

## **05 Annex - Public Procurement**

### **23. PUBLIC PROCUREMENT LAW**

---

**PUBLIC PROCUREMENT LAW**

Official Gazette of the Republic of Montenegro 46/2006 of 21 July 2006

**I. GENERAL PROVISIONS**

**Subject of the Law**

**Article 1**

This Law shall govern: the conditions, manner and procedure of procurement of goods and services and award of works in cases where the contracting authority for such procurement is a covered party designated by this Law; the responsibilities of the administrative authority in charge of public procurement activities; the control of legality of public procurement procedures and protection of rights of participants in the public procurement process; the manner of maintaining public procurement statistics and other matters relevant to the public procurement.

**Covered parties**

**Article 2**

The procurement of goods and services and the award of the performance of works under this Law must be followed by:

- 1) state authorities, state administration authorities, organizations, institutions and other beneficiaries of the Budget of the Republic of Montenegro (hereinafter: the Republic) and of other public funds;
- 2) local self-government authorities, local administration authorities and organizations and institutions that are beneficiaries of the budget of a local self-government unit and of other public funds;
- 3) obligatory social security organizations, established in accordance with laws governing these types of insurance;
- 4) undertakings and other legal persons in which the Republic, a local self-government unit or other covered parties under this Law hold more than 50% of shares or stake in their ownership and have more than a half of members in their management body, and which perform activities in the general interest, not having an industrial or commercial character;
- 5) legal persons that, in awarding public contracts, use the funds provided, as a subsidy or as a guaranty, by the Republic or a local self-government unit or other covered party under this Law.

An administrative authority in charge of public procurement activities shall prepare and publish a list of covered parties that are subject to the application of this Law.

The list of covered parties under this Law, referred to in paragraph 2 above, shall be updated by not later than 31 December each year.

**Exclusions from the Law**

**Article 3**

This Law shall not apply to:

- 1) contracts for the procurement of weapons, ammunition and other supplies needed for the defence and security of the Republic, which are declared to be secret by a law or other regulation, when their performance must be accompanied by special security measures;
- 2) contracts for the procurement executed in pursuance of an international agreement or contract signed between the Republic and one or more states and international organizations and covering:

- a) the delivery of goods, provision of services, performance of works, intended for the joint implementation or exploitation of a project by the signatory states;
  - b) the stationing and deployment of military forces;
  - c) the public procurement carried out pursuant to the particular procedure of an international organization;
- 3) and contracts for:
- a) the acquisition, development, production or co-production of programme material, intended for broadcasting by broadcasters and contracts for the award of broadcasting frequencies;
  - b) arbitration and conciliation services, and public notary's services, except for the services listed in Annex I hereto that is an integral part hereof;
  - c) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by contracting authorities to raise money or capital, and Central Bank of Montenegro services;
  - d) employment contracts.

This Law shall not apply to the process of granting concessions and privatisation of the economy, as well as the sale and renting of land, existing buildings or other real estates or the rights deriving therefrom, performed by the covered parties under this Law.

### Definitions

#### Article 4

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

- 1) «public procurement»** is a set of all actions and activities undertaken by the contracting authority, having as their object the supply of goods, provision of services or performance of works, and for which funds have been allocated by the contracting authority;
- 2) «public contract»** is a contract concluded in writing between a contracting authority and a bidder, having as its object the supply of goods, provision of services or performance of works;
- 3) »public supply contract«** is a contract concluded in written or electronic form and involving the purchase, lease, rental or hire purchase, with or without option to buy goods, including necessary siting and installation operations;
- 4) «public works contract»** is a contract concluded in writing, having as its object either the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex I, or the realisation of a work corresponding to the terms specified by the contractual parties. A «work» means the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function;
- 5) «public service contract»** is a contract concluded in written or electronic form, having as its object the provision of services that are not excluded from this Law. A public service contract may be:
  - a) a public contract having as its object both goods and services if the value of the services in question exceeds that of the goods covered by the contract;
  - b) a public contract having as its object services and including activities within the meaning of Annex I that are only incidental to the principal object of the contract;
- 6) »contracting authority«** is a covered party referred to in Article 2 above, conducting the public procurement procedure and allocating funds for that purpose;
- 7) «bidder»** means either a natural person or legal person that submits a bid for supply, services or works;

- 8) «**bidded price**» means the price specified by the bidder in his bid under the issued invitation;
- 9) «**abnormally low bid**» means the bid price that is so low that it causes doubts in the contracting authority about the ability for carrying out the public contract;
- 10) «**criterion**» means an element used in weighing, comparison and evaluation of received bids;
- 11) «**qualification requirement**» means the requirement specified in the invitation that must be fully met in the bid because it is a precondition for determining the bidder's capacity;
- 12) «**open procedures**» are the procurement procedures whereby any interested business company or entrepreneur may submit a bid;
- 13) «**restricted procedures**» are procedures whereby any interested business company or entrepreneur may request to participate and only those business companies and entrepreneurs invited by the contracting authority may submit a bid;
- 14) «**negotiated procedures**» are the procurement procedures whereby the contracting authority consults the business companies or entrepreneurs and negotiates the terms of the contract with one or more of these;
- 15) «**design contests**» are those procedures which enable the contracting authority to acquire, mainly in the fields of space development, town planning, architecture, engineering or data processing, a plan or design selected by a jury after having been put out to competition with or without the award of prizes;
- 16) «**written**» or «**in writing**» means any expression consisting of words or figures that can be read, reproduced and subsequently communicated. It may include information transmitted and stored by electronic means;
- 17) «**public procurement in electronic form**» means the procurement carried out through the electronic system for public procurement;
- 18) «**electronic system for public procurement**» means a computerised system in general use accessible via the Internet, which is used with the aim to provide higher efficiency and cost-effectiveness in the area of the public procurement;
- 19) «**electronic bid**» means any bid or part of bid, set forth in the conditions of the invitation to tender, which is stored and/or submitted to the contracting authority in electronic form and compliant with safe electronic operation principles under the Law on Electronic Signature, and which unquestionably constitutes a complete and logical unity with other parts of the bid of the same bidder. The recording form and the manner of submitting the documents or part of the documents in electronic form must be defined by the contracting authority in the bidding documents;
- 20) «**electronic means**» means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;
- 21) «**participation request**» is a request submitted to the contracting authority by each person interested in the restricted procedure;
- 22) «**criteria and conditions update**» is temporary adjustment carried out by the contracting authority during the qualification procedure, taking account of market conditions, development and other circumstances;
- 23) «**bid price discount**» is a method of pricing that the bidder may offer only when the contract is awarded in lots, and the contracting authority cannot consider this method as an element for additional privilege;
24. «**standard public procurement forms**» are the forms determined by the administrative authority in charge of public procurement activities, established under this Law;

**25. «public funds»** are the budgetary funds and other funds, the bases and sources of which are determined by a law or other regulations;

**26. «bidding documents»** are the documents specifying in more detail the subject of procurement, conditions and procedure of selection, technical specifications and characteristics and other relevant documents, prepared by the contracting authority;

**27. «public procurement in lots»** is the procurement the subject of which is split into several separate, related lots, and which is designated as such in the call for public competition and bidding documents;

**28. «framework agreement»** means an agreement for a given limited period between a contracting authority and a bidder, the purpose of which is to establish the framework terms governing contracts to be awarded during that period, in particular with regard to subject of contract and, where appropriate, the value, volume or quantities envisaged, as well as the price.

### **Basic principles of public procurement**

#### **Principle of the Cost-effective and efficient use of public funds**

##### **Article 5**

The contracting authority shall ensure, in the process of public procurement and selection of a most economically advantageous bidder, that the public funds are used in a cost-effective and efficient way.

#### **Principle of Competition**

##### **Article 6**

The contracting authority shall undertake any necessary actions to ensure fair competition among potential bidders, in accordance with the law.

The contracting authority may not restrict competition among bidders, particularly potential bidders, through the unjustified use of restricted procedure or measures favouring individual bidders.

Entities involved in the preparation of bidding documents or individual parts of such documents may not act as bidders or subcontractors and may not cooperate with bidders in the preparation of their bids, if that affects competition.

#### **Principle of Transparency**

##### **Article 7**

The transparency principle means that the procurement procedures must be public, which is provided by publishing notices of public competition and decisions on the selection of the best bid in the manner prescribed by this law and public procurement standard forms.

The bidders which participated in the public procurement procedure are entitled to review and obtain information about the completed public procurement procedure after having received the notice of contract award, in accordance with this law.

#### **Principle of Equality**

##### **Article 8**

The contracting authority must ensure that all bidders have equal treatment at all phases of the public procurement procedure.

**Rights of bidders where most employees are persons with special needs**

**Article 9**

The contracting authority may state in the call for competition and in the bidding documents that the contract will be awarded, under equal terms, to the bidders where most of the employees are persons with special needs who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions.

**Confidentiality of information and documents and keeping records of the procedure**

**Article 10**

The contracting authority shall keep all information about the bidder contained in his bid that are designated as confidential by the law or other regulation.

The contracting authority may demand the protection of confidentiality of information and data made available to bidders when delivering technical specifications to them.

The contracting authority must keep the names of bidders and submitted bids as trade secret until the bid opening date.

The person who received information referred to in paragraph 1 above as confidential must respect their confidentiality.

The contracting authority must record all phases and actions undertaken in the conduct of the public procurement procedure.

The contracting authority shall store the public procurement documentation in accordance with the regulations governing archive activities.

**Language in the public procurement procedure**

**Article 11**

The contracting authority shall prepare the invitation, bidding documents and other documents needed in the process of public procurement, and shall maintain the procedure, in the language which is in official use in Montenegro.

The contracting authority may prepare bidding documents and individual parts of them in a foreign language that is commonly used in international trade.

The bidder shall submit a bid in the language designated in the invitation to tender, i.e. in the language in which the bidding documents are written.

The contracting authority which, in the process of inspection and evaluation of bids, finds out that a part of the bid needs to be translated into the language that is in official use in Montenegro shall allow the bidder a period during which that part of bid must be translated.

In case of a dispute, the version of bidding documents and/or bid provided in the language that is in official use in Montenegro shall prevail.

**Currency**

**Article 12**

The bid price, i.e. value of the public procurement, shall be expressed in EUR.

**Anti-corruption rules**

**Article 13**

All contracting authorities, bidders and other participants in the public procurement procedure shall undertake efficient and effective measures preventing corruption, misuse of official position, conclusion of agreements for the purpose of deceiving third parties, provision of false data when submitting bids, conflict of interest, lack of impartiality and transparency in the conduct of public procurement procedure and, to that end, shall promote high standards of transparency, efficient internal audit systems, and open public competition and in determining objective criteria of selection and decision-making.

The contracting authority shall reject a bid, cancel a public procurement procedure or withdraw from the conclusion of contract if it determines or has reasonable doubt to believe that the bidder has tried to exert influence on, or has tried to give or has given or has agreed to give, directly or indirectly, to the public procurement officer, member of the Commission for opening and evaluation of bids, or employee with the contracting authority or any other person, a reward or benefit in any form or any other value with respect to the decision or the conduct of the public procurement procedure, in order to exert influence on the contents of activities and decision of the contracting authority regarding the bid, as well as in the case of actions of concealing or misrepresenting data.

In the cases referred to in paragraph 2 above, the contracting authorities shall notify the bidder and the administrative authority in charge of public procurement thereon in writing.

The contracting authorities shall provide access and adequate information on the decision-making organization and process in public procurement procedures to all interested parties.

**Conflict of interest**

**Article 14**

Participants in the public procurement procedure shall take any necessary action to prevent existence of a conflict of interest.

Public procurement officer, members of the Commission for opening and evaluation of bids, members of authorities deciding upon submitted requests for the protection of rights in the public procurement procedure and other persons participating, directly or indirectly, in the public procurement procedure, shall notify the contracting authority and the administrative authority in charge of public procurement, in a timely manner, of the actual or potential existence of a conflict of interest.

The conflict of interest referred to in paragraph 2 above shall occur, inter alia, if such person:

- 1) is the bidder itself or the bidder's legal representative or attorney;
- 2) is a relative in the straight line of kinship, or in the lateral line of kinship up to the fourth degree, or is a marital or extra-marital mate or in-law up to the second degree, regardless of whether the marriage is terminated or not;
- 3) is a guardian, adopter or adoptee of the bidder, his legal representative or attorney;
- 4) is a shareholder or member of management bodies of the bidder;
- 5) has direct or indirect interest in the public procurement procedure, which enables personal acquisition of property, by exerting influence on the decision-making process; and
- 6) if there are other circumstances causing a doubt about such person's impartiality.

A person who has prepared bidding documents and has any impact on the implementation of the public procurement procedure may not act as a bidder or sub-contractor and may not cooperate with the bidder in preparing the bid.

Persons who, on behalf of the contracting authority, perform some of the activities related to a public contract, shall submit a written statement on existence or non-existence of the cases

referred to in paragraphs 3 and 4 above. The signed statement shall make an integral part of the documentation of the respective public contract.

In the case of existence of some of the cases referred to in paragraphs 3 and 4 above, of if the respective person fails to sign the statements referred to in paragraph 5 above, such person shall be excluded from conducting the public procurement procedure.

In case that the requests or bids that the contracting authority has received during the bidding procedure cause or may cause any conflict of interest, the contracting authority shall take necessary actions to eliminate such conflict of interest.

### **Form of conducting public procurement procedure and communication**

#### **Article 15**

Public procurement procedure may be conducted in written or electronic form.

All communication and information exchange between the contracting authority and the bidder may be carried out by post, by electronic means or by a combination of those means, according to the choice of the contracting authority, as stated in the call for competition.

The means of communication chosen shall be generally available and thus not restrict bidders' access to information.

## **II. PERFORMANCE OF ADMINISTRATIVE DUTIES RELATED TO PUBLIC PROCUREMENT**

#### **Article 16**

An administrative body in charge of public procurement activities (hereinafter: competent administrative authority) shall provide conditions for cost-effective, efficient and transparent use of public funds and create competitive and equal conditions for all bidders.

### **Responsibilities of the competent administrative authority**

#### **Article 17**

The competent administrative authority shall have the following responsibilities, inter alia:

- 1) to participate in the preparation of laws, subsidiary legislation and other regulations concerning public procurement;
- 2) to design appropriate standard forms needed for the application of this Law;
- 3) to monitor and review the implementation of the public procurement system, from the aspect of compliance with EU legislation, and propose measures to ensure such compliance of procedures;
- 4) to give prior approval to contracting authorities for the choice of procedure in the cases envisaged by this Law;
- 5) to offer advisory and consulting services in the field of public procurement to contracting authorities, when asked so;
- 6) to participate and cooperate in organizing staff training in public procurement activities;
- 7) to publish invitations to tender and decisions on contract award on the competent administrative authority's website in the cases foreseen by this Law;
- 8) to enhance the system of keeping contracting authorities and bidders informed about public procurement regulations and publish and distribute appropriate technical literature;
- 9) to prepare sample bidding documents and contracts, for typical public contracts;
- 10) to initiate and encourage the development of electronic procurement and communication practices in the field of public procurement;



- 11) to pursue international cooperation with institutions and specialists in the field of public procurement;
- 12) to notify the Supreme Auditing Institution and file reports to other competent authorities on cases of violation of public procurement procedures that it has become aware of in the conduct of its tasks and duties;
- 13) to collect information from contracting authorities and maintain appropriate records;
- 14) to prepare, publish and update a list of covered parties under this Law on its website;
- 15) to prepare uniform bases for establishing records and official lists of bidders, on the basis of data on undertaken and executed public contracts;
- 16) to monitor the public procurement procedures and ensure that they meet the needs of general interest;
- 17) to issue public procurement bulletins;
- 18) to submit to the Government annual reports on the public procurement carried out in the Republic;
- 19) to perform other duties, in accordance with the law.

Upon a request from the competent administrative authority, each contracting authority and bidder shall make the documentation accompanying the course of the public procurement available for review by an authorized employee of such authority.

### **III. PROCEDURE FOR THE AWARD OF PUBLIC CONTRACTS**

#### **1) TYPES OF PROCEDURE**

##### **Article 18**

In awarding public supply, service or works contracts, the following procedures may be applied:

- 1) open procedure;
- 2) restricted procedure;
- 3) negotiated procedure;
- 4) entering into framework agreement;
- 5) direct solicitation of bids (shopping method) and
- 6) direct agreement.

When awarding public contracts, contracting authorities shall choose, as a rule, open or restricted procedure.

##### **Value scale**

##### **Article 19**

Subject to the value of a public contract, the contracting authority shall perform public procurement:

- in one of the methods referred to in Article 18, paragraph 1, points 1 to 4 above (call for competition), in all cases when the value of the contract exceeds EUR 10,000 in the case of supply and service contracts or EUR 30,000 in the case of works contracts (Value Grade 1);
- in the method referred to in Article 18, paragraph 1, point 5 (shopping method), in all cases when the value of the contract ranges from EUR 2,000 to 10,000 in the case of supply and service contracts or EUR 2,000 to 30,000 in the case of works contracts (Value Grade 2);
- in the method referred to in Article 18, paragraph 1, point 6 (direct agreement), in all cases when the value of the contract does not exceed EUR 2,000 (Value Grade 3).

### **Open procedure**

#### **Article 20**

Open procedure is the main method of procurement whereby call for competition must be published and in which all persons interested in winning the public contract may participate and submit a bid in accordance with the requirements and conditions specified in the call for competition and the bidding documents.

### **Restricted procedure**

#### **Article 21**

Restricted procedure may be applied only in the case when the subject-matter of public contract are:

- such commodities, services or building works that, considering the technical, staffing and financial capacity, may be supplied, provided or executed by a limited number of bidders solely,
- such commodities, services or building works that are supplied through repetitive and successive contracts where the volume and period of delivery cannot be pre-determined;
- such commodities, services or building works for which there is an established market with stable prices and which are not provided under special requirements and conditions set by the contracting authority.

In the restricted procedure, the contracting authority shall:

- 1) at the first stage:
  - publish and advertise invitation to tender,
  - establish the qualification of bidders on the basis of data evidencing their legal status, business capacity, financial capacity, technical qualifications and staffing qualifications,
  - select at least three qualified bidders;
- 2) at the second stage, send invitation for bids to all qualified bidders.

Only the qualified bidders may submit a bid.

At the second stage of restricted procedure, the contracting authority may apply the lowest offered price criterion only.

#### **Article 22**

The contracting authority shall notify the bidders whose request for qualification has been rejected of reasons for the rejection, which may be based on the qualification requirements only.

The contracting authority may exclude a bidder from the list of qualified bidders only for the reasons based on pre-determined conditions.

### ***Negotiated procedure without publication of a call for competition***

#### **Article 23**

Contracting authorities may, exceptionally, award public contracts by negotiated procedure without prior publication of a call for competition in the following cases:

- 1) for public works contracts, public supply contracts and public service contracts:
  - when no bids or no orderly and acceptable bids have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of contract and contents of bidding documents are not substantially altered;

- when, for technical or artistic reasons related to the subject-matter of a contract, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular bidder;
  - insofar as is strictly necessary, for provable reasons of extreme urgency brought about by natural disasters, accidents and damages and other events unforeseeable by the contracting authorities, the minimum time limits established by this Law cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be connected to the contracting authority;
- 2) for public supply contracts:
- when the goods involved are manufactured purely for the purpose of research, experimentation, study or development; this provision does not extend to quantity (serial) production to make profits or to recover research and development costs;
  - for additional deliveries by the supplier to whom the contract has been already awarded, which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where previous contracts are still in force; where there are no substantial changes in price or other conditions and where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
  - for goods quoted and purchased on a commodity market;
  - for the purchase of goods on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or a similar procedure;
- 3) for public service contracts, when the contract concerned follows a design contest conducted under Article 73 below and must be awarded to the successful candidate or one of the successful candidates; in the latter case, all successful candidates must be invited to participate in the negotiation;
- 4) for public works contracts and public service contracts:
- for works or services not included in the project initially considered or in the original contract but which have, through unforeseen circumstances, become necessary for the performance of the works or services described therein, when such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authorities. However, such contracts may only be concluded with the bidder to whom the main contract is awarded and the aggregate value of contracts so awarded for additional works or service may not exceed 25% of the amount of the main contract;
  - for works or services consisting in the repetition of similar works or services entrusted to the bidder to whom the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to the open or restricted procedure. As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authorities.

This procedure may be used only during 3 years following the conclusion of the original contract.

### ***Negotiated procedure with prior publication of a call for competition***

#### **Article 24**

Contracting authorities may award their public contracts by negotiated procedure, after publication of a call for competition, in the following cases:

- 1) when no bids or no orderly and acceptable bids have been submitted in response to an open or restricted procedure, provided that the initial subject-matter of contract and contents of bidding documents are not substantially altered. Call for competition does not have to be published if all bidders that have submitted bids in open or restricted procedure are included in negotiated procedure by the contracting authority;
- 2) when the nature of the works, goods, or services or the risks attaching thereto do not permit prior overall pricing;
- 3) in the case of services, inter alia services within category 6 of Annex I, and intellectual services such as services involving the design of works, insofar as the nature of the services to be provided is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selection of the best bid according to the rules governing open or restricted procedures;
- 4) in respect of public works contracts, for works which are performed solely for purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs.

In the cases referred to in paragraph 1 above, and to seek out the best bid, contracting authorities shall negotiate with bidders the bids submitted by them in order to adapt them to the requirements which they have set in the contract notice, the bidding documents and additional documents, if any.

During the negotiations, contracting authorities shall provide equal treatment of all bidders and shall not provide information that gives advantage to individual bidders.

Contracting authorities may provide for the negotiated procedure to take place in successive steps in order to reduce the number of bids to be negotiated by applying the award criteria stated in the contract notice or the bidding documents. The contract notice or the bidding documents shall indicate in that case that recourse has been had to this option.

### ***Framework Agreement***

#### **Article 25**

The contracting authority may conclude a framework agreement after completing open or restricted procedure only, in accordance with this Law.

On the basis of the framework agreement concluded in accordance with paragraph 1 above, the contracting authority shall be entitled during the whole contracted period to conclude contracts with the successful bidder with respect to each of the contracts awarded under the framework agreement.

The contracting authority may consider the award of the framework agreement only in one or more of the following circumstances:

- a) when the subject-matter of the contract are daily services or consumer goods that have not been classified as durable assets;
- b) when the subject-matter of the contract are goods or services where the price and delivery terms are frequently altered;
- c) when the subject-matter of the contract are regular repairs or maintenance works;
- d) when the contracting authority is to award several equal contracts within 1 year and the framework agreement would reduce the procurement costs.

Once a framework agreement has been concluded, its provisions may not be amended.

Contracting authorities may not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

The term of a framework agreement may not exceed 4 years, save in exceptional cases foreseen by regulations.

Where a framework agreement is concluded with a single bidder, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement.

For the award of those contracts, contracting authorities may consult the bidder party to the framework agreement in writing, requesting it to supplement its bid as necessary.

Where a framework agreement is concluded with several bidders, the latter must be at least three in number, insofar as there is a sufficient number of bidders to satisfy the selection criteria and/or of acceptable bids which meet the award criteria.

Contracts based upon such agreements, concluded with several bidders, may be awarded either:

- by application of the terms laid down in the framework agreement without reopening competition, or
- where not all the terms are laid down in the framework agreement, when the parties are again in competition on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the following procedure:
  - (a) for every contract to be awarded, contracting authorities shall consult in writing the bidder capable of performing the contract;
  - (b) contracting authorities shall fix a deadline which is sufficiently long to allow bids for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in bids;
  - (c) bids shall be submitted in writing, and their content shall remain confidential until the stipulated deadline for reply has expired;
  - (d) contracting authorities shall award each contract to the bidder who has submitted the best bid on the basis of the award criteria set out in the specifications of the framework agreement.

### ***Prior approval***

#### **Article 26**

The contracting authorities which intend to award public contract by applying:

- negotiated procedure without prior publication of the call for competition,
- negotiated procedure with prior publication of the call for competition and
- contract award by means of a framework agreement

must, before commencing the procedure, obtain prior approval from the competent administrative authority of the fulfilment of conditions for carrying out that type of the procedure.

The prior approval shall be requested by a written application specifying the legal grounds, reasons and rationale of the choice of that method of procurement, evidence of having met the conditions for the application of the chosen method of procurement, source of financial funds, contract amount and other data about the procurement.

The competent administrative authority may ask the contracting authority to supplement the request for prior approval and furnish documents within a specified time.

The competent administrative authority shall decide on the contracting authority's request within 8 days after the date of the receipt of the request, i.e., the receipt of documents and supplement to the request.

The prior approval for commencing the procurement procedure shall be valid until the end of a budgetary or financial year.

If the competent administrative authority fails to furnish approval within the time specified in paragraph 4 above, the contracting authority may proceed with the procurement procedure.

## **2) COMMENCING THE PROCEDURE**

### ***Public procurement plan and allocation of funds for public contracts***

#### **Article 27**

The contracting authority may start the procurement procedure only if:

- in the cases foreseen by this Law, a public contract has been included in the public procurement plan of the contracting authority;
- appropriate funds are allocated for that contract and are available for every payment under the contract.

Every contracting authority which intends to carry out public procurement in the following budgetary and commercial year, the amount of which exceeds EUR 100,000, shall adopt and publish, in the manner envisaged by this Law, a public procurement plan, by not later than the end of the previous year.

The funds allocated for public procurement shall mean the funds foreseen in the budget or ensured in other manner provided for by the law.

If the Republic's Budget, the budget of a local self-government unit or the financial plan of another contracting authority has not been passed, the contracting authority may commence the public contract procedure only up to the amount of funds planned in accordance with the regulation on temporary financing.

For capital investments, the contracting authority must previously prepare and adopt a feasibility study according to the methodology for the preparation, evaluation and execution of feasibility studies.

If a public contract procedure lasts for a number of years, obligations that will become due in the following years must be contracted in the amounts envisaged in regulations governing the budget execution for each individual year.

### ***Decision on initiating the procedure***

#### **Article 28**

Before starting the procurement procedure, the contracting authority shall issue a decision on initiating and carrying out the procurement procedure.

The decision referred to in paragraph 1 above shall indicate, inter alia:

- 1) details of the contracting authority (name, head office, address, identification number), reference number of the public contract,
- 2) the subject, method and time for carrying out the procurement procedure,
- 3) evidence that the public contract is included in the public procurement plan, in the cases prescribed in Article 26, paragraph 2,
- 4) estimated value of the public contract,
- 5) deadline for the completion of works in cases when the subject of the public contract is the performance of works,
- 6) source of funds allocated for the public contract and conditions and method of payment,
- 7) other conditions of procurement.

The decision shall be made by head of the body, or the competent body of the contracting authority.

***Subject of procurement and subdivision of subject of procurement***

**Article 29**

The subject of procurement shall be determined by the contracting authority and it must be described in a clear, intelligible and unambiguous manner, so that all bidders may offer suitable goods, services and works according to the type, quality and prices, as well as other required qualities and conditions.

The subject of procurement referred to in paragraph 1 above may be split in several lots, so that each lot may be contracted separately.

The bidder shall indicate in his bid whether it refers to the overall procurement or particular lots only.

In the case that the bidder submits a bid for all the lots, the bid must be split so that it can be evaluated for each lot separately.

**3) CARRYING OUT THE PUBLIC CONTRACT ACTIVITIES**

***Public procurement officer***

**Article 30**

Each covered party under this Law shall appoint its public procurement officer.

A person employed by the contracting authority and, as a rule, with university degree shall be appointed as the public procurement officer.

The public procurement officer shall have the following duties: to prepare the public procurement plan; to prepare text of the decision on initiating public contract procedure; to give bidding documents to bidders; to perform professional and administrative tasks in the conduct of the public contract procedure; to carry out and be in charge of the procedure of awarding public contracts of small value; to keep documentation; to maintain records of public contracts and prepare and submit reports on completed contracts to the head of a body, or to the competent management body.

***Commission for opening and evaluation of bids***

**Article 31**

For the preparation and conduct of public contract procedures, except for public contracts of small value, the contracting authority shall establish, simultaneously with making decision on initiating the public contract procedure, the Commission for the opening and evaluation of bids.

The Commission for the opening and evaluation of bids shall consist of at least three members. At least one member shall be a graduated lawyer. As members of the Commission for the opening and evaluation of bids may be appointed specialists with expertise in the area which is the subject of public contract, on condition that at least one member must be employed with the contracting authority.

Exceptionally from paragraph 1 above, the Commission for the opening and evaluation of bids may be appointed for the period of 1 year, subject to the needs of the contracting authority and specific nature of subject of the public contract.

The Commission for the opening and evaluation of bids shall prepare and conduct the public contract procedure by ensuring that the bidding documents be prepared in accordance with the needs of the contracting authority and provisions of the law, preparing the text of the call for competition, giving explanations of the text of the call for competition and bidding documents, carrying out the public opening of bids, evaluating the conformity of received bids with requirements specified in the call for competition and bidding documents, determining the eligibility of bidders, performing inspection, evaluation and comparison of received bids, drawing up report

on the opening and evaluation of bids and proposing the contracting authority the award of contract to the bidders whose bids have been evaluated by the largest number of points.

#### **4) DETERMINING THE PUBLIC CONTRACT VALUE**

##### **Article 32**

The contracting authority shall indicate the estimated value of a public contract in the call for competition.

The contracting authority shall observe the conditions and methods of procurement prescribed by this Law according to the determined values and may not, during a budgetary or financial year, subdivide the subject of a public contract that represents a single whole, with the intention to avoid the application of this Law and the prescribed procurement procedure.

More detailed conditions and method of determining the value of a public contract shall be specified in public procurement standard forms, issued by the competent administrative authority.

#### **5) TRANSPARENCY OF PUBLIC CONTRACTS**

##### **Publication**

##### **Article 33**

For accomplishment of the transparency principle, the contracting authorities shall make known, in the manner specified in this Law:

- the tentative contents of the public procurement plan - prior information notice,
- the invitation to tender and
- the decision on contract award.

##### **Prior information notice**

##### **Article 34**

Every contracting authority that is obliged to adopt a public procurement plan, pursuant to Article 27, paragraph 2 above, shall publish a prior information notice at the website of the competent administrative authority indicating the main details and information from the public procurement plan, the type, subject-matter, planned value, quantity and conditions of the public contracts that are included in the public procurement plan.

The prior information notice referred to in paragraph 1 above shall be published by not later than the end of the previous year for the following year.

##### **The call for competition**

##### **Article 35**

The contracting authority shall publish invitation to tender on the website of the competent administrative authority and advertise it in one daily paper issued and distributed at the overall territory of the Republic.

The contracting authority shall publish or advertise the invitation to tender referred to in paragraph 1 above:

- 1) in the case of awarding a public contract in the open procedure;
- 2) at the first phase of the restricted procedure;
- 3) in the case of awarding a public contract in the negotiated procedure with prior publication of contract notice and



- 4) in the case of awarding a public contract by means of the conclusion of a framework agreement.

The call for competition shall contain data about the contracting authority, the subject-matter of the contract, estimated value of the contract, conditions for participation, criteria, time and place for the review of bidding documents, deadline and place for the submission of bids and for the public opening of bids, date of making decision on the public contract award, as well as the name of contact person that will supply additional information.

The call for competition to tender may also contain other details necessary for informing bidders more fully about the subject-matter of the public contract.

More detailed contents, format and sample of the invitation to tender, i.e. contract notice, shall be fixed by the competent administrative authority by means of a special form.

At the phase of publication, the competent administrative authority shall check and ensure the conformity of the text of the public invitation with conditions prescribed by the public procurement regulations.

The invitation to tender that has not been published and advertised in the manner prescribed by this Law shall not produce any legal effect.

### ***Notice of contract award***

#### **Article 36**

The contracting authority shall publish on the website of the competent administrative authority:

- decision on contract award under all published calls for competition,
- decision on contract award in the negotiated procedure without prior publication of the call for competition,
- decision on public contracts of small value and
- decision on cancellation of public competition.

Contents, format and sample of the decisions referred to in paragraph 1 above shall be fixed by the competent administrative authority by means of a special form.

## **6) BIDDING DOCUMENTS**

### ***Contents of bidding documents***

#### **Article 37**

The contracting authority shall prepare the bidding documents pursuant to this Law and subsidiary legislation, so that the bidders may prepare acceptable bids on the basis of them. The bidding shall offer complete information about the conditions and requirements to be fulfilled by each bidder.

The bidding documents shall contain, inter alia, as chosen by the contracting authority:

- 1) name of the contracting authority,
- 2) evidence of the existence of formally appropriated funds for the public contract, sources of financing, estimated value of the public contract expressed in euros;
- 3) the award procedure chosen and indication of whether the conclusion of framework agreement is envisaged;
- 4) form of the statement of bidder's acceptance of the terms from the invitation and the bidding documents;
- 5) form for establishing qualification and an instruction for proving bidder's qualification;
- 6) selection of criteria establishing minimal conditions for the qualification of bidders and information for making such assessment;

- 7) description of required goods, services or works;
- 8) quantity specifications and/or technical specifications, terms of reference;
- 9) place of delivery;
- 10) revised project, prepared by authorized persons, with maximum deviation of +/-10%;
- 11) indication of possible bid submission in lots;
- 12) completion deadlines;
- 13) alternative bid option;
- 14) criteria and/or sub-criteria for the selection of the best bid;
- 15) conditions of the proposed contract;
- 16) period of bid validity;
- 17) obligation to provide bid guarantee; performance guarantee; advance payment guarantee;
- 18) instrument issued by the contracting authority about the method of regular payment of obligations due under the public contract, presented at the time of concluding the contract;
- 19) place, date and time for the receipt of bids;
- 20) place, date and time for the opening of bids;
- 21) language requirement;
- 22) draft contract to be concluded;
- 23) right of objection.

Standard forms of bidding documents shall be prepared by the competent administrative authority and they shall be published on its website.

### ***Technical specifications***

#### **Article 38**

Technical specifications are a mandatory part of the bidding documents.

Technical specifications must be non-discriminatory to all potential bidders and must ensure a fair and active competition.

The contracting authority shall define the technical specifications by references to the laws, technical regulations and standards applied in the Republic, which are in compliance with European standards, and in the absence of such technical regulations and standards, by reference to European standards or internationally recognized standards, technical regulations or technical reference systems.

### ***Use of technical specifications***

#### **Article 39**

The contracting authority shall not use or refer to the technical specifications designating goods, services or works of a specific make or source, or to a particular process, with the effect of favouring certain bidders or unfairly eliminating the others.

The contracting authority shall not refer in the technical specifications to any particular trademarks, patents, types or a specific origin or production.

When the contracting authority cannot describe in the technical specifications the subject-matter of the contract in the manner that will make the specifications sufficiently intelligible to bidders, any reference to the elements such as trademark, patent, type or producer must be accompanied by the words "or equivalent".

**Article 40**

Technical specifications must be precise and clear to allow bidders to prepare their bids and to allow the contracting authority to reject goods, services or works that do not comply with the defined fair requirements.

The contracting authority shall not have a right to reject a bid:

- on the ground that the goods, services or works bid for do not comply with the specifications to which it has referred with respect to standards indicated in the technical specification, once the bidder proves in his bid that the solutions which he proposes satisfy in a substantially equivalent manner the requirements defined by the technical specifications or
- when there are no applicable standards, technical regulations or technical reference systems in terms of performance or functional requirements, that may also include public health and safety and environmental requirements.

***Purchase of bidding documents***

**Article 41**

Since the day of publication of the invitation to tender, the contracting authority shall allow all interested bidders to review and take over the bidding documents direct or shall deliver the documentation by post, fax or e-mail within 2 days after receiving such request from a bidder.

In the case referred to in paragraph 1 above, the contracting authority shall charge the cost of copying and distributing the bidding documents only.

The contracting authority may not restrict the deadline for the submission of requests for the delivery of bidding documents.

***Amendments to bidding documents***

**Article 42**

The contracting authority may amend the bidding documents on condition that such amendments are made available to interested bidders on the same day, but not later than 5 days before the expiry of the deadline for the submission of bids. If such amendments mean any substantial alteration, the deadline for the submission of bids shall be extended for 7 days.

The decision on extending the deadline shall be published in the same manner in which the invitation to tender was published and advertised.

***Clarification of bidding documents***

**Article 43**

The contracting authority shall, on request for clarification of bidding documents, furnish explanation to all bidders who have taken over the bidding documents, without indicating details of the bidder who submitted such request.

***Guarantees***

**Article 44**

The contracting authority may require, in the invitation to tender, the bid security for the purpose of protection from trivial bids, the performance security, the advance payment security or other security aimed at the protection from breach of the contract.

The bid security shall not be for more than 2% of the bid amount, and the performance security shall not exceed 5% of the contract value.

When concluding a contract, the contracting authority shall issue suitable instrument providing regular payment of due obligations under the public contract.

The format, contents and manner of issuing the instrument referred to in paragraph 3 above shall be prescribed by the Ministry of Finance.

## **7) CONDITIONS AND ELIGIBILITY OF BIDDERS**

### ***Mandatory and optional conditions of participation in bidding procedure***

#### **Article 45**

The bidders must fulfil the following conditions in the process of competition:

- they have not been convicted in a criminal proceeding nor subjected to the prohibition of further conduct of business that is the subject-matter of the public contract;
- they possess business and professional capacity and
- they have properly fulfilled the due and payable obligations relating to taxes and contributions.

The contracting authorities may specify, in the call for competition and bidding documents, that the bidders should meet, in addition to the conditions referred to in paragraph 1 above, also the conditions relating to:

- economic and financial standing and
- technical and/or professional and staffing abilities.

The conformity conditions and types of evidence on the conformity of bidders shall be indicated in the call for competition and the bidding documents.

### ***Non-conviction in criminal and other proceedings***

#### **Article 46**

The bidders participating in the public contract procedure shall prove that they have not been the subject of a conviction by final judgement, in the period of 2 years before the submission of the bid, for the committed criminal offences of participation in criminal organization, corruption, fraud, money laundering or criminal offences related to the professional conduct of their business, and that they have not been imposed a prohibition of the conduct of business activity that is the subject-matter of a respective public contract.

### ***Business and professional capacity***

#### **Article 47**

The bidders participating in the public contract procedure shall furnish certificate of registration for the professional conduct of business activity that is the subject-matter of the public contract, or valid authorization and/or licence issued by a competent authority for the professional conduct of business activity, subject to the public contract procedure and such authorization and/or licence being envisaged by special laws or regulations.

### ***Economic and financial standing***

#### **Article 48**

The contracting authorities may specify, in the call for competition or the bidding documents, that the bidders should meet the following conditions with respect to their economic and financial standing and should prove it by furnishing one or more of the following references:

- 1) the accounting and financial statements - income statement and balance sheet, and/or certified auditor's report in the cases where it is prescribed by the Law on Accounting and Auditing, for the past 3 years, or for the period since its registration;
- 2) appropriate statements from banks, certificates of statements on financial suitability of bidders or, where needed, evidence of relevant professional risk indemnity insurance;
- 3) a statement of the overall turnover and, where needed, of turnover in the area covered by the contract for a maximum of the last 3 financial years available, or for the period since registration.

***Technical and/or professional and staffing abilities***

**Article 49**

Evidence of the technical and/or professional and staffing abilities of a bidder in the award of public supply contracts, as laid down in the call for competition and in the bidding documents, must be proportionate to the nature and subject-matter of public contract and may be furnished by one of the following means:

- a list of the principal deliveries effected in the past 2 to 3 years, with the sums, dates and recipients, along with documents in the form of certificates of deliveries made issued by the recipient or if such certificates cannot be ensured for reasons that are beyond the bidder's control, only by a declaration of deliveries made issued by the bidder;
- a description of the technical facilities and technical capacity, measures used by the bidder for ensuring quality and his study and research facilities and capacity;
- an indication of the technicians involved, whether or not belonging directly to the bidder;
- samples, descriptions and/or photographs of the goods to be supplied, the authenticity of which must be certified if the contracting authority so requests;
- certificates drawn up by official quality control agencies of recognized competence attesting the conformity of goods clearly identified by references to specifications or standards;
- a statement of any intention and subject of subcontracting.

In the procedure for the award of public service contract, the contracting authority may require the bidders to furnish one or more of the following means, as evidence of their technical and/or professional and staffing abilities:

- a list of the main services provided in the past 2 to 3 years, with the sums, dates and recipients, along with documents in the form of certificates of services provided issued by recipients or, if such certificates cannot be ensured for reasons that are beyond the bidder's control, only by a declaration of services provided issued by the bidder;
- the educational and professional qualifications of the bidder and/or those of its managerial staff and, in particular, those of the person or persons in charge of providing the specific services;
- an indication of the technicians or technical staff involved, whether or not directly belonging to the bidder;
- a statement of the average annual manpower of the bidder and the number of managerial staff for the last 3 years;
- a statement of technical facilities and capacity and measures used by the bidder for performing the specific services and for ensuring quality;
- where the services to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authorities or on their behalf by a competent official body of the country in which the bidder is registered on the technical facilities and capacity of the bidder or, if necessary, the means of study and research available to it and the quality control measures it will operate;

- a statement of any intention and subject of subcontracting.

Evidence of the technical and/or professional and staffing abilities of the bidder in the award of public works contracts may be furnished by one of the following means:

- a list of the works carried out over the past 2 to 5 years, accompanied by certificates of satisfactory execution for the most important works. These certificates shall indicate the value, date and site of the works and shall specify whether they were carried out according to the rules of the trade and properly completed. Where appropriate, the competent authority shall submit these certificates to the contracting authority direct;
- the educational and professional qualifications of the bidder and/or those of its managerial staff and, in particular, those of the person or persons in charge of managing the specific work;
- an indication of the technicians involved, particularly that/those in charge of quality control, whether or not directly belonging to the bidder;
- a statement of the average annual manpower of the bidder and the number of managerial staff for the last 3 years;
- a statement of technical facilities available to the bidder for performing the specific works;
- a statement of any intention and subject of subcontracting.

### ***Contracting authority's powers in the assessment of bidders' eligibility***

#### **Article 50**

The contracting authority shall exclude from further public contract procedure any bidder, for which it has established:

- 1) that the bidder has been the subject of a conviction by final judgement, in the period of 2 years before the submission of the bid, for the committed criminal offence of participation in criminal organization, corruption, fraud, money laundering or that related to the professional conduct of its activity, and that the bidder has not been imposed a prohibition of the conduct of business activity that is the subject-matter of a respective public contract;
- 2) that the bidder has not been registered or currently licensed or authorized by a relevant authority for the professional conduct of its activity;
- 3) that the bidder is the subject of liquidation proceedings or has suspended business activities;
- 4) that the bidder has not fulfilled properly obligations relating to the payment of social security contributions and due taxes, in accordance with the legal provisions;
- 5) that the bidder is guilty of serious misrepresentation in supplying the information required in the public contract procedure or has not supplied such information.

The contracting authority may exclude from further public contract procedure any bidder, for which it has established:

- 1) that the bidder has entered into bankruptcy proceedings,
- 2) that the bidder does not fulfil the conditions foreseen in the invitation to tender and in the bidding documents, with respect to professional and/or technical and staffing abilities;
- 3) that the bidder has not regularly met contractual obligations to contracting authorities in previous public contracts.

### ***Evidence on eligibility***

#### **Article 51**

Bidders are obliged to prove their eligibility for participation in public competitions.

Contracting authority may not set eligibility conditions and evidence other than those stated in this law, nor other requirements that bring bidders into an unequal position.

Evidence, produced not more than 6 months as of the day of issued invitation, shall be submitted in original, in copy duly certified or in electronic format.

Evidence of having met the requirements referred to in Article 45 above is:

- excerpt from the court, professional or commercial register in the country of the seat or valid permit and/or license of the bidder issued by a competent body for the professional conduct of business activity;
- proof that the legal person is not insolvent or in insolvency procedure - certificate of the court or competent body in the country of the seat;
- proof that the payments towards the bidder are not suspended - corresponding bank statements, certificate or statement on financial suitability of the bank the legal person is the account holder with;
- proof that the legal person has not been lawfully convicted for a criminal offence from Article 46 above and that protection measure has not been pronounced banning certain commercial activity - excerpt from the penal record or corresponding certificate of a competent body;
- report on accounting and financial condition - balance sheet and income statement, or report of an authorized auditor for the last 3 years, in cases prescribed by the Law on Accounting and Audit, or for the period from the registration provided the business company has been registered inside that period,
- proof issued by the tax administration and the institution of pension and health insurance on the taxes and contributions being paid,
- bidder's statement on its technical ability: equipment, devices, resources, personnel, capacities, manner of quality assurance and participation of sub-producers and/or sub-contractors,
- appropriate samples and photographs of performed works and technical capacities.

Should contracting authority request evidence on fulfilling quality requirements and/or certificates and/or licenses, it is obliged to accept equally valid certificates of other authorized bodies of European Union member states or other states. Contracting authority is obliged to accept the proof on fulfilling quality requirements and/or certificates and /or licenses in another form in case the bidder offers the evidence on its lack of possibility or entitlement to requesting respective certificates.

In case the bidder's seat is located in another country, evidence showing documentation needs to be certified by a competent body of that country (administrative or judicial body, or chamber of commerce), or by that country's embassy in the Republic.

In case the country of the bidder's seat does not issue proofs from paragraph 4 above, such proofs may be substituted by the bidder's statement under penal and material responsibility, or should that country not have legal provisions related to the statements under penal and material responsibility, by the bidder's statement given before a competent judicial or administrative body or public notary.

Bidder is obliged, without delay, and at the latest within 5 days as of the day of change of any data from paragraph 4 above, to advise contracting authority in writing on the change as well as to properly document the same.

In case the bidder fails to submit any of the eligibility evidence envisaged in the call for competition and the bidding documents, its bid will be rejected as incomplete.

**8) BID**

***Bid***

**Article 52**

When making the bid, bidder is obliged to adhere to the conditions given in the call for competition and bidding documents.

During the time envisaged for submitting bids, bidder may change and amend the bid or desist from the same in the form of a written statement. Amendments to or desistance from the bid shall be submitted by the bidders in the same way as the bid. In case of the desistance from the bid, contracting authority shall return unopened bid to the bidder.

***Timely bid***

**Article 53**

Timely bid shall be considered the one reaching contracting authority at the latest by the date and hour stated in the call for competition and bidding documents for receipt of bids.

The bid shall be delivered in person, by mail or in electronic form. The bid in electronic form must be protected by electronic signature and the signature must be authenticated by a qualified acknowledgement.

Following the receipt of certain bid, contracting authority shall indicate the date and hour of its receipt and, upon bidder's request, issue the certificate on receipt.

In case the bid is submitted untimely, contracting authority shall return it to the bidder as unopened following the completion of the procedure for opening bids, with the indication of its being untimely submitted.

***Submission of joint bid***

**Article 54**

Bid may be submitted by a group of bidders whose liability is joint and several.

Relative to the case from paragraph 1 above, contracting authority may not request formal legal form of association from joint bidders in order for them to be able to submit joint bid.

Relative to the case from paragraph 1 above, bidders shall submit a legal act by means of which they are obliged to jointly execute the procurement in case they obtain a contract, under the condition that such form of organization is necessary for successful execution of procurement.

The legal act referred to in paragraph 3 above shall define precisely the responsibility of each individual bidder for the execution of the contract.

Bidders shall state in their bids names and appropriate professional qualifications of persons in charge of contract execution.

**Participation of sub-providers of work and/or subcontractors**

**Article 55**

In the text of the call for competition and in bidding documents, contracting authority may foresee possible participation of subcontractors and/or sub-providers of work.

Bidder shall make sure that its subcontractors and/or sub-providers of work, also meet the requirements from Article 45 above, as well as the contract between bidder and subcontractors and/or sub-providers of work for a part of the works or services that subcontractor and/or sub-provider of works will execute, in case the value of sub-contract surpasses 10% of the contract value.



Bidder is fully liable to contracting authority for the execution of the contractual procurement, regardless of the number of subcontractors and/or sub-providers of work.

***Bid validity period***

**Article 56**

Bid validity period shall be determined by contracting authority in bidding documents. Bid validity period may not be shorter than the one stated in bidding documents, and in no way may it be shorter than 60 days as of the day of opening the bids.

Throughout bid validity period, contracting authority may request from bidder in writing to extend the validity period up to the specified time. In case bidder should reject the request for the extension of bid validity period, or does not extend bid validity period, or does not extend bid security, it will be considered that bidder has rejected contracting authority's request and changed his/her mind about the bid.

The bidder, who accepts the extension of bid validity period and informs in writing contracting authority, may not alter the bid and shall extend the bid security.

***Bidder price***

**Article 57**

Bidder shall submit bid with price, without taxes, in euros. Bidded price shall be written in figures and letters.

Bidded price shall be expressed for the whole subject matter of procurement or, when it is envisaged in bidding documentation, for each individual lot.

Bidded price shall include all expenses and discounts to the total bidded price, without tax which is expressed separately after the price, unless otherwise stated in the bidding documents.

***Price modification***

**Article 58**

Prices for public contracts with up to 12 months' contract execution period may not be increased, except in cases of market disturbances which could not have been foreseen, the consequence of which is price increase for at least 20%.

Price increase is possible for long-term public contracts with the execution period longer than 12 months.

Manner and conditions of price alteration must be determined in bidding documents.

***Abnormally low price***

**Article 59**

If the most favourable bid price is at least 30% lower than the average offered price of all acceptable bids, contracting authority may request thorough explanation of all its integral parts that are considered decisive, and especially assertions related to the economics of the construction method, the manufacturing process or chosen technical solutions, with regards to exceptionally favourable conditions available to the bidder for the execution of the contract or relative to the originality of goods or works proposed by bidder.

In the case from paragraph 1 above, contracting authority shall determine appropriate period for providing an answer, which period may not exceed 20 days as of the day of submitting the request.

Following the receipt of explanation, contracting authority shall examine decisive integral elements of the bid from paragraph 1 above and reject the bid in case it evaluates such elements as unjustified.

***Abnormally short period***

**Article 60**

If the period for the execution of works or the provision of services from the best bid is considerably shorter than the period stated in the call for competition, or period stated in other bids, contracting authority may request thorough explanation of all its integral parts that it considers decisive.

In the case from paragraph 1 above, contracting authority shall determine appropriate period for providing an answer, which period may not exceed 20 days as of the day of submitting the request.

Following the receipt of the explanation, contracting authority shall examine decisive bid elements from paragraph 1 above and reject the bid in case it evaluates that they are not justified.

***Bid withdrawal and modification***

**Article 61**

Following the expiry of deadline for the submission of bids, bidder may not withdraw nor alter his bid, and in case he still does that or if he does not sign the contract once his bid is selected, contracting authority may activate the security instrument given with the bid.

**9) DEADLINES IN THE PROCEDURE OF AWARDING PUBLIC  
PROCUREMENT CONTRACTS**

***Deadline for the submission of bids***

**Article 62**

Contracting authority is obliged to determine, in the call for competition and the bidding documents, the deadline for the submission of bids, the manner of submitting bids, place and time of public opening of bids.

Contracting authority must set deadlines which leave potential bidders enough time for the preparation and submission of bids.

Deadlines for the submission of bids shall be calculated as of the day of the call for competition on the competent administrative authority's official website, or as of the delivery of the call for competition at the second stage of restricted procedure and in negotiated procedure without prior publication of the call for competition.

Bids, arrived after the expiry of the deadline for the receipt of bids, are to be rejected as untimely.

In case bid preparation requires the inspection of voluminous bidding documents or detailed technical specifications, visit of location and so on, contracting authority shall envisage the possibility of extension of deadlines.

***Deadline for the submission of bids in open procedure***

**Article 63**

Deadline for submitting bids in open procedure may not be shorter than 26 days as of the day of the announcement on the competent administrative authority's website.

Deadline for submitting bids in open procedure may be shortened, for reasons of urgency, and it may not be shorter than 15 days as of the day of the public announcement on the competent administrative authority's website.

**Deadlines for submitting bids in restricted procedure and negotiated procedure**

**Article 64**

Deadline for submitting bids for the participation in the first stage of restricted procedure and in negotiated procedure may not be shorter than 20 days as of the day of public announcement on the competent administrative authority's website.

Deadline for submitting bids referred to in paragraph 1 above may be shortened, for reasons of urgency, but it may not be shorter than 15 days as of the day of public announcement on the competent administrative authority's website.

Deadline for submitting bids for the participation in the second stage of restricted procedure may not be shorter than 26 days as of the day of sending invitation for bids to qualified bidders.

**10) CRITERIA FOR SELECTION**

***Setting criteria***

**Article 65**

In the call for competition announcement and in bidding documents, contracting authority shall establish criteria, and sub-criteria if needed, for the selection of the best bid.

Criteria referred to in paragraph 1 above shall be clearly expressed in words and the maximum number of points that can be awarded on the basis of each individual criterion and sub-criterion.

Criteria and sub-criteria must not be discriminatory and they should be logically linked to the content of the public procurement.

When evaluating bids, contracting authority shall apply only those criteria and sub-criteria contained within the call for competition and bidding documents, in such a way as they are described and valued.

***Types of criteria***

**Article 66**

Criteria for evaluating bids are:

- 1) most economically advantageous bid or
- 2) the lowest price offered.

Most economically advantageous bid is the bid based upon various sub-criteria, depending on the subject of public contract, especially the following:

- 1) quality;
- 2) offered price;
- 3) aesthetic and functional characteristics;
- 4) delivery period, or date of completion of services or works;
- 5) running costs;
- 6) cost-effectiveness;
- 7) technical merits;
- 8) programme and degree of environment protection;
- 9) after-sales service and technical assistance;
- 10) warranty period, type and quality of warranties and warranted values;
- 11) obligations related to spare parts;

12) post-warranty maintenance and so on.

In the call for competition and the bidding documents, contracting authority shall establish the number of points according to each individual sub-criterion on the basis of which the selection of the most successful bidder will be carried out, in such a way that the total number of points adds to 100.

Contracting authority shall carry out the selection amongst the submitted bids by applying sub-criteria of most economically advantageous bid by ranking them on the basis of these sub-criteria and the number of points determined for those sub-criteria.

The selection of the best bid by applying the criterion of the lowest price is based upon the lowest price as the sole criterion, provided all the conditions stated in bidding documents have been met.

## **11) PUBLIC OPENING OF BIDS**

### ***Public opening of bids***

#### **Article 67**

Bids shall be opened at the public opening of bids, immediately after the expiry of the ultimate deadline for the submission of bids, and at the latest 1 hour after the expiry of such deadline.

Bids shall be opened at the open meeting of the Commission for the opening and evaluation of bids, which is held at the place and time stated in the text of the call for competition and in bidding documents.

The opening may be attended by all submitting entities.

The Commission for the opening and evaluation of bids previously establishes the number of submitted bids according to the order of reception, examines the authorizations of bidders' representatives, and determines amendments of bids and their timeliness and completeness. The bidder who withdraws his bid is not entitled to attend the procedure of public opening of bids.

In the procedure of public opening of bids for services, in case the bidding documents requires bid in separate envelopes, the Commission for the opening and evaluation of bids shall first of all open the envelope with evidence on qualification of bidder, and then the technical and financial proposal.

The Commission for the opening and evaluation of bids shall keep minutes of the bid opening procedure, indicating the following data:

- 1) number which bid has been recorded under;
- 2) subject-matter of procurement;
- 3) bidder's name and address;
- 4) overview of submitted evidence related to the qualification of bidders;
- 5) offered price for the subject-matter of procurement, as well as for the individual lots;
- 6) objections, proposals and suggestions of bidders' authorised representatives.

More detailed contents, form and format of the minutes referred to in paragraph 6 above shall be determined by the competent administrative authority by issuing a special form.

The minutes must be signed by members of the Commission for the opening and evaluation of bids and the present authorized representatives of bidders.

If any of the bidder's authorized representatives refuse to sign the minutes, the Commission for the opening and evaluation of bids shall jointly state the reasons of the refusal in the minutes.

Contracting authority shall ensure, during the procedure, the keeping of bidder's business secret.

Contracting authority shall send to bidders the minutes of opening bids within 3 days as of the day of termination of the procedure for opening bids.

***Valid bid***

**Article 68**

Valid bid is the one which fulfils all conditions required by the text of the call for competition and bidding documentation, as well as the one which contains slight deviation or shortcomings which are not of decisive influence on the bid.

Slight deviations and shortcomings, in the meaning of paragraph 1 above, are considered the following:

- differences in the use of ciphers,
- differences in standards,
- failure to include minor items,
- established arithmetical errors,
- sub-contracts which are unclear or controversial,
- different construction methods,
- difference in the final date of delivery,
- difference in the delivery schedule,
- completion time, when it is not of crucial importance,
- discord with some local technical regulations that have not been envisaged as conditions in the call for competition,
- any other condition of minor influence on bid.

In case slight deviations are found out, bidder will be requested to submit a written explanation. In case bidder does not submit written explanation or does not accept the correction of the slight deviation, in case of the existence of calculation errors up to the amount of 3% of the value of the bid, such a bid shall be rejected. The bidder shall be informed in writing about the rejection of the bid without delay.

***Invalid bid***

**Article 69**

A bid is invalid:

- when it is an untimely one;
- when it is not in harmony with the conditions required in the text of the call to competition and in bidding documentation;
- when it is incomplete or contains deviations or inadmissible parts which are not in harmony with the text of the call to competition and with bidding documentation;
- when it does not contain bid security defined in the text of the call for competition;
- when it does not contain evidence on eligibility or conditions for qualification envisaged by the law and the text of the call for competition;
- when a bidder has not taken over properly or paid for bidding documents in accordance with the conditions from bidding documents;
- when bidders have not submitted the evidence on joint participation and appointed joint bid bearer;
- when, at the second stage of the restricted public procurement procedure, negotiated procedure without publishing the call for competition and framework agreement, bidder is not invited to submit a bid ;
- when it does not clearly state total price in its absolute amount;

- when bidder refuses to give requested explanation;
- when it contains arithmetical error with the value greater than 3%;
- when a bidder does not accept the correction of the arithmetical error in the bid in the manner established in the Law;
- when a bidder has submitted two or more bids in which he/she is bidder or participant in a joint bid;
- when a bidder has not given a satisfactory answer to the request of contracting authority with regards to the low bid price or abnormally short period.

Bids which contain the shortcomings referred to in paragraph 1 above shall be rejected by stating reasons for their rejection.

## **12) BID EVALUATION**

### ***Inspection, evaluation and comparison of bids***

#### **Article 70**

Inspection, evaluation and comparison of bids shall be carried out by the Commission for the opening and evaluation of bids at a closed session.

The methodology for expressing criteria through appropriate number of points, as well as the manner and procedure of evaluating and comparing bids shall be prescribed by the Ministry of Finance.

Bid evaluation is carried out in such a way that the content of the bid is examined, in accordance with the documentation and conditions for competition.

The Commission for the opening and evaluation of bids can be assisted in the stated procedure by special professional services and/or experts for certain areas that are the subject matter of public procurement and who are commissioned by contracting authority, upon the suggestion of the Commission for the opening and evaluation of bids.

The procedure of inspection, evaluation and comparison of bids, until the notice of selection of the most favourable bid is confidential.

Bids, minutes and data relative to the inspection, explanation, evaluation, comparison and selection must be made available to bidders from the moment of notice on the selection of the most favourable bid to the expiry of period for making a complaint.

The Commission for the opening and evaluation of bids is obliged to keep the minute on the inspection, evaluation and comparison of bids which contains:

- competition number,
- procurement subject matter,
- name and address of bidders who submitted their bids according to the order from the minute on public opening of bids,
- analytical survey of requested and submitted evidence relative to bidders' ability and evaluation of ability and acceptability of bid,
- bid price for subject matter of the contract, i.e. for lots,
- criteria and number of points awarded to each bidder for each established criterion and sub-criterion with the explanation for awarded number of points,
- comparative survey of the evaluation and analysis of bids
- opinion of a professional service or expert, in case the Commission for the opening and evaluation of bids used their services,
- explanation on the selection of the most favourable bid,

- explanation if all bids are rejected,
- explanation of the decision on annulment of public competition,
- list of supplements to the minutes and stated supplements,
- date of the minutes and signatures of all Commission members.

On the basis of these minutes evidencing the inspection, evaluation and comparison of bids, the Commission for the opening and evaluation of bids shall compile a special report on public procurement procedure which shall be submitted to a person in charge of making a decision on the selection of the most favourable bid.

More detailed contents, form and format of the minutes referred to in paragraph 7 above and the report referred to in paragraph 8 above shall be determined by the competent administrative authority by issuing a special form.

### ***Bid explanation***

#### **Article 71**

The Commission for the opening and evaluation of bids may request during the procedure of inspection, evaluation and comparison of bids, and bidders are obliged to give, necessary interpretations for the purpose of explaining bids or eliminating doubts related to the validity of the same.

### ***Public competition annulment cases***

#### **Article 72**

Contracting authority annuls a public procurement procedure in case:

- 1) when no acceptable bid has been submitted,
- 2) when, before the expiry of the deadline for submitting bids, it is deemed necessary to change substantially competition documentation,
- 3) when the need ceases for public procurement subject matter and when public procurement is not going to be repeated during the budget year,
- 4) when the amount of all offered prices exceeds the one of planned and allocated resources for subject public procurement.

Contracting authority is obliged, in cases of annulment referred to in items 2 and 3 of paragraph 1 above, to reimburse expenses bidders incurred by bid submission.

Contracting authority is obliged to give a written rationale behind its decision to annul public competition, by especially stating the reasons for cancellation, and to submit it to bidders.

## **13) DECISION MAKING IN PUBLIC PROCUREMENT PROCEDURE**

### ***Decision on the selection of the most favourable bid***

#### **Article 73**

Public procurement procedure ends in passing the decision on the selection of the most favourable bid, provided contracting authority does not previously annul the public procurement procedure, in cases envisaged by this law.

The decision referred to in paragraph 1 above is passed by the head of the body, or a competent body of the contracting authority.

The decision on the selection of the most favourable bid is passed within the deadline determined in the invitation for bid submission, on the basis of the report referred to in Article 70 above.

The decision on the selection of the most favourable bid must have a rationale and in particular contain data referred to in Article 70 above.

Contracting authority is obliged to submit the decision from paragraph 1 above to all bidders within 5 days as of the day of making the decision.

In case the decision from paragraph 1 above is not passed within the stated deadline, contracting authority is in charge of damages incurred by the bidders.

### ***Public contract***

#### **Article 74**

Contracting authority concludes a public contract with the bidder whose bid has been selected as the best one.

Public procurement contract must be in accordance with the accepted bid and it must contain a guarantee for the regular payment for the execution of all due obligations.

The contract referred to in paragraph 1 above shall not be concluded before the expiry of the deadline for receiving objections.

In case draft contract does not make part of competition documentation, contracting authority shall send draft contract to the bidder within 8 days as of the day of final decision on the selection of the most successful bidder.

Bidder is obliged to sign the draft contract within 8 days as of the day of receipt of the contract, and to return it to contracting authority, together with the required performance security.

In case bidder does not sign draft contract after the repeated request by contracting authority or does not submit the performance security as it has been requested in the bidding documentation, contracting authority may conclude contract with the next most successful bidder provided the price difference is not bigger than 10% in relation to the originally selected bid, or annul the competition and repeat procurement procedure.

Bidder who has been awarded a contract shall not conclude a sub-contract on any essential part of the contract without prior written approval of contracting authority. Contract elements that are sub-contracted and the identity of sub-contractors must be promptly communicated to contracting authority prior to the conclusion of a sub-contract. Contracting authority shall advise bidder on its decision within 15 days following the received notification, stating the reasons in case of refusal. Bidder who is awarded a contract shall bear full responsibility for contract realization.

## **IV. SPECIAL CASES OF AWARDING CONTRACTS**

### ***Award of public service contracts by means of design contest***

#### **Article 75**

Public procurement subject matter, according to this law, comprises competitions for projects, plans or designs which are integral part of the procedure for awarding contracts on public procurement of services, as well as individual competitions for projects, plans or designs, with the awarding of prize and payment to the participants in cases stated in Annex I, except for the services of voice telephony, radio-telephony, paging and satellite services referred to in item 5 of Annex I.

Contracting authority shall award the contract on public procurement of services by means of competition in the areas of urban, construction and architectural planning, design and information technology.

Project, plan or design is selected by an independent jury.

Members of the jury referred to in paragraph 3 above may be only individuals who are not connected to the participants of the competition.



If contracting authority requires special professional qualifications or experience from the participants of the competition, at least one third of the members of the jury must have at least equal qualifications, or experience.

The jury is independent in deciding.

Plans and designs submitted by the candidates are examined anonymously and exclusively on the basis of criteria from the call for competition.

### ***Consulting services***

#### **Article 76**

Contracting authority may, according to previously obtained approval from the competent administrative authority, submit the invitation for the submission of consulting services bids directly to bidders, if:

- 1) the consulting service, which is the subject matter of the public procurement, can be obtained only from a limited number of bidders, in which case the invitation for the submission of bids is submitted to such bidders only;
- 2) time and expenses necessary for evaluation of a great number of proposals would not be proportionate to the value of services which are the subject matter of the public procurement, under the condition that the invitation for the submission of bids has been submitted to a sufficient number of bidders in order to ensure fair competition.

Invitation for submitting consulting services bids, apart from the elements referred to in Article 33 above, contains criteria and points for each criterion, which will be applied during the evaluation of bids with the total number of points per criteria of 100.

Contracting authority is obliged to base the criteria referred to in paragraph 2 above on:

- 1) qualifications, experience, reputation, reliability and professional and managerial abilities of bidders and personnel that will be included in rendering services;
- 2) degree to which the bid satisfies the needs of contracting authority;
- 3) bid price, including possible secondary and related expenses;
- 4) effects of the transfer of technology, knowledge and development of managerial and professional skills;
- 5) other circumstances, depending from the nature of consulting services.

## **V. PUBLIC CONTRACTS OF SMALL VALUE**

### **Direct solicitation of bids (shopping method)**

#### **Article 77**

Public procurement procedure by direct solicitation of bids (shopping method) shall be carried out by collecting at least three bids.

Within 3 days after the expiry of the deadline for the submission of bids, the public procurement officer shall review the received bids and draw up minutes of the opening and selection of the most successful bidder.

The decision on the selection of the most successful bidder using the shopping method shall be published on the website of the competent administrative authority.

Bidders may submit only one bid each and it may not be changed.

A public contract under the shopping method shall be awarded to the bidder who offers the lowest price under equal conditions.

Contracting authority is obliged to observe the conditions and manner of procurement determined in this law according to the established values and it may not divide the subject matter of the procurement during the budgetary or financial year with the intention to avoid the application of this law and prescribed procurement procedure.

Public procurement officer is in charge of the legality of public contract procedure carried out under the shopping method; he is obliged to keep record of public contracts awarded under the shopping method and to submit the decision on the selection of the most favourable bid to the competent administrative authority, for the purpose of its publication on the website.

Bargaining between contracting authority and bidders with regards to the elements of the bid is not allowed.

Procedure related to public contracts awarded under the shopping method may be carried out twice a year at the most, individually for each subject matter of the public supply, service or works contracts.

### ***Direct agreement***

#### **Article 78**

Public contracts the value of which is up to € 2,000 may be carried out by direct agreement.

Contracting authority is obliged to ensure that the total annual value of such contracts does not exceed 10% of its total annual procurement budget.

Public procurement officer is obliged to keep record of public contracts that are carried out by means of direct agreement and to state the number, value and name of suppliers in the annual report submitted to the competent administrative authority.

## ***VI. PUBLIC PROCUREMENT IN ELECTRONIC FORM***

### **Article 79**

Public procurement in electronic form may be carried out through open and restricted procedure, in accordance with this Law, the Law on Electronic Signature and the Law on Electronic Trade.

### **Article 80**

To carry out the electronic system of public procurement, the following must be provided:

- 1) communication, exchange and storage of information, in such a manner as to ensure data integrity and bid confidentiality;
- 2) that the contracting authorities review the contents of bids only upon expiration of the deadline for their submission;
- 3) that information related to specific requirement regarding the electronic submission of bids be made available to all bidders and candidates.

More detailed content and manner of carrying out public contract procedure in electronic form shall be prescribed by a relevant administrative authority in charge of information system development.

### **Article 81**

Electronic devices used for communication through the electronic system of public procurement, and their technical characteristics, must be non-discriminatory, equally accessible to bidders and based on information and communication technologies that are in general use and do not restrict accessibility of public contract procedures to bidders and candidates.

**Article 82**

The contracting authority shall indicate in its decision on conducting the procedure and in the text of the invitation to tender that the procedure will be carried out in electronic form.

When a public contract procedure is carried out in electronic form, the review of bidding documents, modifications of and additions to bidding documents, evidence on eligibility, bidders' clarification, and other communication and information shared between the contracting authority and bidders, or candidates, shall be performed through the electronic system of public procurement.

If the documents and other writings referred to in paragraph 2 above do not exist or may not be provided in electronic form, bidders and candidates may submit them in written form, within the deadlines prescribed in this Law.

**Article 83**

The contracting authority shall notify the competent administrative authority of every public contract procedure in electronic form within 15 days before the submission of the invitation to tender for publication.

**VII. PUBLIC PROCUREMENT RECORDS**

***Record keeping***

**Article 84**

Contracting authorities are obliged to collect and record certain data on awarded public procurement contracts in accordance with this law, at which they are obliged to record data separately for the awarding of public supply contracts, then on public service contracts, and finally on public works contracts, as well as on public contracts in water, energy, transport and postal services sectors.

The competent administrative authority prescribes forms for recording public procurement data.

Contracting authority is obliged to submit the report on public contracts concluded in the previous year by 28 February of the current year at the latest.

The competent administrative authority may request a report from any contacting authority on each individual contract awarded in public procurement procedure, with additional information, provided it is necessary for keeping record of data from the area of public procurement, or because of the protection of public interest.

The competent administrative authority is obliged to prepare a summary report and to submit it to the Government by 31 May of the current year at the latest.

**Storing of documentation**

**Article 85**

Contracting authority is obliged to store the documentation on procurement procedure in the manner and according to the procedures prescribed by special regulations.

**VIII. CONTROL OVER LAW APPLICATION AND PROTECTION OF BIDDERS' RIGHTS AND PUBLIC INTEREST**

***Provision of legal protection***

**Article 86**

Protection of bidders' rights and public interest at all stages of a public procurement procedure shall be provided in the manner and under the conditions laid down in this Law.

Parties to litigation and competent authorities shall rapidly and efficiently resolve disputes arising from public procurement procedures.

When considering and deciding on requests for the protection of rights, the competent authorities shall apply provisions of the Law on General Administrative Procedure, unless otherwise prescribed by this Law with respect to individual issues.

### ***Objection to contracting authority***

#### **Article 87**

Any bidder and any person the rights and legal interests of which the public procurement procedure refers to (interested person) shall have the right to objection in case of irregularities during the whole public procurement procedure.

The objection referred to in paragraph 1 above, when relating to the protection of public interest, may also be submitted by a competent state prosecutor, relevant administrative authority, the Supreme Auditing Institution and other competent bodies.

Objection shall be submitted to contracting authority, in writing, in three copies, directly or by registered mail with return receipt.

Objection shall indicate irregularities in a public procurement procedure, facts and evidence for committed infringements and a proposal for removal of the infringements.

### ***Deadlines for objection submission***

#### **Article 88**

Objection shall be submitted within 8 days from the day of adoption of the decision or committed action infringing rights or undertaking of other measures or actions infringing rights under the procedure.

Contracting authority shall inform all the participants in a public procurement procedure on submitted objection within 3 days upon the receipt of the objection.

### ***Objection legal consequences***

#### **Article 89**

Objection, submitted within the specified deadline, shall deter any further activities of contracting authority in the public contract award procedure until the objection has been resolved.

### ***Decision of contracting authority in respect of objection***

#### **Article 90**

Contracting authority shall by means of a conclusion reject an objection that is unlawful, untimely and presented by an unauthorised person.

Contracting authority shall consider objection submitted in good time and adopt a decision thereon, within 8 days from the day of receipt of the objection.

By means of the decision referred to in paragraph 1 above:

- 1) the objection may be adopted in whole or in part and the decision on selection of the most favourable bid may be altered,
- 2) the objection may be adopted as grounded and the public contract award procedure may be annulled, in whole or in part, or
- 3) the objection may be rejected as groundless.

Reasoned decision referred to in paragraph 2 above shall be submitted to submitter of the objection no later than 3 days from the day of adoption of the decision.

If objection submitter is not provided with the decision within the deadline referred to in paragraph 4 above, the submitter may continue the procedure for protection of its right as if its objection was rejected.

## **Complaint to the Commission for Supervision of Public Procurement Procedure**

### **Article 91**

A complaint may be lodged against the decision that the contracting authority made in respect of a submitted objection, or in case that the contracting authority fails to make a decision within the specified period, in the meaning of Article 90, paragraph 4 above, to the Commission for Supervision of Public Procurement Procedure (hereinafter referred to as: the State Commission) within 8 days from the day of receipt of the decision made in respect of submitted objection.

### **Article 92**

The State Commission shall be autonomous and independent.

The State Commission shall have a president and two members.

President and members of the State Commission shall be appointed by the Government as follows: president at the proposal of the Ministry of Justice, one member at the proposal of the Ministry of Finance and one member at the proposal of the Community of Municipalities.

For the president of the State Commission appointment eligible may be a law school graduate with bar examination passed and with no less than 15 years of relevant work experience.

For a member of the State Commission appointment eligible may be a person with tertiary education and no less than 10 years of relevant work experience.

President of the State Commission shall represent the State Commission and shall manage its work.

President and members of the State Commission shall be appointed for the period of 4 years.

President and members of the State Commission may not be the following: parliament members; councillors; heads of state authorities, and organizations and institutions which are beneficiaries of the Budget of the Republic; heads of organizations for obligatory social security; chief administrators or heads of local government authorities; directors of public companies or other legal persons covered under this Law.

The State Commission shall have a secretary, appointed by the Government at the proposal of the president of the State Commission.

For the secretary of the State Commission appointment eligible may be a law school graduate with no less than 5 years of work experience in public procurement area.

## ***Competences and authorisations of the State Commission***

### **Article 93**

The State Commission shall:

- 1) review complaints of bidders against public procurement procedures, and make decisions in respect of them;
- 2) examine the regularity of application of this Law and propose and undertake remedy measures for identified irregularities, providing for competitive behaviour of bidders and transparency of public procurement procedure;

- 3) determine general positions for the purpose of uniform application of the law,
- 4) perform other operations in accordance with this Law.

***Manner of work of the State Commission***

**Article 94**

Manner of work of the State Commission shall be in more details regulated in rules of procedure.

Members of the State Commission must keep information related to state, military, official or business secret and undertake actions with documents they have access to in their work, in accordance with the level of their confidentiality.

**Article 95**

Funds for the State Commission operations shall be provided in the Budget of the Republic.

President and members of the State Commission shall receive remuneration for their work.

***Term of office termination and release from duty***

**Article 96**

Term of office of the president and members of the State Commission may be terminated, i.e. they may be released from duty only:

- 1) if convicted of a criminal act to effective prison term for the period of no less than 6 months or if convicted of a criminal act making them unworthy for performance of the function;
- 2) in case of death or permanent loss of health capability for performance of the duty;
- 3) if they get appointed for and if they commence performing a function incompatible with the duty in the State Commission;
- 4) if they resign or demand to be released from duty;
- 5) if without justifiable reason they do not perform their duties in the State Commission for the period longer than 3 months.

President and member of the State Commission shall be given an opportunity to explain the reasons for the release.

***Complaint contents***

**Article 97**

Complaint is required to contain the following:

- 1) decision of the contracting authority challenged by the complaint;
- 2) description of irregularities made by contracting authority in public procurement procedure;
- 3) reasons for challenging the decision, and
- 4) basic data on the complaint submitter.

The State Commission may, when assesses that the submitter of a complaint has not provided these elements in the complaint, demand the supplement to the complaint in the meaning of paragraph 1 above.

Deadline for the provision of the supplement of the complaint may not exceed 3 days.

If the submitter of the complaint does not provide the supplement to the complaint within the specified period, the State Commission shall continue the procedure and make a decision in accordance with available data and circumstances.

***Suspensive effect of complaint***

**Article 98**

Timely and properly presented complaint shall postpone the conclusion of the public contract.

***The State Commission Conduct of Actions***

**Article 99**

The State Commission shall make a decision within the limits of the request submitted in the complaint.

The State Commission shall also make decisions with regard to infringements of public procurement procedure prescribed by law, which could significantly influence public contract award.

At request of the State Commission, contracting authority shall be obliged, within 3 days from the receipt of the request, to provide any files and documentation required for resolution of the complaint.

***Deadlines for decision making***

**Article 100**

For the purpose of protecting rights of the contracting authority and bidder, the proceeding before the State Commission must be efficient and completed within the shortest time possible.

The State Commission must adopt a decision in respect of submitted complaint within 15 days from the day of receipt of the files and complete documentation.

The deadline referred to in paragraph 2 above, in specifically justified cases may be extended for no more than 10 days, and the submitter of the complaint and contracting authority shall be informed thereof.

The State Commission shall provide the decision, referred to in paragraph 2 above, to the submitter of the complaint and contracting authority.

***State Commission decision-making***

**Article 101**

The State Commission may, by means of a conclusion:

- 1) reject a complaint, if the complaint is unlawful, untimely and presented by unauthorised person;
- 2) deter further procedure, by receiving a written notice from submitter of the complaint on abandonment of the submitted complaint.

The State Commission may, by means of a decision:

- 1) reject complaint as groundless;
- 2) adopt a complaint as grounded and annul the public procurement procedure and the adopted decisions partly or wholly, notify the contracting authority of the irregularities made and order a renewed public procurement procedure or decision making, or take necessary steps to eliminate the irregularities made.

The State Commission shall explain its decision.

Contracting authority shall act in accordance with the State Commission directions contained in the decision, within the deadlines determined by the State Commission.

The State Commission may request from contracting authority to submit a report to the State Commission on the implementation of orders contained in the decisions referred to in paragraphs 1 and 2 above.

If the State Commission determines that contracting authority has not implemented its decision issued in respect of the complaint and the reported case of irregularity, it shall inform the Government of Montenegro or local self-government unit thereof, and propose initiation of a proceeding for determining liability.

#### **Article 102**

The decision of the State Commission shall be final in an administrative procedure, but for the purpose of establishing its legality, an administrative dispute procedure may be undertaken, by means of an action, against it before the Administrative Court of the Republic of Montenegro.

### **IX. PENALTY PROVISIONS**

#### **Infringements**

#### **Article 103**

A pecuniary fine ranging from 30-fold to 200-fold amount of the minimum wages in Montenegro shall be imposed on the contracting authority for an infringement:

- 1) where information from the bid has not been protected, in accordance with corresponding level of confidentiality (Article 10);
- 2) where public contract has been awarded without previous enforcement of the procedure laid down in this Law (Article 18);
- 3) where the subject of a public contract that represents a single whole is subdivided, with the intention to avoid the application of this Law and the prescribed procurement procedure (Article 32, paragraph 2);
- 4) where prior information notice, invitation to tender and contract award decision have not been advertised in the manner laid down in this Law (Articles 33, 34, 35 and 36);
- 5) where bidding documents have not been provided to all those who requested it, in accordance with invitation to tender (Article 41);
- 6) where the envisaged conditions for participation and criteria have not been in accordance with this Law or where conditions and criteria have been altered after the publication and announcement of the invitation to tender, without informing the bidders (Articles 66 and 45-51);
- 7) where invitation to tender does not specify the deadline, manner of submitting bids, and place and time of public opening of bids (Article 62);
- 8) where public procurement of small value (shopping method) has been enforced contrary to the provisions of Article 77 above;
- 9) where records have not been maintained or public procurement documentation has not been kept (Article 84, paragraph 1, and Article 85);
- 10) where information on enforced public procurement procedures has not been provided to the competent administrative authority within the foreseen time (Article 84, paragraph 3);
- 11) where public contract has been concluded prior to expiry of the deadline for submission of requests for protection of rights referred to in Article 88 above;
- 12) where it has acted contrary to the provision of Article 89 above regarding the deterring of the procedure in case of a submitted request for protection of rights;
- 13) where documents referred to in Article 99 above have not been provided;



- 14) where the decision of the State Commission from Article 101 above has not been enforced within the envisaged deadline.

Pecuniary fine ranging from 5-fold to 20-fold amount of minimum wage in Montenegro shall be imposed on contracting authority's competent person for the infringement referred to in paragraph 1 above.

#### **Article 104**

A pecuniary fine ranging from 30-fold to 200-fold amount of the minimum wages in Montenegro shall be imposed on the bidder for an infringement:

- 1) where it provides incorrect information in respect of professional technical and personnel capabilities (Article 49);
- 2) where it fails to inform the contracting authority about alteration of information (Article 51).

Pecuniary fine ranging from 5-fold to 20-fold amount of minimum wage in Montenegro shall be imposed on bidder's competent person for the infringement referred to in paragraph 1 above.

Pecuniary fine ranging from 5-fold to 20-fold amount of minimum wage in Montenegro shall be imposed on a natural person as a bidder for the infringement referred to in paragraph 1 above.

### **X. TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 105**

Public procurement for which invitation to tender was published before this Law enters into force, shall be enforced in accordance with the regulations based on which it has been initiated.

#### **Article 106**

The provisions of Article 46 above referring to criminal liability of legal persons shall apply after the Law on Criminal Liability of Legal Persons becomes effective.

#### **Article 107**

Public Procurement Commission, appointed based on the provisions of the effective law, shall continue its work, with rights, obligations and term of office determined in this Law.

#### **Article 108**

The competent administrative authority shall be established within 90 days from the day when this Law enters into force.

Until the day of establishment of the competent administrative authority, Directorate for Procurement of the Republic shall perform its operations.

#### **Article 109**

The competent administrative authority shall take over the officials from the Directorate for Procurement of the Republic that perform public procurement operations, within the time referred to in Article 107, paragraph 1 above.

Assignment of duties to the officials referred to in paragraph 1 above shall be performed in accordance with the act on organization and systematisation of the competent administrative authority.

Officials of the Directorate for Procurement of the Republic, who are not assigned duties in accordance with paragraph 2 above, shall exercise the rights in respect of employment in accordance with the law governing the rights of civil servants and state employees.

#### **Article 110**

As of the day of establishment of the competent administrative authority, Directorate for Procurement of the Republic shall continue its work under the former title - Administration for Common Services of State Authorities, until the Government issues an act that will govern its competences, rights and obligations.

The competent administrative authority shall take over business premises, means of work, things, equipment, archive and other resources used on the day when this Law enters into force by employees of the Directorate for Procurement of the Republic performing public procurement operations, within the time referred to in Article 107, paragraph 1 above.

#### **Article 111**

The subsidiary legislation that needs to be adopted according to this Law shall be adopted within 90 days after this Law enters into force.

#### **Article 112**

Public Procurement Law (Official Gazette of the Republic of Montenegro 40/01) shall be repealed on the day when this Law enters into force.

The subsidiary legislation adopted on the basis of the Law on Public Procurement (Official Gazette of the Republic of Montenegro 40/01) shall apply until the subsidiary legislation envisaged by this Law has been adopted.

#### **Article 113**

This Law shall enter into force on the eighth day after its publication in the Official Gazette of the Republic of Montenegro.

#### ***ANNEX I:***

##### ***Services***

1. Maintenance and repair services;
2. Land transport services (except for rail transport services), including armoured car services, and courier services (except transport of mail);
3. Air transport services of passengers and freight, except transport of mail;
4. Transport of mail by land and by air (except for rail transport services);
5. Telecommunications services (except for voice telephony, radio telephony, paging and satellite services);
6. Financial services:
  - insurance services
  - banking and investment services (except financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services);

7. Computer and related services;
8. Accounting, auditing and bookkeeping services;
9. Market research and public opinion polling services;
10. Management consulting services (except arbitration and conciliation);
11. Architectural services:
  - engineering services;
  - urban planning and landscape engineering services;
  - related scientific and technical consulting services;
  - technical testing and analysis services;
12. Advertising services;
13. Building-cleaning services and property management services;
14. Publishing and printing services on a fee or contract basis;
15. Sewage and refuse disposal services; sanitation and similar services.
16. Hotel and restaurant services;
17. Rail transport services;
18. River transport services;
19. Supporting and auxiliary transport services;
20. Legal services;
21. Personnel recruitment supply services;
22. Investigation and security services (except armoured car services);
23. Education and vocational education services;
24. Health and social services;
25. Recreational, cultural and sporting services;
26. Other services.