclusions for procurement of specific subjects

Article 14

This Law shall not apply to the following:

- 1) the acquisition or rental of land, existing buildings or other immovable property or concerning rights thereon;
- 2) acquisition, development, production or co-production of program materials intended for audio-visual media services or radio media services concluded by audio-visual and radio media service providers;
- 3) services related to broadcasting time for providing radio, television or program services that are concluded with audio-visual or radio media service providers;
- 4) services related to arbitration or conciliation;
- 5) the following legal services:
 - a) services by lawyers in:
 - legal representation of clients in an arbitration or conciliation held in Montenegro, a Member State, a third country or before an international arbitration or conciliation instance; or
 - legal representation of clients in proceedings before courts and other bodies in Montenegro, a Member State of the European Union or a third country, before an international court and other institutions;
 - b) advisory services of lawyers for purpose of preparation for for tasks referred to in sub-item a) of this item;
 - c) services provided by notaries or other legal services related to execution of entrusted public powers;
- 6) procurement of services of the Central Bank of Montenegro;
- 7) services in connection with the issue, sale, purchase, or transfer of securities or other financial instruments, financial and legal assistance and all other services related to securities, or other financial instruments, in accordance with a separate law regulating the capital market;
- 8) loans, credits and other financial derivatives whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;
- 9) financial and legal assistance and other activities related to loans, credits and other financial derivatives referred to in item 8 of this paragraph;
- 10) financial, legal or other services in the proceedings related to the privatization of the economy;
- 11) services related to employment;
- 12) civil security and rescue services provided by non-profit organisations or associations, which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3;
- 13) research and development services except for services covered by CPV codes: 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 provided that these services are wholly remunerated by the contracting authority and used in the conduct of its own affairs;
- 14) public passenger transport services by rail, underground railway or trolley;

- 15) political campaign services covered by CPV codes: 9341400-0, 92111230-3 and 92111240-6, provided that those services were assigned by the political party within the election campaign;
- 16) procurement of election material;
- 16) tasks related to the development and adoption of planning documents as stipulated by the law governing spatial planning.

Exclusions for procurement of postal services

Article 15

A public contracting authority shall not apply this Law to the procurement of the postal services referred to in Article 165 paragraph 2 item b thereof for performance of the following activities:

- 1) services that are fully provided by electronic means, including the safe transmission of coded documents by electronic means, address management services and transmission of registered electronic mail;
- 2) financial services which are covered by CPV codes 66100000-1 to 66720000-3 and financial services in connection with securities and other financial instruments referred to in Article 14 paragraph 1 item 7 of this Law, including postal money orders and postal gyro transfers;
- 3) philatelic services or
- 4) logistics services (the services which are a combination of physical delivery or warehousing with other non-postal functions).

Exclusions for procurement in the field of electronic communications

Article 16

This Law shall not apply to procurements the purpose of which is to allow a public contracting authority the provision or use of the public communication network or the provision of one or more electronic communication services, in accordance with the law regulating electronic communications.

Exclusions for procurement of services based on an exclusive right

Article 17

This Law shall not apply to the procurement of services that a public contracting authority awards to another public contracting authority or an association of public contracting authorities on the basis of an exclusive right enjoyed by them under a law or another regulation.

Exclusions for procurements among public contracting authorities and economic operators with majority state ownership

Article 18

This Law shall not apply to procurements of supplies, services and works awarded by a public contracting authority to another economic operator with majority state ownership, where:

- 1) the contracting authority, independently or together with other public contracting authority, exercises control over such economic operator,
- 2) such economic operator carries out more than 80% of its activities in the performance of tasks entrusted to it by the public contracting authority or an economic operator controlled by that public contracting authority, and
- 3) there is no direct participation of the private capital in accordance with the founding agreement, unless otherwise stipulated by the law.

A public contracting authority shall be deemed to independently exercise control over an economic operator referred to in paragraph 1 item 1 of this Article if it exercises a decisive influence over the management and administration of affairs of the economic operator, or a decisive influence over adoption of significant decisions and strategic objectives of the economic operator.

Within the meaning of paragraph 1 item 1, it shall be deemed that the control is exercised jointly where:

- 1) the decision-making bodies of that economic operator are composed of representatives of the contracting authorities, while individual representatives may represent several or all of the participating public contracting authorities, or
- 2) those contracting authorities jointly exert decisive influence over the strategic objectives and significant decisions of that economic operator, or
- 3) the economic operator does not pursue any interests which are contrary to those of the controlling contracting authority.

Exclusions for procurements between contracting authorities

Article 19

This Law shall not apply to the conduct of public procurements between two or more contracting authorities, provided that the following conditions are met:

- 1) the procurement is conducted as a cooperation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common,
- 2) the procurement is conducted for purpose of achieving and/or protecting the public interest; and
- 3) the contracting authorities referred to in Article 2 paragraph 2 items 3 and 4 of this Law perform on the open market less than 20% of the activities concerned by the cooperation referred to in item 1 of this paragraph.

For the determination of the percentage of activities from paragraph 1 item 2 of Article 18 of this Law and paragraph 1 item 3 of this Article, the average total turnover based on the appropriate activity, such as costs incurred by the contracting authority with respect to services, supplies or works for the three years preceding the contract award shall be taken into consideration.

In case that the relevant contracting authorities were created or commenced activities or because of a reorganisation of their activities the information on the turnover for the preceding three years are not available, it shall be sufficient for contracting authorities to show by their business projections that they fulfil the required conditions.

Exclusions for procurements for the pursuit of sectoral activity for purpose of resale or lease

Article 20

This Law shall not apply to procurements:

- 1) conducted by sectoral contracting authorities, for the purpose of resale or lease of the procurement subject where the sectoral contracting authority enjoys no special or exclusive right to sell or lease the subject of such procurement, and where other entities are free to sell or lease it under the same conditions as the sectoral contracting authority, and/or
- 2) the sectoral activity is directly exposed to competition on markets to which entry is not restricted, in accordance with Articles 170 and 171 of this Law.

Exclusion for procurement of water, energy or fuel for the production of energy

Article 21

This Law shall not apply to:

- 1) procurement of energy or fuel for the production of energy conducted by a sectoral contracting authority performing the activity referred to in Article 159, that is, Article 160 paragraph 1, Article 161 paragraph 1 or Article 166 of this Law;
- 2) procurement of water conducted by a sectoral contracting authority performing the activity referred to in Article 162 paragraph 1 of this Law;
- 3) procurement from the associated persons or on basis of a joint venture referred to in Article 167 of this Law.

Exclusion for procurements in the field of defence or security

Article 22

This Law shall not apply to procurements within the field of defence and security which contain the elements laid down by Articles 175, 176 and 177 of this Law.

Exclusion for simple procurements

Article 23

This Law shall not apply to procurements referred to in Article 26 paragraph 1 items 1, 2 and 3 of this Law (hereinafter: simple procurements).

4. Special public procurement rules

Procurement for diplomatic and consular missions and military-diplomatic representatives

Article 24

The method of conducting procurements of goods and services with the estimated value not exceeding 40,000.00 euros, or procurement of works with the estimated value not exceeding 100,000.00 euros as well as of the reporting on conducted procurements for diplomatic and consular missions of Montenegro abroad, military-diplomatic representatives and units of the Armed Forces of Montenegro in international forces and peacekeeping missions shall be prescribed the Government of Montenegro, unless otherwise provided for by a ratified international agreement or a treaty.

Reserved public procurements

Article 25

Contracting authorities may in tender documentation establish the right to participate in public procurement procedures for economic operators whose aim is the social and professional integration and employment of disabled persons, as well as of disadvantaged persons in accordance with the law governing professional rehabilitation and employment of disabled persons, provided that those persons account for at least 30% of the employees, whereupon all participants of the joint bid and all subcontractors belong to the said group.

The economic operators from paragraph 1 of this Article may subcontract up to 20% of the value of a reserved procurement to subcontractors which do not comply with the requirements from paragraph 1 of this Article.

The economic operator from paragraph 1 of this Article shall in its qualification application or its bid submit the evidence that it meets the requirements referred to in paragraph 1 of this Article.

5. Thresholds, participation in a procedure and data protection

Thresholds

Article 26

The thresholds for procurements shall be the following:

- 1) procurements of supplies, services and works with a value estimated to be below EUR 5,000.00 at annual level;
- 2) procurements of supplies and services with a value estimated to be equal to or greater than EUR 5,000.00 and below EUR 20,000.00 at annual level;
- 3) procurements of works with a value estimated to be equal to or greater than EUR 5,000.00 and below EUR 40,000.00 at annual level;
- 4) public procurements of supplies and services with a value estimated to be equal to or greater than EUR 20,000.00;
- 5) public procurements of works with a value estimated to be equal to or greater than EUR 40,000.00 at annual level;
- 6) public procurements of supplies, services and works with a value estimated to be equal to or greater than the thresholds of the European Union at annual level.

The thresholds referred to in paragraph 1 item 6 of this Article shall be published by the Ministry.

Application of regulations

Article 27

The method of conducting simple procurements referred to in Article 26 paragraph 1 items 1, 2 and 3 of this Law shall be prescribed by the Ministry.

A contracting authority shall conduct the procurements referred to in Article 26 paragraph 1 items 4, 5 and 6 of this Law in accordance with the procedure prescribed by this Law.

A contracting authority may not divide the subject of a procurement with the intention of avoiding the application this Law.

A contracting authority may conduct the simple procurements referred to in Article 26 paragraph 1 items 1, 2 and 3 of this Law in accordance with the procedures prescribed in Article 51 of this Law.

When conducting procurement referred to in paragraph 1 and 2 of this Article, the contracting authority is obliged to prepare semi-annual reports for the following periods: from 1 January to 30 June and from 1 July to 31 December of the current year.

Contracting authority shall submit the semi-annual reports to the Ministry within 30 days from the expiry of the period referred to in paragraph 4 of this Article.

Application of this Law to public-private partnership

Article 28

The provisions of this Law shall apply accordingly to award procedures for contracts on public-private partnerships, unless otherwise provided by separate laws.

Right to participate in a public procurement procedure

Article 29

An economic operator may participate in a public procurement procedure independently or jointly with one or more economic operators in accordance with this Law.

Data protection

Article 30

An economic operator may designate certain data representing a business secret in their qualification application, or bid, as confidential, except for the offered price, catalogue, financial part of the bid, the data which are evaluated in accordance with the criterion for the selection of the most advantageous bid, public document and proofs on fulfilment of the conditions in the public procurement procedure.

A contracting authority shall not disclose information pertaining to economic operator which has been designated as confidential.

Contracting authorities shall not reveal to other candidates and bidders in a negotiated procedure without prior publication of a contract notice, a competitive procedure with negotiation, a competitive dialogue, an innovation partnership or a negotiated procedure with prior publication of a contract notice the data or designs communicated to them by the candidate or the bidder participating in negotiations or a dialogue, without their written consent.

Contracting authorities may, in tender documentation, designate as confidential certain data which they make available to economic operators in the course of the public procurement procedure, in accordance with the law governing data confidentiality.

II. COMMUNICATION, CONFLICT OF INTERESTS AND ANTICORRUPTION ACTIVITIES

1. Communication between contracting authorities and economic operators

Electronic communication

Article 31

Contracting authorities and economic operators shall communicate and exchange data in a public procurement procedure by electronic means, in accordance with regulations regulating electronic administration, electronic identification and electronic signature, electronic trade and information security.

Notwithstanding paragraph 1 of this Article, contracting authorities and economic operators shall exchange information and data in a public procurement procedure in another manner, where:

1) the exchange of information and data electronically would require specific electronic means or the use of file formats that are not generally available or supported by generally available applications;

2) the exchange of information and data electronically supports file formats that are suitable for the description of the bids, but they cannot be made available for downloading or remote use by the contracting authority;

3) the use of electronic means would require specialised office equipment that is not generally available to contracting authorities;

4) in a public procurement procedure, samples, models, original documents and similar evidence are to be supplied, but they cannot be submitted using electronic means;

5) the procurement is subject to legislation regulating public procurement intended for defence and security or legislation regulating public procurement intended for diplomatic missions, consular missions and military-diplomatic representatives abroad.

The communication from paragraph 2 of this Article shall be conducted by an authorised provider of postal services or other appropriate courier service, via telefax, electronic mail or a combination thereof with electronic means.

In case that, during a public procurement procedure, a document has been submitted by a contracting authority or a bidder by electronic means, it shall be deemed that the submission has been executed properly where the recipient acknowledges the receipt of the document by an action confirming the receipt of the electronic document in a material form, including also automatic receipt acknowledgment systems.

A sent electronic document shall be deemed to have been received at the moment when the sender receives the receipt acknowledgment from the recipient.

In case that a document, for technical reasons, cannot be read, an economic operator, a qualification applicant or a bidder may require that such document is delivered in another, appropriate form.

Electronic means for the communication

Article 32

Electronic means for communication, as well as their technical characteristics shall be non-discriminatory, generally available and interoperable with the ICT products in general use and shall not restrict access for economic operators in a public procurement procedure.

Communication, exchange and storage of information and data in a public procurement procedure shall be done in a way that ensures the integrity and confidentiality of data included in qualification applications, bids, plans and projects.

Powers of contracting authorities

Article 33

A contracting authority shall not be obliged to require the use of electronic means of communication in the following cases:

- 1) the existence of risk of breach of security of the electronic means of communication or
- 2) the need for protection of sensitive information requiring a high level of protection that cannot be properly ensured by electronic tools and devices that are either generally available to economic operators or can be made available to them by alternative means of access.

Alternative means of access

Article 34

A contracting authority may require the use of tools and devices which are not generally available, provided that it offers an alternative means of access.

A contracting authority shall be deemed to have offered an alternative means of access where it:

- 1) offers an electronic, unrestricted and full direct access free of charge to those means from the date of publication or sending of the tender documentation, if it specifies in the tender documentation the internet address at which those tools and devices are accessible;
- 2) ensures that economic operators having no access to the electronic means or no possibility of obtaining them within the relevant time limits, may take part in the public procurement procedure through the use of an online access free of charge, established by the contracting authority;
- 3) supports an alternative channel for electronic submission of bids.

Special requirements relating to the use of electronic means

Article 35

In case of procurement of works, plans and projects, contracting authorities may require that special electronic means be used, such as virtual construction models of a building and similar; in those cases, they shall make available an alternative means of access until such tools become generally available.

Electronic means for the electronic transmission and receipt of qualification applications, bids, plans and projects shall fulfil the following requirements:

- 1) the exact time and date of the receipt of qualification applications and bids and the submission of plans and projects can be determined precisely;
- 2) before the time limits laid down no person can have access to data transmitted under item 1 of this paragraph;
- 3) only authorised persons of the contracting authority may, after the prescribed date, set or change the date for opening data received, access to all submitted data or their parts during the different stages of the public procurement procedure, as well as the access to the transmitted data;
- 4) data received and opened in accordance with this Law are accessible only to persons authorised to acquaint themselves therewith;
- 5) infringements of prohibitions or conditions from items 1, 3 and 4 of this paragraph are clearly detectable.

In addition to the requirements from paragraph 2 of this Article, the following rules shall apply to electronic means for the transmission and receipt of qualification applications, bids, plans and projects:

1) information on specifications for the electronic submission of qualification applications and bids, including encryption and time-stamping, shall be available to economic operators;

2) contracting authorities may specify the level of identification security required for the electronic means of communication in the various stages of the specific public procurement procedure;

3) where contracting authorities conclude that the level of risk, assessed under item 2) of this paragraph is such that advanced electronic signatures are required, they shall accept advanced electronic signatures in accordance with the regulation governing electronic identification and electronic signature.

Contracting authorities shall justify the reasons for using means of communication other than electronic means referred to in Articles 31 and 33 of this Law in the tender documentation and other acts concerning the public procurement procedure.

Written communication

Article 36

Written communication between contracting authorities and economic operators in public procurement procedures shall be realized by mail, courier service or in other appropriate manner determined by the tender documentation.

Oral communication

Article 37

Notwithstanding Articles 31 and 36 of this Law contracting authorities and economic operators may communicate orally if such communication is not related to the essential elements of a public procurement procedure, provided that the content of such communication is documented in its substantial part by preparation of an official note or a sound file by the contracting authority.

The essential elements of a public procurement procedure referred to in paragraph 1 of this Article shall include the tender documentation, the conditions for participation in a public procurement procedure, a qualification application and a bid.

2. Prevention of corruption and conflict of interest

Obligations of contracting authorities

Article 38

A contracting authority shall, in the course of a public procurement procedure, take measures aimed at preventing and eliminating the consequences of corrupt activities.

A contracting authority shall:

- 1) exclude an economic operator from the public procurement procedure where they establish that such economic operator, directly or indirectly has given, offered, promised or otherwise made probable a gift or some other benefit or has threatened to a public procurement officer, a member of the commission for the opening and evaluation of bids, a person who participated in preparing the tender documentation, a person who participated in planning the public procurement or some other person, with a view to obtaining confidential information or exert influence on the actions of the contracting authority;
- 2) record cases from paragraph 1 of this Article, make an official note thereof, submit a report to the competent state authorities so that they can take measures in accordance with law and immediately notify the competent authority;
- 3) carry out risk analysis and control activities in the public procurement procedures.

A public procurement contract concluded with violation of anticorruption rule shall be null and void (the anticorruption clause).

The manner of keeping, the content of records on the conflict of interest or violation of anticorruption rule and the methodology for risk analysis in performing control over public procurement procedures for the purpose of proactivity and an early detection of corrupt activities and other activities with elements of corruption shall be prescribed by the Ministry.

Duty to report corruption

Article 39

An employee involved in the carrying out of public procurement tasks or any other person commissioned by a contracting authority possessing information about the existence of corruption in public procurement shall, depending on whom the information relates to, with no delay notify thereof the authorized person of the contracting authority, the Ministry, the authority in charge of corruption prevention and the competent state prosecutor.

Duty to prevent conflict of interest

Article 40

A contracting authority shall take appropriate actions to efficiently prevent, recognise and eliminate conflict of interest related to a public procurement procedure.

Conflict of interest between contracting authorities and economic operators

Article 41

The conflict of interest between contracting authorities and economic operators shall cover the following situations:

- 1) the representative of a contracting authority acting on behalf and/or for the account of the contracting authority, who conducts the public procurement procedure has, directly or indirectly, a financial, economic or other personal interest which might affect their impartiality and independence in the conduct of such public procurement procedure, particularly if:

- they participate in the management of the economic operator or

- their participation in ownership or shares account for more than 2.5% of the capital or they enjoy other right on the basis of which they can participate in the management of the economic operator's business activity.

2) the authorised person of the economic operator has:

- participation in ownership or shares of the contracting authority accounting for more than 2.5% of the value of the capital, or
- the following close relations with the representative of the contracting authority: marriage or common-law marriage, regardless of whether the marriage has ended or not, straight line of kinship or lateral line of kinship up to the fourth degree, kinship by marriage up to the second degree or on the basis of adoption as an adopter or adoptee.

Representative of the contracting authority from paragraph 1 item 1 of this Article shall be:

- 1) an authorised person;
- 2) a public procurement officer, a member of the commission for the opening and evaluation of bids, a person participating in the preparation of the tender documentation and a person participating in the public procurement planning;
- 3) persons from items 1 and 2 of this paragraph who are acting on behalf and/or for the account of the contracting authority in a joint procurement.

The provision from paragraph 1 item 2 of this Article shall also apply to the authorised person of the candidate, the bidder, member of a joint bid and/or subcontractor.

Paragraph 1 item 1 of this Article shall also apply to persons related by blood in the straight line and in the lateral line up to the fourth degree, in-laws up to the second degree, the spouse or partner in a common-law marriage, regardless of whether the marriage has ended or not, the adopter and the adoptee, of the contracting authority's representative from paragraph 2 item 1 of this Article.

Transfer of ownership or shares to another legal or natural person under regulations concerning the prevention of conflict of interest shall not exclude the existence of conflict of interest in the course of such transfer.

Conflict of interest arising from prior activities of economic operators with contracting authorities

Article 42

An economic operator or a person having developed or participated in developing a technical documentation or having performed an expert check of the technical documentation, supervision over execution of works and an economic operator whose authorized person or expert has taken part in developing or an expert control over the technical documentation used for the preparation of technical specification in the tender documentation or the documentation under which a public procurement contract is executed and a person having taken part in the technical consultation or the provision of technical advice to the contracting authority, shall not participate in a public procurement procedure in the capacity of a bidder, a member of a joint bid or a subcontractor and shall not cooperate with the bidder, person having submitted a joint bid or the subcontractor in the preparation of the bid, except where:

- 1) the subject-matter of procurement is the development of technical documentation and execution of works according to such technical documentation;
- 2) the subject-matter of procurement is the development of a master design, on the basis of previously developed design, or project design or individual documents connected with the development of this part of the technical documentation, in accordance with law;
- 3) the entire content of technical consultation and technical advice is an integral part of the tender documentation.

Prevention and recording of conflict of interest

Article 43

The representative of the contracting authority from Article 41 paragraph 2 of this Law shall, before taking the first action in a public procurement procedure, sign a statement declaring absence of conflict of interest or notify the contracting authority of the conflict of their interests, and if the conflict of interest occurs during the public procurement procedure this person shall with no delay request his/her recusal.

An economic operator intending to participate in a public procurement procedure may, within the time limits for lodging appeals to tender documentation, request the contracting authority to exclude from the public procurement procedure the person from Article 41 paragraph 2 of this Law, who is in the conflict of interest situation.

The request for recusal of the authorised person of the contracting authority shall be decided upon by the body that appointed or elected such person, while the recusal of other representatives of the contracting authority shall be decided upon by the authorised person of the contracting authority, not later than eight days from the day of submitting such request.

A contracting authority shall enter the submitted requests for recusal due to conflict of interest into the records on conflict of interest and, without delay, notify thereof the competent authority and the body in charge of preventing corruption.

The economic operator that participate in public procurement procedure is required to indicate in the statement of the economic operator that its authorized person is not in conflict of interest within meaning of paragraph 1 item 2 and that there is no conflict of interest from Article 43 of this Law.

III. BODIES IN CHARGE OF CONDUCTING PUBLIC PROCUREMENT PROCEDURES

Tasks in public procurement field

Article 44

The Ministry shall perform the following administrative and associated technical tasks in public procurement field:

- 1) perform monitoring;
- 2) provide technical guidance on application of this Law;
- 3) monitor the compliance of legislation governing public procurement with the legislation of the European Union;
- 4) give its opinion to contracting authorities regarding the fulfilment of conditions for conducting negotiated procedures without prior publication of a contract notice, in accordance with this Law;
- 5) provide advisory assistance to contracting authorities and economic operators upon their request;
- 6) organize and carry out professional training and education for the staff of contracting authorities and other persons for performing public procurement tasks;
- 7) organize the taking of the professional examination for performing tasks in public procurement field and issue certificates for the work in public procurement field;
- 8) establish, maintain and manage the EPPS and monitor its use;
- 9) establish and maintain records on registered economic operators in the EPPS;
- 10) publish public procurement plans, tender documentation, decisions and other acts of contracting authorities issued during the public procurement procedure, including the

amendments thereof, public procurement contracts and framework agreements and modifications thereof and notifications concerning lodged complaints on the EPPS;

11) enable contracting authorities via electronic public procurement system to access and receive qualification applications, bids, projects and solutions;

12) prepare, publish and update the list of contracting authorities and the list of public procurement officers;

13) prepare and publish the Common Procurement Vocabulary (CPV) on its internet page, in accordance with regulations of the European Union;

14) pursue cooperation and exchange of information with international organizations, institutions, the European Commission and experts in public procurement field;

15) pursue cooperation and exchange of information with competent bodies from other countries and organization within the scope of its competences;

16) notify inspection and other competent bodies on observed irregularities in public procurement procedures;

17) prepare and submit to the Government reports in accordance with this Law;

18) perform other tasks in conformity with law.

Electronic Public Procurement System (EPPS)

Article 45

EPPS shall, through electronic means, in particular enable the following:

- 1) drawing up and publishing of tender documentation and other acts related to public procurement;
- 2) dispatching public procurement notices to the Publications Office of the EU so that they can be published in the Official Journal of the EU, in case of procurements exceeding the threshold referred to in Article 26 paragraph 1 item 6 of this Law;
- 3) free access, search, review and download of the published tender documentation and other acts related to conducting of public procurement procedures;
- 4) drawing up, submission, receipt, assessment and evaluation of qualification applications, bids, plans, projects and solutions, free of charge;
- 5) registration and keeping records on economic operators;
- 6) the competent state authorities to access the database of the EPPS;
- 7) access to data in accordance with Article 46 of this Law.

The user of EPPS shall be solely responsible for the accuracy of the entered data.

Funds for financing EPPS shall be provided from the Budget of Montenegro and from the dedicated revenue based on fees charged for using the EPPS, which is used for investment, research, development, improvement and maintenance of the EPPS.

Processing, exchange and publication of data in electronic form within the EPPS shall be conducted in accordance with the laws regulating electronic government, electronic identification and electronic signature, electronic document, electronic trade and information security.

Operating conditions and instructions for use of the EPPS shall be prescribed by the Ministry.

Compulsory provision of access to data

Article 46

The state administration bodies and other bodies and organization in charge of keeping public records or electronic registry shall enable access by electronic means of communication to relevant data in the records or registry for the purposes of EPPS, in accordance with the law regulating e-government.

Public procurement officer

Article 47

Contracting authorities shall appoint at least one person to perform tasks of a public procurement officer.

A public procurement officer shall be a person holding a university degree, level seven (VII) of the national qualification framework and a certificate confirming that they have passed the professional exam for performing public procurement tasks.

A public procurement officer shall: take part in preparing public procurement plans; supply interested persons with the part of the tender documentation containing confidential data in accordance with law; keep records of public procurements; draft reports on conducted public procurement; carry out administrative tasks in the course of a public procurement procedure and perform other tasks in accordance with this Law and secondary legislation.

Contracting authorities shall supply the Ministry with their decision on appointment of the public procurement officer.

Commission for the opening and evaluation of bids

Article 48

Commission for the opening and evaluation of bids (hereinafter: Commission) shall be established by the decision of the authorized person of the contracting authority.

A public procurement procedure shall be conducted by the Commission, in accordance with this Law.

Commission shall consist of an odd number of members.

At least one member of the Commission shall be an employee of the contracting authority.

The public procurement officer of a contracting authority may be a member of the Commission.

A contracting authority may appoint a vice-president and a member of the Commission.

Commission shall: prepare and establish tender documentation and amendments thereof; provide clarifications to tender documentation; manage the opening of bids or qualification applications; write minutes of the opening of bids or applications; review, assess, compare and evaluate bids or qualification applications; write minutes of the review, assessment and evaluation of bids; prepare and propose to the authorized person of the contracting authority decisions on the exclusion from a public procurement procedure, decisions on the selection of the most advantageous bid or decisions on the annulment of procedures; prepare responses to appeals, perform other tasks in accordance with this Law.

Commission shall cease its operation upon conclusion of a public procurement contract or the adoption of the executive decision on annulment of the public procurement procedure.

The Ministry shall prescribe more detailed criteria for establishing the Commission.

Professional exam for acquiring the public procurement certificate

Article 49

The professional exam for performing public procurement tasks (hereinafter: professional exam) shall be taken before the commission for taking professional exam.

The commission from paragraph 1 of this Article shall be established by the Ministry and it shall consist of at least three members.

The administrative and other tasks for the needs of the commission from paragraph 1 of this Article shall be performed by a secretary of the commission.

The president, members and secretary of the commission referred to in paragraph 1 of this Article shall be entitled to remuneration.

The costs of taking the professional exam for performing public procurement tasks shall be borne by the person who applied for taking the professional exam.

The program and manner of taking the professional exam, the composition and method of establishment of the commission from paragraph 1 of this Article, the costs of taking the professional exam, the remuneration for the president, members and secretary of the commission, issuing of certificates and the form of the certificate on passed professional exam shall be prescribed by the Ministry.

Professional training and education

Article 50

Employees of contracting authorities involved in the carrying out of public procurement tasks shall attend professional training and education courses.

Contracting authorities shall provide professional development and training for public procurement officers and other persons employed by contracting authority involved in public procurement tasks.

Professional training and education in public procurement field shall be conducted on basis of the program for professional training and education.

Professional training and education referred to in paragraph 2 of this Article for the needs of contracting authorities shall be organized and conducted by the Ministry.

Professional training and education may be organized and conducted by the Ministry also for economic operators and other persons.

The Ministry shall establish the program and method of professional training and education in public procurement field.

IV. PUBLIC PROCUREMENT PROCEDURES

1. Types, choice and launch of public procurement procedures

Types of public procurement procedures

Article 51

Public procurement procedures are the following:

- 1) open procedure,
- 2) restricted procedure,
- 3) competitive procedure with negotiation,
- 4) negotiated procedure without prior publication of a contract notice,
- 5) partnership for innovation,
- 6) competitive dialogue,
- 7) negotiated procedure with prior publication of a contract notice.

Choice of public procurement procedures

Article 52

A contracting authority shall choose the public procurement procedure depending on the type, the essential characteristics and specific conditions of the subject of public procurement.

Commencing the procedure

Article 53

Public procurement procedure shall commence with publishing or sending the tender documentation which shall contain a call for competition, the technical specification of the procurement subject, methodology for bid evaluation, the instruction for preparation and submission of bids and the instruction on legal remedy, in accordance with this Law.

The call for competition set out in paragraph 1 of this Article shall contain, in particular, information about a contracting authority, type of award procedure, subject-matter of procurement, estimated value of procurement, conditions for participation, deadline for the submission of an application/bid, time of opening of applications/bids and other relevant information which will reasonably inform bidders on subject-matter of procurement and the public procurement procedure.

Content and form of the tender documentation set out in paragraph 1 of this Article, depending on the type of procedure, shall be prescribed by the Ministry.

Open procedure

Article 54

Open public procurement procedure may be applied for any subject-matter of procurement, in which all interested economic operators may submit a bid in accordance the call for competition and tender documents.

Open procedure shall commence with the publication of a call for competition and tender documents in EPPS (ESJN), for purpose of submission of bids.

Bids in an open public procurement procedure shall be submitted within the time limit which may not be shorter than 30 days as of the day of publication of the tender documentation.

Notwithstanding paragraph 1 of this Article, a contracting authority may reduce the time limit for bid submission, which may not be shorter than 15 days from the day of publication of the tender documentation, if required so by the reasons of urgency not caused by the fault of the contracting authority.

A contracting authority shall provide an explanation in the tender documentation on the reasons of urgency due to which the bid submission period from paragraph 4 of this Article was reduced.

In case that the bids are submitted electronically through the EPPS, a contracting authority may reduce the time limit from paragraph 3 of this Article by five days.

Restricted procedure

Article 55

Restricted public procurement procedure may be applied for any subject-matter of procurement, in which application for qualification may be submitted by any interested economic operator, in accordance with a call for competition.

First stage of a restricted procedure shall commence with the publication of tender documents in EPPS (ESJN) for the purpose of submission of a qualification application.

Qualification applications shall be submitted within the time limit which may not be shorter than 30 days as of the day of publication of the tender documentation.

Notwithstanding paragraph 3 of this Article, a contracting authority may reduce the time limit for submission of qualification applications, which may not be shorter than 15 days from the day of publication of the tender documentation, if required so by the reasons of urgency not caused by the fault of the contracting authority.

A contracting authority shall provide an explanation in the tender documentation on the reasons of urgency due to which the bid submission period from paragraph 4 of this Article was reduced.

Second stage of restricted procedure

Article 56

Second stage of a restricted public procurement procedure shall commence when the invitation to submit a bid is sent to qualified candidates.

Contracting authority shall send the invitation referred to in paragraph 1 of this Article electronically to all candidates respectively on the same day.

The invitation referred to in paragraph 1 of this Article shall contain the time limit and the manner of submission of bids, in accordance with the tender documents.

A time limit for bid submission may not be shorter than 30 days as of the day of sending the invitation for submission of bids.

Notwithstanding paragraph 4 of this Article, a contracting authority may reduce the time limit for submission of bids, which may not be shorter than 10 days from the day of delivery of the invitation for submission of bids, if required so by the reasons of urgency not caused by the fault of the contracting authority.

A contracting authority shall provide an explanation in the invitation for submission of bids on the reasons of urgency due to which the bid submission period from paragraph 4 of this Article was reduced.

Competitive procedure with negotiation

Article 57

Competitive procedure with negotiations may be applied for the procurement of supplies, works and services if:

1) the needs of contracting authority cannot be met without adaptation of existing solutions of the subject-matter of procurement;

2) the subject-matter of procurement includes design or innovative solutions;

3) due to specific circumstances of the subject-matter of procurement which are related to the nature, complexity or the legal and financial requirements of the subject-matter of procurement or due to the risks related to hereto, a procurement procedure cannot be applied without prior negotiations;

4) a contracting authority cannot precisely establish the technical specifications of the subject-matter of procurement with regards to valid standards, common technical specification or technical reference, or if

5) all bids received in an open or a restricted public procurement procedure were irregular.

The first stage of a competitive procedure shall commence with a publication of the tender documents in EPPS, for the purpose of submission of the application for qualification.

Contracting authority shall describe the subject-matter of procurement in tender documents in a manner in which it will define its needs and minimum requirements in terms of elements and characteristics of the subject-matter of procurement which shall be met by bidders in their bids so that economic operators may identify the nature and scope of procurement and decide whether they will submit an application for qualification.

Any economic operator shall have the right to submit an application for qualification, in accordance with the tender documents.

A time limit for submission of qualification applications may not be shorter than 30 days as of the day of publication of the tender documents.

Notwithstanding paragraph 5 of this Article, a contracting authority may reduce the time limit for submission of qualification applications, which may not be shorter than 15 days from the day of publication of the tender documents, if required so by the reasons of urgency not caused by the fault of the contracting authority.

A contracting authority shall provide an explanation in the tender documents on the reasons of urgency due to which the bid submission period from paragraph 6 of this Article was reduced.

Second stage of the competitive procedure with negotiation

Article 58

Second stage of a competitive procedure with negotiations shall commence when the invitation to submit initial bid is sent to qualified candidates; initial bid shall be the basis for further negotiations.

Contracting authority shall send the invitation referred to in paragraph 1 of this Article electronically to the qualified candidates respectively on the same day.

Invitation from paragraph 1 of this Article shall contain the time limit and the manner of submission of initial bids in accordance with the tender documents.

A time limit for submission of initial bids may not be shorter than 30 days as of the day of sending the invitations for submission of initial bids.

Notwithstanding paragraph 4 of this Article, a contracting authority may reduce the time limit for submission of initial bids, which may not be shorter than 10 days from the day of sending the invitations for submission of initial bids, if required so by the reasons of urgency not caused by the fault of the contracting authority.

A contracting authority shall provide an explanation in the invitation for submission of initial bids on the reasons of urgency due to which the bid submission period from paragraph 5 of this Article was reduced.

Contracting authorities shall negotiate with each bidder on the initial and all subsequent bids submitted by them in order to improve the content of bids and to draft the final requirements and specifications needed for submission of the final bid.

The reduction of the minimum requirements in terms of the elements and characteristics of the procurement subject-matter as well as the change of the award criteria for the selection of the most advantageous bid shall not be subject to negotiations.

Contracting authority shall produce particular minutes about the negotiations referred to in paragraph 4 of this Article.

Contracting authority may apply competitive procedures with negotiation in successive stages in order to reduce the number of bids to be negotiated by applying the award criteria for most advantageous bid established in tender documents.

Contracting authority shall:

- 1) inform the bidders whose bids are eliminated from further negotiations by electronic means, not later than 24 hours prior to the commencement of the next round of negotiations;
- 2) by electronic means, inform at once all the bidders whose bids are not eliminated on all amendments made to technical specifications or other parts of documents and it shall set an appropriate time limit for the preparation and submission of amended bids;
- 3) inform the bidders referred to in item 2 of this paragraph on the completion of negotiations and provide them with the final technical specifications and other elements related to the subject-matter of the procurement and set a time limit for the submission of final bids.

Content and form of the invitation referred to in paragraph 2 and the minutes from paragraph 6 of this Article shall be prescribed by the Ministry.

Negotiated procedure without prior publication of a contract notice

Article 59

A negotiated procedure without prior publication of a contract notice may be applied for the procurement of supplies, services or works where:

- 1) no bids or no regular bids have been submitted in response to an open or restricted public procurement procedure, provided that the subject of procurement and the content of the tender documentation are not substantially altered, in which case the contracting authority shall particularly involve in the negotiated procedure all bidders who have submitted their bids in response to the open or the restricted procedure;
- 2) only particular economic operator may implement the procurement for any of the following reasons:
 - a) the aim of procurement is the creation or acquisition of a unique work of art or artistic performance of the subject-matter of procurement,
 - b) market competition is absent for technical reasons, or
 - c) the protection of exclusive rights, including intellectual property rights;
- 3) to the extent necessary, for reasons of extreme urgency brought about in exceptional circumstances by events unforeseeable by the contracting authority and not depending or attributable to that contracting authority, it is not possible to apply open, restricted, or competitive procedure with negotiation within the time limits provided for by this Law;
- 4) the subject of procurement are the supplies manufactured purely for the purposes of research, experimentation, study or development, on the condition that it does not include quantity production with an aim of making profit or to recover the costs of research and development;
- 5) it concerns additional deliveries in the course of execution of contractual obligations by the bidder with whom a public procurement contract was concluded under this Law, which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of bidder or supplies would result in technical difficulties in operation and maintenance, provided that the total value of the additional deliveries does not exceed 20% of the value of the concluded contract, ;and as of the conclusion of original contracts, the duration of such contracts as well as that of recurrent contracts shall not exceed three years;
- 6) supplies are acquired on commodity markets;
- 7) supplies are acquired on particularly advantageous terms from either a bidder which has definitely wound up its business activities or is in the process of liquidation or insolvency, in accordance with the national laws and regulations;
- 8) the subject of procurement is a service which follow after the continuation of a service provided through a contest conducted under Article 156 of this Law, and the contract is concluded with the selected or one of the selected economic operators, provided that all selected economic operators are involved in the negotiated procedures by the contracting authority;
- 9) it concerns procuring services and/or awarding works consisting in the repetition of similar works or services entrusted to the economic operator with whom the contracting authority concluded an original contract, provided that the services

and/or works are in accordance with the original contract concluded after the procedure from Article 51 of this Law was conducted, if the possibility of additional services or works has been foreseen in the tender documents and if the total value of subsequent works or services does not exceed 20% of the value of the contract concluded and the original contract was not concluded more than three years ago.

The manner of conducting of a negotiated procedure without prior publication of a contract notice

Article 60

A negotiated procedure without prior publication of a contract notice shall be launched, depending on conditions from Article 59 of this Law, by supplying one or more economic operators with the tender documentation, directly or by electronic means of communication, for purpose of obtaining their initial bids.

Tender documentation from paragraph 1 of this Article shall be supplied to all economic operators individually on the same day.

Contracting authorities shall specify in the tender documentation the subject of negotiation, the method of negotiation and an appropriate time limit for submission of initial bids which may not be shorter than eight days as of the day of supplying the tender documentation, except in the case referred to in Article 59 paragraph 1 item 3 of this Law.

Initial bids may be submitted only by the economic operators supplied with the tender documentation by the contracting authority, independently or together with a group of economic operators.

Contracting authority shall negotiate on initial bids with the bidders in order to improve conditions of bid and production of final bids.

Contracting authorities shall draft minutes of negotiations referred to in paragraph 5.

The conditions of participation in the procedure and the criteria for the selection of the most advantageous bid indicated in the tender documentation shall not be subject to negotiation.

Contracting authorities may conduct several successive negotiations in order to reduce the number of bids to be negotiated by applying the criteria for the selection of the most advantageous bid specified in the tender documentation.

Contracting authorities shall:

- 1) inform electronically the bidders who will not be invited to further negotiations, not later than 24 hours before the commencement of such further negotiations;
- 2) inform electronically and at the same time all bidders whose bids have not been eliminated of any changes to the technical specifications or to other parts of the tender documentation resulting from the negotiations and set an appropriate deadline to prepare and submit an amended or a new bid;
- 3) inform the bidders of the conclusion of negotiations and set a deadline to submit the final bids.

Competitive dialogue

Article 61

Competitive dialogue may be applied for the procurement of supplies, services or works under the conditions set out in Article 57 paragraph 1 of this Law.

The first stage of a competitive dialogue shall commence with publication of the tender documents in EPPS for the purpose of submission of applications for qualification.

Contracting authority shall specify in its tender documents the needs and requirements in relation to the subject-matter of procurement, along with a time frame to implement the

procurement, and shall also state which elements of needs and required characteristics of works, supplies and services represent minimum requirements which shall be fulfilled by bids and which shall not be amended in the course of procedure, along with the conditions for participation and award criteria for the selection of the most advantageous bid.

The applications for qualification shall be submitted within a time limit which may not be shorter than 30 days as of the day of publication of the tender documentation.

Second stage of the competitive dialogue

Article 62

The second phase of the competitive dialogue is initiated by delivering an invitation to qualified candidates to a dialogue about the subject-matter of the procurement, in order to define final conditions and requirements related to the procurement subject which are necessary for preparation of the bid.

A contracting authority shall submit the invitation referred to in paragraph 1 of this Article to the qualified candidates individually on the same day, by electronic means.

The invitation referred to in paragraph 1 of this Article shall contain the time limit and the manner of conducting the dialogue, in accordance with the tender documents.

A contracting authority may conduct more than one dialogue with the candidates, individually, until it determines the final solution which meets the established requirements in terms of subject-matter of the procurement, on basis of which the candidates shall submit their final bids.

During the dialogue, contracting authority considers all the relevant elements of the subject of procurement with bidders, and is obliged to ensure equal treatment of bidders and may not reveal data and information that give some candidates an advantage over others.

Reduction of number of the proposed solutions for the subject-matter of the procurement is performed by applying the criteria for selecting the most advantageous bid.

A contracting authority shall keep particular minutes of the conducted dialogues.

A contracting authority shall:

- 1) inform, via electronic means, candidates who will not be invited to continue the dialogue, no later than 24 hours before the commencement of the next phase of the dialogue;
- 2) inform, via electronic means, at the same time, all candidates who will be invited to continue the dialogue about all amendments to technical specifications or other parts of the tender documentation, and to set for them an appropriate time limit for preparation and submission of an amended solution;
- 3) inform qualified candidates of the conclusion of the dialogue, inviting them to submit their final bids for the solutions accepted during the dialogue, within an appropriate time limit which may not be shorter than eight days as of the day of supplying the invitation.

Contracting authority may ask the bidder to clarify, specify and adjust their final bid or provide additional information, which do not modify the essential elements of the final bid, provided that such alterations and information do not result in distortion of competition or in discrimination of bidders.

In a competitive dialogue, proposed solutions for the subject-matter of the procurement and bids are valued on the basis of the criteria related to price and quality ratio.

After evaluating the regularity of the bids, the contracting authority may negotiate with the bidder, for whom it has determined to have submitted a bid representing the best price / quality ratio, in order to confirm the financial obligations or other conditions contained in the bid by specifying the terms of the contract, provided that this does not result in material changes to the essential elements of the bid or subject of procurement, including the needs and

requirements set out in the documentation, and that it does not distort competition and cause discrimination.

Contracting authority may make provisions for rewards for the offered solutions and / or reimbursement of the cost of candidate's participation in the dialogue.

The form and content of the invitation referred to in paragraph 3 and the minutes referred to in paragraph 7 of this Article shall be prescribed by the Ministry.

Innovation partnership

Article 63

Contracting authority may implement an innovation partnership procedure if it has the need for innovative goods, services or works that it can not meet by procuring goods, services or works that are available on the market.

The innovation partnership aims to develop innovative goods, services or works and their subsequent procurement, provided that it is in line with the degree of production and the maximum cost agreed between the contracting authority and the participants in the innovation partnership.

The innovation partnership is initiated by publishing the tender documentation at the electronic system for public procurement (ESPP) for submission of qualification application.

The qualification applications shall be submitted within a time limit which may not be shorter than 30 days as of the day of publication of the tender documentation.

The contracting authority shall determine in the tender documentation the need for innovative goods, services or works, as well as the minimum requirements for the elements of the subject of procurement that the bids should satisfy, the conditions of the competence of the economic operators related to research, development and implementation of the innovative solutions and the manner in which the intellectual property rights shall be regulated.

The information referred to in paragraph 5 of this Article must be sufficiently clear so that economic operator could recognize the nature and scope of the subject-matter of procurement and decide whether to submit a qualification application.

Estimated value of the subject-matter of procurement referred to in paragraph 1 of this Article must not be disproportionate in relation to the investment required for research and development of the innovative solution of the subject-matter of procurement.

Contracting authority may decide to establish an innovation partnership with one or more candidates who meet the conditions referred to in paragraph 5 of this Article, for the purpose of carrying out separate research and development activities.

The partnership referred to in paragraph 8 of this Article shall be established by concluding a contract governing the mutual rights and obligations of the contracting authority and the candidate.

Contracting authority shall electronically invite all selected candidates in the innovation partnership on the same day, to submit their initial bids within the specified deadline, without the possibility of insight into the data on other selected candidates.

The innovation partnership takes place in successive stages, respecting the sequence of stages in the research and innovation process that could involve production of goods, provision of services or carrying out of works.

In the innovation partnership process, provisional objectives are set which partners need to achieve in the particular stages of the procedure, as well as payment of fee in appropriate amounts.

On the basis of the objectives set forth in paragraph 12 of this Article, the contracting authority may, after each phase, terminate the innovation partnership or, in the case of an

innovation partnership with several partners, reduce the number of partners by terminating individual contracts, provided that this possibility has been defined by the tender documentation.

Contracting authority negotiates initial and all subsequent bids with bidder in order to improve their content and reduce the number of bids that are to be negotiated further, except in the case of a final bid and a report is drawn up on that.

There can be no negotiation of reducing the minimum requirements of the subject of procurement and changing the criteria for selecting the most advantageous bid from the tender documentation.

Contracting authority shall:

- 1) terminate the innovation partnership contract with the bidder who will not be invited to the next stage of negotiation;
- 2) notify the bidders with whom the innovation partnership contract was not terminated of the conclusion of the negotiations and set a deadline for submitting the final bids which may not be shorter than eight days as of the day of supplying the invitation.

In innovation partnership, bids are evaluated solely on the basis of the offered price and quality.

Negotiated procedure with prior publication of a contract notice

Article 64

Negotiated procedure with prior publication of a contract notice may be applied by a sectoral contracting authority for the procurement of supplies, works and/or services required for the pursuit of sectoral activity.

Negotiated procedure with prior publication of a contract notice shall be conducted in accordance with Articles 57 and 58 of this Law.

Prior approval

Article 65

Contracting authority shall obtain opinion of the Ministry, before initiation of negotiation procedure without prior publication of the invitation to tender, except in the case referred to in Article 59, paragraph 1, item 3 of this Law.

In order to obtain the opinion referred to in paragraph 1 of this Article, the contracting authority shall state in the written form the following: legal basis for the implementation of the procedure, name of the subject of procurement, estimated value of the public procurement, position from the procurement plan, source or the manner of securing financial resources, reasons and proof of fulfilment of the requirements for implementing the procedure.

The Ministry shall give the opinion from paragraph 2 of this Article, without examination of the procedure, on basis of the submitted evidence, within eight days of the receipt of the proper documentation.

Determining qualification of the applicants

Article 66

Qualification of the applicants in a restricted procedure, a competitive procedure with negotiation, a competitive dialogue, an innovation partnership and a negotiated procedure with prior publication of contract notice shall be performed in relation to capability requirements foreseen in the tender documentation.

Along with the application for qualification, an applicant shall submit the economic operator's declaration that all mandatory requirements have been met, as well as the capability requirements prescribed in the tender documentation.

Applications for qualification shall be opened after the expiry of the period defined in the call for competition, without the attendance of applicants' representatives, about which the minutes shall be produced.

After the opening of applications for qualification, contracting authorities shall assess the validity of timely submitted applications for qualification and determine qualified candidates.

The applicants who have not fulfilled the qualification requirements shall be delivered a notice of elimination from further public procurement procedure.

Limitation of number of qualified candidates

Article 67

Contracting authority may limit the number of qualified candidates in tender documents, provided that the minimum number of candidates may not be less than five in a restricted public procurement procedure and less than three in a competitive procedure with negotiation, a competitive dialogue and an innovation partnership.

In the event referred to in paragraph 1 of this Article, the selection of the foreseen number of candidates shall be performed according to the number and/or amount of references for proving the fulfilment of the required capability requirements.

If the number of qualified candidates is below the number prescribed by the tender documentation, the contracting authority may proceed with the public procurement procedure if that possibility is envisaged in its tender documentation.

After assessing the validity of submitted applications for qualification, contracting authorities shall rank candidates who submitted valid applications.

The applicants who were not ranked within the determined number of candidates referred to in paragraph 1 of this Article shall be delivered a notice of elimination from further public procurement procedure.

2. Special forms of procurement

Framework agreement

Article 68

Framework agreement is an agreement between one or more contracting authorities with one or more economic operators, setting out the conditions for concluding a public procurement contract for a specified period for a specific price and quantity as required.

Framework agreement may be concluded by the implementation of the procedures referred to in Article 51 of this Law, except for the negotiation procedure without prior publication of a call for tender.

Framework agreement may be concluded for a maximum of four years, except in the case of procurement necessary for the performance of the sectoral activity and in particularly justified cases related to the subject of public procurement which the contracting authority must explain.

Public procurement contracts concluded on the basis of the framework agreement must be concluded before the expiry of the deadline for which the framework agreement was

concluded, provided that the duration of certain contracts concluded under this agreement do not need to coincide with the duration of the framework agreement, however if necessary may take longer or shorter time, but shall not exceed 12 months from the expiry of the term of the framework agreement.

The contracting authority is obliged to determine in the tender documentation that it will conclude the framework agreement and the number of economic operators with whom it intends to conclude a framework agreement.

The contracting authority shall determine in the tender documentation if the parties to the agreement are obliged to execute it and determine the procedure for concluding a contract based on the framework agreement, and in the case of central or joint procurement, indicate names of the contracting authorities covered by such framework agreement.

Public procurement contracts under a framework agreement may be concluded by the contracting authorities who have concluded the framework agreement, the contracting authorities on whose behalf the framework agreement has been concluded and the contracting authorities for which it is clearly possible to determine from the tender documentation that the framework agreement is intended for them.

Contracting authority intending to conclude a framework agreement with several economic operators may also conclude a framework agreement with a smaller number of economic operators, or with a single economic operator, if it does not receive a predetermined number of bids that meet the conditions for awarding the framework agreement, and if this option has been provided for by the tender documentation.

The provisions of Articles 150 and 151 of this Law shall also apply to termination and amendment of the framework agreement.

Conclusion of public procurement contracts based on a framework agreement

Article 69

If a framework agreement is concluded with a single bidder, the contract is concluded directly on the basis of the terms provided for in the framework agreement.

Where a framework agreement is concluded with several bidders, contracts based on the framework agreement are concluded in one of the following ways:

- 1) without re-bidding signatories of the framework agreement, in accordance with the conditions set out therein, where such agreement sets out all the necessary terms governing the performance of works, the provision of services or the supply of goods and the conditions of the contractor's ability to execute the contract;
- 2) by re-bidding signatories of the framework agreement, if the framework agreement fails to stipulate all the terms for the performance of works, provision of services or supply of goods;
- 3) partially without re-bidding referred to in item 1 of this paragraph, and partially with re-bidding signatories of the framework agreement referred to in item 2 of this paragraph, if the framework agreement provides for all conditions for performance of the works, provision of services or delivery of goods, if this possibility is stipulated by the tender documentation and if there are certain conditions and criteria to be applied in re-bidding.

Re-bidding from paragraph 2 item 2 of this Article shall be implemented on the basis of the terms provided for in the tender documentation for the conclusion of the framework agreement and, where necessary, on the basis of more precisely defined other conditions from the tender documentation in the following manner:

- the contracting authority shall invite in written form all bidders from the framework agreement for the conclusion of each contract;

- the contracting authority is obliged to specify an appropriate deadline for submission of tender for each contract that it concludes, in accordance with the complexity of the procurement and the time required to submit the bid;
- the content of the bids must be kept secret until the expiration of the deadline for their opening;
- contracting authority concludes an individual contract with the bidder who has submitted the most advantageous bid based on the criterion for selecting the most advantageous bid set out in the tender documentation.

Dynamic purchasing system

Article 70

Contracting authority may, through the use of a dynamic purchasing system, conduct procurement of goods, services and works that are generally available on the market, by using the rules of the restricted procedure.

Dynamic purchasing system shall be established and operated using electronic means, free of charge, throughout the entire validity period, open to all economic operators that meet the requirements set forth in the tender documentation.

If the contracting authority applies a dynamic purchasing system based on the type of subject, it is obliged by the tender documentation to determine, for every procurement subject, the conditions that each economic operator must fulfil.

In a dynamic purchasing system, each economic operator may submit a qualification application throughout the entire validity period of its system, in accordance with the tender documentation.

All qualified candidates have access to a dynamic purchasing system throughout its entire validity period.

Contracting authority can not limit the number of qualified candidates in a dynamic purchasing system.

For the purpose of awarding a public procurement contract within the framework of a dynamic purchasing system, contracting authority shall:

- 1) indicate in the invitation to tender and in the tender documents that it establishes a dynamic purchasing system and a period of its validity;
- 2) indicate in the tender documentation the basic information on the nature and estimated quantity of foreseen individual procurement and all necessary information related to the dynamic purchasing system, including information on how the dynamic purchasing system is conducted, the electronic equipment used and the technical connections and specifications;
- 3) indicate any division into the categories of goods, works or services and relevant characteristics defining them and specify mandatory requirements and conditions for the capabilities of economic operators, for each category of the procurement subject;
- 4) ensure unlimited, complete and immediate access to tender documentation by electronic means of communication throughout the period of the dynamic purchasing system.

Contracting authority shall evaluate received qualification applications in the system in accordance with the terms set out in the tender documentation within ten days from the date of their receipt.

Exceptionally, the deadline referred to in paragraph 8 of this Article may be extended by 5 days in individual cases where justified, in particular for the purpose of studying additional

documents or for verifying whether the mandatory and conditions of the competence of economic operator are fulfilled.

Notwithstanding paragraph 9 of this Article, if the invitation to submit bids for the first specific procurement within the dynamic public procurement system has not been sent, the contracting authority may extend the validity period of the application for qualification, provided that no invitation to tender has been issued during the extended evaluation period, with the contracting authority indicating in the tender documentation the time it intends to extend this period for.

Having evaluated the application for qualification, the contracting authority is obliged to submit to the applicant without delay a notice on access to the dynamic purchasing system or notification of the denial of access to the dynamic purchasing system.

Contracting authority shall simultaneously and by electronic means of communication, invite all qualified candidates who have access to the dynamic purchasing system to submit their bids for each individual procurement within the system.

After completing all individual procurement within the dynamic purchasing system, a contracting authority shall publish the decision on selection of the most advantageous bid.

During the duration of the dynamic purchasing system, the contracting authority may require all qualified candidates who have access to the dynamic system to submit innovated and updated statements from the economic operator within five days from the date of submission of the request.

If the dynamic purchasing system is divided into types of procurement subjects for goods, works or services, the contracting authority is obliged to call qualified candidates who have access to the type of subject that corresponds to that procurement to submit the bid.

Contracting authority selects the most advantageous bid within the dynamic purchasing system based on the criteria for selecting the most advantageous bid that are specified in the tender documentation.

Provision of Article 134 of this Law shall apply throughout the entire validity of the dynamic purchasing system.

If the contracting authority, during the dynamic purchasing system, changes the validity of the system, it shall publish a change in the invitation to tender.

Upon termination of the dynamic purchasing system, contracting authorities shall publish the notification on termination of the dynamic system.

Electronic auction

Article 71

Contracting authorities may, in an open procedure, restricted procedure, competitive procedure with negotiation, negotiated procedure with prior publication of a contract notice, in the repeated public procurement procedure referred to in Article 69 paragraph 2 items 2 or 3 of this Law and in a dynamic purchasing system determine that the conclusion of a public procurement contract shall be preceded by an electronic auction, if such possibility is foreseen in tender documentation and if the technical specification has been precisely determined.

Electronic auction may be conducted after the assessment of bids for the purpose of obtaining new prices, revised downwards and/or new values concerning certain elements of bids, which enables ranking of the bids using automatic evaluation methods.

Electronic auction may be conducted on basis of one of the criteria, provided that they can be quantified in numbers or percentages, that is, which are suitable for automatic evaluation using electronic means, without intervention of the contracting authority, and those are the following:

- the price, where the selection of bids is conducted on the basis of price only,

- the price and/or a new value specified in the tender documentation, where the selection of bids is conducted on the basis of the price-quality ratio criterion determined by the contracting authority or on the basis of the lowest cost applying the principle of cost-effectiveness.

Before proceeding with an electronic auction, contracting authorities shall make an assessment and evaluation of the bids in accordance with the conditions for participation in a public procurement procedure set forth in the tender documentation and produce minutes thereof.

Where, by the assessment from paragraph 4 of this Article, it is established that there is only one regular bid, electronic auction shall not be held, and contracting authorities may make a decision on the selection of the most advantageous bid or a decision on annulment of the public procurement procedure.

The manner of conducting and concluding an electronic auction shall be prescribed by the Ministry.

Electronic catalogue

Article 72

Contracting authorities may require in the tender documentation that the bids are to be submitted in the form of an electronic catalogue or include an electronic catalogue.

The bid from paragraph 1 of this Article may be accompanied by other documents.

Electronic catalogues shall be established by bidders in accordance with the technical specifications and in a form determined by the contracting authority in the tender documentation.

Contracting authorities shall determine in tender documentation from paragraph 1 of this Article the necessary information on the form of the electronic catalogue, electronic equipment used and the technical connection arrangements and specifications for the electronic catalogue.

Where a framework agreement has been concluded with more than one bidder, following the submission of bids in the form of electronic catalogues, contracting authorities may provide that the reopening of competition for conclusion of contracts based on the framework agreement takes place on the basis of updated catalogues.

In the case from paragraph 5 of this Article, contracting authorities may apply one of the following methods:

1) invite bidders to resubmit their electronic catalogues adjusted to the new requirements, for the purpose of concluding a contract or

2) notify bidders that they intend to collect from the electronic catalogues which have already been submitted the information needed to constitute bids adapted to the requirements of that contract, provided that the use of that method has been announced in the tender documentation for the framework agreement.

In cases referred to in paragraph 6 item 2 of this Article, the contracting authorities shall notify all parties to the framework agreement of the date and time at which they intend to collect the information needed to constitute bids adapted to the requirements of that specific contract.

Contracting authorities shall allow for an adequate period between the notification and the actual collection of information.

Before conclusion of the contract, contracting authorities shall present the collected information to the parties to the framework agreement so as to give them the opportunity to contest or confirm that the bid thus constituted does not contain any technical errors.

A dynamic purchasing system may be conducted by submitting the bids in the format of an electronic catalogue in accordance with the tender documentation.

Contracting authorities may award contracts based on a dynamic purchasing system in accordance with paragraph 6 item 2 and paragraphs 7, 8 and 9 of this Article provided that the bid in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting authority.

3. Joint and centralized procurement

Joint procurement

Article 73

Two or more contracting authorities may agree to perform joint public procurement, in which case they shall jointly determine their responsibilities and obligations.

Where a public procurement procedure from paragraph 1 of this Article is entirely conducted jointly in the name and on behalf of all the contracting authorities involved in such joint procurement, or where one contracting authority conducts on its own a procedure on behalf of all other contracting authorities, all contracting authorities are jointly responsible for fulfilling their obligations pursuant to this Law.

Where a public procurement procedure from paragraph 1 of this Article is not entirely conducted jointly in the name and on behalf of all the contracting authorities involved in such joint procurement, they shall be jointly responsible only for those parts of the procedure they carry out jointly, and each contracting authority shall have sole responsibility for fulfilling its obligations pursuant to this Law in respect of the parts of the procedure it conducts in its own name and on its own behalf.

Centralized public procurement

Article 74

Public procurements for the needs of state administration bodies or public services founded by the state can be implemented by a contracting authority appointed by the Government's regulation.

Public procurements for the needs of the local administration bodies and public services founded by the local self-government can be implemented by a contracting authority appointed by the regulation of the competent local self-government body.

The method of planning and implementation of centralized public procurement shall be regulated by the regulation of the Government or a competent body of a local self-government unit.

IV. SUBJECT OF PUBLIC PROCUREMENT

1. Types of procurement subjects

Procurement of supplies

Article 75

The subject of procurement of supplies shall be purchase, hire-purchase or leasing of supplies, with or without the right of redemption, which may include setup and installation of supplies as a subsidiary element of the procurement.

Procurement of services

Article 76

The subject of procurement of services shall be the services from the following fields: transport; finances; ICT; education, science and research; accounting and auditing; consultancy; project design; expert supervision; hospitality, healthcare, social care, as well as other services, apart from those covered by procurement of supplies referred to in Article 75 of this Law.

Procurement of works

Article 77

The subject of procurement of works shall be:

- 1) execution of works;
- 1) design and execution of the works;
- 2) execution of works or tasks on construction of buildings and/or civil engineering as a whole which meets all economic and technical requirements of the contracting authority;

The list of works and tasks referred to in paragraph 1 of this Article which may be subjects of procurement and the list of works and tasks referred to in Article 2 paragraph 10 of this Law shall be prescribed by the Ministry, with the prior opinion obtained from state administration bodies responsible for transport and construction of buildings.

Mixed procurement

Article 78

Where the subject of a public procurement contract includes two or more types of procurement subjects referred to in Articles 75, 76 and 77 of this Law, the procurement subject shall be determined by the main subject of the contract.

The main subject of procurement referred to in paragraph 1 of this Article shall be the procurement subject which has higher estimated value.

In case of a mixed procurement having as its subject partly services and partly supplies, where both subjects have the same estimated value, supplies shall be considered the main subject of procurement.

Where, in the case of a mixed procurement having as its subject partly services and partly social and other special services referred to in Article 153 of this Law, in the case where both subjects have equal value, services shall be considered the main subject of procurement.

Where the different parts of the subject of procurement are objectively separable, contracting authorities may decide to conclude separate contracts for those separate parts of the mixed procurement or to conclude a single contract.

Where contracting authorities decide to conclude separate contracts for separate parts of a mixed procurement, the rules of this Law concerning those separate parts of the mixed procurement subject shall be applied to any one of such separate contracts, on the basis of the technical characteristics of those parts.

Where contracting authorities decide to conclude a single contract for all subjects of a mixed procurement, they shall apply provisions governing the procedures referred to in Article 51 of this Law.

Where contracting authorities decide to conclude a single contract for mixed procurement, which includes also the procurement subjects from the field of defence and security, they shall apply the provisions of this Law governing procurement in the field of defence and security, provided that the procurement subject by its content represents an integral whole.

Determining the subject of procurement

Article 79

The subject of procurement shall be described by its type and title, in way that it represents a technical, technological, functional or other unit, in a manner that enables preparation of adequate bids.

Determining the subject of procurement according to lots

Article 80

The subject of procurement may be divided into lots according to the type, characteristics, purpose, place or time of implementation, provided that the subject-matter and value of individual lots have been determined, taking into account the possibility of participation of small and medium enterprises in a public procurement procedure.

Where contracting authorities have not divided the subject of procurement into lots, they shall provide in the tender documentation an indication of their reasons for doing so.

A bidder may submit the bid for one, several or all lots.

In case that the tender documentation provides for the possibility of awarding several lots to one bidder, a contracting authority may conclude the public procurement contract for each lot separately or by combining several lots or all lots of the procurement subject.

The obligatory use of the Common Procurement Vocabulary (CPV)

Article 81

Upon determining the procurement subject, contracting authorities shall use the terminology and expressions established by the Common Procurement Vocabulary.

2. Estimated value of the procurement subject

Article 82

Contracting authorities shall indicate the estimated value of a public procurement in the public procurement plan, the tender documentation, the decision on the selection of the most advantageous bid and the decision on annulment of the public procurement procedure.

The method of determining the estimated value of public procurement may not be used with an intention of avoiding application of this Law.

The estimated value of a public procurement shall be stated in EUR, net of VAT, including any form of costs, prizes or payments to candidates and possible renewals of the contracts based on a framework agreement.

The estimated value of a public procurement shall be determined on basis of a methodology prescribed by the Ministry.

VI. CONDUCTING OF A PUBLIC PROCUREMENT PROCEDURE

1. Launching of a public procurement procedure

Conditions for launching of a public procurement procedure

Article 83

Contracting authorities may initiate a public procurement procedure provided that the procurement subject is foreseen in their public procurement plan for the current year and the funds for such procurement are provided by means of a budget allocation or otherwise in accordance with law.

The funds referred to in paragraph 1 of this Article include also the funds for the VAT to the estimated procurement value.

Where a procurement is to be conducted over a period of several years, funds for payments becoming due in the following years shall be provided by the law governing budget, that is the regulation governing financial operations of economic operators.

Public procurement plan

Article 84

Contracting authorities shall draw up a public procurement plan by 31 January of the current financial year and submit the plan to the Ministry for purpose of its publication on the EPPS.

Public procurement plans shall contain the following:

- 1) details of the contracting authority;
- 2) the code and title of the subject of procurement in accordance with the CPV code, including low value procurements;
- 3) estimated value for each individual subject of procurement;
- 4) total estimated value of procurement for the entire term of the framework agreement;
- 5) type of the public procurement procedure;
- 6) budgetary position, or position in the financial plan envisaging funds for the procurement.

A public procurement plan shall be adopted by an authorised person of the contracting authority.

Contracting authorities may change or amend the procurement plans not later than five days before launching a public procurement procedure.

Contracting authorities shall submit to the Ministry the changes and amendments to the public procurement plan for purpose of its publication, within the time limit stipulated in paragraph 4 of this Article.

In case of beneficiaries of the budget of Montenegro, the public procurement plans and changes and amendments thereof shall be subject to approval of the Ministry; in case of beneficiaries of the local self-government budgets, they shall be subject to approval of the competent body of the local self-government concerned; and in case of public services and undertakings founded by the state or a local self-government unit, they shall be subject to approval of their respective management bodies, in accordance with law.

The subject of procurement specified in the tender documentation and other acts of the contracting authority must be identical to that specified in the procurement plan.

The procurement plan shall be drawn up in the form of the public procurement plan prescribed by the Ministry.

Market analysis

Article 85

Before creation of a public procurement plan and launching of a public procurement procedure, contracting authorities may conduct a market analysis with a view to determine precisely the description and the estimated value of the procurement subject.

A contracting authority may, for example, seek or accept advice of independent experts, competent authorities or potential market participants.

The advice and consultations referred to in paragraph 2 of this Article can be used in the planning and implementation of the procurement procedures, provided that these advices do not lead to distortions of competition and does not violate the principle of non-discrimination and transparency.

Manner of preparation of tender documentation

Article 86

Contracting authorities shall draw up the tender documentation in a clear, precise and intelligible manner, enabling the submission of adequate and comparable qualification applications or bids.

The tender documentation must contain all information which would enable the bidder to be aware of all the costs that it may bear in relation to the public procurement subject.

Technical specifications

Article 87

The characteristics required for supplies, services and works to be procured shall be determined by technical specifications.

Contracting authorities shall allow economic operators an equal access to the public procurement procedure by technical specifications which may not have the effect of restricting market competition.

Technical specifications, depending on the subject of procurement, shall include description, that is the name of such subject as a whole, by pertaining lots and items, essential characteristics of such subject (in terms of quality, size, shape, security, performance, labeling, shelf life, measure unit, quantity, etc.) as well as the requirements concerning the manner of execution of the procurement subject which are essential for preparation of the bid and execution of the contract, including the requirements concerning the environmental protection, energy efficiency, social care and/or protection and transfer of intellectual property rights.

Technical specifications of the procurement subject shall be determined:

1) as a requirement in relation to execution or a functional requirement, in a manner that the required parameters are defined precisely enough so as to enable the bidders to prepare an adequate bid and contracting authorities to properly select the most advantageous bid;

2) with reference to Montenegrin standards, norms and related documents, technical regulations and technical specifications concerning project design, execution of works or utilization of goods which are harmonized with European standards, technical regulations or common technical specifications stating the words "or equivalent", and when there are no such norms, technical regulations and technical specifications in Montenegro, the contracting authority refers to European standards, technical regulations, common technical specifications, internationally recognized standards and other technical reference systems determined by European standardization bodies.

In the case referred to in paragraph 4 item 1 of this Article, a contracting authority may not refuse a bid for works, goods and services which is in accordance with the standard, technical regulation and technical specification referred to in paragraph 4 item 2 of this Article.

In the case referred to in paragraph 5 item 2 of this Article, a contracting authority may not refuse a bid because the offered works, goods or services are not in accordance with the technical specification, provided that the bidder in its bid, by any valid means of proof, including the means of proof referred to in Article 92 of this Law, demonstrates that the offered solutions meet the requirements determined in the technical specification in an equivalent manner.

Where, due to its specific nature, it is not possible to determine the exact amount of the procurement subject, a description of the procurement subject is performed by specifying the measure unit, in respect of which the bid is submitted, taking into account the total estimated value of procurement.

Using technical characteristics

Article 88

Description and essential characteristics of the procurement subject shall not be adapted to a particular economic operator or a particular product.

Contracting authorities in the tender documentation shall not use or make reference to technical characteristics, trademarks, patents or types, a specific origin or production characterising products, services or works, where by doing so they would favour a certain bidder or eliminate the other bidders without justification.

Notwithstanding paragraph 2 of this Article, when it is not possible to describe the procurement subject in a sufficiently clear and precise manner in accordance with Article 87 paragraph 4, the elements such as trademark, patent, type or manufacturer may be indicated, provided that such indication is accompanied by the phrase “or equivalent“ .

In case referred to in paragraph 3 of this Article, contracting authorities shall state in the tender documentation the criteria for determining the equivalency of the procurement subject or indicate the standard which the procurement subject is to fulfill.

Requirements concerning execution of a procurement subject

Article 89

Requirements for execution of the subject of procurement are the requirements in terms of: the deadline and place of execution; implementation of quality control; testing and test methods; warranty period; handover and commissioning; trial period and vocational training; marking or labeling; packaging; conditions and methods of payment.

Requirements for execution of works may also include regulations concerning calculation of costing, construction techniques and methods, test work and the acceptance conditions.

Essential requirements and charges for the use of patents

Article 90

Contracting authorities shall specify in the tender documentation essential requirements which are concerned with security and protection of public interest.

Contracting authorities may indicate in the tender documentation that bidders are to cover the costs of using patents and be liable for any violation of the third party intellectual property rights.

Requirements related to labels

Article 91

A label is a confirmation, certificate or some other document confirming that certain works, products, services, processes or procedures comply with certain requirements.

Where contracting authorities intend to purchase supplies, services or works with specific environmental or other characteristics, they may require in the technical specifications, award criteria or contract execution terms a proof that the supplies, services or works comply with the characteristics for a certain label, where the following conditions have been met:

1) the requirements for the label are linked only to the criteria concerning the subject of procurement and are suitable for determining its characteristics;

2) the requirements for the label are based on the objectively verifiable and non-discriminatory criteria;

3) the label is determined in an open and transparent procedure in which all stakeholders, such as state authorities, consumers, social partners, manufacturers, distributors and non-governmental organisations may participate;

4) the label is accessible to all economic operators;

5) the requirements for the label are set up by a third party over which the economic operator requesting the label cannot exert decisive influence.

Contracting authorities may require that supplies, services or works meet only the label requirements which are needed for the specific procurement subject.

Contracting authorities who request a particular label shall accept any label confirming that the supplies, services or works concerned meet the requirements for the requested label.

Where economic operators for provable reasons which were not caused by their actions are unable to obtain the label requested by contracting authorities or an equivalent label within the set time limits, contracting authorities shall accept other appropriate means of proof, such as a technical dossier of the manufacturer, provided that such economic operators thereby prove that the supplies, service or works meet the label requirements or specific conditions specified by the contracting authorities.

Where a label, in addition to the requirements from paragraph 2 items 2 to 5 of this Article, also determines the requirements other than those connected with the subject of procurement, contracting authorities shall not request such label, but they may define technical characteristics by making a reference to a more detailed specification of that label or, where appropriate, its parts that are connected to the subject of procurement and suitable for determining the characteristics of that subject of procurement.

Test reports, certification and other means of proof

Article 92

Contracting authorities may require that economic operators provide a test report, a certificate or a similar document issued by an accredited conformity assessment body, as means of proof of conformity with requirements or criteria set out in the technical specifications and the criteria for selection of the most advantageous bid or the contract performance conditions.

Publishing and supplying tender documentation

Article 93

A contracting authority shall publish the tender documentation from Article 86 of this Law on EPPS, except for the tender documentation for the conduct of negotiated procedure without prior publication of a contract notice which is directly delivered to economic operators.

Where a part of the tender documentation contains confidential information, contracting authorities shall indicate in the part of the tender documentation they publish the manner in which economic operators may obtain such part of the tender documentation that contains confidential information.

Amendments to tender documentation and extension of the time limit

Article 94

Contracting authorities may amend tender documentation not later than 15 days before the time limit for submitting qualification applications or bids has expired, without the obligation to extend the time limit for submission of qualification applications or bids.

Where contracting authorities amend tender documentation after expiry of the period from paragraph 1 of this Article, they shall extend the time limit for the submission of qualification applications or bids so as to ensure a minimum of 15 days between the day of publication or supply of amendments of the tender documentation and the expiry of the time limit for the submission of qualification applications or bids.

In the event of interruption of operation of the EPPS, contracting authorities shall extend the time limit for submitting qualification applications or bids for the duration of the interruption.

Economic operators shall have the right to propose to contracting authorities to amend the tender documentation, as well as to propose the amendments to the tender documentation within eight days from the day of its publication or supply.

The proposal from paragraph 4 of this Article shall contain a description of irregularities, shortcomings or unlawful elements of the tender documentation or of amendments to the tender documentation on the basis of which amendments are requested, but it shall not contain a proposal for the wording of the amendments concerned.

Contracting authorities shall, within three days as of the day of receipt of the proposal from paragraph 4 of this Article, notify the party having submitted the proposal by electronic means whether they accept the proposed amendments to the tender documentation.

The sole extension of the time limit for the submission of qualification applications or bids shall not be considered an amendment to the tender documentation.

The provisions of Article 93 of this Law shall apply to the amendments to the tender documentation.

Clarifying tender documentation

Article 95

Economic operators shall have the right to request the contracting authorities in writing to clarify the tender documentation or amendments thereof, within the time set for the submission of qualification applications or bids, and not later than 10 days before the deadline for the submission of qualification applications or bids.

Contracting authorities shall, depending on the type of the public procurement procedure, publish or supply clarification of the tender documentation via EPPS with no delay and at the latest five days as of the day of receipt of the request from paragraph 1 of this Article.

Clarification of tender documentation shall not be used as a means of amending the tender documentation.

2. Means of financial securing

Obligations of contracting authorities

Article 96

For public procurements the value of which is estimated at over EUR 40,000, contracting authorities shall require in the tender documentation that bidders supply a bid guarantee, a public procurement contract and the framework agreement concerned performance guarantee or other means of financial securing, in accordance with law.

Contracting authorities may also establish an obligation in the tender documentation that bidders should supply a bid guarantee and other means of financial securing from paragraph 1 of this Article for the public procurement contract with estimated value below EUR 40,000.

Contracting authorities shall specify in the tender documentation the type, validity period and conditions concerning activation of the means of financial securing from paragraph 1 of this Article.

Contracting authorities shall activate the means of financial securing from paragraph 1 of this Article in case of occurrence of the indicated event or risk based on which such means was required.

Bid guarantee

Article 97

A bid guarantee is a means of protection of a contracting authority in case that a bidder:

- 1) abandons its bid while it is still valid;
- 2) fails to submit required evidence before signing of contract;

- 3) refuses to sign a public procurement contract or a framework agreement or
- 4) fails to submit accurate information in a self-declaration of an economic operator on fulfillment of the conditions referred to in Article 111 paragraph 4 of this Law.

Bid guarantees shall be determined in an amount which shall not exceed 2% of the estimated value of the subject of procurement or a lot where the subject of procurement is divided into lots.

Duration of the bid guarantee shall be determined in accordance with the term of validity of the bid and an appropriate time limit set for the activation of such guarantee which shall not be longer than eight days from the expiry of the term of validity of the bid.

Bidders may supply bid guarantees having longer validity periods than that specified in paragraph 3 of this Article.

Contracting authorities shall return bid guarantees to the bidders within 10 days from the day of concluding a public procurement contract or a framework agreement, and they shall keep a copy of the guarantee in the public procurement documents.

Means of financial securing of public procurement contracts

Article 98

Means of financial securing of a public procurement contract shall be the following:

- 1) contract or framework agreement performance guarantee, in case of violation of contractual obligations;
- 2) advance payment guarantee, where advance payment is required;
- 3) guarantee that irregularities will be eliminated within the specified guarantee period, in case that the selected bidder fails to fulfil its obligations concerning elimination of the irregularities that the guarantee covers;
- 4) an insurance policy for professional liability, in accordance with law;
- 5) other guarantee which is required by law.

The guarantee from paragraph 1 item 1 of this Article shall be determined in an amount which may not exceed 10% of the contract value.

3. Conditions of participation in a public procurement procedure and grounds for exclusion of economic operators

Mandatory conditions

Article 99

Only an economic operator which fulfils the following conditions shall participate in a public procurement procedure:

- 1) it has not been the subject of a conviction by final judgement, and the executive director of which has not been the subject of a conviction by final judgement for a criminal offence with the following elements:
 - a) criminal association;
 - b) creation of a criminal organisation;
 - c) giving a bribe;
 - d) receiving a bribe;
 - e) giving a bribe in business operations;
 - f) receiving a bribe in business operations;
 - g) evasion of taxes and contributions;
 - h) fraud;
 - i) terrorism;

- j) terrorist financing;
 - k) terrorist association;
 - l) participation in foreign armed formations;
 - m) money laundering;
 - n) trafficking in human beings;
 - o) trafficking minors for adoption;
 - p) slavery and transport of enslaved people.
- 2) it has fulfilled all its due obligations relating to the payment of taxes and healthcare and pension contributions.

Means of proof for mandatory conditions

Article 100

The following certificates or documents shall serve to prove the fulfilment of conditions from Article 99 of this Law:

1) a document that the competent authority issued on the basis of judicial records in accordance with the legislation of the country in which the economic operator concerned is seated, or in the country of residence of its authorised person(s),

2) a document issued by the state administration body in charge of tax affairs, that is, by the competent authority of the country in which the economic operators concerned in seated.

Where the country in which the economic operator is seated or the country of residence of its authorised person does not issue means of proof from paragraph 1 of this Article or where these do not cover all the circumstances specified in Article 99 of this Law, the required evidence may be replaced by a declaration made by the economic operator confirming that the listed conditions have been met, accompanied by a proof of authenticity of such declaration issued by the competent authority of the country in which the economic operator is seated or the embassy of that country in Montenegro.

Capability requirements imposed on economic operators

Article 101

Contracting authorities may, in accordance with subject matter of the public procurement require in the tender documentation from economic operators to comply with the following conditions:

- 1) capability to pursue the professional activity,
- 2) economic and financial standing and/or
- 3) technical and professional ability.

Requirements from paragraph 1 of this Article may be imposed only at a minimum level which ensures the ability of economic operators to successfully perform the public procurement contract in its entirety, or partly, depending on whether the bid is submitted for the procurement subject in its entirety or for a specific lot/s.

Capability requirements for economic operators referred to in paragraph 1 of this Article shall be logically connected and proportionate to the procurement subject.

Capability to pursue professional activity

Article 102

Contracting authorities shall, as a condition referred to in Article 101 paragraph 1 item 1 of this Law, require in tender documentation from economic operators to prove that they:

- 1) are registered with the Central Registry of Economic Operators or other appropriate register, in the country in which the economic operators are seated; and/or,

- 2) possess a valid authorisation (permit, licence, approval or other act) in accordance with law.

Proving professional suitability

Article 103

The following shall serve to prove the fulfilment of conditions from Article 102 of this Law:

- 1) a document attesting to the registration of economic operators with the Central Registry of Economic Operators or other appropriate register, including information about the authorised persons of the economic operators;
- 2) a document attesting to the authorisation to carry out the activity which is the subject of procurement (permit, licence, approval or other act issued by the authority in charge of the professional activity which is the subject of procurement).

Economic and financial standing

Article 104

As a condition referred to in Article 101 paragraph 1 item 2 of this Law, the tender documentation may determine the following:

- 1) a certain minimum yearly turnover in the preceding two years, including a certain minimum turnover in the area covered by the contract; and/or
- 2) the ratios between assets and due liabilities and/or other financial parameters.

The minimum amount of annual turnover referred to in paragraph 1 item 1 of this Article shall not exceed two times the estimated contract value, except in duly justified cases such as relating to the special risks attached to the subject matter of the procurement, which the contracting authority shall explain in the tender documentation.

In a public procurement procedure involving the conclusion of a framework agreement under which the procedure is to be reconducted (mini competition), the minimum annual turnover from paragraph 2 of this Article shall be calculated on the basis of the expected maximum value of specific contracts that will be concluded on the basis of the framework agreement or on the basis of the determined value of the framework agreement.

In the case of a public procurement procedure involving a dynamic purchasing system, the maximum annual turnover from paragraph 2 of this Article shall be calculated on the basis of the maximum expected value of specific contracts that will be concluded during the period of validity of such system.

Where a contract is divided into lots, the conditions from paragraph 1 of this Article shall apply proportionately in relation to each individual lot.

Proving economic and financial standing

Article 105

The fulfilment of conditions referred to in Article 104 of this Law shall be proved by financial statements on the turnover within two preceding financial years, depending on the date of establishment or commencement of the activity, accompanied by the reports of a certified auditor in accordance with law governing audit.

Technical and professional ability

Article 106

As a condition referred to in Article 101 paragraph 1 item 3 of this Law, the tender documentation may determine the following:

- 1) a specific experience with high-quality and successful execution of same or similar activities related to the field of the procurement subject;

- 2) the necessary expert and personnel resources that will be involved in the contract execution;
- 3) a mechanical and technical equipment and/or other capacities necessary for timely and high-quality execution of the contract;
- 4) a quality management system in place which is relevant to the area of the subject of procurement; and/or
- 5) an environmental protection system in place.

Contracting authorities may render it necessary in the tender documentation for mixed procurement that economic operators comply with professional and technical ability requirements from paragraph 1 of this Article for each part of the subject of procurement.

Proving technical and professional ability

Article 107

The fulfillment of requirements from Article 106 shall be demonstrated by supplying one or more of the following proofs:

- 1) proof of the supplies delivered, services provided or works executed within the preceding years but not more than five, including the year in which the public procurement procedure is launched, giving description and value of the procurement subject, date of contract conclusion and period of contract execution, and the statement that the contract was executed in a timely and effective manner, which is supplied by the investor or the beneficiary;
- 2) proof (a copy of the employment record, registration of an employee for compulsory insurance, temporary service agreement, etc.) that they employ or engage in some other manner human resources with appropriate references that are required for the implementation of the subject of procurement in accordance with law;
- 3) official list of capital assets and equipment owned or obtained in a different lawful manner;
- 4) certificate or other appropriate proof issued by a competent authority or organization of compliance with the quality management requirements relevant to the area of the subject of procurement;
- 5) certificate or other appropriate document issued by a competent authority or organization attesting an environmental protection system in place.

4. Grounds for exclusion from a public procurement procedure

Grounds for mandatory exclusion

Article 108

Contracting authorities shall exclude an economic operator from participation in a public procurement procedure if they establish that:

- 1) it is in a conflict of interest situation referred to in Article 41 paragraph 1 item 2 indent 1 or Article 42 of this Law;
- 2) it has failed to meet the requirements from Article 99 of this Law,
- 3) it has failed to meet the requirements from Articles 102, 104 and 106 of this Law stipulated by the tender documentation, unless otherwise provided by this Law, and/or
- 4) there is some other reason stipulated by this Law.

Exception to mandatory exclusion

Article 109

Notwithstanding paragraph 1 item 1 of Article 108 of this Law, if there are substantial reasons relating to the lives of people and public health or environmental protection, a

contracting authority does not have to exclude an economic operator in case where there is a ground for exclusion due to conflict of interest.

Notwithstanding paragraph 1 item 2 of Article 108 of this Law, a contracting authority shall not exclude an economic operator due to unsettled liabilities for taxes and contributions, provided that it demonstrates that, in accordance with regulations, it has no obligation of paying taxes or that it has been allowed to defer the payment of taxes and contributions which it performs within the established time limits.

Special conditions for exclusion from participation in public procurement procedures

Article 110

Contracting authorities may specify in the tender documentation that an economic operator is to be excluded from participation in a public procurement procedure if they establish that it:

- 1) is the subject of bankruptcy or liquidation procedure;
- 2) it has concluded a contract or entered into an agreement with another economic operator with a view to distorting market competition;
- 3) it has unsettled contractual liabilities or has shown significant or permanent deficiencies in the performance of contractual obligations under a prior public procurement contract, a public-private partnership or a prior concession contract which led to early termination of that contract, damages or other comparable sanctions;
- 4) it has misrepresented facts concerning its compliance with the public procurement procedure requirements;
- 5) it is to blame for a grave professional misconduct which brings into question its integrity.

A professional misconduct represents an unjustified violation of the obligations stipulated by the public procurement contract by bidders including the refusal to conclude a public contract, as well as breach of regulations in the following fields: environmental protection; social and labor law, including collective agreements; protection of competition or intellectual property rights.

Notwithstanding paragraph 1 item 1 of this Article, a contracting authority does not have to exclude the economic operator if it proves that it will be capable of executing a public procurement contract.

5. Manner of proving compliance with the conditions

Self-declaration submitted by economic operators

Article 111

Compliance with the conditions of participation in a public procurement procedure shall be demonstrated by means of a self-declaration of an economic operator and evidence required in the tender documentation.

The declaration from paragraph 1 of this Article shall be supplied in electronic form.

The declaration from paragraph 1 of this Article, until the day the EPPS is established, shall be supplied in written or electronic form, and as of the day the EPPS is established solely in electronic form.

The declaration from paragraph 1 shall serve as a guarantee of the qualification applicant or the submitter of a bid, that it meets all the mandatory conditions of participation in a public procurement procedure and other requirements established by the tender documentation.

In case of a joint bid being submitted, declaration from paragraph 1 of this Article shall be provided by all members of the joint bid, and where a bid involves a subcontractor; such declaration shall also be provided by all the subcontractors involved.

The qualification applicant or the bidder may, along with the declaration from paragraph 1 of this Article, submit proofs on fulfilment of capability requirements stipulated by the tender documentation.

The declaration from paragraph 1 shall be drawn up and submitted along with the qualification application or bid in a form prescribed by the Ministry.

Verifying accuracy of the declaration

Article 112

Contracting authorities shall verify on the basis of records kept by competent authorities in accordance with law, including also e-Certis and optionally through the EPPS, whether an economic operator has supplied accurate information in the declaration referred to in Article 111 paragraph 1 of this Law.

In case that the information from paragraph 1 of this Article are not available to contracting authorities or the proof can not be obtained ex officio, contracting authorities shall require the economic operator to supply the originals or certified copies of the necessary evidence indicated in the tender documentation within a minimum of eight days from the day of receipt of such request.

Where any of the submitted evidence is incomplete or unclear, contracting authorities shall notify the economic operator concerned thereof and allow it to supply complete and clear evidence within five days from the day of delivery of such notification.

In case that the originals or certified copies of the evidence from paragraphs 1 and 2 of this Article have not been made available before taking a decision in the procurement procedures, contracting authorities shall require from the bidders who submitted the most economically advantageous bid to submit original or certified copy of the evidence stipulated by the tender documentation within a period which may not be less than five days from the date of submission of such request.

In case that the bidder referred to in paragraph 4 of this Article fails to submit original or certified copy of the evidence provided in tender documentation, such bidder shall be considered to have abandoned its bid and the contracting authority shall invite the the bidder who ranks second to submit original or certified copy of the evidence provided in tender documentation or annul the procedure in accordance with this Law.

Provision from paragraph 1 of this Article shall not apply in case of contracts concluded on basis of a framework agreement where such contracts are awarded under Article 67 paragraph 1 and paragraph 2 item 1 of this Law.

Records on economic operators registered in the EPPS

Article 113

The records on economic operators registered in the EPPS shall contain consolidated information on economic operators with whom the public procurement contracts were concluded.

The Ministry shall, upon request of a competent authority from another country, make available any information from the records on economic operators from paragraph 1 of this Article, for purpose of their enrolment into the appropriate register kept in that country.

The form of the records referred to in paragraph 1 of this Article shall be prescribed by the Ministry-

Quality assurance and environmental protection

Article 114

Contracting authorities may require in the tender documentation that economic operators submit evidence or certificates issued by accredited certification bodies on fulfilment of quality

assurance conditions related to the subject of the procurement as well as the environmental protection requirements.

Evidence issued by accredited certification bodies of other countries shall be recognized in accordance with the law governing technical requirements for products and compliance assessment.

Contracting authorities shall accept other evidence of quality assurance and environmental protection measures where an economic operator had demonstrably no access to certificates from paragraphs 1 and 2 of this Article or no possibility of obtaining them within the relevant time limits for objective reasons, provided that the economic operator proves that these measures are equivalent to those from paragraphs 1 and 2 of this Article.

6. Time limits in public procurement procedures

Determining and calculating time limits

Article 115

When determining the time limits for submitting qualification applications or bids, contracting authorities shall particularly take into account the complexity of the subject of procurement and the time required for drawing up the applications or bids, without prejudice to the minimum time limits set out in this Law.

Contracting authorities shall indicate precisely in the tender documentation the date and time before which qualification applications or bids can be timely submitted.

Possibility of shortening the time limits

Article 116

Contracting authorities may shorten the time limit for submitting qualification applications and bids only in cases foreseen by this Law.

7. Criterion for the selection of the most advantageous bid

Criteria for the selection of the most advantageous bid

Determining the criteria

Article 117

A contracting authority shall select the most advantageous bid in a public procurement procedure applying the principle of cost-effectiveness, on basis of the following criteria:

- 1) offered price;
- 2) best price-quality ratio or
- 3) life-cycle cost.

Contracting authorities shall determine the criterion in the tender documentation and establish a methodology for evaluation of bids.

The criterion for selection of the most advantageous bid shall be descriptive, determined by points, related to the subject of procurement and non-discriminatory.

The criterion for the selection of the most advantageous bid shall be related to the subject of procurement if its parameters relate to the requirements of the procurement subject in any of its aspects and at any stage of its life cycle, including factors related to the specific process of production, execution of works, supply or trading of goods or services or the particular process

within some other stage of their life cycle, even when those factors are not part of their substantive content.

The criterion for the selection of the most advantageous bid shall be considered non-discriminatory where all its sub-criteria are available to bidders under the same conditions.

The bid evaluation methodology shall contain the method and the maximum number of points which could be assigned to a bid in accordance with the determined criterion and each envisaged parameter.

The parameters of the criterion for selection of the most advantageous bid and the bid evaluation methodology must be defined in a way which ensures an objective and accurate expression of the number of points assigned to each bid and their ranking.

A contracting authority may set the price as a criterion for selection of the most advantageous bid exclusively in a negotiated procedure without prior publication of a contract notice, in a process of concluding the contract on the basis of the framework agreement in accordance with Article 68, paragraph 2, item 2 of this Law, in an electronic auction or a dynamic purchasing system, in a contract award procedure for social and other specific services and in the case of public procurement for the needs of defence and security or for the needs of diplomatic missions, consular offices and military and diplomatic representatives abroad, except in case where the price of the procurement subject has been previously determined.

The methodology for evaluation and ranking of bids shall be prescribed by the Ministry.

Price-quality ratio

Article 118

The price-quality ratio shall be determined on basis of parameters which may cover the following:

1) quality, including technical and technological merit, aesthetic and functional characteristics, availability of the solution to all users, social, environmental and/or innovative characteristics of the trade and trade conditions;

2) organisation, qualification and experience of staff assigned to performing the procurement subject, where the experience of the staff assigned can have a significant impact on the level of performance of the procurement subject;

3) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion, etc.

Where the price has been previously determined, the bids shall be evaluated solely on basis of the quality parameters.

The ratio between the price and the quality shall be determined in such manner that the number of points given on the basis of price may not exceed 90% of the total determined maximum number of points.

The life-cycle cost

Article 119

The life-cycle cost, depending on a type of procurement subject, shall include all or some of the following costs:

1) the costs borne by the contracting authority or other user, such as:

- acquisition or purchase costs;
- costs of use, such as the consumption of energy and other resources;
- maintenance costs;
- costs related to end of life cycle, such as collection and recycling;

2) costs imputed to environmental impact of the procurement subject during its life cycle, provided their monetary value can be determined and verified, which may include the cost of reducing emissions of greenhouse gases, emissions of other pollutants as well as other climate change mitigation costs.

Where contracting authorities evaluate bids using the life-cycle costing sub-criterion, they shall indicate in the tender documentation the data related to costs to be provided by the bidders from paragraph 1 item 2 of this Article and the methodology they will use to determine the life-cycle costs on the basis of such data.

Methodology from paragraph 2 of this Article shall be based on objectively verifiable and non-discriminatory parameters and that it shall not unduly favour or disadvantage certain economic operators, whereupon any economic operator can provide the required data with reasonable efforts.

8. Bid and qualification application

Bid **Article 120**

A bidder submits a bid, by means of which it offers the subject of the procurement for a certain price and in accordance with the conditions provided in the tender documentation

A bidder may submit only one bid.

The price referred to in paragraph 1 of this Article shall include all costs related to the procurement subject and determined by the tender documentation, net of VAT.

Offered prices shall be written in numbers and expressed in EUR.

Offered prices shall be formulated for the subject of procurement taken as a whole, in accordance with the tender documentation.

By way of derogation from paragraph 5 of this Article, where the subject of procurement is determined solely by using the unit of measure in accordance with Article 87 paragraph 7 of this Law, the total offered price shall be formulated as the sum of the unit prices.

Bidders may amend their bids or abandon them within the time limit set for submitting bids.

Where bidders amend their bids within the time limit for submitting bids, their bid shall be considered submitted at the moment of submission of the last supplied amended bid.

Bids shall be binding until the expiry of the time period of their validity.

Bidders shall extend the bid validity period upon request of the contracting authority, provided that such request was submitted before expiry of the period in question.

In case of extension of bid validity period, the contracting authority shall also request from the bidder the extension of the validity period of the bid guarantee.

If a bidder fails to act in accordance with the request from paragraphs 10 and 11 of this Article, it shall be considered to have abandoned the bid.

After the time limit for the submission of bids has expired, a bids shall not be amended nor supplemented in the parts concerning information about the bidder, its financial part, the bid guarantee and the information on basis of which the bid is evaluated, except in cases envisaged by this Law.

Bidders shall submit their bids directly, by mail or by electronic means in accordance with the tender documentation.

A bid may be submitted partly in hard copy, and partly in electronic form, in accordance with the tender documentation.

The Ministry shall prescribe the content and instructions for preparation and submission of a bid.

Direct submission of bids or submission by mail

Article 121

A bid submitted directly or by mail shall be supplied in a closed wrapping (envelope, package and similar).

The bid referred to in paragraph 1 of this Article and the accompanying documents, except for the bid guarantee and samples, shall be bound with a red tape so that individual sheets cannot be subsequently inserted, removed or replaced without visibly damaging the bid sheets or the red tape.

Bidders shall prepare their bids in a manner that they shall bind each piece of evidence to the bid with a red tape into one whole, except for a bid guarantee and samples, mark each page of the bid by an ordinal number and indicate in the first page of their bid the total number of marked pages of the bid.

Bid and documents drawn up by the bidder, which are integral parts of the bid, shall be signed by the authorised person of the bidder.

The bid wrapping shall indicate the following: "Bid", the number of the tender documentation, the name and seat of the contracting authority, and the name, seat and address of the bidder together with the following wording: "do not open before the public opening of bids".

Bid guarantees shall be submitted in the original form in a separate wrapping - envelope, together with the bid.

Samples required by the tender documentation, depending on the size of such samples, shall be submitted in one or more wrappings (envelope, package) which shall indicate the name of the bidder, the procurement subject, or the part of the subject of procurement that it relates to and the number of samples.

Submitting electronic bids

Article 122

A bidder shall submit a bid in electronic form to a contracting authority through EPPS in accordance with the laws governing electronic government, electronic identification and electronic signatures, electronic documents, electronic trade and information security.

Where some parts of a bid are submitted through EPPS and other parts directly or by mail, a bidder shall indicate in the part of the bid submitted via EPPS the manner in which other parts of the bid are submitted.

The EPPS shall:

- 1) secure receipt of the electronic bids signed by an advanced electronic signature and verified in accordance with law;
- 2) enable that the electronic bids have indications of time, i.e. that the exact date, hour and minute of the receipt of bids can be determined with precision;
- 3) disable access to data included in the bids before the moment of bid opening;
- 4) enable detecting the infringement of the prohibition of access to the bid data;
- 5) secure that only persons authorised by the contracting authority can set and change the date and hour for opening the bids;
- 6) secure that only authorised persons can access the bid data simultaneously;
- 7) ensure archiving of electronic bids in accordance with the legislation concerning electronic government.

Submission of bids by lots

Article 123

Bidders may submit a bid for one or several lots, in accordance with the tender documentation, and shall indicate in their bid the lots they are submitting the bid for.

Where a bidder submits a bid for several lots, such bid shall be drawn up in a way that enables separate evaluation of each of those lots.

Submission of bids involving variants

Article 124

Contracting authorities may foresee in the tender documentation that bidders submit bids involving variants.

Bids involving variants shall be those submitted by bidders to offer the subject of procurement which meets the minimum requirements or standards laid down by the contracting authority in the tender documentation, with different technical characteristics compared to the technical characteristics required by the technical specifications.

Contracting authorities shall ensure the application of the criterion for the selection of the most advantageous bid to the variants meeting the minimum requirements in accordance with paragraph 2 of this Article.

Timely bids

Article 125

The bids submitted directly or by mail shall be timely if they are delivered to contracting authorities before expiry of the time limit for submission of bids specified in the tender documentation or the invitation for submission of bids.

Electronic bids shall be timely if uploaded on EPPS within the time limit specified in the tender documentation.

Bids that are delivered to contracting authorities or uploaded on EPPS after expiry of the time limit from paragraphs 1 and 2 of this Article shall be considered untimely.

Submission of a joint bid

Article 126

A joint bid may be submitted by two or more economic operators who concluded a contract on joint participation.

The contract referred to in paragraph 1 of this Article regulates mutual rights and obligations, determines which of each of the members of the joint bid is in charge as well as its percentage share in the total value of the bid.

Where a joint bid is submitted by more than one economic operator, each member of the joint bid is required to meet the mandatory requirements for participation in the public procurement procedure, the capability requirements from Article 102 item 2 of this Law and the requirements from Article 106 paragraph 1 of this Law for the part of the procurement subject in accordance with the contract concluded in accordance with paragraph 2 of this Article.

Applicants of the joint bid may jointly meet the requirements of economic and financial capacity and of professional and technical capacity.

The economic operator from paragraph 1 of this Article may use the capacities of another economic operator with whom the contract on joint participation was concluded, for the purpose of proving the compliance with the conditions on professional and technical capacity.

Contracting authorities shall not require that applicants of the joint bid have a specific organizational form.

Contracting authorities shall determine in the tender documentation the manner in which the applicants of the joint bid should comply with the requirement referred to in Article 102 item 1 of this Law.

Contracting authorities may require in the tender documentation that, in the event of submission of a joint bid involving setup or installation tasks, certain key tasks are to be performed directly by a holder of a joint bid or by another economic operator who is a member of the joint bid.

Reliance on the capacities of other entities

Article 127

With a view to proving the fulfilment of requirements related to economic and financial standing and technical and professional ability, a bidder may, in a public procurement procedure, rely on the capacities of other economic operator in the following cases:

- 1) with a view to demonstrate the fulfillment of conditions from paragraph 1 items 1 and 2 of Article 106 of this Law, only in case that the economic operator on whose capacities it relies will execute the works or provide the services for which the ability in question is required;
- 2) if it demonstrates that the economic operator on whose capacities it relies has at its disposal the capacities necessary for performance of the contract.

Pursuant to Articles 111 to 114 of this Law, contracting authorities shall verify whether the economic operators on whose capacities a bidder relies fulfil the relevant capacity requirements.

Where contracting authorities establish that an economic operator from paragraph 1 of this Article does not fulfil the capability requirements on which the bidder relies, or where there are grounds for exclusion, they shall notify the bidder thereof and enable the bidder to replace that economic operator with another economic operator who fulfils the necessary conditions, within an appropriate time limit which may not be shorter than 5 days from the day of submission of the request.

Where a bidder relies on the capacities of other economic operators, contracting authorities may require in the tender documentation that those entities be jointly liable for the execution of the contract.

Subcontracting

Article 128

Bidders may assign the performance of a part of a procurement subject or a public procurement contract to a subcontractor/s in accordance with this Law.

Contracting authorities shall not require bidders to subcontract a share of the procurement subject or a public procurement contract or involve certain subcontractors, nor shall they restrict them in this respect, unless otherwise provided for by a separate piece of legislation or an international treaty.

Subcontractors shall comply with the mandatory conditions, as well as the capability requirements for conducting the activity and professional-technical capabilities that relate to the subject of procurement which has been assigned thereto.

Contracting authorities shall apply all the foreseen grounds of exclusion from a public procurement procedure on subcontractors.

Where a contracting authority establishes that there are grounds for exclusion of a subcontractor, it shall require the economic operator to substitute such subcontractor within an appropriate time limit which is not shorter than five days.

Economic operators intending to subcontract a share of the public procurement contracts shall:

- 1) specify in their bid the part of the procurement subject, or the share of the contract they intend to assign, or to subcontract, with the details on the name and description of the part of the subject-matter, precise quantity, and percentage share; and

2) specify in their bid the data on the subcontractor (name, address, tax identification number, account number, name of authorized person).

Where an economic operator subcontracts a share of the procurement subject, or a public procurement contract, information from paragraph 6 of this Article shall be indicated in the public procurement contract.

Bidders may, during the execution of a public procurement contract, request from the contracting authority to approve of the following:

1) replacement of a subcontractor for the share of the public procurement contracts which was previously subcontracted to it,

2) introduction of one or more new subcontractors the joint share of which shall not exceed 30% of the value of the public procurement contract concerned, net of VAT;

3) the taking over of execution of the previously subcontracted share of the public procurement contract.

Contractors shall accompany the request from paragraph 8 of this Article with the information and documents for proving the compliance with the mandatory conditions, as well as the capability requirements for conducting the activity and professional-technical capabilities for any new subcontractor.

Contracting authorities shall not approve the request from paragraph 9 of this Article:

1) in the case that the new subcontractor fails to meet the requirements from paragraph 9 of this Article,

2) in the case that the bidder fails to meet the capability requirements for conducting the activity and professional-technical capabilities for the part of the procurement subject the execution of which it assumes.

Receipt and recording of bids

Article 129

When receiving bids referred to in Article 121 of this Law, contracting authorities shall make a note of the date and time (hour and minute) of such receipt, and record the bids in order of their receipt.

Where bids are delivered in person, contracting authorities shall issue a confirmation of receipt to the bidder concerned, containing the data on the time of receipt of the bid.

Opening of bids

Article 130

In a public procurement procedure, bids shall be opened within the time limit and in the manner set out in the tender documentation.

Bids delivered in person or by mail bids shall be opened not later than one hour after the time limit for submitting bids has expired.

Bids submitted in response to an open procedure and a restricted procedure, as well as all final bids submitted in response to other public procurement procedures shall be opened in public.

Initial bids and all subsequent bids until the submission of the final one shall be closed to the public.

Public opening of bids shall be attended by at least two thirds of members of the commission for opening and evaluation of bids.

Public opening of bids may be attended by the authorised representatives of the bidders.

Public opening of bids shall be performed in the order in which they are received.

Untimely bids and bids which have not been submitted in accordance with paragraphs 4 and 6 of Article 121 shall not be opened.

The bids from paragraph 8 of this Article shall be returned to the bidder unopened, upon enforceability of the decision on selection of the most advantageous bid, or the decision on annulment of the procedure.

Contracting authorities shall not be obliged to open bids publicly where the bids are submitted electronically and where the EPPS enables an automatic opening of bids at the time of expiry of the time limit for bid submission, along with producing the minutes on bid opening and delivery of those minutes to all bidders who submitted their bids.

Minutes of the opening of bids

Article 131

Commissions for the opening and evaluation of bids shall write up the minutes of the opening of bids.

The minutes shall be signed by the present members of the commission for the opening and evaluation of bids and the present authorised persons of the bidders.

Once the minutes are signed, all of the present authorised representatives of the bidders shall be supplied with their copy.

Where an authorised representative of a bidder refuses to sign the minutes or leave the bid opening before its closure, such minutes shall state the leaving, the refusal to sign the minutes and the reasons for the refusal to sign the minutes.

Contracting authorities shall supply bidders who were not present during the opening of bids with the minutes of the opening of bids not later than three days after the opening of bids has ended.

The minutes of the opening of bids shall be produced in a form prescribed by the Ministry

Regular bid

Article 132

A regular bid shall be that which does not contain the grounds for irregularity listed in Article 133 of this Law.

Irregular bid

Article 133

Irregular bids shall be the following:

- 1) those which were not prepared in the manner determined in the tender documentation in accordance with this Law;
- 2) those containing no self-declaration of the bidder referred to in Article 111 of this Law;
- 3) those containing no bid guarantee or in respect of which the bid guarantee applies to the value lower than required or it is not submitted in the manner established in the tender documentation or it is submitted but irregular;
- 4) those failing to correspond to the technical specification or where the requirements concerning the subject of procurement are not clear enough, whereupon these shortcomings could not be removed by the clarification of the bid in accordance with Article 134 paragraph 3 of this Law;
- 5) those offering the price higher than the estimated value of the procurement;
- 6) those offering an unrealistic price, which the bidder failed to justify in accordance with Article 139 of this Law;
- 7) those containing erroneous calculation, whereupon the bidder does not approve of the proposed correction thereof in accordance with Article 134 paragraph 6 of this Law.

Procedure for reviewing and assessing bids

Article 134

The bids shall be reviewed and assessed after their opening without bidders being present, in particular verifying whether there are grounds for exclusion from a public procurement procedure referred to in Articles 108 and 110 and/or reasons for irregularity of bids referred to in Article 133 of this Law.

In an open public procurement procedure, contracting authorities may evaluate bids as to their compliance with the conditions and requirements relating to the subject of procurement and technical specifications before they verify compliance with conditions and grounds for exclusion from a public procurement procedure.

Where an economic operator fails to submit the evidence or the evidence submitted is incomplete or incorrect, contracting authorities shall notify the economic operator thereof, respecting the principles of equal treatment and transparency, and allow the economic operators concerned to submit a supplement or clarify the necessary information or documents within five days as of the day of supplying the notification.

In case that a bidder does not act in the manner referred to in paragraph 3 of this Article, it shall be deemed to have abandoned the bid.

Evidence relating to the evaluation of the bids, including also the final bids in multiphase public procurement procedures, may not be subsequently submitted nor amended, unless there is an erroneous calculation.

Where a bid contains erroneous calculation, contracting authorities shall notify the bidders thereof and request that bidders provide their written agreement for the correction of such error within five days from receiving such request.

Contracting authorities shall reject a bid they establish to be irregular on the basis of the results of review and assessment thereof, or in respect of which there are grounds for exclusion in accordance with the tender documentation.

The information on the review and assessment of bids shall be confidential until the contracting authority has taken the decision.

The method of correction of an erroneous calculation referred to in paragraph 6 of this Article shall be prescribed by the Ministry.

Evaluation of bids

Article 135

Once reviewed and assessed, regular bids shall be evaluated and ranked by the commission for the opening and evaluation of bids.

Each member of the commission from paragraph 1 of this Article shall separately (individually) evaluate regular bids on the basis of the criteria established in the tender documentation.

On the basis of evaluation results from paragraph 2 of this Article, an average number of points awarded to each bid shall be established together with a ranking list in descending order.

Minutes of the review, assessment and evaluation of bids

Article 136

Commission for the opening and evaluation of bids shall write up minutes of the review, assessment, comparison and evaluation of bids.

A member of the commission disagreeing with the conducted procedure of review and evaluation of bids or with the proposal for the decision on the selection of the most advantageous bid or the decision on the annulment of the public procurement procedure shall have the right to request that his/her position on the matters concerned be indicated in the minutes.

In the case from paragraph 2 of this Article, the position of the member of commission shall be included in the minutes after the proposal for the decision on the selection of the most advantageous bid or the decision on the annulment of the public procurement procedure has been indicated.

The form of the minutes of review, assessment and evaluation of bids shall be prescribed by the Ministry.

Qualification applications

Article 137

Qualification applications shall be subject to provisions of Articles 123 to 131 and Articles 134, 135 and 136 of this Law accordingly.

The content and the form of the qualification application, the form of the minutes of the opening of applications, the form of the minutes of review, assessment and evaluation of bids, the form of the notification sent to candidates whose applications have been rejected and of the invitation for the qualified candidates to submit their bids shall be prescribed by the Ministry.

Notification of exclusion

Article 138

In a restricted procedure, a competitive procedure with negotiation, a competitive dialogue and an innovation partnership, contracting authorities shall, on the basis of results of the negotiations or a dialogue, notify the bidders whose bids do not comply with conditions for continuation of the negotiation procedure, or a dialogue, of the reasons for the rejection of their bids, supported by an instruction that the right to legal protection in such cases may be exercised by lodging an appeal to the decision on selection of the most advantageous bid, or the decision on annulment of the public procurement procedure.

Notification from paragraph 1 of this Article shall be supplied to each applicant who will not participate in the continuation of the negotiation procedure, or a dialogue within eight days as of the day of review and assessment referred to in paragraph 1 of this Article, in a way that prevents the other bidders from accessing the notification

The form of notification referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

Unrealistic bid

Article 139

Unrealistic bid shall be that containing a price which is at least 30% lower than the average price of all regular bids, including such bid.

Contracting authorities shall require the bidder having offered an unrealistic price to explain such price within five days with respect to the following:

- 1) the economics of the manufacturing process, conditions of procurement, technology of the service provision and/or the construction method;
- 2) the technical solutions chosen and favourable conditions for the supply of the products or services or for the execution of the works;
- 3) the originality of the supplies, the licenced services and their products, technical or technological features of the execution of the proposed works;
- 4) compliance with obligations by the subcontractors;
- 5) state aid and other benefits.

Where a bidder fails to supply an explanation of the abnormally low price within the time limit from paragraph 2 of this Article it shall be excluded from further participation in the public procurement procedure.

Contracting authorities shall check the explanation of unrealistic bid against the criteria from paragraph 2 of this Article and if such explanation is not supported by valid and verifiable evidence they shall reject such bid on the grounds it being irregular.

Contracting authorities shall reject the bid, where they have established that the bid is abnormally low because it does not comply with applicable obligations related to environmental protection, social and labour law, including collective agreements, in accordance with the law and internationally ratified agreements.

Reasons for annulment of public procurement procedures

Article 140

Contracting authorities shall annul a public procurement procedure in the following cases:

- 1) they find it necessary to substantially alter the tender documentation before expiry of the time limit for submitting qualification applications or bids;
- 2) there have been no qualification applications submitted;
- 3) the number of qualified candidates prescribed by the tender documentation is insufficient;
- 4) there have been no bids or no regular bids submitted;
- 5) in the case of a framework agreement there has been no required number of the submitted bids, except in the case from Article 68 paragraph 8 of this Law;
- 6) where objective circumstances occurred prior to consideration of the applications or bids (organisational change, streamlining, or the subject of procurement is otherwise acquired), due to which the genuine need of the contracting authority for the subject of procurement ceased to exist, in which case the contracting authority shall not conduct the procurement concerned in the current year;
- 7) the subject of procurement has been performed completely or for the most part following a final decision on the selection of the most advantageous bid which is subsequently annulled by the Administrative Court;
- 8) there are other grounds, as prescribed by this Law.

Subject to the reasons and circumstances from paragraph 1 of this Article, contracting authorities may annul an entire public procurement procedure or a part of it where the subject of procurement is divided into lots.

Provisions of this Article shall apply accordingly to public procurement procedures for social and other specific services, as well as for procurements conducted by means of a contest.

9. Decisions of contracting authorities

Adoption of decisions

Article 141

A contracting authority shall:

- 1) adopt the decision on exclusion from a public procurement procedure within 15 days as of the day of opening of qualification applications and submit it to the appellant within three days as of its adoption;
- 2) adopt the decision on selection of the most advantageous bid, or the decision on annulment of a public procurement procedure within 60 days from the day of opening of bids and publish it on the EPPS within three days as of the day of adoption.

The decision referred to in paragraph 1 of this Article shall be adopted by the authorized person of a contracting authority, upon proposal of the commission for opening and evaluation of bids.

Decisions published on the EPPS shall be considered properly supplied to all participants in a public procurement procedure on the day following that of their publication.

The decision referred to paragraph 1 item 2 of this Article which is not published shall have no legal effect.

In case some of the information included in the decisions is confidential in accordance with the law governing data secrecy, the decisions shall be published in a way that ensures appropriate protection of such information.

Decision on exclusion from a public procurement procedure
Article 142

The decision on exclusion from a public procurement procedure shall contain:

- 1) data on contracting authority;
- 2) data on type of public procurement procedure, name and description of the procurement subject taken as a whole and by lots and the number of the tender documentation;
- 3) total estimated value of of the procurement subject as a whole and by lots;
- 4) name of the qualification applicant that is excluded from the public procurement procedure and the reasons for exclusion thereof;
- 5) instruction on legal remedy;
- 6) date of adoption of the decision and signature of the authorized person of a contracting authority.

The decision on exclusion from a public procurement procedure shall be enforceable upon expiry of the time limit for filing an appeal in case the appeal was not filed, or on the day following that of publication of the decision on rejection of the appeal.

The form of the decision referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

Decision on the selection of the most advantageous bid
Article 143

Decision on the selection of the most advantageous bid shall be adopted to decide upon the most advantageous bid, regular bids and irregular bids, and exclusion of candidates or bidders from a public procurement procedure in accordance with this Law.

If two or more bids are equally ranked against the criterion for the selection of the most advantageous bid, contracting authorities shall invite those equally ranked bidders and perform the selection by drawing lots.

The drawing from paragraph 2 of this Article shall be performed by the president of the commission for opening and evaluation of bids.

Decisions on the selection of the most advantageous bid adopted without prior public procurement procedure shall be void where the contracting authority was required to conduct the public procurement procedure before the adoption of such decision in accordance with this Law.

Decisions on the selection of most advantageous bid shall specify information about the following:

- 1) the contracting authority;
- 2) the type of the public procurement procedure, name and description of the subject of procurement, taken as a whole and by lots, and the number of the tender documentation;
- 3) the total estimated value of the subject of procurement, taken as a whole and by lots;
- 4) irregular bids and the reasons for such determination;

- 5) regular bids;
- 6) reasons supporting the selection of the most advantageous bid, including the bids in case of conclusion of a framework agreement with one or more bidders;
- 7) instruction on legal remedy;
- 8) the date of adoption of such decision and the signature of the authorised person of the contracting authority.

Where the subject of procurement is divided into lots, decisions on the selection of the most advantageous bid shall be adopted for each of the lots individually, for more than one lot or for all lots.

The form of decisions from paragraph 1 of this Article shall be prescribed by the Ministry.

Decision on annulment of public procurement procedures

Article 144

Decisions on the annulment of public procurement procedures, depending on the reason for the annulment, shall specify information about the following:

- 1) the contracting authority;
- 2) the bidders;
- 3) reasons for exclusion from the public procurement procedure;
- 4) reasons supporting the annulment of public procurement procedure, taken as a whole or for specific public procurement lot/s;
- 5) the type of the public procurement procedure, name and description of the subject of procurement, taken as a whole and by lots, and the number of the tender documentation;
- 6) the total estimated value of the subject of procurement, taken as a whole and by lots;
- 7) instruction on legal remedy;
- 8) the date of adoption of such decision and the signature of the authorised person of the contracting authority.

The form of the decision from paragraph 1 of this Article shall be prescribed by the Ministry.

Accessing public procurement procedure documents

Article 145

In the period between submission of the decision from Article 142 or the publication of decisions from Articles 143 and 144 on the EPPS and the expiration of the time limit for lodging appeals, contracting authorities shall allow applicants or bidders, if they request so in writing, to access all of the public procurement procedure documents within two days as of the day of receipt of such request, save those that are published on the EPPS and the documents designated as confidential.

An official note on the performed access referred to in paragraph 1 of this Article shall be made, containing the information on the following: time of access, the person having performed the access, the person in whose presence the access was performed, parts of documents which were inspected, the reasons why a person having performed the access refused to sign an official note, as well as other facts relevant to the credibility of these actions.

Enforceability of decisions on the selection of the most advantageous bid

Article 146

Decisions on the most advantageous bid shall become enforceable:

- 1) upon expiry of the standstill period, provided that no appeals have been lodged,
- 2) on the day following the date of publishing the decision upon an appeal, by means of which an appeal is rejected or an appeal procedure is discontinued, in accordance with this Law.

Contracting authorities may not conclude a public procurement contract or a framework agreement before enforceability of the decision on selection of the most advantageous bid, except in following cases:

- 1) where only one bidder participated in the public procurement procedure;
- 2) in case of conclusion of a public procurement contract on basis of a framework agreement with a single bidder or a dynamic purchasing system with a single bidder;
- 3) in case of a public procurement from Article 59 paragraph 1 item 3 of this Law.

Enforceability of decisions on annulment of public procurement procedures

Article 147

Decisions on the annulment of a public procurement procedure shall become enforceable:

- 1) on the day following the date of publication on the EPPS, provided that no bids or qualification applications have been submitted;
- 2) upon expiry of the time limit for lodging an appeal, provided that no appeals have been lodged;
- 3) on the day following the date of publishing the decision upon an appeal, by means of which an appeal is rejected or an appeal procedure is discontinued, in accordance with this Law.

Ending the decision-making procedure on qualification applications, or bids

Article 148

A public procurement procedure shall be ended upon adopting the decision on selection of the most advantageous bid, or a decision on annulment of a public procurement procedure.

The decision-making procedure on qualification applications shall be ended when the decision on exclusion from a public procurement procedure becomes enforceable.

The decision-making procedure on bids shall be ended when the decision on the selection of the most advantageous bid or a decision on the annulment of a public procurement procedure become enforceable.

Public procurement contract

Article 149

A contracting authority shall conclude a public procurement contract in written or electronic form with the bidder whose bid was selected as the most advantageous one, after the decision on selection of the most advantageous bid becomes enforceable.

Public procurement contracts shall be in conformity with the conditions determined by the tender documentation, the selected bid and the decision on selection of the most advantageous bid, except for the expression of VAT.

A contracting authority shall sign the public procurement contract and supply it to the selected bidder no later than five days from the date of enforceability of the decision on the selection of most advantageous bid.

Bidder from paragraph 3 of this Article shall sign the supplied public procurement contract and return such signed contract to the contracting authority together with the contract or framework agreement performance guarantee and/or other means of financial security required by the tender documentation, within 15 days from the day of supplying the contract.

A bidder may not assume rights and obligations from a public procurement contract, in case it fails to supply a signed public procurement contract to the contracting authority, as well as the contract or framework agreement performance guarantee and/or other means of financial security required by the tender documentation within the time limits from paragraph 4 of this Article.

In case that the bidder fails to act in accordance with paragraph 4 of this Article, it shall be considered that such bidder refused to conclude the contract.

In the case referred to in paragraph 6 of this Article, contracting authorities shall activate the bid guarantee and require from the bidder whose bid was selected as the most advantageous one the damage compensation in the amount of 10% of the offered price, whereupon the bidder is obliged to pay the said compensation.

In the case referred to in paragraph 6 of this Article, contracting authorities may conclude the public procurement contract with the second ranked bidder, provided that the price of his bid does not exceed 10% of the originally selected most advantageous bid, or the contracting authority may annul the public procurement procedure.

The price determined in the public procurement contract may not exceed the price determined in the decision on selection of the most advantageous bid.

A public procurement contract, in addition to the price referred to in paragraph 9 of this Article, shall contain also a specifically expressed value of VAT.

Contracting authorities shall publish the public procurement contracts on the EPPS within three days from the date of the conclusion.

Termination of public procurement contracts

Article 150

A contracting authority shall terminate a public procurement contract in following cases:

- 1) arising of circumstances which would have as a result the significant modifications of contract, which would require conducting of a new public procurement procedure;
- 2) existence of some reason which represents the grounds for mandatory exclusion referred to in Article 108 of this Law.

The modifications of the contract referred to in paragraph 1 item 1 of this Article shall be considered significant when they have as a result the changes of the contract's nature in material sense in relation to previously signed contract, when one or more of the following conditions are met:

- 1) the modification introduces the conditions which would, provided that they were a part of the original public procurement procedure, enable involvement of other economic operators in relation to those previously selected or the acceptance of other bid in relation to previously accepted, or enable acceptance of other bid in relation to previously accepted one, or enable greater competition in the public procurement procedure which preceded the conclusion of the contract;
- 2) the modification alters the natural balance of the contract in favour of the economic operator with whom the contract was concluded in a manner not envisaged by the original contract;
- 3) the modification significantly increases the contract size;
- 4) replacement of the economic operator with whom the public procurement contract was concluded, except in case referred to in Article 151 paragraph 1 item 4;
- 5) the bidder fails to perform the contractual obligations as well as in other cases established in the tender documentation in accordance with law.

In case of termination of the contract, a contracting authority shall publish the notification on termination of the contract on the EPPS within ten days as of the day the contract was terminated.

Modifications to public procurement contracts
Article 151

Public procurement contracts may be modified in the course of their duration without a new procurement procedure in any of the following cases:

1) where the modifications, irrespective of their monetary value, have been provided for in the tender documentation and the public procurement contract in clauses which may include price revision clauses, or options, with stated scope and nature of possible modifications or options, as well as the conditions under which they may be used, provided that those clauses do not provide for modifications or options that would alter the overall nature of the public procurement contract, whereby the increase of the contract value may not exceed 20% of the original contract value,

2) for procurement of additional supplies, services or works that have become necessary and that were not included in the original contract where a change of contractor cannot be made for economic or technical reasons such as requirements of compatibility with the existing equipment, services or installations procured under the original contract and would cause significant inconvenience or substantial increase of costs for the contracting authority, whereupon the increase of the contract value may not exceed 20% of the original contract,

3) when the need for modification has been brought about by circumstances which a contracting authority could not foresee and the modification does not alter the overall nature of the contract, whereupon the increase of the contract value may not exceed 20% of the original contract,

4) when the economic operator, following corporate restructuring, including takeover, merger, acquisition or insolvency, is universally or partially replaced by an entirely or partly new legal successor, or an economic operator which fulfils the originally established criteria of the public procurement contract, whereby the modifications were foreseen by the tender documentation, provided that no other significant contract modifications from Article 150 paragraph 2 are performed.

In case that it is necessary to perform significant modifications from Article 150 paragraph 2 to the public procurement contract a contracting authority shall launch a new public procurement procedure.

In case of more than one modification, the value of public procurement contract shall be estimated on basis of net cumulative value of all modifications. .

A contracting authority shall publish the decision on contract modifications on the EPPS within three days as of the day of adoption.

The provisions of paragraphs 1 to 4 of this Article shall be applied also to modifications to framework agreements in the course of their duration.

Control and reporting on execution of public procurement contracts
Article 152

Contracting authorities shall:

- 1) perform control over execution of a concluded public procurement contract;

- 2) prepare the report on the implementation of the contract and publish it on the EPPS within 30 days after the implementation of public procurement contract.

The content of the form of the report referred to in paragraph 1 item 2) of this Article shall be prescribed by the Ministry.

VII. PARTICULAR FORMS OF SERVICE PROCUREMENTS

1. Procurement of social and other special services

Procurement procedure

Article 153

Contracting authorities intending to conduct a public procurement of social and other services the value of which equals or exceeds the values referred to in Article 26 paragraph 1 item 2 of this Law shall publish the tender documentation on the EPPS, except for the cases where a negotiated procedure without prior publication of a contract notice have been applied.

Contracting authorities shall act in accordance with the public procurement principles in the procedure for public procurement of services referred to in paragraph 1 of this Article.

The minimum time limit for submitting qualification applications and bids shall be 15 days from the day of publishing the call for competition.

In the procedure for procurement of services from paragraph 1 of this Article, contracting authorities shall not be required to use grounds for exclusion, nor to require that the qualification applications and bids are submitted using electronic means of communication.

The list of services referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

2. Reserved procurements

Conditions for applying reserved procurements

Article 154

Contracting authorities may reserve the right to participate in public procurement procedures of services from Article 153 paragraph 1 of this Law that are covered by the following CPV codes: 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4 and 98133110-8 to the organisations meeting the following requirements:

- 1) their objective is the pursuit of a public service mission;
- 2) their profits are reinvested with a view to achieving the organisation's objective;
- 3) their structures of management or ownership are based on employee ownership or participation of employees, users or stakeholders and;
- 4) they have not been awarded a reserved contract for the services listed in this paragraph within the past three years.

The maximum duration of the reserved contract for services from paragraph 1 of this Article shall not be longer than three years.

Contracting authorities shall indicate in the call for competition that the public procurement procedure for healthcare, social and services in the field of culture from paragraph 1 of this Article is reserved solely for the organisations complying with the requirements from paragraph 1 items 1- 4 of this Article.

3. Contest

Conditions for applying contest

Article 155

Contracting authorities may hold a contest for procuring services related to architecture, construction, engineering and informatics.

Contracting authorities may hold a contest:

- 1) which precedes the conclusion of a public procurement service contract;
- 2) which involves prizes and remuneration to participants.

In the case from paragraph 1 item 1 of this Article, the estimated value of the public procurement shall be based on the estimated value of services, including any prizes or payment to participants.

In the case from paragraph 1 item 2 of this Article, the estimated value of the public procurement shall be based on the total amount of the prizes or payments to participants, including the estimated value of the public service contract which may be subsequently awarded in the negotiated procedure under Article 59 paragraph 1 item 8 of this Law, if the contracting authority has announced its intention to award such contract in the contest notice.

Contracting authorities shall publish the contest notice on the EPPS.

In a contest, contracting authorities intending to award a subsequent service contract shall indicate that the negotiated procedure from Article 59 paragraph 1 item 8 of this Law shall be applied.

Contracting authorities having held a contest shall communicate the contest results by publishing information to that effect on the EPPS.

Implementation of contests and the selection of participants

Article 156

Contracting authorities shall not restrict access to participants of the contest:

- by reference to the territory or part of the territory of the state,
- on the grounds that the participants are required to have a particular organizational form, except where provided so under separate legislation.

Contests may be organised as open or restricted procedures.

Where contests are restricted to a limited number of participants, the contracting authorities shall lay down clear and non-discriminatory criteria for the selection of participants.

The Ministry, in cooperation with the state body responsible for tasks in the field of spatial planning and urban construction, shall regulate contest notices, the procedure for opening bids, the content and method of preparation and supplying of the minutes.

Composition and work of the jury

Article 157

The contest shall be conducted by a technical jury which is appointed by the contracting authority from among experts in the field which is a subject of the contest.

The jury shall be composed of an odd number of members.

Where a particular professional qualifications or technical experience is required from the participants in a contest, at least one third of the members of the jury shall have that or equivalent qualification or technical experience.

The jury members shall perform assessment of submitted plans and projects individually and jointly, in accordance with the contest.

The jury shall examine the plans and projects submitted by the candidates while ensuring anonymity of participants and solely on the basis of the criteria indicated in the contest notice.

The jury shall record its ranking of plans and projects in the minutes, made according to the merits of the characteristics of each plan and project, together with its remarks on the elements that need to be clarified, and afterwards prepare an opinion with a proposal of the decision.

The minutes referred to in paragraph 6 of this Article shall be signed by the members of the jury.

The jury shall supply the minutes and opinions with the proposals of decisions from paragraph 6 of this Article to the contracting authority for further action.

Contracting authorities shall adopt the decision on basis of the opinion of the jury and publish the decision on the contest results on the EPPS, within three days from the day when the jury supplied the decision thereto.

The content of the forms of the contest notice, the minutes and the notification on the contest results shall be prescribed by the Ministry.

VIII PUBLIC PROCUREMENTS FOR SECTORAL CONTRACTING AUTHORITIES

1. Procurements for performing sectoral activities

Obligation of application in the field of sectoral activity

Article 158

The sectoral contracting authorities shall perform public procurement of supplies, services or works for the purpose of performing sectoral activities referred to in Articles 159 to 166 of this Law in accordance with Articles 167-173 of this Law.

Sectoral activity

Article 159

Sectoral activities, within meaning of this Law, shall be the activities in the following fields: electricity, gas and thermal energy, water management, transport, airports and sea ports, postal services and research and production of oil, coal and other solid fuels.

Activity in the field of electricity

Article 160

Sectoral activity in the field of electricity within meaning of this Law includes:

- 1) generation, transmission or distribution and/or supply of electricity for the purpose of its sale;
- 2) provision of services related to use of fixed networks or management of fixed networks intended to provide services to the public in connection with the generation, transmission or distribution of electricity;
- 3) the supply of electricity to the networks referred to in item 2 of this paragraph.

Electricity supply by a sectoral contracting authority which is not a public contracting authority to fixed networks providing public service shall not be considered relevant activity referred to in paragraph 1 of this Article if all of the following conditions are met:

1) electricity generation by this sectoral contracting authority takes place because electricity consumption is required in order to carry out an activity other than the activity referred to in paragraph 1 of this Article or Articles 161, 162 and 163 of this Law; and

2) the supply to the fixed network depends only on the own consumption of the sectoral contracting authority and does not amount to more than 30% of the total energy production of

the sectoral contracting authority taking into account the average of the previous three years, including the current year, except in cases where the generation is performed in a period shorter than 3 years when the generation achieved is proved on basis of business projections for the period between the since the establishment, that is, the commencement of the activity.

Activities in the field of gas and thermal energy

Article 161

Sectoral activities in the field of gas and thermal energy, within meaning of this Law, include:

- 1) provision of services related to use of public infrastructure (hereinafter: fixed networks) or management of fixed networks intended to provide services to the public in connection with the production, transmission or distribution of natural gas or thermal energy;
- 2) the supply of natural gas or thermal energy to networks referred to in item 1 of this paragraph.

The supply of gas or thermal energy by a sectoral contracting authority that is not a public contracting authority to fixed networks providing public service shall not be considered relevant activity referred to in paragraph 1 of this Article if all of the following conditions are met:

- the production of gas or thermal energy is the activity of the sectoral contracting authority which is not covered by paragraph 1 of this Article or Articles 160 and 162 of this Law and
- the sole purpose of supply to the fixed network is the commercial exploitation of the production referred to in indent 1 of this paragraph, which does not amount to more than 20% of the turnover of that sectoral contracting authority taking into account the average production of the previous three years, including the current year.

Activity in the field of water management

Article 162

Sectoral activity in the field of water management within meaning of this Law includes:

- 1) provision of fixed networks or management of fixed networks intended to provide services to the public in connection with the production, transfer or distribution of drinking water,
- 2) the supply of drinking water to networks referred to in item 1 of this paragraph.

The provisions of this Law shall also apply to public procurement procedures or contests conducted by a sectoral contracting authority that carries out an activity referred to in paragraph 1 of this Article that is related to:

- 1) hydraulic engineering projects, irrigation or land drainage, provided that the amount of water to be used for the supply of drinking water represents more than 20% of the total quantity of water supplied by such projects or through irrigation or drainage installations,
- 2) wastewater disposal or treatment.

The supply of drinking water by a sectoral contracting authority, which is not a public contracting authority, by fixed networks providing public services shall not be considered relevant activity referred to in paragraph 1 of this Article if all of the following conditions are met:

- 1) the production of drinking water by that sectoral contracting authority is carried out because its consumption is necessary for the performance of activities other than those referred to in paragraphs 1 and 2 of this Article or Articles 160, 163 and 164 of this Law;
- 2) the supply to the public network depends only on the own consumption of the sectoral contracting authority and does not amount to more than 30% of the total production of drinking

water of the sectoral contracting authority, taking into account the average of the previous three years, including the current year.

Activity in the field of traffic services

Article 163

Sectoral activity in the field of traffic within meaning of this Law is an activity related to the provision of services related to use of fixed networks or management of networks intended to provide services to the public in the area of transport by rail, automated systems, buses or cable cars.

The services provided under the conditions established by the carrier in accordance with law shall be considered to constitute the traffic network from paragraph 1 of this Article.

Activities in the field of airports and seaports

Article 164

Sectoral activities in the field of airports and sea ports within meaning of this Law are activities related to the exploitation of areas for the provision of airport and sea port services or other terminal equipment to air and maritime transport operators.

Postal service activity

Article 165

Sectoral activity in the field of postal services within meaning of this Law includes the provision of:

- 1) postal services,
- 2) other services, other than postal services referred to in paragraph 2 item b of this Article, provided that the sectoral activity is not directly exposed to market referred to in Article 170 of this Law.

For the purposes of paragraph 1 of this Article:

- a) postal consignment is a consignment addressed in the final form in which it is to be delivered, including letters, books, catalogues, newspapers, magazines and postal parcels containing goods with or without commercial value, regardless of their weight,
- b) postal services are services consisting of the receipt, sorting, routing and delivery of postal consignments, which includes services that are covered and that are not covered by universal service, in accordance with a special regulation governing postal services,
- c) other services, other than postal services, are:
 - postal service management services (services both before and after dispatch, including postal handling service management services),
 - services related to postal consignments not covered by item a of this paragraph.

Activity of research and production of oil, gas, coal or other solid fuels

Article 166

Activities of research and production of oil, gas, coal or other solid include the exploitation of a geographical area for the purpose of:

- 1) production of oil or gas,
- 2) research or extraction of coal or other solid fuels.

2. Related companies and joint ventures

Procurement from a related company or on the basis of a joint venture

Article 167

Procurement from a related company or on the basis of a joint venture constituted by a number of sectoral contracting authorities is a procurement that a sectoral contracting authority conducts for the purpose of performing sectoral activity from a company related to one of those sectoral contracting authorities, for the procurement of:

1) supplies, provided that at least 80% of the average total turnover of the related company over the previous three years comes from the supply of goods to the sectoral contracting authority or other companies to which it is related,

2) services, provided that at least 80% of the average total turnover of the related company in the past three years comes from the provision of services to the sectoral contracting authority or other companies to which it is related,

3) works, provided that at least 80% of the average total turnover of the related company over the previous three years comes from the performance of works to the sectoral contracting authorities or other companies to which it is related.

If the related company is established or has started to perform its activity or achieves its turnover in course of a period shorter than the period referred to in paragraph 1 of this Article, the achieved turnover shall be demonstrated on basis of business projections for the period since the establishment, that is, the commencement of the activity.

If two or more companies related to a sectoral contracting authority with which they form an economic community provide the same or similar services, supplies or works, the average total turnover from paragraph 1 of this Article shall be calculated on basis of the sum of total turnover coming from the provision of services, the supply of goods or the performance of works by those related companies.

Related company

Article 168

A related company referred to in Article 167 of this Law is any company whose annual financial statements are consolidated with the annual financial statements of the sectoral contracting authority in accordance with the law regulating the field of accounting.

If the obligation to consolidate the annual financial statements with the annual financial statements of the sectoral contracting authority does not apply to the entity referred to in paragraph 1 of this Article, a related company is any company that:

- may be directly or indirectly under the dominant influence of the sectoral contracting authority, or

- may have a dominant influence on the sectoral contracting authority, or

- is together with the sectoral contracting authority under the dominant influence of another company on the basis of ownership, financial interests or the founding acts of these companies.

Joint venture

Article 169

A joint venture within meaning of this Law is an association of sectoral contracting authorities that has been established for the purpose of performing sectoral activities for a period of at least three years and by whose act on establishment it has been required that each sectoral contracting authority of which the joint venture consists shall be a part of it for at least three years.

4. Procurement for carrying out of sectoral activity that is directly exposed to market competition

Sectoral activities directly exposed to market competition

Article 170

A sectoral activity is directly exposed to market competition if more than one economic operator performs or has an opportunity to perform such activity under equal conditions on a geographically relevant market.

Direct exposure to market competition is decided in accordance with the law governing the protection of competition, taking into account nature and characteristics of products or services, the existence of input barriers or customers' preferences, the considerable differences related to market shares of economic operators between that area and neighbouring areas or considerable differences related to prices.

This Law shall not apply to award of contracts and design contests intended for pursue of sectoral activities where the responsible state body performing supervision over a sectoral contracting authority or a sectoral contracting authority demonstrate that the sectoral activity pursued in Montenegro is directly exposed to competition on a market with no accessibility restrictions.

In the demonstration procedure referred to in paragraph 3 of this Article, the responsible state body performing supervision over a sectoral contracting authority or a sectoral contracting authority shall obtain an opinion from an independent regulatory body in charge of the sectoral activity which performs supervision in the sectoral activity concerned and from a body responsible for competition affairs.

The sectoral activity from paragraph 3 of this Article can be a part of larger sector or can be pursued only on a specific territory of Montenegro.

An assessment of market competition from paragraph 3 of this Article shall be determined in accordance with this Law and the law governing protection of competition on the market.

Upon assessment of market competition, the market of the activity in question shall be taken into account and the relevant geographical market, within meaning of paragraphs 7-10 of this Article.

The direct exposure of the activity to the market competition shall be decided upon on basis of the criteria in line with the rules on competition of the European Union.

The criteria referred to in paragraph 8 of this Article may include characteristics of the products and services in question, existence of alternative products or services which are deemed replaceable on the part of the supply or the part of demand, price, as well as the real or potential competition between more than one product suppliers or service providers.

Relevant geographical market on basis of which the market competition was assessed represents a territory on which certain economic operators participate in supply and demand of products or services, where the market competition conditions are sufficiently homogenous and which may differ from other neighbouring territories, in particular regarding the fact that the market competition conditions are significantly different on that territory.

Upon assessment of the market competition, the nature and characteristics of the products and services in question shall be particularly taken into account, as well as existence of entry barriers or the affinities of buyers, the significant differences in market shares of entrepreneurs between the territory in question and other neighbouring territory or the significant price differences.

The access to market shall be considered as not restricted within meaning of paragraph 1 of this Article in case that the regulations governing sectoral activity are harmonized with those of the European Union.

In case that the free access to certain market could not be assumed on basis of paragraph 12 of this Article, it must be demonstrated that the access to that market is free in factual and legal sense.

Procedure for determining the direct exposure of sectoral activities to market competition

Article 171

In case that the the responsible state body performing supervision over a sectoral contracting authority or the sectoral contracting authority considers that on the basis of the criteria from Article 170 par. 7 to 10 of this Law a certain activity is directly exposed to competition on the market to which access is not restricted, the sectoral contracting authority may submit a request to the European Commission in order to establish that the sectoral activity which is performed in Montenegro is directly exposed to competition on the market with no accessibility restrictions.

A request referred to in paragraph 1 of this Article, in accordance with law, shall be accompanied by an opinion from an independent regulatory body in charge of the sectoral activity which performs supervision in the sectoral activity concerned.

The requests from paragraph 1 of this Article may refer to the activities which are parts of a larger sector or which are performed only on a specific territory of Montenegro.

In request from paragraph 1 of this Article the responsible state body performing supervision over a sectoral contracting authority or a sectoral contracting authority shall inform the European Commission about all all significant facts, and in particular on all laws, regulations, administrative acts or agreements related to compliance with the conditions set out in Article 170 paragraphs 3-6 of this Law.

The responsible state body performing supervision over a sectoral contracting authority and a sectoral contracting authority shall, upon request of the European Commission, supplement its request from paragraph 1 of this Article, in case that this request is not accompanied by rationale and justification of the opinion issued by an independent national regulatory body which, in accordance with law, performs supervision over the sectoral activity in question, where, in accordance with Article 170 paragraphs 7-10 of this Law, the conditions for possible exclusion of the sectoral activity in question from application of this Law have been thoroughly analysed.

4. Selection of the procedure, techniques in the public procurement procedure and application of the classification system

Selection of the procedure type

Article 172

Sectoral contracting authority may use the following public procurement procedure for public procurement for the performance of sectoral activities:

- 1) Open procedure, restricted procedure, negotiated procedure with prior publication of a contract notice and competitive dialogue, for the procurement of each procurement subject;
- 2) Partnership for innovation, if it has the need for innovative goods, services or works that cannot be satisfied by the procurement of goods, services or works already available on the market;
- 3) Negotiated procedure without prior publication of a contract notice, if there are circumstances referred to in Article 59 of this Law.

In the case referred to in paragraph 1 of this Article, a sectoral contracting authority may, as a means of initiating a public procurement procedure, use:

1) notification on the establishment of a qualification system, if it implements a restricted procedure, a negotiated procedure with prior publication of a contract notice, a competitive dialogue or partnership for innovation.

2) the tender documentation in all public procurement procedures.

The sectoral contracting authority may use the procedures referred to in paragraph 1 of this Article, conclude a framework agreement, use a dynamic purchasing system, an electronic auction and an electronic catalogue, in accordance with this Law.

Qualification system

Article 173

Sectoral contracting authority may establish and keep a qualification system for economic operators, with the obligation to publish the notification thereof on the EPPS.

A sectoral contracting authority that establishes or keeps a qualification system is obliged to ensure that economic operators can at any time request a qualification.

A qualification system may involve different stages of qualification.

The qualification system is conducted on the basis of objective rules, i.e. mandatory requirements and requirements of competence of economic operators established by the contracting authority for the qualification of economic operators applying for qualification, including rules for entry in the system, periodic updating of qualifications, if there are any.

Sectoral contracting authority is obliged to make available the requirements referred to in paragraph 4 of this Article to the economic operators and to inform all economic operators about the updated rules.

Where objective rules from paragraph 5 of this Article include the technical specifications, Articles 87 to 92 of this Law shall be applied.

The sectoral contracting authority is obliged to keep a written record of qualified economic operators.

Records can be divided into categories according to the type of procurement subject to which the qualification applies.

If the notification of establishment of the qualification system is used as a means for invitation to public tender, the contracts for supplies, services or works covered by a qualification system shall be concluded through restricted or negotiated procedures, in which all bidders are selected among the candidates already qualified in accordance with such a system.

The sectoral contracting authority that establishes and keeps the qualification system is obliged to notify applicants for qualification about its decision to reject the application for qualification within six months.

If the decision making is to take more than four months from the filing of the application for qualification, the contracting authority is obliged to notify the applicant within two months from the filing of the application on the reasons justifying that longer period, as well as the date on which it will decide on its application.

The sectoral contracting authority is obliged to submit the decision on rejection of the application for qualification with the explanation of reasons for rejection to the applicant, without delay, within 15 days from the day of the decision at the latest.

A sectoral contracting authority that establishes and keeps a qualification system may exclude an economic operator from a qualification only for reasons based on the qualification requirements referred to in paragraph 4 of this Article.

The contracting authority shall notify the economic operator of the intention to terminate the qualifications no later than 15 days prior to the determined date for deciding on the qualification, stating the reasons for the termination.

Costs charged in connection with submission of the qualification application or updating an already received qualification application in accordance with the system will be determined in a manner to be proportionate to the actual costs.

The notification form referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

VIII. PROCUREMENT IN THE FIELD OF DEFENCE AND SECURITY

Application of regulations

Article 174

Public procurement in the field of defence and security shall be implemented in accordance with the provisions of this Law, except in cases referred to in Articles 175, 176 and 177 of this Law.

Subject of procurement

Article 175

The procurement subject in the field of defence and security, within the meaning of this Law, shall be the following:

- 1) military equipment, including all its parts, components or subassemblies;
- 2) security-sensitive equipment, including all its parts, components or subassemblies;
- 3) goods, services and works that are directly related to the equipment referred to in items 1 and 2 of this paragraph, during any period or entire life-cycle of such equipment;
- 4) services and works exclusively for military purposes;
- 5) security-sensitive services.

The Government shall prescribe the list of military equipment and products referred to in paragraph 1 of this Article.

Special procurements in the area of defence and security

Article 176

Special procurements in the area of defence and security shall be the following:

- 1) to which special public procurement rules apply, in accordance with an international agreement or arrangement concluded between Montenegro and one or more countries;
- 2) to which special public procurement rules apply, in accordance with an international agreement or arrangement relating to the deployment of military units, which relates to the undertakings of Montenegro, an EU Member State or other countries which participate in a public procurement procedure;
- 3) which Montenegro must award in accordance with specific rules of an international organization;
- 4) in which the application of the provisions of this Law would oblige Montenegro to disclose data whose disclosure is contrary to the essential interests of its security;
- 5) for the needs of the security intelligence activities;
- 6) within the framework of a research and development-based cooperation program jointly implemented by Montenegro and at least one EU Member State and, when applicable, for the next stages of the whole or part of the life-cycle of that product;

7) concluded in the third state, including for civilian needs, when forces are deployed outside the territory of the European Union if operational requirements require that these contracts be concluded with economic operators located in the area of activity;

8) concluded by state authorities of Montenegro with the state bodies of EU Member States or the third country, which relate to:

- a) procurement of military equipment or security-sensitive equipment;
- b) works and services directly associated with the equipment referred to in indent a) of this item, or
- c) works and services for explicitly military purposes or security-sensitive works and security-sensitive services.

9) when the protection of essential security interests of Montenegro cannot be ensured by determining the requirements with the aim of protecting the confidentiality of data that the contracting authority makes available in the public procurement procedure as provided by this Law;

10) procurements declared to be secret or those which must be accompanied by special security measures in accordance with laws, by-laws or acts of the competent authority, provided that Montenegro has determined that important security measures and interests cannot be protected by the measures referred to in item 9 of this Article.

11) procurements of supplies and services referred to in Article 175 of this Law the estimated value of which is equal to or less than EUR 20,000.00, or procurements of works the estimated value of which is equal to or less than EUR 40,000.00.

Implementation and reporting

Article 177

Implementation, reporting and keeping of records on procurement referred to in Articles 175 and 176 of this Law shall be performed in the manner and according to the procedure established in a regulation adopted by the Government.

Verifying the fulfilment of conditions for participation in procurements for the North Atlantic Treaty Organization

Article 178

The procedure for verifying the fulfilment of conditions for participation of economic operators registered in Montenegro and issuing certificates for participation in procurements for the needs of the North Atlantic Treaty Organization shall be prescribed by a state authority in charge of economy affairs.

X. PUBLIC PROCUREMENT RECORDS, REPORTING AND STORING OF DOCUMENTATION

Records of public procurement procedures

Article 179

The contracting authority is obliged, after publishing the public procurement contract on the EPPS, to continuously keep a record containing, in particular, the following information for each public procurement procedure:

- 1) the name and address of the contracting authority, the subject and the estimated value of the procurement;

- 2) the number of submitted qualification applications or bids;
- 3) the name of the qualified candidates or bidders;
- 4) the name of the unqualified candidates or bidders;
- 5) the name of the selected bidder;
- 6) the reasons for conducting the negotiated procedure with the prior publication of the contract notice, competitive procedure with negotiations, competitive dialogue or negotiated procedure without prior publication the contract notice;
- 7) the reasons for the adoption of the decision to annul the public procurement procedure;
- 8) the reasons why electronic means of communication have not been used for submission of bids;
- 9) the data on established conflict of interests and the measures taken;
- 10) the data on the lodged appeal in a public procurement procedure;
- 11) the date of conclusion of a public procurement contract.

The contracting authority is obliged, upon request of the Ministry, to submit the records referred to in paragraph 1 of this Article within a period of five days as of the day of submission of the request.

Keeping of records

Article 180

The contracting authority is obliged to keep records of the following:

- 1) simple procurement;
- 2) exemptions in accordance with this Law;
- 3) procurement for diplomatic and consular representation offices and military-diplomatic representatives;
- 4) procurement related to the ratified international agreements;
- 5) procurement for social and other special services.

The form of records referred to in Article 179 and paragraph 1 of this Article shall be prescribed by the Ministry.

Storing of documentation

Article 181

The contracting authority is obliged to store the complete documentation from public procurement procedures conducted in accordance with this Law.

The contracting authority shall store the documentation referred to in paragraph 1 of this Article at least four years after the day of execution of the public procurement contract or framework agreement.

The documentation referred to in paragraph 1 of this Article, which is recorded in the EPPS, shall be archived in the said system for at least five years from the conclusion of a public procurement contract or framework agreement in a way that preserves the integrity of the data.

Statistical reporting on public procurement

Article 182

The contracting authority is obliged to compile a statistical report on the conducted public procurement procedures and concluded public procurement contracts by 28 February of the current year, as well as a report on the conducted procurement and concluded contracts/invoices for simple procurements for the previous year and submit the report to the Ministry.

The report referred to in paragraph 1 of this Article shall be delivered in written and electronic forms.

The Ministry publishes on its web site the instructions for the contracting authorities on the content and method of filing of the statistical report on public procurement.

The Ministry makes a statistical report on public procurement annually for the previous year and submits it to the Government, by 31 May of the current year at the latest, and publishes the report it on its website after adoption.

The Ministry shall, upon request, submit to the European Commission the statistical report on public procurement.

The statistical report also contains other statistical data required in accordance with the ratified international agreements.

The Ministry shall prepare and submit to the Government the semi-annual report on conducted public procurement procedures and concluded public procurement contracts, as well as a report on procurements and concluded contracts/accounts for the simple procurements.

The form of the report referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

XI. PROTECTION OF RIGHTS IN THE PUBLIC PROCUREMENT PROCEDURE

1. Procedure for protection of rights and competence for decision making

Providing protection

Article 183

Protection of rights of participants in a public procurement procedure, in accordance with this Law and a regulation governing public procurement in area of defence and security shall be exercised before Commission for Protection of Rights in Public Procurement Procedures (hereinafter: Commission for Protection of Rights).

Application of regulations

Article 184

The issues related to protection of rights in public procurement procedures which are not regulated by this Law shall be subject to provisions of the law governing administrative procedure.

Launching the procedure for protection of rights

Article 185

The procedure for protection of the right is initiated by an appeal which is filed with the Commission for Protection of Rights, through the contracting authority.

The appeal referred to in paragraph 1 of this Article, until the EPPS is established, shall be submitted in writing, directly or by registered mail.

An appeal may be filed against:

- 1) tender documentation;
- 2) changes and/or supplements to the tender documentation;
- 3) decision on exclusion from a public procurement procedure;
- 4) decisions on the selection of the most advantageous bid;
- 5) decisions on annulment of the public procurement procedure.

An appeal from paragraph 3 items 1 and 2 of this Article may be used to challenge the lawfulness of the tender documentation, or changes and/or supplements thereof.

An appeal against changes and/or supplements to the tender documentation cannot challenge the part of the tender documentation that has not been changed.

An appeal may not challenge a change of the tender documentation performed by a contracting authority in the second phase of a competitive procedure with negotiations, a competitive dialogue and an innovation partnership.

Appeal referred to in paragraph 3 item 3 of this Article may be filed against:

- 1) the procedure for receiving qualification applications;
- 2) the procedure for opening qualification applications;
- 3) the procedure for reviewing and assessing qualification applications or bids;
- 4) the lawfulness of the decision on exclusion of a qualification applicant from a public procurement procedure

Appeal referred to in paragraph 3 items 4 and 5 of this Article may be filed against:

- 1) the procedure for supplying invitations for submission of bids, or invitations to a dialogue;
- 2) the procedure for receiving bids;
- 3) the procedure for opening bids;
- 4) the content and manner of supplying minutes on opening of bids;
- 5) the procedure of review and evaluation of bids;
- 6) the procedure for negotiations and for conducting of a dialogue;
- 7) the procedure for evaluating bids;
- 8) the reasons for exclusion of candidates or bidders from a procedure;
- 9) the lawfulness of the decision on selection of the most advantageous bid;
- 10) the lawfulness of the decision to annulment of the public procurement procedure.

Right to appeal and time limits for an appeal

Article 186

The appeal from Article 185 paragraph 3 items 1 and 2 of this Law may be filed by an economic operator no later than ten days before the determined date of opening of qualification applications or bids.

The appeal from Article 185 paragraph 3 item 3 of this Law may be filed by a qualification applicant within ten days as of the day of supply of the decision on exclusion from a public procurement procedure.

The appeal from Article 185 paragraph 3 items 4 and 5 of this Law may be filed by a candidate or a bidder within ten days as of the day of publication of the decision on selection of the most advantageous bid or the decision on annulment of a public procurement procedure.

In case that economic operators fail to file the appeal from Article 185 paragraph 3 items 1 and 2 of this Law within a time limit of ten days before the day determined for opening of bids, they have no right to, as a qualification applicant, a candidate or a bidder, state the reasons for unlawfulness of the tender documentation or the changes/supplements thereof in their appeal against the decisions of the contracting authority referred to in Article 185 paragraph 3 items 3, 4 and 5 of this Law.

Effect of an appeal

Article 187

A timely appeal accompanied by proof of payment of the fee for conducting the proceedings in accordance with Article 188 paragraph 3 of this Law, shall suspend all further

activities of the contracting authority in the public procurement procedure, pending the decision on the appeal.

Notwithstanding paragraph 1 of this Article, in the public procurement procedure referred to in Article 59 paragraph 1 item 3 of this Law, the appeal shall not suspend further activities of the contracting authority in the public procurement procedure.

Content of the appeal

Article 188

The appeal, depending on the stage of the procedure, shall contain the following:

- 1) information on the appellant (name and head office, or name and address);
- 2) name and head office of the contracting authority;
- 3) number and date of publishing, i.e. supply of the tender documentation or changes/supplements thereof;
- 3) number and date of the decision on exclusion from a public procurement procedure, the decision on the selection of the most advantageous bid or decision on annulment of the public procurement procedure;
- 5) reasons for appeal with a rationale;
- 6) evidence;
- 7) an appeal request;
- 8) signature of the authorized person.

The appellant who does not have a head office in the territory of Montenegro is obliged to appoint a proxy for receiving letters in the territory of Montenegro stating all data necessary for communication with that proxy, or to determine another way of supply of letters which will not delay the delivery procedure.

The appellant is obliged to attach with the appeal proof of payment of the fee for initiating the appeal proceedings, in the amount of 1% of the estimated value of the public procurement, or to submit this proof no later than expiry of the time limit for lodging the appeal.

The amount of fee from paragraph 3 of this Article cannot exceed EUR 20,000.

If a decision is made in the appeal proceedings in the appellant's favour, the Commission for Protection of Rights shall return the fee referred to in paragraph 3 of this Article to the appellant, within 15 days, from the date the decision on the appeal becomes final and enforceable.

If the appellant submitted the proof of payment referred to in paragraph 3 of this Article in the amount lesser than the prescribed amount, the Commission for Protection of Rights shall return the amount of the paid fee to the appellant.

The fee for conducting the proceedings which was not returned to the appellant in accordance with paragraph 5 of this Article shall be the revenue of the budget of Montenegro.

Procedure of the Contracting Authority on Appeal

Article 189

The contracting authority is obliged to publish within three days from the day of receipt of the appeal, on the EPPS, a notification that the appeal has been filed and that further activities in the public procurement procedure have been discontinued until the decision on the appeal is adopted.

Depending on the phase of a public procurement procedure the appeal refers to, in case that a contracting authority considers that the appeal is justified in its entirety, it may, within eight days as of the day of receipt of the appeal, annul the challenged decision or replace it with another decision, correct or supplement the tender documentation in accordance with appeal request or annul the public procurement procedure.

A contracting authority which used the powers from paragraph 2 of this Article shall:

1) adopt the decision by which it will assess each appeal allegation, provide the reasons for accepting the appeal and decide on procedure costs;

2) publish the decision referred to in item 1 of this Article on the EPPS within three days as of the day of its adoption, except when the appeal was filed against the decision on exclusion from the public procurement procedure, when it is obliged to submit the decision to the qualification applicant or a candidate;

3) submit the decision on accepting the appeal to the Commission for Protection of Rights with proof that it was published on the EPPS, that is, that it was submitted to the appellant.

A contracting authority may not accept the appeal which is unlawful, which is untimely, which is not accompanied by a proof of payment of the fee for conducting of a procedure in accordance with Article 188 paragraph 2 of this Law or which was filed by an unauthorized person, instead it shall submit the case files to the Commission for Protection of Rights.

In case it does not use its right from paragraph 2, a contracting authority shall, within eight days from receipt of the appeal, submit to the Commission for Protection of Rights the appeal with all appendices submitted by the appellant along with its appeal, copies of complete documentation pertaining to the public procurement procedure and the original qualification applications of the appellant, or the originals of all submitted bids.

A contracting authority may, along with the appeal, submit also the response to the appeal and the proofs challenging the appeal allegations of the appellant.

Until the day of putting into operation of the EPPS, a contracting authority shall submit the appeal and the documents from paragraphs 4 and 5 of this Article to the Commission for Protection of Rights in writing, and as of the day of putting the EPPS into operation these documents shall be submitted electronically.

Abandonment of an appeal

Article 190

An appellant may abandon his appeal until publication of the decision on the appeal.

In case that the appeal is filed by a bidder who is a member of a joint bid, the abandonment of the appeal shall have a legal effect, provided that all members of a joint bid abandon the appeal, or if a member of a joint bid who is authorized to file an appeal abandons it.

The abandonment of the appeal is irrevocable.

Proceeding in case of failure to submit files

Article 191

If the contracting authority fails to submit with the appeal a complete documentation pertaining to the public procurement procedure, within the time limits and in the manner stipulated by Article 189 of this Law, the Commission for Protection of Rights shall give it a time limit of five days for acting upon the appeal, with a warning that otherwise the appeal will be upheld and the proceedings or a part of the proceedings to which the appeal relates annulled.

Deciding by the Commission for Protection of Rights

Article 192

The Commission for Protection of Rights shall decide in the appeal procedure by a decision whereby it:

1) discontinues the appeal proceedings as a result of the appellant's withdrawal of the appeal;

2) reject the appeal as unlawful, in case it refers to the action of the contracting authority which was not allowed;

3) reject the appeal as untimely, if it was filed after expiry of the stipulated time limit;

4)) reject the appeal as filed by an unauthorized person, if it was filed by a person who is not authorized for filing appeals in accordance with Article 186 of this Law;

5) reject the appeal as incomplete, in case that the proof of payment for conducting the procedure was not submitted with the appeal or within the prescribed time limit for filing the appeal in accordance with Article 188 paragraph 3 of this Law;

6) reject the appeal as irregular, if the appellant within the specified deadline fails to remedy formal deficiencies that prevent acting upon the appeal;

7) reject the appeal as unfounded; when it determines that the appeal allegations are entirely unfounded;

8) accept the appeal in whole or in part, annul the decision or the public procurement procedure or action of a contracting authority in the part in which the unlawfulness has been established.

An appeal against the decision on the selection of the most advantageous bid will be rejected as unfounded if the appellant does not challenge the incorrectness of his bid or if the appellant fails to prove that his bid is the most advantageous one or that all remaining bids are incorrect.

The contracting authority shall act upon the decision referred to in paragraph 2 item 8 of this Article, within 15 days from the date of publication of the decision, or supply of the decision and inform the Commission for Protection of Rights thereof within the deadline.

If the contracting authority fails to act in accordance with paragraph 3 of this Article, the Commission for Protection of Rights shall notify the Ministry and the public procurement inspector thereof.

If the Commission for Protection of Rights rejects the appeal against the tender documentation or suspends the procedure due to the appellant's withdrawal of the appeal, the contracting authority is obliged to publish a notification on the new deadline for submission of bids on the EPPS.

The notification referred to in paragraph 4 of this Article shall not constitute a change to the tender documentation.

In case where the Commission for Protection of Rights annul a public procurement procedure by its decision, a contracting authority shall publish a notification thereof on the EPPS, within five days as of the day that decision was supplied.

Deadlines for decision-making

Article 193

The Commission for Protection of Rights shall:

1) adopt the decision from Article 192 paragraph 1 item 1 within eight days as of the day of receipt of notification on withdrawal of the appellant;

2) adopt the decision from Article 192 paragraph 1 items 2, 3, 4, 5 and 6 within eight days as of the day of submission of the appeal and complete case files;

3) adopt the decision from Article 192 paragraph 1 items 7 and 8 within 30 days as of the day of submission of the appeal and complete case files.

The deadline referred to in paragraph 1 item 3 of this Article may be extended for a maximum of 10 days in the event of the need to engage an expert witness, to obtain the opinion of the competent authorities and the volume of the documentation in the public procurement procedure, of which the appellant and the contracting authority shall be notified.

The Commission for Protection of Rights shall publish the decision referred to in paragraph 1 of this Article, within three days from the date of its adoption, on the EPPS and on its website, except in case where the decision was made upon an appeal regarding the decision

on exclusion from a public procurement procedure, which it shall submit to the appellant within three days as of its adoption.

On the date of publication of the decision on the EPPS, the decision is deemed to have been duly submitted to the parties in the proceedings.

Until the date of putting the EPPS into operation, the decision is deemed to have been duly submitted to the parties in the proceedings if it was published on the website of the Commission for Protection of Rights.

Rules of proof

Article 194

In the procedure of protection of rights, the appellant is obliged to prove the existence of the facts which the appeal allegations are based upon.

The Commission for Protection of Rights may, for purpose of clarifying certain technical issue, hire an expert or seek an opinion by a competent state authority, or an organization performing public function.

Significant violations of the rules of procedure

Article 195

Significant violations of the rules of a public procurement procedure shall be the following:

1) the implementation of the public procurement procedure referred to in Article 59 of this Law contrary to the opinion of the Ministry, except in the case referred to in Article 59 paragraph 1 item 3 of this Law;

2) if the tender documentation does not contain mandatory conditions for participation in the public procurement procedure and/or mandatory grounds for exclusion from the public procurement procedure;

3) if the contracting authority, contrary to Article 187 paragraph 1 of this Law, continues the procedure prior to rendering of the decision on appeal;

4) if the decision on selection of the most advantageous bid fails to decide upon all submitted bids;

5) if a contracting authority acts contrary to Article 95 paragraphs 2 and 3 of this Law.

In the event of a material breach of the rules of procedure referred to in paragraph 1 of this Article, the Commission for Protection of Rights shall annul the decision or a part of the procedure or public procurement procedure in its entirety.

Acting ex officio

Article 196

The Commission for Protection of Rights, ex officio, shall take into account important violations referred to in Article 195 of this Law, irrespective of the part of the public procurement procedure an appeal has been filed against.

Judicial protection

Article 197

An administrative dispute may be initiated against a decision of the Commission for Protection of Rights.

The complaint filed against the decision of the Commission for Protection of Rights shall have no suspensive character for the conclusion of a public procurement contract.

The Commission for Protection of Rights shall publish on its website and the EPPS the notification on launched administrative procedure from paragraph 1 of this Article and the decision on the appeal.

Any person who suffered damage due to violation of this Law has a possibility of damage compensation before the competent court in accordance with law.

2. Organization and status of the Commission for Protection of Rights

Status of the Commission for Protection of Rights

Article 198

The Commission for Protection of Rights is an authority responsible for protection of rights in public procurement procedures and the procedures for awarding contracts on public-private partnership.

The seat of the Commission for Protection of Rights is in Podgorica.

The Commission for Protection of Rights is autonomous and independent in performing functions stipulated by this Law.

The funds for the work of the State Commission are provided in the budget of Montenegro.

Composition of the Commission for Protection of Rights

Article 199

The Commission for Protection of Rights has a president and six members, who discharge offices professionally.

The President of the Commission for Protection of Rights represents the Commission for Protection of Rights, manages its work and performs other tasks in accordance with the law and the Rules of Procedure.

The Commission for Protection of Rights may have a Deputy President, in accordance with the Rules of Procedure.

Appointment and duration of the mandate

Article 200

The President and members of the Commission for Protection of Rights are appointed by the Government of Montenegro, at the proposal of the Ministry, on the basis of a public competition.

The President and members of the Commission for Protection of Rights shall be appointed for a period of five years and may be reappointed.

The Ministry of Finance is obliged to initiate the procedure for determining the proposal for the election of the President or a member of the Commission for Protection of Rights no later than six months prior to the end of their mandate, with the appointment being made no later than 15 days prior to the expiry of the mandate.

Terms of appointment

Article 201

A person who is a law graduate with a seventh level (VII1) of the national qualification system who passed bar exam with a minimum of eight years of work experience may be appointed President of the Commission for Protection of Rights.

At least two members of the Commission for Protection of Rights must have a bar exam and five years of work experience, or a bar exam and at least three years of work experience in the field of public procurement.

Two members of the Commission for Protection of Rights must be law graduates or persons with a seventh level (VIII) of the national qualification system and passed exam for work in state bodies with at least five years of work experience and at least three years of work experience in public procurement activities.

Two members of the Commission for Protection of Rights may be persons with a seventh level (VIII) of the national qualification system, with at least five years of work experience out of which at least three years of work experience in public procurement activities and passed professional exam for work in state bodies.

Preventing Conflict of Interest and Recusal

Article 202

The President and a member of the Commission for Protection of Rights may not exercise any other public office or office in a political party.

The President and a member of the Commission for Protection of Rights may not decide in the procedure of protection of the right if there are reasons that cast doubt on their impartiality.

Termination of mandate and resolving of duty

Article 203

The term of office of the President and a member of the Commission for Protection of Rights shall cease:

- 1) by the expiration of the time appointed to it;
- 2) on a personal request;
- 3) by being resolved of duty.

The President and a member of the Commission for Protection of Rights shall be resolved of duty before the expiry of the mandate, if they:

- 1) have been convicted by a final and enforceable decision for the criminal offense to an unconditional prison sentence in duration of at least six months or if they have been convicted of a criminal offense which makes him unbecoming of performing his office;
- 2) are stripped of legal capacity by a final and enforceable decision;
- 3) perform other public office or professionally perform other activities;
- 4) fail to perform official duties or perform the same unconscientiously or untimely.

If there is any reason for the resolving of duty referred to in paragraph 2 of this Article, the President of the Commission for Protection of Rights shall submit a proposal for the resolution of a member of the Commission for Protection of Rights to the Minister of Finance, and for the resolution of the President the proposal shall be submitted by the majority of members of the Commission for Protection of Rights.

The method of work of the Commission for Protection of Rights

Article 204

The Commission for Protection of Rights shall work and decide on the sessions which are not public.

The method of work of the Commission for Protection of Rights shall be regulated in more detail by the Rules of Procedure.

Competences and powers of the Commission for Protection of Rights

Article 205

The Commission for Protection of Rights shall:

- 1) decide on appeals filed in public procurement procedures and the procedures for the award of public-private partnership;

- 2) inform the inspection and other competent authorities of the perceived incriminated actions in the public procurement procedures;
- 3) cooperate and exchange information in the field of public procurement with the competent authorities of other states, international institutions and organizations;
- 4) adopt the Rules of Procedure;
- 5) perform other tasks in accordance with this Law and a separate law.

The cost of the procedure for protection of rights

Article 206

The Commission for Protection of Rights shall decide upon costs of the appeal proceedings.

The costs of the appeal proceedings are the expenses incurred during the proceedings for protection of rights.

Each party in the proceedings shall bear the costs incurred by their own actions.

The compensation for the work of lawyers shall be determined in accordance with the Bar tariff and for making submissions for the cases for which the price could not be determined in the administrative procedure and administrative dispute.

Compensations for other persons shall be determined in accordance with laws regulating the administrative procedure and administrative dispute.

In case an appeal is withdrawn or rejected, the appellant shall not be entitled to reimbursement of the costs of the appeal proceedings.

Performance report

Article 207

The Commission for Protection of Rights shall submit to the Government semi-annual reports on its work for periods from 1 January to 30 June and from 1 July to 31 December of the current year, no later than 30 days from the expiry of the respective semester.

The Commission for Protection of Rights shall submit to the Parliament of Montenegro an annual report on its work in the previous year for adoption, no later than 30 June of the current year.

Legal Department of the Commission for Protection of Rights

Article 208

The Commission for Protection of Rights shall have a legal department that carries out professional and administrative-technical tasks necessary for the work of the Commission for Protection of Rights.

The professional service is managed by the Secretary of the Commission for Protection of Rights.

Secretary of the Commission for Protection of Rights, on basis of a public contest, shall be appointed by the Commission for Protection of Rights, upon proposal of the President of the Commission for Protection of Rights, in accordance with the law regulating the rights, obligations and responsibilities of civil servants and state employees related to the appointment of senior management staff.

A person who has a law degree, who passed the professional exam for work in state bodies and the professional exam for performing tasks in public procurement field and who has at least five years of work experience may be appointed as the Secretary of the Commission for Protection of Rights.

Secretary of the Commission for Protection of Rights shall be appointed for a period of five years and may be reappointed after expiry of that period.

The organization and job descriptions of the legal department of the Commission for Protection of Rights shall be regulated by the act on internal organization and job descriptions, which is adopted by the Commission for Protection of Rights, with the approval of the Government.

The employees of the Commission for Protection of Rights' legal department are subject to the regulations on civil servants and state employees.

XII. INSPECTION SURVEILLANCE

Bodies performing surveillance

Article 209

The surveillance over the implementation of this Law and regulations adopted pursuant to this Law shall be performed by the Ministry.

Inspection surveillance over the implementation of this Law shall be performed by the state authority in charge of inspection affairs through a public procurement inspector, in accordance with this Law and the law regulating inspection surveillance.

The public procurement inspector shall keep records and make a monthly work report on the performed surveillance and the measures undertaken, which is submitted to the Ministry and a semi-annual report which is submitted to the Government.

An appeal against the decision of the public procurement inspector may be filed with the Ministry within eight days from the date of delivery of the decision.

In case that the public procurement inspector fails to perform surveillance or take action based on the information from the Commission for Protection of Rights in the cases referred to in Article 205, paragraph 1, indent 3 of this Law, or fails to act in accordance with Article 210, paragraph 2, item 8, the Commission shall notify the Government thereof.

Subject of surveillance

Article 210

The Public Procurement Inspector shall perform inspection surveillance over work of the contracting authority in relation to:

- 1) deadlines for adopting, amending and publishing a procurement plan;
- 2) the fulfilment of the conditions for performing the tasks of the public procurement officers and the commission for opening and evaluating bids;
- 3) fulfilment of conditions for initiating public procurement procedures;
- 4) correct application of prescribed exemptions from the application of this Law;
- 5) proper implementation of the simple procurement;
- 6) correctly determining and extending deadlines for submitting and opening qualification applications or bids;
- 7) application of anti-corruption measures and measures for the prevention of conflict of interest in a public procurement procedure;
- 8) the obligation of the contracting authority to submit a bid guarantee and means of financial security for a public procurement contract, in accordance with this Law;
- 9) the obligation of the contracting authority to determine the mandatory conditions for participation in the public procurement procedure and the obligatory basis for excluding an economic operator from the public procurement procedure, in accordance with this Law;

10) the correct application of the rules regarding the receipt of bids, issuance and provision of evidence in connection with it;

11) compliance with the prescribed deadline for making a decision on the selection of the most advantageous bid and conclusion of the public procurement contract;

12) drafting, concluding and executing a public procurement contract in accordance with the conditions established by the tender documentation and the selected bid;

13) the failure of the contracting authority to control whether the contractor performs the contractual obligations in accordance with the public procurement contract;

14) proper record keeping and storing of public procurement documents;

15) acting upon the decision of the Commission for Protection of Rights.

When it is determined, in the course of the inspection procedure, that this law or by-law for its implementation has been violated, the Public Procurement Inspector is obliged, depending on the type of violation and the possibility of its removal in the specific case to:

1) order the contracting authority to remedy the identified omissions within a specified period;

2) prohibit the implementation of certain procurement until the fulfilment of the prescribed conditions;

3) prohibit the public procurement officer who fails to meet the requirements, to perform public procurement activities until the fulfilment of these statutory requirements;

4) suspend the execution of the public procurement contract until adjustment with the conditions set forth in the tender documentation and with the selected bid;

5) file for initiation of a misdemeanour procedure against the perpetrator of the misdemeanour or issue a misdemeanour order;

6) if there is a suspicion that a criminal offense has been committed in the public procurement procedure, inform the competent state prosecutor thereof;

7) notify the authority in charge of preventing corruption about the observed violations of the anti-corruption rules, the corruptive actions, as well as the violation of the rules on conflict of interest;

8) notify the Ministry on irregularities identified and actions undertaken referred to in Article 44 paragraph 1 item 16, or the Commission for Protection of Rights in cases referred to in Article 205 paragraph 1 item 2 of this Law.

XIII PENAL PROVISIONS

Serious offenses

Article 211

A legal entity shall be liable to a fine of EUR 5,000.00 to 20,000.00 if it:

1) fails to conduct the public procurement procedures referred to in Article 26 paragraph 1 items 4, 5 and 6 of this Law, unless otherwise prescribed by this Law (Article 27 paragraph 2);

2) divides the procurement with the intention of avoiding the application of this Law (Article 27, paragraph 3);

3) does not record cases referred to in Article 38 paragraph 2 item 1 of this Law, does not make an official note thereof or does not submit a report on such violation to competent state bodies for purpose of taking measures in accordance with law and does not notify thereof the Ministry (Article 38 paragraph 2 item 2);

4) does not perform a risk analysis and a control of risks in a public procurement procedure (Article 38 paragraph 2 item 3);

5) conclude a public procurement contract having violated the anti-corruption rules (Article 38 paragraph 3);

6) does not take appropriate measures to efficiently prevent, identify and remove the conflict of interest in relation with the public procurement procedure (Article 40);

7) does not conduct a public procurement procedure using a competitive procedure with negotiations, negotiated procedure without prior publication of the contract notice, innovation partnership, competitive dialogue and negotiated procedure with prior publication of the contract notice in accordance with the conditions prescribed by this Law (Articles 57, 58, 59, 60, 61, 62, 63 and 64);

8) does not obtain the approval of the Ministry prior to the initiation of the negotiated procedure without prior publication of the contract notice (Article 65 paragraph 1);

9) fails to draw up and submit to the Ministry its annual public procurement plan, not later than 31 January of the current financial year, for purpose of its publication on the EPPS (Article 84 paragraph 1);

10) fails to submit to the Ministry the changes and amendments to its public procurement plan not later than five days before launching of a public procurement procedure (Article 84 paragraph 5);

11) fails to establish the obligation for the bidder to submit a bid guarantee in the tender documentation for the public procurements with an estimated value exceeding EUR 40,000.00, as well as a contract performance guarantee for public procurement contracts and framework agreements or some other means of financial security, in accordance with law (Article 96 paragraph 1);

12) fails to specify in the tender documentation for the public procurements with an estimated value exceeding EUR 40,000.00 the type, validity period and the conditions for activating the means of financial security (Article 96 paragraph 3);

13) fails to activate the means of financial security referred to in Article 96 paragraph 1 of this Law whereupon the situation due to which the security was required had occurred (Article 96 paragraph 4);

14) upon determining the time limits for submission of qualification applications or bids, fails to observe the minimum time limits prescribed by Article 116 of this Law;

15) adopts a decision on selection of the most advantageous bid without previously conducted public procurement procedure, whereupon that contracting authority was obliged to conduct a public procurement procedure prior to adopting such decision, in accordance with the Law (Article 143 paragraph 4);

16) concludes a contract or a framework agreement before enforceability of the decision on selection of the most advantageous bid, except in cases prescribed by this Law (Article 146 paragraph 2);

17) does not end a public procurement procedure by reaching a decision on selection of the most advantageous bid or a decision on annulment of a public procurement procedure (Article 148 paragraph 1);

18) concludes a public procurement contract which is not in accordance with the conditions prescribed in the tender documentation, the selected bid and the decision on selection of the most advantageous bid (Article 149 paragraph 2);

19) fails to publish a public procurement contract and/or changes and amendments thereto on the EPPS within three days as of the day the public procurement contract or the changes/amendments thereto was concluded (Article 149 paragraph 11 and Article 151 paragraph 4);

20) within 30 days as of the day of the implementation of the public procurement contract, fails to draw up the contract implementation report and publish it on the EPPS (Article 152 paragraph 2);

21) does not store documentation of the conducted public procurement procedures within the deadline prescribed by this Law (Article 181);

22) fails to prepare a statistical report on conducted public procurement procedures and concluded public procurement contracts, as well as the report on conducted procurements and concluded contracts/invoices for simple procurements for the previous year and submit it to the competent authority no later than 28 February of the current year (Article 182 paragraph 1);

23) fails to act in accordance with the decision referred to in Article 192 paragraph 1 item 8 of this Law within 15 days from the day of its publication and to notify thereof the Commission for Protection of Rights within the prescribed time limit (Article 192 paragraph 3).

For the misdemeanours referred to in paragraph 1 of this Article, a responsible person in a legal entity shall also be fined, as well as the responsible person in a state authority, the administration body, a local self-government body or a local government body, in the amount of EUR 250.00 to 2,000.00.

Minor offences

Article 212

A legal entity shall be liable to a fine of EUR 2,000.00 to 10,000.00 if it:

- 1) fails to conduct procurement procedures referred to in Article 26 paragraph 1 items 2 and 3 of this Law in accordance with the act of the Ministry (Article 27 paragraph 1);
- 2) fails to submit to the Ministry a semi-annual report within 30 days as of the expiry of the period referred to in Article 27 paragraph 4 of this Law (Article 27 paragraph 5);
- 3) fails to appoint at least one person as its public procurement officer and/or appoints a public procurement officer who does not fulfil the conditions in accordance with this Law (Article 47);
- 4) fails to establish a commission for opening and evaluation of bids in accordance with conditions prescribed by this Law (Article 48);
- 5) upon receiving bids, does not indicate a minute, hour and date of their receipt, and does not record the bids according to order of their receipt (Article 129 paragraph 1);
- 6) fails to issue a certificate on receipt of the bids containing the data on the time they were received (Article 129 paragraph 2);
- 7) fails to adopt a decision on selection of the most advantageous bid within 60 days as of the day of opening of bids and publish it on the EPPS within three days as of the day of its adoption (Article 141 paragraph 1 item 2);
- 8) after publication of a decision on selection of the most advantageous bid or the decision on annulment of a public procurement procedure, until expiry of the time limit for lodging the appeal and at the written request by the qualification applicant or a bidder, does not allow an insight into the complete documentation pertaining to the public procurement procedure, except for the documents published on the EPPS and those marked as confidential (Article 145);
- 9) alters a public procurement contract in the course of its duration, contrary to provisions of Article 151 paragraph 1 of this Law;
- 10) after publication of a public procurement contract on the EPPS, for each public procurement procedure, fails to continuously keep records on public procurement procedures in accordance with this Law (Article 179 paragraph 1);

- 11) fails to submit the records on public procurement procedures upon request of the Ministry within five days from the day of receipt of the request (Article 179 paragraph 2);
- 12) fails to keep records on simple procurements, exclusions, procurements in the field of defence and security, procurements for diplomatic-consular missions and military-diplomatic representatives, procurements associated to the Government Procurement Agreement (GPA) and other international agreements and procurements for social and other special services (Article 180 paragraph 1).

For the misdemeanours referred to in paragraph 1 of this Article, the responsible person in a state authority, the administration body, a local self-government body or a local government body shall be fined in the amount of EUR 150.00 to 1,000.00.

XIV. TRANSITIONAL AND FINAL PROVISIONS

Deadlines for adoption of by-laws

Article 213

By-laws based on authorisations established by this Law shall be passed within six months from the date of entry into force of this Law.

Contracting authorities are obliged to adjust their public procurement plans with this Law within 15 days as of the day this Law enters into force.

Started procedures

Article 214

Public procurement procedures that have started until the entry into force of this Law shall be completed according to the regulations in compliance with which they were initiated.

Framework agreements concluded after a conducted public procurement procedure, until the entry into force of this Law shall be completed according to the regulations in compliance with which they were initiated.

Contract validity

Article 215

Public procurement contracts concluded before the day of entry into force of this Law shall stay valid until expiry of the time period for which they were concluded.

Continuation of the work of the Commission for Protection of Rights

Article 216

The State Commission for Control of Public Procurement Procedures established before entry into force of this Law shall continue its work under the name of Commission for Protection of Rights in Public Procurement Procedures.

The President and members of the State Commission for Control of Public Procurement Procedures appointed on the basis of the Public Procurement Law (Official Gazette of Montenegro 42/11, 57/14, 28/15 and 42/17) shall continue to work until the expiration of their terms of office as the President of the Commission for Protection of Rights, or a member of the Commission for Protection of Rights.

Deadline for putting into operation of the EPPS

Article 217

The EPPS shall be put into operation no later than 18 months as of the day this Law enters into force.

Until the day the EPPS is put into force, the Public Procurement Portal shall be used, while the communication in public procurement procedures shall be conducted in writing, directly or by mail.

Until the day the EPPS is put into force, the self-declaration of an economic operator shall be submitted in written or electronic form, and after the EPPS is put into force it shall be submitted in electronic form.

Cease of effect

Article 218

On day this Law enters into force the Public Procurement Law (Official Gazette of Montenegro 42/11, 57/14, 28/15 and 42/17) shall cease to apply.

Entry into force

Article 219

This Law shall enter into force on the eighth day from the day of its publication in the Official Gazette of Montenegro, and shall be applied after six months as of the date of its entry into force.