

On the basis of Article 71 of the Law on Amendments and Modifications to the Law on Public Procurement (“Official Gazette of the Republic of Macedonia” No. 185/2011), the Legislative Committee of the Assembly of the Republic of Macedonia at the session held on \_\_\_\_\_ determined the Consolidated Text of the Law on Public Procurement.

The Consolidated Text of the Law on Public Procurement encompasses: the Law on Public Procurement (“Official Gazette of the Republic of Macedonia” No. 136/2007), the Law on Amendments and Modifications to the Law on Public Procurement (“Official Gazette of the Republic of Macedonia” No. 130/2008), the Law on Amendments and Modifications to the Law on Public Procurement (“Official Gazette of the Republic of Macedonia” No. 97/2010), the Law on Amendments and Modifications to the Law on Public Procurement (“Official Gazette of the Republic of Macedonia” No. 53/2011) and the Law on Amendments and Modifications to the Law on Public Procurement (“Official Gazette of the Republic of Macedonia” No. 185/2011) where the date of their entering into force and implementation is designated.

No. \_\_\_\_\_  
\_\_\_\_\_ 2012  
Skopje

President  
of the Legislative Committee of  
the Assembly of the Republic of Macedonia  
**Blagorodna Dulikj, own signature**

## **LAW ON PUBLIC PROCUREMENT (Consolidated Text)**

### **Chapter I**

#### **General Provisions**

##### **Section 1**

##### **Scope of the Law**

##### **Article 1**

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

##### **Article 2**

This Law shall in particular ensure:

- competition among economic operators;

- equal treatment and non-discrimination of economic operators;
- transparency and integrity in the process of awarding public procurement contracts, and
- rational and efficient use of funds in contract award procedures.

## **Section 2**

### **Definitions**

#### **Article 3**

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

1. "Public procurement contract" shall mean a contract of financial interest, which includes utilities contracts, concluded in writing between one or more contracting authorities on one side and one or more economic operators on the other side, the subject of which is the execution of works, delivery of goods or provision of services, in accordance with this Law;
2. "Utilities contract" shall mean a public procurement contract awarded for the purpose of performing one or more of the activities as referred to in Article 176 paragraph (1) of this Law;
3. "Contract award procedure" shall mean a procedure conducted by one or more contracting authorities whose aim or activity is purchase or acquisition of goods, services or works;
4. "Open procedure" shall mean a procedure whereby any economic operator has the right to submit a tender;
5. "Restricted procedure" shall mean a procedure whereby any economic operator has the right to submit a request to participate, and only the candidates selected by the contracting authority are invited to submit a tender;
6. "Competitive dialogue" shall mean a procedure in which any economic operator has the right to submit a request to participate and whereby the contracting authority conducts a dialogue with the selected candidates so as to determine one or more appropriate solutions that meet its requirements, and on the basis of which selected candidates shall prepare their tenders;
7. "Negotiated procedure" shall mean a procedure whereby the contracting authority consults the selected candidates and negotiates the terms of contract with one or more of them;
8. "Simplified competitive procedure" shall mean a simplified contract award procedure, carried out in accordance with Chapter V Section 6 of this Law;
9. "Framework agreement" shall mean a written agreement between one or more contracting authorities and one or more economic operators, for the purpose of determining the basic requirements that regulate the public procurement contracts that have to be awarded in a certain time period, in particular regarding the price and, if possible, the planned quantities;

10. "Electronic auction" shall mean a recurrent process of negative bidding realized after an initial full evaluation of tenders, whereby the tenderers have a possibility, exclusively by using electronic means, to revise the proposed prices, wherefore the ranking is made automatically by using electronic means;
11. "Tender documentation" shall mean a set of documents, information and requirements that serve as a basis for elaboration, submission and evaluation of the participation request, i.e. the tender;
12. "Technical specification" shall mean a set of technical requirements, regulations, recommendations and standards that in detail define the minimum requirements from a technical item of view to be met by the goods, services or works which are subject of the public procurement contract;
13. "Economic operator" shall mean any natural person or legal entity or a group of such persons, which offer goods, services or works on the market;
14. "Candidate" shall mean any economic operator which submits a request to participate in a restricted procedure, negotiated procedure or competitive dialogue;
15. "Request to participate" shall mean a proposal of the candidate by which its personal situation, technical and professional qualification and economic and financial standing is proven, as a requirement for obtaining an invitation to submit a tender in a restricted procedure, negotiated procedure or a competitive dialogue;
16. "Tenderer" shall mean any economic operator that submits a tender;
17. "Participant in design contest" shall mean any economic operator that submits a project in an open design contest;
18. "Tender" shall mean a proposal given by the tenderer prepared on the basis of the tender documentation, representing a basis for awarding the public procurement contract;
19. "Technical proposal" shall mean a section of the tender which proves the fulfillment of the technical requirements and the conditions referred to in the tender documentation;
20. "Financial proposal" shall mean a section of the tender containing the offered price according to the requirements determined in the tender documentation;
21. "Alternative tender" shall mean a tender offering other features of the subject of the public procurement contract than those determined in the tender documentation;
22. "Contractor" shall mean a tenderer or a group of tenderers that conclude a public procurement contract;
23. "Evaluation of a tender" shall mean the evaluation of the tender submitted in the contract award procedure;
24. "Acceptable tender" shall mean a tender submitted within the determined time period that fully

meets all requirements referred to in the tender documentation and technical specifications, and matches all criteria, conditions and possible requirements regarding the qualification of tenderers;

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

26. "Research and development services" shall mean all the activities that include thorough research, applied research and experimental development including implementation of technological demonstrators, that is devices that demonstrate the effect of a new concept or of new technologies in an appropriate or representative environment;

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

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

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

30. "Electronic system for public procurement" shall mean a single computerized system available on the Internet, which is used in order to enable greater efficiency and cost-effectiveness in the field of public procurement;

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

32. "Central purchasing body" shall mean a contracting authority which in accordance with Article 4 paragraph (1) items a), b) or c):

- acquires on its own behalf and for its own account goods or services intended for one or more contracting authorities or

- awards public procurement contracts and concludes framework agreements on behalf and for the account of one or more contracting authorities, and

33. "Common Procurement Vocabulary – CPV" shall mean the reference nomenclature applicable in the contract award procedures and providing uniformity with the remaining existing nomenclatures.

### **Section 3**

#### **Contracting authorities**

#### **Article 4**

(1) Contracting authorities shall be:

a) state authorities, local self-government units and the City of Skopje;

b) legal entities established for a specific purpose for meeting the public interest needs, which are of non-industrial or non-commercial nature, and which are mainly financed by the contracting authorities referred to in paragraph (1) item a) of this Article or by other such legal entities, or which are subject to control of their operations by the contracting authorities referred to in paragraph (1) item a) of this Article or by other such legal entities, or in which more than half of their governing or supervisory board members are appointed by the contracting authorities referred to in paragraph (1) item a) of this Article or by other such legal entities;

c) associations established by one or several contracting authorities referred to in paragraph (1) items a) and b) of this Article;

d) public enterprises, joint stock companies and limited liability companies wherein the contracting authorities referred to in paragraph (1) items a), b) and c) of this Article have dominant direct or indirect influence through ownership, i.e. if they hold the major share of the company's capital, have majority vote of the stockholders or appoint more than half of the governing or supervisory board members of the enterprise or the company, and which carry out one or more activities referred to in Chapter IX Section 1 of this Law, in the cases when they award public procurement contracts or conclude framework agreements for the purpose of carrying out appropriate activities, and

e) any legal entity, other than those referred to in paragraph (1) items a), b) c) and d) of this Article, which carries out one or more activities referred to in Chapter IX Section 1 of this Law on the basis of a special or exclusive right, in the cases when it awards public procurement contracts or concludes framework agreements for the purpose of carrying out appropriate activities.

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

### **Section 4**

#### **Application and exclusions**

#### **Article 5**

(1) This Law shall apply when:

- awarding public procurement contracts, including the utilities contracts;

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

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

#### **Article 6**

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

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

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

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

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

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

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

#### **Article 7**

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

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

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

#### **Article 8**

This Law shall not apply when awarding public procurement contracts of services that:

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

#### **Article 9**

(1) This Law shall not apply to:

- public procurement contracts whereby the funds have been provided by international organizations (donors and lenders) or by third countries, provided that special terms and conditions for awarding public procurement contracts are prescribed by them,
- public procurement contracts awarded for the needs of the Army of the Republic of Macedonia sent to military exercises and training and in humanitarian or peacekeeping operations and collective defense operations outside the territory of the Republic of Macedonia, in accordance with a ratified international agreement, and

- public procurement contracts of goods or works which are awarded on the basis of an international agreement concluded between the Republic of Macedonia and one or more countries and which are intended for joint implementation or exploitation of a construction by the signatory states or services intended for joint implementation or exploitation of projects by the signatory states, provided that the international agreement envisages an appropriate contract award procedure.

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

#### **Article 10**

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

#### **Article 11**

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

### **Chapter II**

#### **Public Procurement Bureau**

#### **Article 12**

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

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

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

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

#### **Article 13**

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

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

(3) The director of the Bureau should have university education in law or economy and at least 5 years of working experience.

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

#### **Article 14**

(1) The Bureau shall perform the following activities:

- initiate proposals for the adoption of legal and other acts in the field of public procurement to the Minister of Finance;

- monitor and analyze the enforcement of the law and other public procurement regulations, the functioning of the public procurement system, and initiate modifications for the purpose of improving the public procurement system;

- provide opinions regarding the provisions and the application of this Law;

- advise and assist the contracting authorities and the economic operators;

- prepare models of tender documentation and model forms for the procedures regulated by this Law;

- keep single records and maintain and update the records of the public procurement contracts, and make them available to the public on ESPP;

- monitor the timely submission of data and disable use of ESPP for users who disobey their obligations with regard to the use of ESPP;

- reschedule electronic auction in case of technical mistake, ESPP crash and upon decision of the State Appeals Commission;

- analyze the elaborations on non-implementation of electronic auction, in accordance with Article 123 of this Law and if the same are not well-founded, point the omission to the contracting authority and

- propose Code of Ethics when implementing public procurement, adopted by the Minister of Finance;

- collect, process and analyze public procurement data and prepare statistical reports;

- immediately inform the contracting authorities, and if necessary, the competent authorities regarding the established irregularities from the received notifications;

- determine the minimum requirements regarding the professional qualification of persons performing professional tasks in the field of public procurement;

- organize and conduct training for civil servants and other competent persons in connection with public procurement;
- manage and operate its web page and the Electronic System for Public Procurement (hereinafter: ESPP);
- cooperate with international institutions and other foreign entities in the activities connected with the development of the public procurement system;
- realize international cooperation in connection with the public procurement system and plan and coordinate foreign technical assistance in the field of public procurement;
- submit an annual report to the Government regarding its activities in the functioning of the public procurement system;
- give guidelines and prepare manuals and comments on the rules for public procurement and publish an electronic bulletin, and
- perform other activities in accordance with this Law.

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

- number and value of concluded contracts;
- classification of contracts by type of conducted procedures, by subject of the contract and by country where the head office of the contractor is located, and
- number and value of concluded contracts and the requirements stipulated by this Law justifying the selection of the negotiated procedure with or without prior publication of a contract notice.

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

#### **Article 14-a**

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

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

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

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

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

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

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

### **Chapter III**

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

##### **Article 15**

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

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

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

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

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

##### **Article 16**

(1) Subject to contracts for public procurement of goods is the procurement of one or more goods through immediate purchase, purchase with deferred payment, or lease with or without an option to buy the goods.

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

##### **Article 17**

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

- maintenance and repair services, land or air transport services, research and development services, market research and public opinion survey, cleaning services and property management services, insurance, banking and investment, telecommunication, IT, accounting, auditing, bookkeeping, consultant, architectural, engineering, advertising, publishing, printing and sanitation services, or

- railway and water transport services, temporary employment services, hotel, catering, legal, investigative, education, health, social, recreational, cultural, sport and other services not covered by paragraph (1) line 1 of this Article.

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

(3) Articles 2 and 103 of this Law shall only apply in the case of awarding a contract for public procurement of services as referred to in paragraph (1) line 2 of this Article with an estimated value not exceeding Euro 20.000 in Denar counter-value, excluding VAT.

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

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

#### **Article 18**

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

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

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

#### **Article 19**

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

line 2 of this Law is higher than the estimated value of the services referred to in Article 17 paragraph (1) line 1 of this Law.

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

## **Article 20**

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

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

## **Chapter IV**

### **Common provisions applicable to the contract award procedures**

#### **Section 1**

#### **General rules**

#### **Article 21**

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

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

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

#### **Article 22**

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

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

(3) In order to use ESPP the contracting authorities and the economic operators shall pay fees in line with the Fee Book adopted by the Minister of Finance. The funds from payment of the fees shall be

income of the Bureau, and shall be used for promotion and development of the public procurement system.

#### **Article 23**

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

(2) The contracting authorities may procure goods, services or works from or through the central purchasing body, and it shall be considered that they conducted a contract award procedure in accordance with this Law.

#### **Article 24**

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

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

#### **Article 25**

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

#### **Article 26**

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

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

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

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

#### **Article 26-a**

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

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

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

#### **Article 26-b**

In case of decrease of the funds by the Budget of the Republic of Macedonia, the budget beneficiaries upon a previously obtained consent from the other contracting party, by concluding an annex to the contract for extension of the time period for the following year or more, may change the dynamics of the implementation and/or payment of the obligations arising from the concluded public procurement contracts not included in the development section of the Budget. The Government of the Republic of Macedonia shall adopt a decision on consent to the conclusion of annex to the contract, upon previous opinion from the Ministry of Finance.

### **Section 2**

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

#### **Article 27**

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

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

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

### **Section 3**

#### **Decision on public procurement**

##### **Article 28**

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

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

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

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

##### **Article 29**

(1) The commission, depending on the contract award procedure, shall perform the following activities:

- implement technical dialogue with the economic operators,
- open the tenders,
- keep minutes,
- evaluate the qualification of the economic operators,
- determine the selected candidates,
- check the technical proposals submitted by the tenderers regarding the conditions and requirements referred to in the technical specifications or the descriptive documentation,

- check the financial proposals submitted by the tenderers regarding the price, appropriate financial and other conditions determined in the tender documentation,
  - determine unacceptable tenders, as well as the reasons why those tenders are considered as unacceptable,
  - determine the acceptable tenders,
  - propose the most favorable tender,
  - prepare a report of the implemented procedure,
  - notify the participants in the procedure about the outcome of the implemented procedure,
- and
- other activities in accordance with this Law.

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

#### **Article 29-a**

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

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

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

- coordinate the preparation of the public procurement plan,
- prepare the decision on public procurement,
- publish the contract notice for public procurement,
- consult the commission during the implementation of the contract award procedure,
- mandatorily participate as a member of the public procurement commission in contract award procedure with estimated value exceeding Euro 130.000 in Denar counter-value for goods and services and exceeding Euro 4.000.000 for works,
- draft the necessary acts pursuant to the report of the implemented procedure,
- update the data submitted to ESPP, in accordance with this Law,

- give directions and instructions to the contracting authority about acting in an appealing procedure, in cooperation with the public procurement commission and
- perform other activities in accordance with this Law.

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

#### **Article 30**

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

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

#### **Article 31**

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

#### **Section 4**

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

#### **Article 32**

(1) The contracting authority shall be obliged to state in the tender documentation the requests, conditions, criteria, and other necessary information, so as to ensure that the economic operator has complete, just and precise information regarding the manner of conducting the contract award procedure.

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

- general information regarding the contracting authority, particularly the address, telephone number, fax number, e-mail, contact person, manner of communication, etc;
- instructions regarding the legal time periods and the necessary requirements for participation in the contract award procedure;
- if required, the minimum criteria for determining the competence and documents that have to be submitted by the tenderers or candidates so as to prove that they meet the criteria for determining the qualification;
- technical specifications or, in case of application of a competitive dialogue or negotiated procedure, a descriptive documentation;

- instructions regarding the preparation and submission of the technical and financial proposal;
- detailed and complete information regarding the criteria for awarding the contract, which are to be applied for selection of the most favorable tender in accordance with the provisions referred to in Chapter VII Section 3 of this Law;

- instructions regarding the legal protection in the contract award procedure, and
- information regarding the compulsory provisions of the public procurement contract.

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

### **Article 33**

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

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

- by reference, as a rule, in the following order: application of Macedonian standards in accordance with the European standards, European technical approvals (European technical attests), common technical specifications used in the European Union, international standards or other technical references established by the European standardization authorities. When the above mentioned are not prescribed, the technical specifications shall be defined by reference to Macedonian standards, national technical approvals or national technical specifications referring to the products use, the design or the execution of the works. Each reference shall be accompanied by the words 'or equivalent';

- in regard to the requirements for performance or functional features of the subject-matter of the contract that have to be described sufficiently accurate in order to ensure that the tenderers exactly understand the subject-matter of the contract, and that the contracting authority selects the most favorable tender;

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

- by reference to the specifications as referred to in line 1 of this paragraph for certain features, and by reference to the requirements for performance or functional features as referred to in line 2 of this paragraph for the remaining features.

#### **Article 34**

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

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

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

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

#### **Article 35**

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

(2) When the contracting authority indicates requirements in connection with the environment in the performance requirements or functional features, it may use detailed specifications, or, if

necessary, parts of them as defined in the European or (multi-)national “eco-labels“, or by any other eco-labels, under the following conditions:

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

(3) The contracting authority may indicate that the products and services with “eco-label” shall be considered fully compliant with the technical specifications in the tender documentation. The contracting authority shall not consider that a certain tender is non-compliant with the technical specifications solely for the reason that the products or services do not bear an “eco-label”, provided that the tenderer proves, by any appropriate means, that the products or services correspond to the requested technical specifications. The contracting authority shall be obliged to accept the certificates by recognized authorities established in any member state of the European Union.

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

#### **Article 36**

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

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

#### **Article 37**

(1) The contracting authority shall make the tender documentation available to any interested economic operator:

- by using electronic means for the purpose of providing direct and full access to the tender documentation, or

- in hard copy or by using magnetic medium for all economic operators that have submitted a request thereon, or the ones that have been sent an invitation to submit a tender.

(2) In the cases referred to in paragraph (1) line 2 of this Article, the contracting authority, within a time period of three days as of the day of receipt of the request, shall send the tender documentation to all economic operators that have requested so, and if a fee for obtaining the tender documentation is stipulated in the contract notice, the tender documentation shall be delivered immediately after the economic operator pays the fee.

(3) The fee for obtaining the tender documentation shall only cover the costs for copying and/or delivery of the tender documentation.

### **Article 38**

(1) The contracting authority, within the time period referred to in paragraph (3) of this Article, on its own initiative or on the basis of questions for clarification by the economic operators, may amend or modify the tender documentation.

(2) The contracting authority, according to the amendments and modifications to the tender documentation, may extend the time period for submission of the tenders or the requests to participate.

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

### **Article 39**

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

(2) The contracting authority shall, within the shortest possible time period, reply to the questions in writing and shall send the reply to all economic operators that have obtained the tender documentation free of charge, without stating the name of the economic operator that has asked the

question; or if the tender documentation has been published by using electronic means for the purpose of direct and full access, it shall publish the reply in the same manner as it has published the tender documentation.

## **Section 5**

### **Participation in the contract award procedure**

#### **Article 40**

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

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

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

#### **Article 41**

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

#### **Article 42**

The contracting authority, following the selection of the most favorable tender, may require from the group of economic operators to associate in a specific legal form, for the purpose of executing the contract.

#### **Article 43**

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

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

- make the technical specifications it plans to use in the procedure available to the public through the ESPP, at least five working days after their publication,

- enable each interested economic operator to give its own proposals and comments to the published technical specifications in the period referred to in line 1 of this paragraph, by using electronic means or by organizing joint meeting in a previously determined time and date and

- after the period referred to in line 1 of this paragraph to review the received proposals and comments, and if they are acceptable to implement them in the technical specifications.

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

(4) The contracting authority may also conduct a technical dialogue in contract award procedures with estimated value lower than the amount referred to in paragraph (2) of this Article.

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

#### **Article 44**

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

#### **Article 45**

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

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

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

#### **Article 46**

(1) Within the framework of the same contract award procedure, the candidate i.e. tenderer may participate only with one request to participate, i.e. tender.

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

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

(3) The economic operator may participate as a subcontractor in more than one request to participate i.e. tender.

## **Section 6**

### **Guarantees**

#### **Article 47**

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

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

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

(4) The tender guarantee shall be submitted together with the tender in original form.

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

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

(6) If it comes to collecting the guarantee of the tender, retaining the deposited funds or violating the statement on steadiness of the tender, the contracting authority shall publish on ESPP a

negative reference that results in exclusion of the particular tenderer from all the further contract award procedures in a period of one year as of the day of publication, in case of a first negative reference, for which the tenderer shall be informed. The period of exclusion, referred to in this paragraph, shall be extended for one additional year for every following negative reference, yet not exceeding five years.

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

(8) The negative reference referred to in paragraph (6) of this Article shall be published by the contracting authority at the same time as the publication of the announcement for concluded contract or for cancellation of the procedure. In case of simplified competitive procedures, the negative reference shall be published in a period of 30 days as of the day of conclusion of the public procurement contract or annulment of the procedure.

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

(10) In exceptional cases, the contracting authority may require from the tenderers to extend the validity period of the tender guarantee.

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

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

#### **Article 48**

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

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

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

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

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

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

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

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

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

(10) The negative reference referred to in paragraph (8) of this Article shall be submitted by the contracting authority within a period of five working days as of the day of collecting the guarantee.

#### **Article 49**

(1) The contracting authority, in accordance with the obligations arising from the public procurement contract, may foresee an advance payment.

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

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

#### **Article 50 is deleted**

## **Section 7**

### **Manner of publication**

#### **Subsection 1**

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

##### **Article 51**

(1) The contracting authority shall provide transparency when awarding public procurement contracts, organizing open design contests and concluding framework agreements by publishing a prior indicative notification, contract notice, contract award notice and/or notification on cancellation of the contract award procedure in accordance with this Law.

(2) For the purpose of precisely determining the subject-matter of the public procurement contract or the framework agreement, the contracting authority shall use the Common Procurement Vocabulary in public procurement contracts whose estimated value, VAT excluded, is above:

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

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

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

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

## **Section 2**

### **Prior indicative notification**

##### **Article 52**

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

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

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

#### **Subsection 3**

#### **Contract notice**

##### **Article 53**

The contracting authority shall publish a contract notice when:

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

#### **Article 54**

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

(2) If the estimated value of the public procurement contract, excluding VAT, exceeds Euro 500.000 in Denar counter-value for goods and services, i.e. Euro 2.000.000 in Denar counter-value for works, the contract notice shall be also mandatorily published in the Official Journal of the European Union or in a respective business publication or technical or specialized newspaper available to the broad international expert and other public.

(3) The contracting authority may also publish the contract notice in accordance with this paragraph even if the estimated value of the public procurement contract is below the amounts prescribed by this paragraph.

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

#### **Section 4**

##### **Contract award notice**

#### **Article 55**

The contracting authority shall mandatorily publish a contract award notice on ESPP within a time period of 30 days after:

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

#### **Section 8**

##### **Manner of communication**

#### **Article 56**

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

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

#### **Article 57**

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

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

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

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

#### **Article 58**

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

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

#### **Article 59**

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

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

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

## **Article 60**

(1) The contracting authority may require the request to participate or the tenders to be submitted by using electronic means only if:

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

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

## **Article 61**

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

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

## **Section 9**

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

## **Article 62**

(1) The provisions of the Law on Prevention of Conflict of Interest shall accordingly apply to the contract award procedures for the purpose of preventing a conflict of interests.

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

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

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

#### **Article 63**

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

### **Chapter V**

#### **Types of contract award procedures**

##### **Section 1**

##### **Open procedure**

#### **Article 64**

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

(2) As the exception to paragraph (1) of this Article, the contracting authority may conduct an electronic auction as an additional phase, wherefore this shall be published in the contract notice and the tender documentation.

#### **Article 65**

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

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

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

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

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

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

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

#### **Article 66**

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

#### **Article 67**

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

#### **Section 2**

#### **Restricted procedure**

#### **Article 68**

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

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

(2) As an exception to paragraph (1) of this Article, the contracting authority may conduct an electronic auction as an additional phase, wherefore it shall publish this in the contract notice and in the tender documentation.

#### **Article 69**

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

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

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

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

#### **Article 70**

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

#### **Article 71**

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

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

(3) The minimum number of candidates indicated in the contract notice cannot be less than 5.

#### **Article 72**

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

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

- cancels the restricted procedure, or

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

#### **Article 73**

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

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

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

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

#### **Article 74**

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

- the reference number of the contract notice;
- the time period for submission of the tenders;
- the address where tenders are submitted;
- date and place of tender opening, and
- if necessary, any additional documents which the economic operators have to submit with the purpose of verifying the statements or completing the documents submitted in the first phase in order to prove their qualification.

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

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

#### **Article 75**

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

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

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

(4) As an exception to paragraphs (1) and (2) of this Article, if the contracting authority publishes the entire tender documentation by using electronic means with direct access of all selected candidates without restrictions, the time periods arising from paragraphs (1) and (2) of this Article may be reduced by 5 days. The tender documentation shall be published simultaneously with the sending of the invitation to submit tenders.

(5) The reduction of the time periods in accordance with paragraph (4) of this Article shall be allowed only in the case when the invitation to submit tenders indicates the internet address where the tender documentation is available.

#### **Article 76**

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

(2) As an exception to paragraph (1) of this Article, if the contracting authority publishes the entire tender documentation by using electronic means with direct access of all selected candidates without restrictions, the time period arising from paragraph (1) of this Article may be reduced by 5 days. The tender documentation shall be published simultaneously with the sending of the invitation to submit tenders.

(3) The reduction of the time periods in accordance with paragraph (2) of this Article shall be allowed only in the case when the invitation to submit tenders indicates the internet address where the tender documentation is available.

### **Section 3**

#### **Competitive dialogue**

#### **Article 77**

The contracting authority may conduct the competitive dialogue procedure when awarding a public procurement contract if:

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

#### **Article 78**

As a particularly complex public procurement contract, in terms of Article 77 paragraph (1) line 1 of this Law shall be considered the contract for which the contracting authority is objectively unable to:

- define the technical specifications and technical means that can satisfy its needs, or
- determine the legal or financial framework for carrying out the contract.

#### **Article 79**

The competitive dialogue shall be conducted in three phases:

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

#### **Article 80**

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

#### **Article 81**

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

#### **Article 82**

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

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

(3) The contracting authority shall, in the contract notice, state the criteria for determining the qualification and the rules to be applied, the minimum number of candidates it intends to select, and, if required, the maximum number of candidates.

(4) The minimum number of candidates indicated in the contract notice cannot be less than three.

#### **Article 83**

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

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

- cancels the competitive dialogue, or
- conducts the competitive dialogue only with those candidates that meet the criteria for determining the qualification, only if that number is still sufficient to ensure a genuine competition.

#### **Article 84**

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

(2) On the basis of the report by the commission, the contracting authority shall make a decision on selected candidates which shall be invited in writing to participate in the dialogue phase.

(3) The contracting authority shall be obliged to send the invitation to participate in the dialogue phase simultaneously to all selected candidates.

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

#### **Article 85**

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

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

(2) The contracting authority shall send the invitation to participate in the dialogue phase together with the tender documentation, which also contains a descriptive documentation.

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

#### **Article 86**

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

(2) In the tender documentation, the contracting authority may envisage for the procedure to take place in successive phases so as to reduce the number of possible solutions. The successive reduction of the solutions shall be made by applying the contract award criteria stipulated in the tender documentation.

#### **Article 87**

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

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

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

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

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

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

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

#### **Article 88**

The invitation to submit tenders shall in particular contain:

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

#### **Section 4**

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

#### **Article 89**

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

- when no acceptable tender or no appropriate tender has been received in an open procedure, restricted procedure or competitive dialogue, and the previous procedure has been cancelled without substantially modifying the initial requirements in the tender documentation;

- in exceptional cases, when the nature of the works, products or services, or the risks arising thereon, do not allow a prior determination of the value of the contract;

- for services, if the service is of such nature, that the technical specifications cannot be determined with sufficient precision so as to enable the award of a contract by choosing the most favorable tender in accordance with the rules governing open or restricted procedures and

- for works, conducted solely for the purpose of research, testing or development, and not with the aim of obtaining benefit or recovering of the costs incurred during research and development.

(2) In the cases referred to in paragraph (1) line 1 of this Article, the contracting authority shall not be obliged to publish a contract notice, provided that in the negotiated procedure it invites all economic operators which, in the open procedure, restricted procedure or the competitive dialogue procedure have proven their qualification and submitted tenders in accordance with the requirements of the appropriate procedure. In such case, the contracting authority cannot invite tenderers or candidates that have not participated in the previous procedure.

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

#### **Article 90**

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

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

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

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

#### **Article 91**

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

#### **Article 92**

Any interested economic operator shall have the right to submit a request to participate in the negotiated procedure with a prior publication of a contract notice, except in the cases referred to in Article 89 paragraph (2) of this Law.

#### **Article 93**

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

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

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

(4) The contracting authority, in the contract notice, shall state the criteria for determining the qualification and other applicable rules, the minimum number of candidates it intends to select, and, if required, the maximum number of candidates.

(5) The minimum number of candidates indicated in the contract notice cannot be less than 3.

#### **Article 94**

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

(2) As an exception to paragraph (1) of this Article, when the number of candidates that meet the criteria for determining the qualification is less than the minimum number indicated in the contract notice, the contracting authority may:

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

#### **Article 95**

(1) The contracting authority shall be obliged to simultaneously send the invitation to submit an initial tender to all selected candidates.

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

#### **Article 96**

- (1) The invitation to submit an initial tender shall in particular include:
- the reference number of the contract notice,
  - date and place of holding the negotiations,
  - time period for submitting the initial tenders,
  - if necessary, any additional documents which the economic operators have to submit with the purpose of verifying the statements or completing the documents submitted in the pre-qualification phase in order to prove their qualification, and
  - the contract award criteria in accordance with the provision of Chapter VII, Section 3 of this Law.

(2) The contracting authority shall send the invitation to submit an initial tender together with the tender documentation, which also contains the descriptive documentation.

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

#### **Article 97**

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

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

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

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

#### **Article 98**

(1) In the tender documentation, the contracting authority may envisage for the procedure to take place in successive stages so as to reduce the number of initial tenders to be negotiated. The reduction of the number of initial tenders shall be made only by applying previously determined contract award criteria.

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

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

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

## **Section 5**

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

#### **Article 99**

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

1) for procurement of goods, services and works:

- when no tender in an open procedure or no request to participate in the first phase of a restricted procedure has been submitted, provided that the initial requirements of the contract have not been altered;

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

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

- in an open procedure, restricted procedure, negotiated procedure with publication of a contract notice and a simplified competitive procedure, the contracting authority cannot schedule electronic auction since there is not enough competition;

2) for procurement of goods:

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

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

- which are procured under particularly favorable terms, from a tenderer which winds-up its business activities (liquidation or bankruptcy), from a bankruptcy administrator or liquidator upon a prior agreement with the creditors;

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

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

- such additional works or services cannot be technically or economically separated from the basic contract without major inconveniences for the contracting authority, or

- such works or services, although separable from the implementation of the basic contract, are necessary for its completion.

(2) The total value of the additional works or services referred to in paragraph (1) item 4 of this Article cannot exceed 30% of the amount of the basic contract.

(3) The contracting authority may conduct a negotiated procedure without a prior publication of a contract notice, provided that in the simplified competitive procedure with publication of a contract notice no tender is received.

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

(5) In the cases referred to in paragraph (1) item 1) lines 3 and 4, item 2) lines 2 and 3 and item 4) of this Article, the contracting authority shall not be obliged to determine the qualification of the economic operators.

## **Section 6**

### **Simplified competitive procedure**

#### **Article 100**

(1) The contracting authority may conduct a simplified competitive procedure with publication of a contract notice on ESPP when the estimated value of the public procurement contract for goods

and services is up to Euro 20.000 in Denar counter-value, and for works up to Euro 50.000 in Denar counter-value, VAT excluded.

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

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

- five days as of the day of publication of the contract notice on ESPP, when the estimated value of the public procurement contract is up to Euro 5.000 in Denar counter-value, VAT excluded and

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

#### **Article 101**

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

#### **Article 102**

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

(2) The contracting authority in the simplified competitive procedure where the estimated value of the public procurement contract amounts up to Euro 5.000 in Denar counter-value, VAT excluded, shall solely determine the ability of the economic operators to perform professional activity.

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

(4) In the simplified competitive procedure where the estimated value of the public procurement contract for goods and services amounts up to Euro 20.000 in Denar counter-value, and for works up to Euro 50.000 in Denar counter-value, VAT excluded, the economic operators shall confirm their personal standing by giving a statement.

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

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

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

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

#### **Article 103**

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

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

#### **Article 104**

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

### **Section 7**

#### **Open design contest**

#### **Article 105**

In accordance with Article 21 paragraph (3) of this Law, the contracting authority shall organize an open design contest, as a separate procedure with awarding prizes, or as a section of the contract award procedure for services.

#### **Article 106**

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

#### **Article 107**

The contest documentation shall in particular include:

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

#### **Article 108**

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

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

#### **Article 109**

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

#### **Article 110**

(1) If the contest is section of the contract award procedure for services, the contracting authority may, within the contest documentation, require fulfillment of the minimum requirements by the participants in order to prove their qualification for implementing the contract.

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

#### **Article 111**

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

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

#### **Article 112**

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

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

#### **Article 113**

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

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

#### **Article 114**

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

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

### **Chapter VI**

#### **Special manners for awarding a public procurement contract**

##### **Section 1**

## **Framework agreement**

### **Article 115**

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

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

(3) The contracting authority cannot use the framework agreements for the purpose of obstructing, restricting or disturbing the competition.

### **Article 116**

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

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

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

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

### **Article 117**

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

- the obligations assumed by the economic operator in accordance with the technical proposal;
- the unit price that the economic operator has foreseen in the financial proposal, on the basis of which the price of each public procurement contract that is awarded on the basis of the agreement is calculated, and

- if necessary, special conditions and formulas for determining the differences in the price.

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

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

### **Article 118**

(1) When the contracting authority concludes a framework agreement with several economic operators, their number cannot be lower than three.

(2) As an exception to paragraph (1) of this Article, the number of economic operators may be lower, provided that there is insufficient number of economic operators that have met the criteria for determining the qualification and have submitted acceptable tenders.

### **Article 119**

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

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

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

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

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

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

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

(5) The contracting authority may award a public procurement contract in accordance with paragraph (2) line 2 of this Article in the cases when all the conditions for awarding a public procurement contract are not determined in the framework agreement, by re-opening of the competitive procedure wherefore the tenderers shall re-tender on the basis of the same conditions, and, if necessary, with more precisely formulated conditions determined in the framework agreement.

#### **Article 120**

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

- for every public procurement contract, the contracting authority shall submit a written request to all tenderers that are a party to the framework agreement, for the purpose of collecting tenders;

- the contracting authority shall determine a reasonable time period as to enable the submission of tenders for each public procurement contract, taking into account the complexity of the subject-matter of the contract and the time period needed for preparation and submission of the tenders;

- the tenders shall be submitted in writing and the contracting authority shall open them within the determined time period. The content of the tenders shall remain confidential until the contracting authority informs the tenderers on the selection made, and

- the contracting authority shall award each public procurement contract to the tenderer which has submitted the most favorable tender on the basis of the contract award criteria determined in the framework agreement.

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

- information regarding the quantities and special conditions that constitute the subject-matter of the contract that is to be awarded;

- information on the elements that are subject of the re-opening of the competitive procedure in accordance with the contract award criteria defined in the tender documentation for the framework agreement, and

- information on the time period for submission of the tenders and the manner of their submission.

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

#### **Section 2**

## **Electronic auction**

### **Article 121**

(1) The contracting authority may use an electronic auction:

- as a final phase of an open procedure, restricted procedure, simplified competitive procedure or a negotiated procedure with a prior publication of a contract notice as in the cases referred to in Article 89 paragraph (1) line 1 of this Law, before awarding the public procurement contract and only if the technical specifications have been precisely defined, or

- during re-opening of the competitive procedure among the economic operators which are a party to the framework agreement in accordance with Article 119 paragraph (5) and Article 120 of this Law.

(2) In the contract notice and the tender documentation, the contracting authority shall define the use of the electronic auction.

### **Article 122**

The contracting authority cannot use electronic auction for the purpose of obstructing, restricting or disturbing the competition, or changing the subject-matter of the contract determined in the contract notice and the tender documentation.

### **Article 123**

(1) Electronic auction shall not be used for awarding public procurement contract of particular services or works that include intellectual services, such as design of a draft plan and other similar services, as well as in cases when due to the particularity of the subject-matter of the public procurement contract it is impossible to conduct electronic auction.

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

### **Article 124**

If the contracting authority uses electronic auction, it shall be obliged to include the following in the tender documentation or in the invitation to participate in an electronic auction:

- the part of the tender which is the subject-matter of the electronic auction, provided it can be determined and expressed in figures or percentages;

- the limitations of the value up to which the part referred to in paragraph (1) line 1 of this Article can be improved, in accordance with the technical specifications of the subject-matter of the contract;

- the information which is available to tenderers in the course of the electronic auction and when this information will be made available;
- the relevant information concerning the electronic auction process, and
- the requirements under which the tenderers can bid, and in particular the minimum differences allowed in the process of negative bidding.

#### **Article 125**

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

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

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

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

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

#### **Article 126**

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

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

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

#### **Article 127**

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

- the number of participants in the respective round of the electronic auction, and

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

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

#### **Article 128**

(1) The electronic auction shall be closed in one or several of the following manners:

- at a previously determined time for which the tenderers have been informed in the invitation referred to in Article 125 paragraph (2) of this Law;

- when the number of rounds, determined in the invitation referred to in Article 125 paragraph (2) of this Law has been met, wherefore the invitation also includes a time frame for each round or

- when new prices or new values that meet the requirements concerning the minimum differences are no longer received, wherefore the contracting authority, in the invitation, states the time period which is allowed to elapse after receiving the last tender before the electronic auction is closed.

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

### **Chapter VII**

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

##### **Section 1**

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

##### **Subsection 1**

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

#### **Article 129**

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

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

(3) In exceptional cases, the contracting authority may require from the tenderers to extend the validity period of the tenders.

#### **Article 130**

(1) The contracting authority may extend the time period for submission of tenders in the case when the tenders cannot be prepared without a site visit, as well as in the case when the contracting authority is not able to deliver the tender documentation or the answers to the submitted requests for clarifications within the time periods determined by this Law, even though they have been requested in

a timely manner. In that case, the contracting authority shall extend the time period for submission of the tenders for a period that enables all interested tenderers to obtain complete and relevant information for the preparation of the tender, wherefore they shall be informed in writing by the contracting authority.

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

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

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

#### **Article 131**

(1) When the contract award criteria is the economically most favorable tender, the contracting authority may allow the tenderers to submit alternative tenders.

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

#### **Article 132**

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

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

#### **Article 133**

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

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

#### **Article 134**

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

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

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

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

#### **Article 135**

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

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

### **Section 2**

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

#### **Article 136**

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

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

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

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

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

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

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

#### **Article 137**

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

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

#### **Article 138**

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

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

#### **Article 139**

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

- about the contracting authority;
- the place and time of public opening of tenders;
- the reference number of the contract notice;
- the name and surname of the members of the commission;
- the number of tenders received (including the tenders which are withdrawn, replaced and amended);
- the number of late tenders;
- the name of the tenderers;

- the submitted tender guarantees, if required;
- the offered tender prices and discounts;
- the comments of the tenderers, and
- other information considered as useful.

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

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

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

### **Section 3**

#### **Evaluation of tenders**

#### **Article 140**

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

(2) In regard to the open procedure, the commission, prior to the evaluation of the tenders, shall check the completeness and the validity of the documentation for determining the qualification of the tenderer.

(3) When checking the completeness and validity of the documentation for determining the qualification of the tenderer and during the evaluation of the tender, the commission may require from the tenderers to clarify or complete their documents, should there be minor deviations from the required documentation. By using the requested clarifications or additions to the documentation, the contracting authority must not create advantage in favor of a certain economic operator.

(4) The tenderer shall submit the requested clarification in writing within the time period determined by the contracting authority.

(5) No changes to the tender, except correction of arithmetical errors, may be required, offered or allowed by the commission or the tenderer.

(6) The commission may directly require from the tenderer, for the purpose of clarifying the tender, to translate the part of the tender connected with the technical documentation for which it

allowed, in the tender documentation, to be prepared in a foreign language, and to determine a reasonable time period for completion of such requirement.

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

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

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

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

#### **Article 141**

When evaluating the requests to participate and the tenders in a restricted procedure, negotiated procedure and competitive dialogue, the commission shall accordingly apply the provisions referred to in Article 140 of this Law.

#### **Section 4**

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

#### **Article 142**

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

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

- the name and address of the contracting authority, subject-matter and estimated value of the public procurement contract or the framework agreement;

- the names of the selected candidates or tenderers and explanation in connection with their selection;

- the names of candidates or tenderers whose requests to participate or tenders have been dismissed and the reasons for their dismissal;

- the reasons for the rejection of tenders with unusually low price, and

- the name of the tenderer or the tenderers whose tender is chosen as most favorable and the manner and the reasons of the selection.

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

(4) The contracting authority shall be obliged to undertake all necessary measures to document the conduct of the contract award procedure by using electronic means.

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

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

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

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

## **Section 2**

### **Determining the qualification**

#### **Subsection 1**

#### **Criteria for determining the qualification**

##### **Article 143**

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

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

##### **Article 144**

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

(2) The contracting authority must not require fulfillment of certain minimum requirements in connection with the economic and financial standing and the technical or professional ability of the economic operators, which are un-proportional to the subject-matter of the public procurement contract.

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

## **Subsection 2**

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

#### **Article 145**

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

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

#### **Article 146**

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

#### **Article 147**

(1) The contracting authority shall exclude any economic operator from the contract award procedure, provided that it:

- is a under a bankruptcy or liquidation procedure;
- has unpaid taxes, contributions or other public duties, unless the economic operator is approved delayed payment of taxes, contributions or other public duties, in accordance with the special regulations and pays them on regular basis;
- has been imposed a secondary sentence prohibition on participation in open call procedures, awarding public procurement contracts and contracts for public private partnership;
- has been imposed a secondary sentence temporary or permanent prohibition on performing a certain activity;

- is being pronounced a misdemeanor sanction prohibition on practicing profession, performing activity or duty, i.e. temporary prohibition for performing a particular activity, or

- presents false information or does not submit the information required by the contracting authority.

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

- a statement by the economic operator that it has not been imposed a legally valid court decision for participation in criminal organization, corruption, fraud or money laundering in the last 5 years;

- certificate by a competent authority that a bankruptcy procedure has not been initiated;

- certificate by a competent authority that a liquidation procedure has not been initiated;

- certificate by a competent authority from the country where that economic operator is registered for paid taxes, contributions and other public duties;

- certificate by the Register of sentences for committed crimes of legal entities that a secondary sentence prohibition on participation in open call procedures, awarding public procurement contracts and contracts for public private partnership, has not been imposed,

- certificate by the Register of sentences for committed crimes of legal entities that a secondary sentence temporary or permanent prohibition on performing a certain activity, has not been imposed, and

- certificate that a misdemeanor sanction resulting in prohibition for practicing profession, performing activity or duty, i.e. temporary prohibition for performing a particular activity has not been imposed by a legally valid court decision.

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

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

### **Subsection 3**

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

#### **Article 148**

The contracting authority shall require from each economic operator to deliver a document for registered activity in order to prove it is registered as a natural person or legal entity to pursue the

activity related to the subject-matter of the public procurement contract or a proof that it belongs to a professional association in accordance with the regulations of the country where registered.

#### **Subsection 4**

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

#### **Article 149**

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

#### **Article 150**

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

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

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

#### **Article 151**

(1) The economic and financial capacity of the economic operator may be supported by another entity, regardless of the legal relations between the economic operator and that entity.

(2) When the economic operator proves its economic and financial capacity referring to the support of another entity in accordance with paragraph (1) of this Article, it shall be obliged to prove the support by presenting a valid proof that the entity will make available the respective financial resources to the economic operator. A legally valid court decision for participation in criminal organization,

corruption, fraud or money laundering must not have been pronounced against the entity that provides the financial support.

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

#### **Subsection 5**

#### **Technical or professional ability**

#### **Article 152**

(1) The contracting authority may require from the economic operator participating in the contract award procedure to prove its technical or professional ability.

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

#### **Article 153**

(1) The technical and professional ability of the economic operators in the contract award procedure for goods may be proven in one or more of the following manners:

- list of the principal deliveries by the tenderers or the candidates conducted in the past three years containing values, dates, customers (contracting authorities or economic operators), by providing a statement for the deliveries made issued by the recipients, or if such statements cannot be provided due to reasons beyond the control of the economic operator, only with its statement regarding the conducted deliveries;

- description of the technical equipment and ability of the economic operator, measures used to ensure quality and its equipment and ability for examination and research;

- statement on the engaged technical staff and technical authorities regardless of whether they directly belong to the economic operator;

- samples, descriptions and/or photos of the products subject to delivery, whose authenticity have to proven by the economic operator provided it is required by the contracting authority;

- certificates issued by competent authorities for quality control, with recognized competence, attesting the conformity of the products clearly determined by reference to the specifications and standards;

- in case of procurement of complex products, or in exceptional cases for special purposes, inspection of the production capacities of the economic operator shall be provided, or if necessary, of its study and research capacities, as well as of the quality assurance measures, conducted by the contracting authority or on in its behalf by a competent authority in the country wherein the economic operator is registered, and

- notification about the elements of the contract that the economic operator intends to transfer to a subcontractor.

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

- a list of the principal services of the tenderers or the candidates conducted in the past three years containing values, dates, buyers (contracting authorities or economic operators), by providing a statement for the conducted services issued by the recipients, or if such statements cannot be provided due to reasons beyond the control of the economic operator, only with its statement regarding the conducted services;

- educational and professional qualifications of the economic operator or of its expert staff, and especially of the persons responsible for providing the respective service;

- a statement on hired technical staff and technical authorities, regardless of whether they directly belong to the economic operator;

- a statement by the economic operator on the average annual number of employees and the number of the managing staff in the past three years;

- a statement on the technical equipment and competence of the economic operator and on other resources available in order to provide the respective services and assure quality;

- in case of procurement of complex services, or in exceptional cases for special purposes, inspection of the production capacities of the economic operator shall be provided, or if necessary, of its study and research capacities, as well as of the quality assurance measures, conducted by the contracting authority or on in its behalf by a competent authority in the country wherein the economic operator is registered, and

- notification about the elements of the contract that the economic operator intends to transfer to a subcontractor.

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

manners:

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

#### **Article 154**

(1) The technical and professional ability of the economic operator may be supported by another entity, regardless of the legal relations between the economic operator and the entity.

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

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

#### **Subsection 6**

#### **Quality assurance standards**

#### **Article 155**

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

#### **Article 156**

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

#### **Subsection 7**

#### **Environmental management standards**

#### **Article 157**

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

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

#### **Article 158**

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

#### **Section 3**

#### **Contract award criteria**

#### **Article 159**

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

#### **Article 160**

(1) A contract award criterion may be:

- economically most favorable tender or
- the lowest price.

(2) As an exception to paragraph (1) of this Article, if the public procurement contract is awarded using the competitive dialogue procedure, the contract award criterion shall be the economically most favorable tender.

### **Article 161**

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

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

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

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

(5) The methodology for expressing the contract award criteria into items shall be prescribed by the Minister of Finance.

### **Section 4**

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

### **Article 162**

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

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

### **Article 163**

(1) When a particular tender contains an unusually low price, significantly lower than the actual market price which makes it suspicious that the contract will be fulfilled, the contracting authority shall require from the tenderer, in writing and before rejecting the tender, details of the tender which are

considered to be relevant, and it shall check the proofs that have been submitted as a justification regarding the prices of the tender.

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

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

#### **Article 164**

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

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

#### **Article 165**

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

(2) If the selected tenderer withdraws from concluding or carrying out the contract, the contracting authority may conclude the contract with the next ranked tenderer, or may cancel the procedure.

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

#### **Article 166**

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

## **Section 5**

### **Notifying candidates or tenderers**

#### **Article 167**

(1) The contracting authority, depending on the type of applied contract award procedure, shall notify the candidates, i.e. the tenderers, in writing, about the decisions made in connection with the conducted pre-qualification, the award of the public procurement contract, the conclusion of the framework agreement or the cancellation of the contract award procedure. The notification shall be sent within a time period of three days as of the day of adoption of the respective decision.

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

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

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

#### **Article 168**

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

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

## **Section 6**

### **Cancellation of the contract award procedure**

#### **Article 169**

(1) The contracting authority may cancel the contract award procedure if:

- the number of candidates is less than the minimum number envisaged in the contract award procedures in accordance with this Law;

- no tender or no acceptable or appropriate tenders have been submitted;

- acceptable tenders have been submitted, but they cannot be compared due to different approaches in the financial or technical proposals;
- unforeseeable changes occurred in the budget of the contracting authority;
- the tenderers have offered prices and conditions for implementation of the public procurement contract which are less favorable than the real prices and conditions on the market;
- it assesses that the tender documentation contains important omissions or flaws, until the moment of tender opening;
- due to unforeseeable and objective circumstances the needs of the contracting authority have changed or
- the contracting authority cannot select the most favorable tender due to major violations to the Law in accordance with Article 210 of this Law.

(2) In case of cancellation of the contract award procedure pursuant to paragraph (1) line 7 of this Article, the contracting authority cannot conduct a new procedure for the same subject matter of the contract, within a period of six months as of the day of adoption of the decision on cancellation of the procedure.

(3) The responsible person at the contracting authority shall adopt a decision on cancellation of the contract award procedure.

#### **Article 170**

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

(2) The contracting authority shall publish a notification for cancellation of the contract award procedure on ESPP within a period of 30 days as of the day of cancellation of the procedure.

### **Chapter VIII**

#### **Completion of the contract award procedure**

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

(1) The contract award procedure shall be completed on the day of the legal validity of the decision on selection or cancellation of the procedure.

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

#### **Article 171**

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

#### **Article 172**

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

#### **Article 173**

Depending on the applied contract award procedure, the procedure dossier shall in particular contain:

- public procurement decision;
- prior indicative notification and proof that it has been sent for publication;
- contract notice for awarding a public procurement contract and proof that it has been sent for publication;
- tender documentation;
- received requests to participate;
- communication between the contracting authority and the economic operators;
- report assessing the qualification of the candidates;
- decision on the selection of qualified candidates;
- received tenders;
- minutes of the public opening;
- statements on the existence/non-existence of conflict of interest;
- reports by external experts;
- conducted evaluation report;
- decision for selection of the most favorable tender;
- signed public procurement contract or framework agreement and
- contract award notice and proof that it has been sent for publication.

#### **Article 174**

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

#### **Article 175**

When the contracting authority conducts a contract award procedure by using electronic means, or electronic auctions, it shall be obliged to ensure complete monitoring of the activities it

carries out during the contract award procedure, for the purpose of keeping the dossier referred to in Article 173 of this Law.

## **Chapter IX**

### **Utilities contracts**

#### **Section 1**

#### **Activities applicable to utilities contracts**

##### **Subsection 1**

##### **Scope**

##### **Article 176**

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

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

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

##### **Article 177**

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

##### **Article 178**

(1) When the contracting authority referred to in Article 4 paragraph (1) items a), b) and c) of this Law awards a public procurement contract for several activities, among which at least one is a covered activity, and another activity is covered by the provisions referred to in Chapter III of this Law, and objectively, it is impossible to determine for which activity the contract is mainly intended, such contract shall not be considered as a utilities contract and the contracting authority shall apply this Law as for the public procurement contracts referred to in Chapter III of this Law.

(2) When the contracting authority referred to in Article 4 paragraph (1) items a), b) and c) of this Law awards a public procurement contract for several activities, among which at least one is a covered activity, and another activity is not subject to this Law, and objectively, it is impossible to

determine for which activity the contract is mainly intended, such contract shall be considered as a utilities contract.

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

## **Subsection 2**

### **Water supply**

#### **Article 179**

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

#### **Article 180**

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

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

#### **Article 181**

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

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

## **Subsection 3**

### **Energy**

#### **Article 182**

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

#### **Article 183**

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

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

#### **Article 184**

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

- the production of electricity takes place because satisfying the own consumption is necessary for carrying out an activity which is not covered activity and
- the supply of the public network with electricity depends only on the contracting authority's consumption and does not exceed 30% of the total own production of electricity, taking into consideration the preceding 36 months, including the current year.

#### **Subsection 4**

##### **Transport**

#### **Article 185**

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

#### **Article 186**

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

## **Subsection 5**

### **Postal services**

#### **Article 187**

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

- universal postal services;
- reserved postal services;
- exchange of documents, bills and invoices;
- services concerning mail bearing no address;
- added-value services including transmission of data by using electronic means (including transmission of coded documents, creation of database of users and transmission and delivery of registered mail via electronic means);
- financial services conducted upon agreement in a post, including banking services, payment of transfer orders, pay cards, payment of public duties, money transfer from current and giro accounts, services related to insurance payment, and alike;
- philatelic services or
- logistics services, including physical delivery and warehousing of postal packages related to other non-postal services.

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

## **Subsection 6**

### **Other covered activities**

#### **Article 188**

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

## **Section 2**

### **Specific exemptions**

#### **Article 189**

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

- goods for the purpose of resale or lease to third parties, provided that the contracting authority enjoys no special or exclusive rights to sell or lease such goods, and the other entities are free to sell or lease them under the same conditions, or

- goods, services or works intended for carrying out covered activities abroad.

#### **Article 190**

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

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

#### **Article 191**

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

#### **Article 192**

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

#### **Article 193**

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

- by a contracting authority to an affiliated enterprise or

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

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

(3) An affiliated company shall be a company:

- over which the contracting authority has direct or indirect dominant influence;

- that can dominantly influence the contracting authority or

- which, together with the contracting authority, is subject to dominant influence of another company.

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

- owns the majority of the other entity's capital;

- controls the majority of the votes on the basis of the stocks or shares issued by the other entity

or

- may appoint more than half of the members of the management bodies or the supervisory board.

#### **Article 194**

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

- by a legal entity established by several contracting authorities exclusively for the purpose of carrying out a covered activity to a contracting authority being within the composition of the legal entity, or

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

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

#### **Article 195**

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

### **Section 3**

#### **Procedures for awarding utilities contracts**

#### **Article 196**

(1) The following contract award procedures shall be used for awarding utilities contracts:

- open procedure;

- restricted procedure;

- negotiated procedure with prior publication of a contract notice;

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

- simplified competitive procedure.

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

#### **Article 197**

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

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

#### **Article 198**

(1) When awarding a utilities contract, the contracting authority shall conduct a negotiated procedure without prior publication of a contract notice, in the following cases:

- when upon a prior contract notice, no tender or acceptable tender or no request to participate has been submitted, provided that the initial requirements in the tender documentation are not significantly altered;

- when the contract is only intended for research, experimentation, study or development purposes, and not for generation of profit or recovery of research and development costs, and only if the award of such contract does not violate the competitive award of subsequent contracts for these purposes;

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

- when from reasons of extreme urgency caused by events unforeseeable by the contracting authority, the time period for publication of the open procedure, restricted procedure, simplified competitive procedure or negotiated procedure with prior publication of a contract notice cannot be applied,

- when the contracting authority has to supply additional deliveries from the original supplier for the purpose of partial replacement of the usual goods or installations or as an extension of the existing goods or installations, wherefore a change of the supplier would oblige the contracting authority to purchase material with different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;

- for a contract when there is a possibility to be obtained by using particularly advantageous opportunity available for a short period of time at a price considerably lower than the usual market price;

- for a contract for public procurement of goods procured under favorable conditions from a supplier who is closing up its business activities (liquidation or bankruptcy), a liquidation administrator or a liquidator upon prior agreement with the creditors;

- for a public procurement contract awarded on the basis of a framework agreement,

- for a contract for public procurement of services, following the open design contest, which has to be awarded to the best ranked candidate or one of the best ranked candidates. When the contract has to be awarded to one of the best ranked candidates, the contracting authority shall invite all of them to participate in the negotiations, and

- for a contract for public procurement of additional works or services not included in the basic contract, but which are necessary due to unforeseen circumstances, provided that the contract is concluded with the contractor referred to in the basic contract, when:

a) such additional works or services cannot be technically or economically separated from the basic contract without major inconveniences for the contracting authority or

b) such works or services, although separable from the implementation of the basic contract, are necessary for its completion.

(2) The total value of the additional works or services referred to in paragraph (1) line 10 of this Article cannot exceed 50% of the amount of the basic contract.

### **Section 3-a**

#### **Special manner of awarding utilities contracts**

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

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

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

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

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

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

(3) The qualification system shall consist of the standard contract award procedures with regard to the determination of qualification of tenderers and shall be in accordance with the standard contract

award procedures with regard to the preparation of technical specifications or technical standards, whereby such specifications and standards may be modified as needed.

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

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

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

#### Article 198-c

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

(2) Should the evaluation of the qualification of the tenderer requesting inclusion in the qualification system last longer than four months as of the day of submission of the request, the contracting authority shall be obliged to notify the tenderer thereof within a period of two months as of the day of submission of the request, as well as of the date when the contracting authority is expected to complete the evaluation of the qualification.

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

#### Article 198-d

(1) The contracting authority shall keep a list of qualified tenderers included in its qualification system, divided in categories according to the type of public procurement contracts to which the qualification refers.

(2) The contracting authority shall ensure that the list of qualified tenderers is publicly available on its web site.

#### Article 198-e

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

(2) An invitation to submit tenders shall be delivered to all the tenderers included in the qualification system of the contracting authority for the specific subject of the contract.

#### **Article 199**

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

## **Chapter X**

### **Review procedures**

#### **Section 1**

#### **State Appeals Commission**

##### **Article 200**

(1) State Appeals Commission (hereinafter: State Commission) shall be competent to resolve appeals in the contract award procedures prescribed by this Law, as well as appeals in the procedures for awarding contracts for concessions and public private partnership, regulated by law.

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

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

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

##### **Article 201**

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

(2) The State Commission shall have an expert service. The provisions of the Law on Civil Servants shall apply to the persons employed in the expert service.

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

##### **Article 202**

(1) The State Commission shall be composed of a president and four members, who shall carry out their office professionally.

(2) The president and the members of the State Commission shall be appointed through an open competition and shall be dismissed by the Assembly of the Republic of Macedonia, upon a proposal of the Commission for Election and Appointment Matters of the Assembly of the Republic of Macedonia.

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

(4) A person who is a citizen of the Republic of Macedonia, a law graduate and has at least three years of experience in the field of public procurement may be appointed as member of the State Commission.

(5) A person who is a law graduate, has passed the bar exam, and has at least six years of working experience as a judge, state attorney, deputy state attorney, notary or attorney at law, i.e. ten years of experience in other legal fields after passing the bar exam may be appointed as president of the State Commission.

(6) The members of the State Commission shall elect the deputy president from among their ranks.

(7) The president and the members of the State Commission cannot be members of other authorities or bodies elected or appointed by the Assembly of the Republic of Macedonia or the Government.

### **Article 203**

(1) The Assembly of the Republic of Macedonia shall dismiss the president or a member of the State Commission before his/her term of office expires if he/she:

- requests to be dismissed;
- permanently loses his/her ability to perform the office, which is determined by the Assembly of the Republic of Macedonia;
- has been convicted by a legally valid court decision for a criminal offense to an unconditional imprisonment of at least six months;
- meets the requirements for retirement;
- performs other activities incompatible with his/her office as a president or a member of the State Commission or
- the president or a member passes away.

(2) The Government may also give a proposal for dismissal of the president or a member of the State Commission.

(3) The president of the State Commission (or the deputy in case of dismissal of the president) shall be obliged to inform the Assembly of the Republic of Macedonia about the existence of reasons for dismissing the president or a member of the State Commission.

(4) The Assembly of the Republic of Macedonia shall initiate a procedure for appointment of a president and members of the State Commission at least three months before the expiry of their office. The appointment procedure shall have to be completed at least 30 days before the regular expiry of the office of the president and the members.

#### **Article 204**

The manner of operation and the decision making process of the State Commission shall be regulated by a Rules of Procedure.

#### **Article 205**

(1) The State Commission shall submit an annual report of its activities to the Assembly of the Republic of Macedonia by the end of March in the current year for the previous year.

(2) Upon request of the Assembly of the Republic of Macedonia, the State Commission shall be also obliged to submit a report for a time period shorter than one year.

(3) The annual report shall contain in particular:

- number of cases received;
- number of cases resolved (dismissed, rejected and accepted appeals);
- number of cancelled procedures;
- number of unresolved cases;
- number of cases for which an administrative dispute has been initiated (rejected and accepted cases);
- statistical analysis of the review procedures, and
- evaluation of the condition of the legal protection and the public procurement system as a whole.

#### **Article 206**

Any form of influence on the decision making process of the State Commission shall be forbidden, and in particular any misuse of the public authorizations in order to influence the course and the outcome of the procedure.

#### **Article 207**

(1) Any economic operator having legal interest in the contract award procedure, and which has suffered or could suffer damage by possible violation of the provisions of this Law, may initiate an

appeals procedure against the decisions, actions and omissions to undertake actions by the contracting authority in the contract award procedure.

(2) The state attorney of the Republic of Macedonia may also initiate an appeals procedure when he/she protects the interests of the state or the public interest.

#### **Article 208**

(1) The contracting authority may not sign the public procurement contract and proceed with its implementation within a time period of 12 days, that is five days in case of a simplified competitive procedure, as of the day of receipt of the decision for an individual right in the contract award procedure, except:

- in the cases referred to in Articles 99 and Article 198 of this Law,
- in case when only one tenderer whose tender is selected as most favorable participated in the procedure or
- in case of individual public procurement contracts pursuant to a framework agreement.

#### **Article 209**

(1) In the course of the appeals procedure, the parties shall be obliged to present all facts used as grounds for their requests, as well as the actions or omissions to undertake actions by the contracting authority in the contract award procedure, and to provide respective proofs thereof.

(2) In the course of the appeals procedure, the contracting authority shall be obliged to prove the facts and circumstances on the basis of which it has adopted its decision, undertaken actions or omitted to undertake actions in conducting the contract award procedure, which is the subject-matter of the appeals procedure.

(3) In the appeals procedure, the appellant shall be obliged to prove or to render possible the existence of facts and reasons referring to the right for submitting an appeal, violation of the procedure or violation of the material right, which are raised in the appeal.

#### **Article 210**

Major violations of the law in the contract award procedures shall occur if:

- the contract award procedure has been conducted without adopting a decision on public procurement containing the elements prescribed in Article 28 paragraphs (2) and (3) of this Law;

- the contract award procedure has been conducted without a technical dialogue in the cases where it is mandatory, in accordance with this Law;

- the tender documentation for the contract award procedure is not in accordance with this Law, and led or could have led to discrimination of the economic operators or limitation of the market

competition;

- major omissions have been made with reference to the public opening of tenders;
- major omissions have been made with reference to the evaluation of tenders;
- it is not acted in accordance with Article 215, and in connection with Article 222 paragraph (4)

of this Law;

- the selected tender is not the most favorable one, and
- the selected tender is not acceptable.

#### **Article 211**

In the appeals procedure, the State Appeals Commission shall act within the framework of the appealing allegations, and ex officio with reference to the major violations as prescribed in Article 210 of this Law.

#### **Section 2**

#### **Appeal**

#### **Article 212**

(1) The appeal shall contain the following elements:

- information on the appellant (name and surname, name of the economic operator, address of residence and seat);
- information of the legal representative or the legal proxy;
- name and seat of the contracting authority;
- number and date of the contract award procedure and data on the contract notice;
- number and date of the decision on selection of the most favorable tender, cancellation of the procedure or other decisions adopted by the contracting authority;
- data about the actions or the omissions to undertake actions by the contracting authority;
- description of the actual situation;
- description of irregularities and explanation thereof;
- proposed proof;
- appeals request and/or request for compensation of the procedural costs, and
- signature of the authorized person and seal.

(2) The appellant shall be obliged to provide proof that it has paid the fee for conducting the procedure.

(3) The appellant whose seat is not on the territory of the Republic of Macedonia shall be obliged to appoint a legal proxy for the purpose of receipt of the writs.

### **Article 213**

(1) If the submitted appeal does not contain some of the data referred to in Article 212 paragraph (1) lines 1, 3, 4, 5 and 9 of this Law, the State Commission shall request the appellant to supplement its appeal and shall determine a time period which cannot be longer than five days.

(2) If the appellant fails to act upon the request referred to in paragraph (1) of this Article, the appeal shall be dismissed as incomplete, unless its contents allows for the procedure to be conducted, and it contains an appeals request.

### **Section 3**

#### **Manner of filing an appeal**

### **Article 214**

(1) The appeal shall be filed with the State Commission.

(2) The appeal shall be filed in person or via registered mail simultaneously to the contracting authority and to the State Commission.

(3) The day of filing the appeal via registered mail shall be considered as the day of filing.

(4) In case the appeal is filled in person, the contracting authority shall be obliged to issue the appellant a certificate of the time of receipt.

### **Article 215**

The contracting authority shall, within a time period of 5 days as of the day of receipt of the appeal at the latest, submit the following to the State Commission:

- the appeal with all enclosures, data and proof of the date of receipt;
- the reply to the appeal with an explanation of the facts and the legal indications, as well as the appeals requests, chronology of the contract award procedure, with indications of the major elements of the procedure for public procurement (estimated value, contract notice data, the procedure of tender opening, evaluation of the tenders, selection decision, and other);
- the entire documentation from the procedure with a listing of the enclosures;
- the tenders of the tenderers, and at least the tender of the appellant, the selected tender, and the qualified tenderers which have a chance to be chosen, and
- other proofs for the existence of the circumstance for adoption of the legal decisions, actions or omissions to undertake actions in the contract award procedure.

### **Article 216**

(1) The appeals procedure shall commence with the filing of the appeal, i.e. with submission of request for cancellation of the contract award procedure because of the failure to submit the documentation to the State Commission in accordance with Article 222 of this Law.

(2) The appeal shall be filed within a time period of eight days, i.e. three days for the simplified competitive procedure as of the day of:

- publication of the contract notice regarding the data, actions or omissions to undertake actions referred to in the contract notice;

- opening of tenders, regarding the actions or omissions to undertake actions related to the tender documentation, i.e. the tender opening procedure;

- expiry of the time period for adoption of a decision for selection or cancellation of the procedure in accordance with Article 162 paragraph (2) of this Law in respect to the omission for adoption of decision for selection or cancellation of the procedure in the corresponding deadline;

- receipt of the decision for an individual right in the contract award procedure regarding the determination of the competence of the requests to participate or the evaluation of tenders and the decision; or

- acknowledgment of the illegal conduct of the contract award procedure, within a time period of one year at the latest as of the day of completing the conducted procedure.

(3) An appeal shall be filed within a period of three days as of the receipt of the contract award notice pursuant to a framework agreement.

(4) When the procedure ends with an electronic auction, the time period for filing an appeal in regard to determining the qualification of tenderers and the evaluation of the initial tenders shall be counted as of the day of receipt of the decision of an individual right in the contract award procedure following the completion of the electronic auction.

(5) The economic operator that has failed to file an appeal in accordance with the provisions in paragraph (2) of this Article shall not have the right to file an appeal for the same legal basis in the latter stage of the procedure.

#### **Section 4**

#### **Effect of the appeal and continuation of the contract award procedure**

#### **Article 217**

(1) The filed appeal shall suspend the signing of the public procurement contract and its implementation until the decision of the State Commission becomes final.

(2) As an exception to paragraph (1) of this Article, upon a request of the contracting authority, the State Commission may approve the continuation of the contract award procedure.

(3) The public procurement contract signed contrary to paragraphs (1) and (2) of this Article shall be null and void.

#### **Article 218**

(1) The contracting authority may submit a request for continuation of the contract award procedure. The request shall be submitted simultaneously with the reply to the appeal.

(2) The request for continuation of the contract award procedure submitted contrary to paragraph (1) of this Article shall be dismissed.

(3) The request for continuation of the contract award procedure shall refer to the signing of the public procurement contract which is the subject-matter of the appeal.

(4) The request for continuation of the contract award procedure may be submitted due to reasons that can cause damages if the procedure is not conducted, and which are disproportional to its value.

#### **Article 219**

Upon the request for continuation of the contract award procedure, the State Commission shall decide within a time period of three days as of the day of the submission.

### **Section 5**

#### **Deciding on the appeal**

#### **Article 220**

(1) In the appeals procedure, the State Commission may:

- stop the procedure due to withdrawal of the appeal;
- dismiss the appeal due to incompetence, impermissibility, incompleteness, untimeliness, because it is submitted by unauthorized persons, and in case of non-fulfillment of the obligation referred to in Article 212 paragraph (2) of this Law;
- reject the appeal because it is unfounded;
- abolish the decision, or annul the actions in the part where they are illegal;
- oblige the contracting authority to undertake the actions referred to in Article 162 paragraph (2) of this Law, that it omitted to undertake in accordance with this Law;
- annul the decision in case when the violation made in the contract award procedure is considered as a reason for annulment according to the provisions of this Law and the laws regulating the

administrative procedure, and when it is not acted in accordance with Article 215, in connection with Article 222 paragraph (4) of this Law;

- decide on the requests for compensation of procedural costs or
- decide on the proposals for continuation of the public procurement procedure.

(2) The State Commission shall adopt a decision on the main subject, and reach a conclusion on the other issues.

(3) The decision of the State Commission shall be final.

#### **Article 220-a**

(1) In the appeals procedure, the State Commission shall annul the public procurement contract or the framework agreement, completely or partially, if the contracting authority has concluded:

- a public procurement contract or a framework agreement without previously conducting a contract award procedure, in case it is contrary to the provisions of this Law,
  - a public procurement contract or a framework agreement contrary to Article 208 of this Law,
  - a public procurement contract or a framework agreement contrary to Article 217 of this Law
- and

- an individual public procurement contract pursuant to a framework agreement, contrary to Articles 119 paragraph (4) and 120 of this Law.

(2) Depending on the reasons for annulment referred to in paragraph (1) of this Article, considering all the relevant circumstances, including the gravity of the violation of this Law and the action of the contracting authority, the State Commission shall annul the public procurement contract or the framework agreement, including all its legal consequences as of the moment it is established, or only with regard to its contractual obligations which have not been fulfilled yet.

(3) The State Commission may decide the public procurement contract or the framework agreement to remain into force completely or partially although concluded contrary to the conditions referred to in paragraph (1) of this Article, if considering all the relevant circumstances it confirms that justified reasons related to the general interest for the Republic of Macedonia dominate, because of which the contract or framework agreement shall remain into force.

(4) The economic interests may be considered justified reasons in terms of paragraph (3) of this Article, only in exceptional cases when the annulment of the contract or the framework agreement would lead to disproportionate consequences.

(5) The economic interests directly related to the subject-matter of the public procurement contract or the framework agreement, such as the expenses incurred due to delay in realization,

expenses for conducting the new contract award procedure, expenses possible to incur due to change of the contractor and expenses for legal obligations resulting from annulment of the public procurement contract or the framework agreement, shall not be considered justified reasons in terms of paragraph (3) of this Article.

#### **Article 221**

(1) If after the receipt of the appeal, the contracting authority finds that it is fully or partially grounded, it can put the existing decision out of force, i.e. adopt a new decision, or annul the contract award procedure, correct its action, undertake the action it has omitted to undertake, or conduct a new contract award procedure, by notifying the participants in the contract award procedure in the manner prescribed by this Law, within a time period of five days as of the day of receipt of the appeal.

(2) The appellant shall have the right to file an appeal against the new decision, action or omission to undertake action under the conditions prescribed by this Law.

(3) The contracting authority that exercises the authorizations prescribed by this Article shall be obliged to notify the State Commission thereof by submitting the new decision, i.e. proofs that it has been submitted to the appellant.

#### **Article 222**

(1) If the contracting authority fails to act in accordance with Article 215 of this Law, the appellant shall have the right, within a time period of 30 days as of the day of filing the appeal with the contracting authority, to request from the State Commission to adopt a decision for annulment of the whole contract award procedure.

(2) The request referred to in paragraph (1) of this Article shall be submitted to the State Commission and shall contain the proofs for submitting the appeal to the contracting authority, data about the contracting authority, subject-matter of the public procurement contract and the reference number of the contract notice, if available.

(3) The State Commission shall adopt the request of the appellant if the conditions determined in paragraph (2) of this Article are met.

(4) Following the expiry of the time period of 30 days, in which the appellant could ask for annulment of the whole procedure, the State Commission may *ex officio* annul the whole procedure, provided that the contracting authority failed to act in accordance with Article 215 of this Law.

#### **Article 223**

(1) The appellant, the contracting authority and the selected tenderer shall be parties in the appeals procedure.

(2) The State Commission shall ex-officio inform the selected tenderer about the initiation of the appeals procedure.

(3) Each party shall have the right to present its opinion regarding the requests and the indications by the other party, and to propose evidence. The State Commission shall deliver the submissions received in the appeals procedure on the main subject-matter of the appeal or the submissions proposing new facts and proofs to each party in the procedure.

(4) Each party shall have the right to review the writs, except the part of the tender and the documents containing confidential information determined by law.

(5) The parties in the procedure may be represented by legal proxies.

(6) In the course of the appeals procedure, the contracting authority, upon request of the State Commission, shall be obliged to submit the documentation within a time period determined by the State Commission.

(7) For the purpose of adopting the decision on the procedural costs in the appeals procedure, the value of the case shall be calculated according to the estimated value of the procurement.

#### **Article 224**

(1) The State Commission shall decide upon the appeals on a session with majority of the total number of members.

(2) The State Commission can work only if at least three members are present at the session. The president and/or his/her deputy shall mandatory attend the sessions of the State Commission.

(3) A member of the State Commission cannot sustain from voting.

(4) The sessions of the State Commission shall not be public.

(5) Separate minutes shall be kept for the decision-making and the voting. The minutes shall be signed by all present members of the State Commission and the minute-taker.

(6) The State Commission shall adopt a decision within a time period of 15 days as of the day of completion of the documentation for the appeal.

(7) If the State Commission fails to adopt a decision within the time period referred to in paragraph (6) of this Article, the appellant may within a time period of five working days notify the State Administrative Inspectorate. The form and content of the notification shall be prescribed by the Minister of Finance.

(8) The inspector from the State Administrative Inspectorate shall be obliged, within a time period of ten days as of the day of receipt of the notification referred to in paragraph (7) of this Article to conduct supervision in the State Commission for the purpose of determining whether the procedure

has been conducted in accordance with law, and within a time period of three working days as of the day of the completed supervision notify the appellant regarding the conducted supervision.

(9) Following the completed supervision in accordance with law, the inspector from the State Administrative Inspectorate shall adopt a decision obliging the president and the members of the State Commission to decide upon the submitted request, i.e. to decide upon the appeal within a time period of ten days and to notify the inspector regarding the adopted act. A copy of the act whereby it has been decided upon the submitted appeal shall be attached to the notification.

(10) If the president and the members of the State Commission fail to decide within the time period referred to in paragraph (9) of this Article, the inspector shall file a motion for initiation of a misdemeanor procedure for the misdemeanor determined by the Law on Administrative Inspection against the president and the members of the State Commission and shall determine an additional time period of five working days during which the president and the members of the State Commission shall decide upon the submitted appeal and shall notify the inspector regarding the adopted act within the same time period. A copy of the act whereby it has been decided upon the submitted appeal shall be attached to the notification. The inspector shall within a time period of three working days notify the appellant regarding the undertaken measures.

(11) If the president and the members of the State Commission fail to decide in the additional time period referred to in paragraph (10) of this Article, the inspector shall within a time period of three working days file a report to the competent public prosecutor against the president and the members of the State Commission and shall in the same time period notify the appellant regarding the undertaken measures.

(12) If the inspector fails to act upon the notification referred to in paragraph (8) of this Article, the submitter of the request shall have the right within a time period of five working days to file an objection to the archives of the Director of the State Administrative Inspectorate. In case the Director of the State Administrative Inspectorate does not have archives, the request shall be submitted to the archives of the head office of the State Administrative Inspectorate.

(13) The Director of the State Administrative Inspectorate shall be obliged, within a time period of three working days to review the objection referred to in paragraph (12) of this Article and in case the Director determines that the inspector failed to act upon the notification from the appellant in accordance with paragraphs (8) and (9) and/or fails to file a report in accordance with paragraphs (10) and (11) of this Article, the Director of the State Administrative Inspectorate shall file a motion for initiation of a misdemeanor procedure for a misdemeanor determined in the Law on Administrative

Inspection for the inspector, and shall determine an additional time period of five working days during which the inspector shall conduct supervision in the State Commission for the purpose of determining whether the procedure has been conducted in accordance with law, and within a time period of three working days as of the day of the completed supervision shall notify the appellant regarding the undertaken measures.

(14) If the inspector fails to act in the additional time period referred to in paragraph (13) of this Article, the Director of the State Administrative Inspectorate shall file a report to the competent public prosecutor against the inspector and shall in a time period of three working days notify the appellant regarding the undertaken measures.

(15) In the case referred to in paragraph (14) of this Article, the Director of the State Administrative Inspectorate shall forthwith, and within a time period of one working day at the latest, authorize another inspector to conduct the supervision forthwith.

(16) In the case referred to in paragraph (15) of this Article, the Director of the State Administrative Inspectorate shall within a time period of three working days inform the appellant regarding the undertaken measures.

(17) If the Director of the State Administrative Inspectorate fails to act in accordance with paragraph (13) of this Article, the appellant may, within a time period of eight working days, file a report to the competent public prosecutor.

(18) If the president and the members of the State Commission fail to decide within the time period referred to in paragraph (11) of this Article, the appellant may initiate an administrative dispute with the competent administrative court.

(19) The procedure with the Administrative court shall be urgent.

(20) The decisions shall be published on the web page of the State Commission.

#### **Article 225**

(1) In the course of the decision making upon the appeals, the State Commission shall keep minutes.

(2) The minutes shall have to contain important data on the actions taken, i.e. the decisions adopted during the hearing.

(3) The minutes shall be signed by the president, the members present and the minute-taker, and it shall be an integral part of the appeals file.

#### **Article 226**

(1) The parties may propose a hearing for the purpose of clarifying the complex factual situation or certain legal issues, with an explanation of the reasons for such proposal.

(2) The State Commission shall decide upon the proposal for holding a hearing.

(3) The State Commission may also decide on holding a hearing when it finds that the hearing is necessary to clarify the complex factual situation or certain legal issues.

(4) Minutes shall be kept during the hearing.

(5) The hearing shall be public, but the public may be excluded for the purpose of protecting confidential information in accordance with law.

#### **Article 227**

The provisions of the Law on Prevention of Conflict of Interest shall accordingly apply to the exemption of the president and the members of the State Commission.

#### **Section 6**

#### **Procedural costs**

#### **Article 228**

(1) Each party shall bear the costs resulting from its own actions in the procedure before the State Commission.

(2) The State Commission shall decide on the costs in the appeals procedure, determine who shall bear the costs, the amount, to whom and in what time period they should be paid.

(3) The request for compensation of procedural costs shall be fully determined, specified and submitted before the adoption of the decision.

(4) The party that initiated and lost the procedure shall be obliged to compensate the justified costs incurred during the procedure to the other party.

(5) In case the appeal is withdrawn or dismissed, the appellant shall be obliged to compensate all costs incurred by submitting the appeal to the contracting authority.

(6) In case the appeal is partially accepted, the State Commission may decide each party to cover its own costs, to split the procedural costs of the appeals procedure to equal portions or proportionally to the degree of acceptance of the appeal.

(7) In case the appeal is fully accepted, the contracting authority shall be obliged to compensate all justified incurred procedural costs to the appellant.

#### **Article 229**

(1) In the procedure before the State Commission, the appellant, in addition to the administrative fee, shall pay fee for conducting the procedure which depends on the value of the tender, as follows:

- up to Euro 20.000 in Denar counter-value, the fee is Euro 100 in Denar counter-value;
- from Euro 20.000 to Euro 100.000 in Denar counter-value, the fee is Euro 200 in Denar counter-value;
- from Euro 100.000 to Euro 200.000 in Denar counter-value, the fee is Euro 300 in Denar counter-value or
- exceeding Euro 200.000 in Denar counter-value, the fee is Euro 400 in Denar counter-value.

(2) In case there is no tender, the amount of the fee for conducting the procedure shall be calculated on the basis of the estimated value of the public procurement contract, whereby the State Commission shall inform the appellant about the amount of the fee and the time period in which the appellant shall have to submit proof of the payment.

(3) The fee for conducting the procedure shall be revenue of the Budget of the Republic of Macedonia.

## **Section 7**

### **Court protection and subsidiary application of the regulations**

#### **Article 230**

(1) An administrative dispute may be initiated before a competent court for resolving administrative disputes against the decision of the State Commission.

(2) The competent court for resolving administrative disputes shall resolve the cases concerning public procurement in an urgent procedure.

#### **Article 231**

The provisions of the Law on General Administrative Procedure shall apply to the procedures before the State Commission that are not regulated by the provisions of this Law.

## **Chapter XI**

### **Audit**

#### **Article 232**

The audit over the use and spending of public procurement funds by the contracting authorities referred to in Article 4 paragraph (1) items a), b) c) and d) of this Law shall be conducted by the State Audit Office.

## **Chapter XII**

## **Final and transitional provisions**

### **Article 233**

(Article 233 of the Law published in the "Official Gazette of the Republic of Macedonia" No. 136/2007)

The bylaws prescribed by this Law shall be adopted within a time period of three months as of the day this Law starts to apply, except the Common Procurement Vocabulary which shall be adopted within a time period of one year as of the day this Law starts to apply.

### **Article 234**

(Article 234 of the Law published in the "Official Gazette of the Republic of Macedonia" No. 136/2007)

Until the day the bylaws prescribed by this Law become effective, the existing bylaws, provided that they are in accordance with this Law, shall be applied.

### **Article 235**

(Article 235 of the Law published in the "Official Gazette of the Republic of Macedonia" No. 136/2007, i.e. Article 23 of the Law published in the "Official Gazette of the Republic of Macedonia" No. 130/2008)

(1) The State Commission shall be established and shall commence its operations by November 30th, 2008 at the latest.

(2) Until the establishment and the commencement of the operation of the State Appeals Commission, the Complaints Commission within the Government of the Republic of Macedonia shall continue to perform the activities related to legal protection in public procurement procedures referred to in Chapter IX of the Law on Public Procurement ("Official Gazette of the Republic of Macedonia", No. 19/2004 and 109/2005).

### **Article 236**

(Article 236 of the Law published in the "Official Gazette of the Republic of Macedonia" No. 136/2007)

The public procurement procedures commenced before this Law starts to apply shall be completed in accordance with the regulations that were in force prior to the start of application of this Law.

### **Article 237**

(Article 237 of the Law published in the "Official Gazette of the Republic of Macedonia" No. 136/2007)

As of the day this Law starts to apply, the Law on Public Procurement ("Official Gazette of the Republic of Macedonia", No. 19/2004 and 109/2005) shall cease to be valid.

### **Article 238**

(Article 24 of the Law published in the "Official Gazette of the Republic of Macedonia" No. 130/2008, i.e.

Article 8 of the Law published in the "Official Gazette of the Republic of Macedonia" No. 97/2010)

The contracting authority shall be obliged to use electronic auction in accordance with Chapter VI Section 2 of the Law on Public Procurement, as follows:

- in at least 30% of the estimated value of the planned contract award procedures as of January 1st, 2010,

- in at least 70% of the number of published contract notices for an open procedure, restricted procedure, negotiated procedure with prior publication of a contract notice and simplified competitive procedure with publication of a contract notice as of January 1st, 2011, and

- 100% of the number of published contract notices for an open procedure, restricted procedure, negotiated procedure with prior publication of a contract notice and simplified competitive procedure with publication of a contract notice as of January 1st, 2012.

#### **Article 239**

(Article 9 of the Law published in the "Official Gazette of the Republic of Macedonia" No. 97/2010)

The public procurement procedures commenced until the day this Law starts to apply shall be completed in accordance with the regulations applicable until the day this Law enters into force.

#### **Article 240**

(Article 6 of the Law published in the "Official Gazette of the Republic of Macedonia" No. 53/2011)

The bylaw referred to in Article 224 paragraph (7) of this Law shall be adopted within a time period of 15 days as of the day this Law enters into force.

Upon the adoption of the bylaw referred to in paragraph (1) of this Article, the same shall be published forthwith, and in a period of 24 hours at the latest on the web pages of the Ministry of Finance, the Public Procurement Bureau and the State Appeals Commission.

#### **Article 241**

(Article 67 of the Law published in the "Official Gazette of the Republic of Macedonia" No. 185/2011)

In the Law on Amendments and Modifications to the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" No. 97/2010), Articles 10 and 11 are deleted.

#### **Article 242**

(Article 68 of the Law published in the "Official Gazette of the Republic of Macedonia" No. 185/2011)

The regulations which adoption is determined by this Law shall be adopted in a period of six months as of the day this Law enters into force.

The Code of Ethics when conducting public procurement and the fee book for determination of the amount of the fees for using the ESPP shall be adopted in a period of two months as of the day this Law enters into force.

**Article 243**

(Article 69 of the Law published in the "Official Gazette of the Republic of Macedonia" No. 185/2011)

The certificates for passed exam issued in accordance with the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" No. 136/2007, 130/2008, 97/2010 and 53/2011), as well as the certificates for passed exam for confirming the acquired knowledge of the module for training educators shall continue to be valid during the period they have been issued for, but no longer than one year as of the day this Law enters into force.

**Article 244**

(Article 70 of the Law published in the "Official Gazette of the Republic of Macedonia" No. 185/2011)

The contract award procedures commenced before the day this Law enters into force shall be completed in accordance with the regulations valid to the day this Law enters into force.