

# LAW

## ON PUBLIC PROCUREMENT

### I. BASIC PROVISIONS

#### 1. Subject of regulation and terms

##### *Subject of regulation*

##### **Article 1**

This Law regulates the rules of the procedures of public procurement conducted by Contracting authorities/entities or other entities in cases provided for under this Law, for the purpose of concluding supply, service or works contracts, framework agreements, and for conducting design contest.

This Law regulates the scope of work and form of organization of the Public Procurement Office, competence, regulation and other matters in relation to the scope of work of the Republic Commission for the Protection of Rights in Public Procurement Procedures; it regulates the procedure of protection of the rights in public procurement procedures and in other instances in accordance with the Law, and governs other matters of relevance for public procurement.

In terms of this Law, public procurement shall be:

- 1) acquisition by means of a public supply, service or works contract of by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, supplies or services are intended for a public purpose;
- 2) acquisition by means of a public supply, service or works contract of by one or more contracting entities from economic operators chosen by those contracting entities, provided that the supplies, services or works are intended for the pursuit of one of the utility activities.

The following Annexes are integral parts of this Law:

- 1) Annex 1 List of activities in construction
- 2) Annex 2 List of military equipment and list of supplies purchased by Contracting authorities in the field of defence
- 3) Annex 3 Requirements relating to tools and devices for the electronic receipt of tenders, applications, as well as plans and designs related to design contests
- 4) Annex 4 Contents of public procurement notices
- 5) Annex 5 Contents of procurement documentation relating to electronic auction
- 6) Annex 6 Contents of invitation to submit a tender, invitation to participate in the dialogue, invitation to negotiate, or invitation to submit requests
- 7) Annex 7 Social and other specific services

- 8) Annex 8 List of international conventions in the domain of social and labour law and conventions on the protection of the environment
- 9) Annex 9 List of legal acts of the European Union.

### ***Concepts and definitions***

#### **Article 2**

Certain concepts used in this Law shall have the following meaning:

- 1) **contracting authority / entity** is the common term for contracting authority and contracting entity;
- 2) **public procurement contract** means a contract for pecuniary interest concluded in writing between one or more tenderers and one or more Contracting authorities/entities and having as its object the supply of goods, provision of services, or execution of works;
- 3) **public supply contract** means public procurement contract having as its object the purchase of supplies, rental of supplies, lease of supplies (with or without an option to buy), or the purchase in instalments, and may also include, if needed as an incidental matter, siting and installation operations necessary for the performance of the contract;
- 4) **public works contract** means public procurement contract having as its object:
  - (1) execution of works, or both the design and execution of works related to one or more activities referred to in Annex II of this Law;
  - (2) execution of a work, or both the design and execution of a work;
  - (3) realisation of a work, corresponding to the requirements specified by the Contracting authority/entity exercising the decisive influence on the type or design of the work;
- 5) **a work** means the outcome of building or civil engineering works which taken as a whole fulfils an economic or technical function within the meaning of the law regulating the construction of objects;
- 6) **public service contract** means public procurement contract having as its object the provision of services other than those related to point 4) of this Article;
- 7) **economic operator** means any person or group of persons offering supplies, services or works on the market;
- 8) **tenderer** means an economic operator that has submitted a tender;
- 9) **candidate** means an economic operator that has submitted a request to participate in a restricted procedure, competitive procedure with negotiations, negotiated procedure, competitive dialogue, or innovation partnership;
- 10) **procurement documents** means any document, which describes or determines elements of procurement or procedure, including a contract notice, prior information notice or periodic indicative notice where it is used as means of calling for competition, notice on the existence of a qualification system, descriptive document and tender document;
- 11) **tender document** means the documents containing technical specifications, conditions of contract, templates of documents to be supplied by economic operators, information on applicable obligations and any additional documents and data relevant for the preparation and submission of requests and offers;

12) **“written” or “in writing”** means any expression consisting of words or figures, which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means;

13) **an electronic means** is electronic equipment for the processing, including digital compression and storage of data which is transmitted, conveyed and received by wire, radio and optical means, or by other electromagnetic means;

14) **central purchasing body** means Contracting authority/entity which provides centralised purchasing activities, and may also provide ancillary purchasing activities;

15) **centralized purchasing activities** means activities conducted in one of the following modalities:

(1) the acquisition of supplies or services intended for contracting authorities/entities,

(2) the awarding of public procurement contracts or the conclusion of framework agreements for supplies, services or works to be used by contracting authorities/entities;

16) **ancillary purchasing activities** means activities consisting in the provision of support to purchasing activities, in particular in terms of:

(1) technical infrastructure enabling contracting authorities/entities to award public procurement contracts or to conclude framework agreements for supplies, services or works;

(2) advice on how to prepare and conduct public procurement procedures;

(3) preparation and conducting public procurement procedures on behalf and for the account of the contracting authority/entity concerned;

17) **design contest** means a procedure which enables the Contracting authority/entity to acquire a plan or design, mainly in the fields of town or country planning, architecture, engineering or data processing, selected by a jury after being put out to competition, with or without the award of prizes;

18) **e-Certis** means the electronic system of the European Commission containing database of evidence submitted in the public procurement procedures and bodies in the European Union Member States which are responsible for the issuance thereof;

19) **innovation** means the implementation of a new or significantly improved product, service or process, including but not limited to production and construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations, inter alia, with the purpose of helping to solve societal challenges or as a support to smart, sustainable and inclusive growth;

20) **life cycle** means all consecutive and/or interlinked stages, including necessary research and development, production, trading and conditions of trading, transport, use and maintenance, throughout the existence of supplies or works or provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation;

21) **label** means any document, certificate or attestation confirming that the supplies, services or works, processes or procedures in question, meet certain requirements;

22) **label requirements** means the requirements to be met by the supplies, services or works, processes or procedures in question, in order to obtain the label concerned;

23) **Common Procurement Vocabulary (CPV)** means the single classification system for subjects of public procurement, applicable in public procurement procedures, which at the same time ensures conformity with other existing classifications;

24) **utility activities** are economic activities in the areas of water, energy, transport and postal services, defined in Articles 165 – 171 of this Law;

25) **military equipment** means equipment specially designed or adapted for military purposes and intended for use as an arm, munitions or military material, and in particular military equipment referred to in Annex 2 of this Law (I List of military equipment);

26) **security sensitive equipment, services and works** are equipment, services and works for security purposes involving, requiring and/or containing classified information.

## **2. Contracting authority/entity**

### **Contracting authorities**

#### **Article 3**

In terms of this Law, contracting authorities shall be:

- 1) Republic of Serbia, and, the republic bodies respectively;
- 2) bodies of autonomous province;
- 3) bodies of local self-government units;
- 4) legal bodies established for the purpose of meeting needs in the general interest, not having an industrial or commercial character, provided that any one of the following conditions are met:
  - (1) they are financed by more than 50% by the contracting authority's funds;
  - (2) they are subject to management supervision by a contracting authority;
  - (3) more than a half of members of their supervisory or managerial board are appointed by the contracting authority;
- 5) associations of contracting authorities referred to in paragraph 1, points 1) to 4) of this Article.

The needs deemed to have an industrial or commercial character within the meaning of paragraph 1, point 4) of this Article are the needs performed by a body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity.

The Government shall establish a list of the contracting authorities referred to in paragraph 1, point 1) of this Article on the proposal of the ministry responsible for finance affairs.

### **Contracting entities**

#### **Article 4**

Contracting entities, within the meaning of this Law, are:

- 1) contracting authorities which perform utility activity;
- 2) public undertakings which perform a utility activity over which a contracting authority may exercise a dominant influence, directly or indirectly, by virtue of its ownership of them, or its financial participation therein, or the rules which govern them;
- 3) other entities which perform utility activity on the basis of exclusive or special rights.

Dominant influence in terms of paragraph 1, point 2) of this Article is presumed in any of the following cases in which contracting authority, directly or indirectly:

- 1) holds the majority of the undertaking's subscribed capital;
- 2) controls majority of votes attaching to the shares issued by the undertaking;
- 3) can appoint more than a half of members of the company's supervisory or management body.

Exclusive or special rights in terms of paragraph 1, point 3) of this Article are the rights granted by the competent authority pursuant to a law, a regulation, or an individual legal act the effect of which is to limit the exercise of utility activity to one or more entities and which substantially affects the ability of other entities to carry out economic activity.

The rights which have been granted by means of the procedure which involved the publication and where the granting of such rights was based on objective criteria, shall not be deemed to be an exclusive or special rights in terms of paragraph 3 of this Article.

The procedure referred to in paragraph 4 of this Article shall encompass:

- 1) procedure conducted in application of rules on public procurement or on public private partnership and concessions, or
- 2) other procedures in which objective criteria were applied and transparency and publication ensured in accordance with European Union's legal acts listed in Annex 9 Part I of this Law.

### **3. Principles of public procurement**

#### ***General provisions***

#### **Article 5**

When applying this Law, contracting authority/entity shall act in a cost-effective and efficient manner, to ensure the competition, equal and discrimination-free position of all economic operators, and to act in a transparent and proportionate manner.

Public procurement must not be designed with the intention of excluding it from the application of this Law or circumventing the application of an applicable type of public procurement procedure, or with the intention of unduly favouring or disadvantaging certain economic operators.

Economic operators that are entitled to provide the relevant service under the law of the state in which they are established, shall not be rejected from the public procurement procedure in so far as under the law of the Republic of Serbia they would be required to be either natural or legal persons.

When performing public procurement contracts, economic operators are obliged to observe obligations concerning the protection of environment, social and labour laws and duties stemming from the collective agreements, and also the provisions of the international law related to the protection of the environment, of the social and labour rights.

The lists of international conventions in the area of social and labour law and conventions on environmental protection are indicated in Annex 8 of this Law.

#### ***The principle of cost-effectiveness and efficiency***

#### **Article 6**

The contracting authority/entity shall purchase supplies, services or works of adequate quality having in mind the purpose, function and value of public procurement, namely, the cost-effective and purposeful spending of public funds.

Contracting authority/entity shall ensure that public procurement procedure is conducted and that awarding of contract is completed within deadlines and in the manner as set forth by this Law, with as little costs related to the procedure and execution of public procurement as possible.

### ***The principle of ensuring competition and prohibition of discrimination***

#### **Article 7**

Contracting authority/entity shall ensure as much competition as possible in public procurement procedures.

Contracting authority/entity may not restrict competition with the intention of unduly favouring or disadvantaging certain economic operators, and, in particular, it may not prevent any economic operator from taking part in public procurement procedure by using discriminatory criteria for qualitative selection of economic operator, technical specifications, and contract award criteria.

Contracting authority/entity shall not impose such conditions that would constitute national, territorial, or personal discrimination among economic operators, directly or indirectly.

### ***The principle of transparency in public procurement procedures***

#### **Article 8**

Contracting authority/entity shall ensure openness and transparency in public procurement procedure, observing obligations under this Law.

### ***The principle of equal treatment of economic operators***

#### **Article 9**

Contracting authority/entity shall ensure equal treatment to all economic operators in all phases of public procurement procedure.

### ***The principle of proportionality***

#### **Article 10**

Contracting authority/entity shall conduct public procurement in a manner proportionate to the subject of public procurement and the objectives to be achieved.

Criteria for qualitative selection of economic operator in public procurement procedure, technical specifications, contract award criteria and deadlines, as well as evidence, must be proportionate to the size, nature and complexity of given public procurement and the resulting contract.

## **4. Exclusions from the application of law**

### **General exceptions**

#### **Article 11**

The provisions of this Law do not apply to public procurements and design contests that contracting authorities/entities are obliged to conduct in accordance with the procurement procedures established:

- 1) under an international agreement or other act pursuant to which an international law obligation was created, and which is concluded by the Republic of Serbia with one or more third countries or their inner political-territorial units, and relating to supplies, services or works intended for joint use or exploitation by the signatories;
- 2) by international organisations.

The provisions of this Law do not apply to public procurements and design contests which are conducted pursuant to the procurement rules set forth by an international organisation or an international financial institution, provided that such organisation or institution fully finances concerned procurements and design contests.

In the case of procurements and design contests referred to in paragraph 2 of this Article co-financed for the most part by an international organisation or financial institution, the rules as stipulated shall be applied.

A third country, in terms of paragraph 1, point 1) of this Article, is any state not a member state of the European Union, and, by the time the Republic of Serbia acceded to the European Union, it is also a member state of the European Union.

International agreements or other acts referred to under paragraph 1, point 1) of this Article shall be concluded in accordance with the Treaty on the Functioning of the European Union.

The Republic of Serbia shall communicate to the European Commission all international agreements or other acts referred to in paragraph 1, point 1) of this Article.

In the case referred to in paragraph 1, point 1) of this Article the principles of this Law shall be applied.

## **Article 12**

Contracting authorities/entities shall not apply the provisions of this Law to:

- 1) acquisition and rental of land, existing construction facilities and other immovable property, and the concerning rights thereon;
- 2) acquisition of time for the television or radio broadcasting, or time for broadcasting programme material, from the media service provider;
- 3) arbitration and conciliation services;
- 4) legal services, as follows:
  - (1) legal representation of contracting authority/entity by a lawyer in the procedure of arbitration or conciliation, in the country or abroad, and before an international arbitration or international conciliation instance;
  - (2) legal representation of contracting authority/entity by a lawyer in judicial proceedings and other procedures before the courts or other public authorities, in the country or abroad, or before international courts, tribunals or institutions;
  - (3) services of legal advice by a lawyer given in preparation for legal representation in the proceedings referred to in sub-points (1) and (2) of this point or where there is a tangible indication or high probability that the matter to which the advice relates would become the subject of such proceedings;
  - (4) legal services provided by legal representatives or guardians, or other legal services the providers of which are designated by a court or are designated by virtue of law to carry out specific tasks under the supervision of courts;
  - (5) other legal services which are connected, even if occasionally, with the exercise of official authority;
- 5) services of document certification and authentication provided by notaries;
- 6) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of the law governing the capital market, as well as

activities carried out within the European Financial Stability Facility and European Stability Mechanism;

7) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;

8) contracts concluded in accordance with the provisions of the law regulating rights, obligations and responsibilities arising from employment, or on the basis of employment except piece work contracts;

9) services of civil defence, civil protection and services of danger prevention, that are provided by non-profit organisations or associations, which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3, except for the patient ambulance transport services;

10) services of passenger transport by rail or metro;

11) procurements from the contracting authorities/entities or groups of contracting authorities/entities that are exclusive right holders, on the basis of which they only can perform a particular activity in a particular geographical area and which are granted by or are deriving from law or sub-legal act;

12) research and development services, except where the subject-matter of the public procurement are research and development services covered by CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 provided that both of the following conditions are met:

(1) the benefits accrue exclusively to the contracting authority/entity, that is, they are intended exclusively for its use and conduct of its own affairs, and

(2) the contracting authority/entity fully finances these services.

In the case referred to in paragraph 1 of this Article the principles of this Law shall be applied in the manner appropriate to the circumstances of specific procurement.

### ***Contracts between related entities***

#### **Article 13**

The provisions of this Law shall not apply to contracts that contracting authority/entity concludes with another legal person, if all the following conditions are met:

1) the contracting authority/entity exercises control over that legal person, similar to the control which it exercises over its own organizational units;

2) controlled legal person carries out more than 80% of its activities in the Republic of Serbia in the performance of tasks entrusted to it by the contracting authority/entity or by other legal persons controlled by that contracting authority;

3) in controlled legal person there is no private capital participation which would exert a decisive influence in the decision making or would prevent the decision making, in accordance with the applicable legislation.

The contracting authority/entity shall be deemed to exercise control over the legal person, similar to the control which it exercises over its own organizational units, where it exercises a decisive influence over the strategic objectives and significant decisions of that legal person. Such control may also be exercised by another legal person which is itself controlled in the same way by the contracting authority/entity.



Paragraph 1 of this Article also applies in the case where the controlled legal person, which is a Contracting authority/entity, awards a contract to its controlled contracting authority/entity or to another legal person controlled by the same contracting authority/entity, on the condition there is no private capital participation in the legal person being awarded a contract which would exert a decisive influence.

The provisions of this Law shall not apply to contracts that contracting authority/entity awards to another legal person not controlled by this concerned contracting authority/entity, in accordance with paragraph 1 of this Article, if all the following conditions are met:

- 1) the contracting authority/entity exercises jointly with other contracting authorities/entities a control over that legal person, similar to that which they exercise over their own organizational units;
- 2) controlled legal person carries out more than 80% of its activities in the Republic of Serbia with the purpose of performance of tasks entrusted to it by the concerned contracting authorities or by other legal persons controlled by the same contracting authorities/entities;
- 3) in controlled legal person there is no private capital participation which would exert a decisive influence in the decision making or would prevent the decision making, in accordance with the applicable legislation.

The contracting authorities/entities shall be deemed to jointly exercise control over a legal person if all of the following conditions are met:

- 1) the decision-making bodies of the controlled legal person are composed of representatives of all contracting authorities/entities exercising control over this legal person, and individual representatives may represent some or all contracting authorities/entities;
- 2) these contracting authorities/entities are able to jointly exert decisive influence over the strategic objectives and significant decisions of such legal entity;
- 3) controlled legal entity does not have interests different from the interests of the controlling contracting authorities/entities.

The provisions of this Law shall not apply to contracts concluded by two or more contracting authorities/entities, if all the following conditions are met:

- 1) the contract establishes or determines the cooperation between the contracting authorities/entities with the aim of ensuring that public services they are obliged to perform are provided with a view to achieve the objectives that are common;
- 2) implementation of this cooperation is carried out exclusively for needs related to the general interest;
- 3) contracting authorities/entities realize in the open market less than 20% of activities covered by their cooperation.

To determine the percentage amount referred to in paragraph 1, point 2), paragraph 4, point 2), and paragraph 6, point 3) of this Article, it shall be taken into consideration the average of total income realised in the Republic of Serbia over the period of the previous three years, or over a shorter period where, due to the date of establishment or date of commencing activities, or due to reorganisation of their activities, or due to other justifiable reasons, relevant data for the previous three years is not available, and where business projections of such entity demonstrate fulfilment of the mandatory requirement.

## **5. Special exclusions for contracting authorities**

### **Article 14**

Contracting authorities do not apply the provisions of this Law to:

- 1) public procurements whose sole and immediate purpose is to enable contracting authority to provide or utilize a public communications network or to provide to the public one or more electronic communications services in terms of the law governing electronic communications;
- 2) procurements of services of the Central Bank;
- 3) procurements intended for processing and sale, resale or rent to third persons on the market, provided that contracting authority/entity does not hold an exclusive or special right to resale or rent the procurement subject, and provided that other entities may, under the same conditions, engage in sale, resale or rent of the procurement subject to third persons;
- 4) procurements of goods and services related to safety colours for the production of banknotes, identity documents and excise stamps, to procurements of security paper for the production of banknotes, of OVD security elements for the production of banknotes, identity documents and chips for producing identity documents, retroflected foil for registration plates, roundels for the production of coins and to procurement of services of money transport, and services of providing security for transports of money and cash and effective foreign currencies;
- 5) acquisition, development, production or co-production of programme material intended for audio-visual media services or radio media services that are awarded by contracting authority which is a media service provider;
- 6) procedures conducted by contracting authority which provides postal services in terms of Article 170, paragraph 2, point 2) of this Law for performing activities of rendering:
  - (1) added value services linked to the electronic means and provided entirely by electronic means (including secure sending of encrypted documents by electronic means, address management services and sending registered electronic mails);
  - (2) financial services covered by CPV codes from 66100000-1 to 66720000-3 and by Article 12, paragraph 1, point 6) of this Law, including postal money orders and postal giro transfers (money transfers without opening payment accounts in banks);
  - (3) philatelic services, or
  - (4) logistic services (services that combine physical delivery or storage and other non-postal functions).

The terms used in paragraph 1, point 5) of this Article shall have meaning established in the law governing electronic media.

In the case referred to in paragraph 1 of this Article the principles of this Law shall be applied in the manner appropriate to the circumstances of specific procurement.

### ***Contracts subsidized or co-financed by contracting authorities***

#### **Article 15**

The provisions of this Law shall apply to the procurement of:

- 1) works that are subsidized or co-financed by more than 50% by one or more contracting authorities, where the contract includes the works referred to in Annex 1 of this Law or works on the construction of hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes;
- 2) services which are subsidized or co-financed by more than 50% by one or more contracting authorities and which are connected to the works contract under point 1) of this Article.

Contracting authority which subsidizes or co-finances contracts under paragraph 1 of this Article shall ensure application of this Law, where it does not award such a contract on its own, or where it awards such contract in the name and on behalf of another subject.

## **6. Special exclusions for contracting entities**

### **Article 16**

The provisions of this Law shall not apply to:

- 1) procurements that contracting entities conduct for the purpose which does not include the pursuit of their utility activities, or for the pursuit of utility activities abroad, on the condition that this does not involve the use of network or territory within the Republic of Serbia and the European Union;
- 2) procurements of drinking water by a contracting entity which performs activity referred to in Article 167, paragraph 1, of this Law;
- 3) procurements of energy or fuel for the production of energy by contracting entity which performs activity under Article 165, paragraph 1) and Article 166, paragraph 1) and Article 171 of this Law;
- 4) procurements intended for resale or rent to third persons on the market, provided that contracting authority/entity does not hold an exclusive or special right to resale or rent the procurement subject, and provided that other entities may, under the same conditions, engage in sale or rent of the procurement subject to third persons.

In the case referred to in paragraph 1 of this Article the principles of this Law shall be applied in the manner appropriate to the circumstances of specific procurement.

## ***Contracts between Contracting entities and affiliated undertaking***

### **Article 17**

The provisions of this Law shall not apply to contracts awarded by contracting entity to an affiliated undertaking, or by a joint venture, organised by several contracting entities for the performing utility activities, awarded to an undertaking that is affiliated with one of these contracting entities, for the procurement of:

- 1) services, provided that at least 80% of the affiliated undertaking's average total income generated from provision of all services in the Republic of Serbia for the previous three years, derives from the provision of services to the contracting entity or to other undertakings with which it is affiliated;
- 2) supplies, provided that at least 80% of the affiliated undertaking's average total income generated from supply of all goods in the Republic of Serbia for the previous three years, derives from the provision of supplies to the contracting entity or to other undertakings with which it is affiliated;
- 3) works, provided that at least 80% of the affiliated undertaking's average total income generated from performing all works in the Republic of Serbia for the previous three years, derives from the provision of works to the contracting entity or to other undertakings with which it is affiliated.

If, due to the affiliated undertaking's date of establishment or date of commencing its activities, the data on its income for the previous three years is not available, it will suffice that undertaking shows the income referred to in paragraph 1 of this Article is credible, in particular by means of business projections.

Where two or more undertakings affiliated with the contracting entity with which they form an economic group, provide the same or similar services, supplies or works, the percentage shall be calculated by taking into account total turnover deriving from the provision of services, delivery of supplies or execution of works by these affiliated undertakings.

An affiliated undertaking in terms of paragraph 1 of this Article shall be any undertaking whose annual financial accounts are consolidated with the annual financial accounts of the contracting entity, in accordance with legislation governing the accounting.

Where duty to consolidate own annual financial accounts with the annual financial accounts of contracting entity does not apply to the contracting entity referred to in paragraph 1 of this Article, an affiliated undertaking shall be any undertaking which:

- 1) may be, directly or indirectly, subject to a dominant influence by the contracting entity, or
- 2) may exercise a dominant influence over the contracting entity, or
- 3) together with contracting entity is subject to the dominant influence of another undertaking by virtue of ownership over it, financial participation, or the rules which govern those undertakings.

Dominant influence in terms of paragraph 5 of this Article shall be influence under Article 4, paragraph 2 of this Law.

### ***Contracts awarded to a joint venture or contracting entity forming part of a joint venture***

#### **Article 18**

Where several contracting entities organise a joint venture with a view to performing utility activities over the period of at least three years, and where the act establishing this joint venture stipulates that contracting entities forming this joint venture should remain parts thereof for at least the same duration of time, the provisions of this Law shall not apply to contracts:

- 1) awarded by a joint venture to one of these contracting entities, or
- 2) awarded by a contracting entity to the joint venture of which it forms part.

#### **Article 19**

The expression 'joint venture' used in Articles 17 and 18 of this Law shall mean legal act on the basis of which several contracting entities got organised with a view to performing utility activities.

### **7. Special exclusions in the fields of defence and security**

#### **Article 20**

Contracting authorities/entities shall not apply the provisions of this Law for awarding of public procurement contract and design contest in the field of defence and security:

- 1) governed by specific rules of procurement in accordance with an international agreement or arrangement, which relates to the stationing of troops and concerning the activities of the Republic of Serbia, of an EU Member State, or of a third country;
- 2) for which the application of the provisions of this Law would oblige the Republic of Serbia to supply information the disclosure of which is contrary to the essential interests of its security, and on the basis of the decision of the Government;
- 3) for the needs of intelligence activities;

4) in the framework of cooperative programme based on research and development of a new product, implemented jointly by the Republic of Serbia and one or more Member States of the European Union, where it is applicable to the later phases of all or part of the life-cycle of this product;

5) awarded in a third country, including procurements for the civil needs, when the forces are deployed outside the territory of the Republic of Serbia and of the European Union, where operational needs require the contracts to be concluded with economic operators in the territory of operations;

6) which the Republic of Serbia concludes with the state, regional or local self-government authorities of other states, relating to:

(1) supply of military equipment or security sensitive equipment;

(2) works and services directly linked to such equipment, or

(3) works and services specifically for military purposes, or security sensitive works and security sensitive equipment.

The Republic of Serbia shall communicate to the European Commission all international agreements or other acts referred to in paragraph 1, point 1) of this Article.

In the event referred to in paragraph 1, point 4) of this Article, upon the conclusion of a cooperative programme, Member States shall indicate to the European Commission the share of the research and development expenditures relative to the overall costs of the programme, the cost-sharing agreement, and the intended share of purchases per state, if any.

### ***Special exemptions for public procurement containing defence or security aspects***

#### **Article 21**

The provisions of this Law shall not apply to:

1) the award of public procurement contracts and design contests not otherwise exempted under Article 20, paragraph 1 of this Law, in so far as that, by applying this Law, the Republic of Serbia would be obliged to supply information the disclosure of which it considers to be contrary to the essential interests of its security;

2) the award of public procurement contracts and design contests not otherwise exempted under Article 20, paragraph 1 of this Law, in so far as that the protection of the essential security interest of the Republic of Serbia cannot be guaranteed by other measures, for instance by imposing requirements aimed at protecting the confidential nature of information which the contracting authority/entity makes available in a public procurement procedure, in compliance with this Law;

3) where the procurement and performance of public procurement contracts and design contests are declared to be secret, or where these must be accompanied by special security measures in accordance with the applicable laws, regulations or administrative provisions, provided that the Republic of Serbia has determined that the essential security interests cannot be protected by other measures, such as those under point 2) of this Article.

The Government shall decide on application of exemptions referred to in paragraph 1 of this Article.

## **8. Mixed Procurement**

### ***General provisions***

#### **Article 22**

The provisions on mixed procurement shall apply to:

- 1) contracts covering different subject-matters of procurement (supplies, services or works);
- 2) contracts to which different procurement rules apply;
- 3) contracts awarded by contracting entities;
- 4) contracts containing elements of defence and security.

The provisions of paragraph 1 of this Article may not be applied with the intention of circumventing the application of this Law, or the law governing public-private partnerships and concessions.

### ***Contracts covering different subject-matters of procurement***

#### **Article 23**

Public procurement contract which has as its subject different subjects of procurement (supplies, services or works), shall be awarded pursuant to the provisions of this Law applicable to the main subject of the contract.

In the case of the public procurement contract consisting partly of supplies and partly of services, the main subject of the contract shall be determined in accordance with which of the estimated values of the respective subject is higher.

In the case of the public procurement contract consisting partly of services and partly of social and other special services, the main subject of the contract shall be determined in accordance with which of the estimated values of the respective subject is higher.

### ***Contracts to which different procurement rules apply***

#### **Article 24**

In the case of contract which has as its subject the procurement covered the rules on public procurement procedures prescribed by this Law and the procurement not covered by the provisions of this Law, and different parts of the contract are objectively separable, separate contracts may be awarded in accordance with the rules relating to separate parts or a single contract, in which case the rules on public procurement procedures apply, except when the subject of procurement includes procurements in the fields of defence and security, in which case the contract is awarded in accordance with Article 27 of this Law.

In the case of contract which has as its subject the procurement of supplies, services or works and procurement having elements of a concession, the contract is awarded in accordance with the provisions of this Law if the estimated value of supplies, services or works is equal to or greater than the amount referred to in Article 27 of this Law.

### ***Contracts awarded by contracting entities***

#### **Article 25**

In the case of a contract which has as its subject-matter a procurement intended to cover several activities, the contracting entity may award separate contracts for the purposes of each of the

activities it performs in accordance with the rules relating to the relevant activity or may award a single contract.

Where contracting entity chooses to award a single contract, the rules governing the activity for which the contract is mainly intended shall apply, except where the subject of procurement also covers the procurements in the fields of defence and security, in which case, the contract shall be awarded in accordance with Article 26 of this Law.

In the event that it is not possible to objectively determine the main purpose of the contract, the contract shall be awarded:

- 1) in accordance with the rules of the public procurement procedure relating to contracting authorities in the case of contracts comprising the subject of procurement intended for utility activity and activities other than utility;
- 2) in accordance with the rules of the public procurement procedure relating to contracting entities in the case of contracts comprising the subject-matter of procurement intended for utility activity and procurements covered by provisions of the law governing concessions;
- 3) in accordance with the rules of the public procurement procedure relating to contracting entities in the case of contracts comprising the subject-matter of procurement intended for utility activity and other activities not covered by the provisions of this Law relating to contracting entities and contracting authorities, nor the provisions of the law governing concessions.

### ***Contracts containing elements of defence and security***

#### **Article 26**

In the case of contract having as its subject-matter the procurement which partly includes the subject-matter of procurement covered by the rules on public procurement procedures in the field of defence and security or the subject-matter of procurement not covered by the provisions of this Law, in accordance with Articles 20 and 21 of this Law, if different parts of the contract are objectively separable, separate contracts may be awarded in accordance with rules relating to separate parts or single contract may be awarded.

Single contract may be awarded if the different parts of the contract cannot be objectively separated or if different parts of the contract can be separated and the award of single contract is justified by objective reasons and the purpose of awarding one contract is not to avoid the application of the provisions of this Law:

- 1) pursuant to the provisions of this Law relating to procurements in the fields of defence and security, if a part of the contract comprises procurements to which such provisions apply;
- 2) without applying the provisions of this Law, if part of the contract is the procurements to which Articles 20 and 21 of this Law apply.

## **9. Thresholds**

### ***Thresholds below which the Law does not apply***

#### **Article 27**

The provisions of this Law shall not apply to:

- 1) procurement of supplies, services and conducting of design contests, the estimated value of which is less than RSD 1,000,000.00 and for the procurement of works, the estimated value of which is less than RSD 3,000,000.00;

2) procurement of supplies, services and conducting the design contest, the estimated value of which is less than RSD 15,000,000.00, for the purposes of diplomatic missions and diplomatic-consular representative bodies and performance of other activities of the Republic of Serbia abroad; as well as for works for those purposes the estimated value of which is less than RSD 650,000,000.00;

3) procurement of social and other specific services referred to in Article 75 of this Law the estimated value of which is less than RSD 15,000,000.00 when procurement is carried out by a contracting authority, or less than RSD 20,000,000.00, when the procurement is carried out by a contracting entity.

In the case referred to in paragraph 1 of this Article, the principles of this Law shall apply in a manner appropriate to the circumstances of the particular procurement.

### ***Thresholds above which the Law does apply***

#### **Article 28**

The contracting authority/entity shall apply the provisions of this Law to procurement of supplies, services and works and design contests the value of which is equal to or higher than the thresholds referred to in Article 27 of this Law.

In accordance with the threshold values published by the European Commission in the Official Journal of the European Union, the ministry responsible for finance determines the appropriate value thresholds in dinars (hereinafter: the European thresholds).

The dinar value of the European thresholds is published by the Ministry responsible for finance in "the Official Journal of the Republic of Serbia" and in its website.

As of the day of accession of the Republic of Serbia to the European Union, the appropriate value of European thresholds in dinars is determined by the European Commission and published in the Official Journal of the European Union.

## **10. Method of determining estimated value of public procurement and division into lots**

### **Estimated value of public procurement**

#### ***General provision***

#### **Article 29**

The estimated value of the subject-matter of public procurement must be objective, based on performed procurement-related subject inquiries and market research that include the checking of price, quality, warranty period, maintenance, etc., and must be valid at the time of initiation of the procedure.

Determining the estimated value of the subject-matter of public procurement shall not be made with an intention of excluding it from the scope of this Law, nor with the intention of dividing the subject-matter of public procurement into several procurements.

The contracting authority/entity shall define the subject-matter of public procurement in such a way that it presents technical, technological, functional and other objectively determinable wholeness.



## ***Methods for calculating the estimated value of the subject-matter of public procurement***

### **Article 30**

The estimated value of the subject-matter of public procurement shall be expressed in dinars, without value-added tax, and shall comprise an estimate of total amounts payable by the contracting authority/entity, including all contract options and any renewals of the contract, if defined in tender documents.

Where contracting authority/entity provides for prizes or payment to tenderers or candidates, it shall take the value of such prizes or payments when calculating the estimated value of the subject-matter of public procurement.

Where the contracting authority/entity is comprised of several separate organizational units, the estimated value is calculated as the total estimated value of the subject-matter of the public procurement for all organizational units.

Notwithstanding paragraph 3 of this Article, where a separate organisational unit is independently responsible for its own public procurement, the estimated value of the subject-matter of public procurement may be calculated at the level of this organisational unit.

It shall be deemed that organisational unit referred to in paragraph 4 of this Article is independently responsible if it independently plans its own procurements, conducts public procurement procedures, and awards public procurement contracts that it finances from the funds dedicated within the scope of a separate budgetary line it has at its disposal.

## ***Determining estimated value in a framework agreement, dynamic purchasing system, and innovation partnership***

### **Article 31**

With regard to framework agreement and dynamic purchasing system, estimated value of the subject-matter of public procurement shall be calculated as the maximum value of all contracts envisaged for the total term of such framework agreement or dynamic purchasing system.

With regard to innovation partnership, estimated value of the subject-matter of public procurement shall be calculated as the maximum estimated value of all of research and development activities to take place during all stages of envisaged partnership, as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership.

## ***Calculating the estimated value of public procurement of supplies***

### **Article 32**

In the case of public procurement of standard supplies which are generally available on the market or which are to be periodically renewed, the calculation of the estimated value is based on:

- 1) the total actual value of all contracts of the same subject-matter of the procurement awarded in the previous 12 months or during the previous budget year, adjusted, where possible, to take account of changes in quantity or value which would occur within the next 12 months, or
- 2) the total estimated value of successive deliveries within 12 months following the first delivery.

In the case of public procurement of supplies relating to rental, leasing, or hire-purchase the calculation of the estimated value, it is based on:

- 1) the total estimated value for the total term of the contract, where the term of the contract is 12 months or less;
- 2) the total estimated value of the contract for the first 12 months and the estimated value for the residual period until the expiry of the contractual term, where the term of the contract is longer than 12 months;
- 3) the monthly value of the contract multiplied by 48, where the contract is awarded without a fixed term or the term cannot be defined.

### ***Calculating the estimated value of public procurement of services***

#### **Article 33**

In the case of public procurement of services regular in nature or services which are to be periodically renewed, the calculation of the estimated value is based on:

- 1) the total actual value of all contracts of the same subject-matter of the procurement awarded in the previous 12 months or during the previous budget year, adjusted, where possible, to take account of changes in quantity or value which would occur within the next 12 months, or
- 2) the total estimated value of successively provided services within 12 months following the first provision of service.

With regard to public procurement of certain services, the contracting authority/entity takes into account as the basis for calculating the estimated value:

- 1) for insurance services – the premium payable, as well as other forms of remuneration;
- 2) for banking and other financial services – fees, commissions, interest, and other forms of remuneration;
- 3) for design services - fees, commissions and other forms of remuneration or rewards.

With regard to public procurement service contracts which do not indicate the total price, the calculation of the estimated value is based on:

- 1) the total estimated value for the full term of the contract, where the term of contract is up to 48 months;
- 2) the monthly estimated value of the contract multiplied by 48, where the contract is without fixed term or with term greater than 48 months.

In case of public service contracts for drawing technical documentation, technical control of technical documentation, expert supervision, project supervision, as well as technical inspection of the works carried out, the contracting authority/entity may determine the estimated value according to the market value of these services in the Republic of Serbia.

### ***Calculating the estimated value of public procurement of works***

#### **Article 34**

The total value of works, as well as the supplies and services necessary for the execution of works the contracting authority may determine also on the basis of values referred to in technical documentation of the feasibility study with the design project, the project for the building permit or the project for the execution of works.

Calculation of the estimated value of the public procurement of works is based on the total value of works as well as the supplies and services that the contracting authority/entity may make available to the contractor, provided they are necessary for the execution of works.

## ***Calculating the estimated value of public procurement in lots***

### **Article 35**

Where the subject-matter of public procurement is divided into lots, contracting authority/entity shall determine the estimated value of each lot.

The estimated value of public procurement divided into lots includes the estimated values of all lots, for the term the contract is awarded.

Contracting authority/entity cannot avoid the application of this Law for award of an individual lot, if the aggregate value of all lots is equal to or exceeds the thresholds referred to in Article 27, paragraph 1, and point 1) of this Law.

Notwithstanding paragraph 3 of this Article, contracting authority/entity may award contracts for one or more individual lots without applying the provisions of this Law, provided that estimated value of the lot concerned is less than RSD 300,000.00 for supplies or services, or less than RSD 500,000.00 for works, and that the total estimated value of all such lots does not exceed the threshold referred to in Article 27, paragraph 1, point 1) of this Law.

## ***11. Division of procurement into lots***

### **Article 36**

The contracting authority/entity may decide to divide the subject-matter of public procurement into several lots on the basis of objective criteria (by type, quantity, characteristics, purpose, place, or time of execution, etc.), while determining the subject matter and scope of each lot, taking into account the possibility of the participation of small and medium-sized enterprises in the public procurement procedure when that is justified.

If the estimated value of the public procurement is equal to or greater than the European thresholds, when determining the subject-matter of procurement, the contracting authority should consider the appropriateness of the dividing of the subject-matter of public procurement into several lots, and in case it concludes that the division of the subject-matter of public procurement into the lots is not appropriate, it shall indicate in the report on the public procurement procedure the main reasons for such conclusion.

Contracting authorities/entities shall indicate in the contract notice, invitation to confirm interest or invitation to submit tenders, or to negotiate in the case of a qualification system, whether tenders may be submitted for one, several, or for all lots.

Contracting authority/entity may, even where tenders may be submitted tenders for several or for all lots, limit the number of lots that may be awarded to one tenderer, provided the maximum number of lots per tenderer is indicated in the contract notice, invitation to confirm interest, or invitation to submit tenders, or to negotiate in the case of qualification system.

In the event referred to in paragraph 4 of this Article, contracting authority/entity shall indicate in the procurement documents the objective and non-discriminatory criteria or rules it intends to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number the contracting authority/entity has indicated.

## **12. Reserved public procurements**

### **Article 37**

Contracting authority/entity may reserve the right to participate in public procurement procedure to:

- 1) economic operators whose main aim is professional rehabilitation and employment of disabled persons who are organised in accordance with the law governing professional rehabilitation and employment of disabled persons;
- 2) economic operators whose main aim is the social and professional integration of disadvantaged persons who are organised in accordance with the law governing social entrepreneurship and employment in the social enterprises.

Disadvantaged persons, in terms of paragraph 1, point 2) of this Article, are persons of poor employability, persons with working capacity who exercise rights or services pursuant to regulations on social protection, and other persons of poor employability from among the particularly vulnerable categories.

Contracting authority/entity may provide that public procurement contract to be performed in the context of sheltered employment programme.

In the events referred to in paragraphs 1 and 3 of this Article, at least 50% of the employees in these economic operators or sheltered employment programmes are disabled persons or disadvantaged persons.

For procurements under paragraphs 1 and 3 of this Article, contracting authority/entity shall state in the contract notice that the public procurement is reserved.

Economic operator referred to in paragraphs 1 and 3 of this Article must prove to contracting authority/entity that it meets requirements under Paragraph 4 of this Article by virtue of its registration into the relevant register, certificate of the competent authority, or in another adequate manner.

All participants in a joint tender and all subcontractors must be subjects referred to in paragraphs 1 and 3 of this Article.

Where public supply contract is being awarded, the provisions of this Article shall apply, on the condition that offered supplies are produced by subjects referred to in paragraphs 1 and 3 of this Article.

The contracting authority/entity shall carry out a control of execution of the public procurement contract in accordance with the conditions set in the procurement documents and chosen tender.

## **13. Information protection, documentation and keeping records of procedures**

### **Data protection**

#### **Article 38**

Contracting authority/entity shall:

- 1) keep as confidential all information that economic operator made available to the contracting authority/entity in public procurement procedure and designated as confidential, in compliance with the law governing the protection of business secrets, or those that are confidential in terms of the law governing the confidentiality of data, including but not limited to the technical or business secrets;

2) keep as business secret information on economic operators interested in taking part in public procurement procedure, and information on submitted requests to participate or tenders, until the opening of requests to participate or tenders.

Economic operator shall indicate the legal basis pursuant to which the information referred to in paragraph 1, point 1) of this Article is designated as confidential and explain the reason of confidentiality.

The economic entity shall not mark as confidential the declaration and information of fulfilment of the criteria for the qualitative selection of the economic operator, the catalogues, the offered price and price elements, as well as other information related to the contract award criteria and the conditions for performance of the contract.

Only upon agreement of economic operator participating in the public procurement procedure may contracting authority/entity reveal to other participants the confidential information communicated by the economic operator concerned, whereby such agreement shall be given with reference to individually specific information and shall not take the form of a general waiver.

### ***Determining confidentiality***

#### **Article 39**

Contracting authority/entity may impose on economic operators requirements aimed at the protection of confidentiality of information which it makes available to them, if such information are business secret in terms of the law governing the protection of business secrets, or are confidential data in terms of the law governing the confidentiality of data.

Contracting authority/entity may condition the access to tender documents or parts thereof in accordance with Article 45 paragraph 6 of this Law.

Person who receives information designated as confidential shall keep and protect such data, irrespective of the degree of this confidentiality.

#### **Article 40**

Provisions of Articles 38 and 39 of this Law do not exclude duty to apply other provisions of this Law, in particular those relating to the advertising public procurement notices, the contents of decisions and documentation on the procedure which the contracting authority/entity supplies to economic operators, as well as the provisions of special regulations, including legislation governing the right to free access to information of public importance.

## **14. Documentation and keeping records of procedures**

#### **Article 41**

The contracting authority/entity shall record and document in writing all actions during the planning, conducting the procedure and execution of the public procurement contract.

Contracting authority/entity shall, pursuant to legislation governing the area of documentary material and the archives, keep all documents related to public procurements.

The documentation referred to in paragraph 2 of this Article is any document created during the public procurement planning, conducting the public procurement procedure and execution of the public procurement contract that the contracting authority/entity shall keep for at least five years since the conclusion of an individual public procurement contract or framework agreement, or five years since the suspension or annulment of a public procurement procedure.

The documentation that is exchanged on the Public Procurement Portal shall be kept and archived in accordance with this paragraph 3 of this Article on the Public Procurement Portal.

## **15. Language in public procurement procedure**

### **Article 42**

Contracting authority/entity shall conduct the procedure and draft procurement documents in public procurement procedure in Serbian language.

Contracting authority/entity may also prepare procurement documents in a foreign language.

Tenderer shall submit tender in Serbian language.

Contracting authority/entity may allow that tender or part of the tender is submitted in a foreign language.

Where contracting authority/entity finds, in the tender review and evaluation procedure, that a part of tender should be translated into the Serbian language, it shall set an adequate deadline, within which the tenderer shall translate the part of the tender concerned.

The linguistic version of the procurement documents and tenders in Serbian language is the sole authentic wording.

## **16. Currency**

### **Article 43**

Values in public procurement procedure shall be expressed in dinars.

Contracting authority/entity may allow the tenderer to express the price in its tender in a foreign currency and, in this event, contracting authority/entity will indicate in tender documents that, for the calculation into dinars, will be used relevant middle exchange rate of the National Bank of Serbia, valid on the day the opening of tenders began.

If tenderers are allowed to express the price in tender in a foreign currency, contracting authority/entity shall specify in tender documents the currencies in which may be expressed prices in tenders.

## **17. Communication in public procurement procedure**

### ***General provisions***

### **Article 44**

Contracting authority/entity and economic operators in the public procurement procedure shall communicate through the Public Procurement Portal, by post, courier service and electronically – by sending an electronic mail, in accordance with this Law and the instruction for the use of the Public Procurement Portal referred to in Article 184 of this Law.

Where contracting authority/entity or economic operator has submitted a document in public procurement procedure by electronic mail, the document shall be deemed received at the moment it was sent.

## ***Communication by electronic means***

### **Article 45**

Communication and exchange of information in the public procurement procedure shall be carried out by electronic means on the Public Procurement Portal, in compliance with this Article and the instruction for the use of the Public Procurement Portal referred to in Article 184 of this Law.

The following shall be considered to be communication and exchange of information referred to in paragraph 1 of this Article:

- 1) drawing-up public procurement notices and sending them for publication, including changes thereof;
- 2) electronic availability of descriptive and tender documents, and amendments thereto;
- 3) inviting economic operator to submit tenders and requests to participate, to negotiate or to participate in the dialogue;
- 4) communication between contracting authorities/entities and economic operators concerning the additional information and clarifications necessary for preparation and submission of the tender or request;
- 5) submission and opening of tenders, requests, plans and designs;
- 6) communication between contracting authorities/entities and tenderers concerning the submission, amendments to or clarifications of tenders, requests and corrections of calculation errors;
- 7) communication between contracting authorities/entities and tenderers concerning the submission of evidence on fulfilling criteria for qualitative selection of economic operator;
- 8) publication and submission of decisions that contracting authority/entity is obliged to publish and submit, in compliance with this Law;
- 9) filing requests for the protection of rights and publication of decisions of the Republic Commission for the protection of rights in public procurement procedures;
- 10) communication between the Public Procurement Office and contracting authorities/entities in relation to Article 62, paragraphs 2 and 3 of this Law.

Communication and exchange of information by electronic means on the Portal relating to submission of parts of tenders, requests to participate, plans or designs is not mandatory if:

- 1) due to specialised nature of procurement, the use of electronic means of communication requires special tools, devices or file formats that are not generally available or are not supported by generally available applications;
- 2) applications supporting file formats that are suitable for the description of tenders use file formats that cannot be handled by any other open or generally available application, or under a proprietary licensing protection, and cannot be made available for downloading or remote use by the contracting authority/entity;
- 3) the use of electronic means requires specialised office equipment not generally available to contracting authorities/entities;
- 4) certain objects such as samples, projects, physical models and the like, cannot be transmitted by electronic means;
- 5) it is necessary to submit the original documents which cannot be transmitted by electronic means;

6) the given procurement is covered by a part of this Law that governs public procurements for the needs of defence and security.

In the cases referred to in paragraph 3 of this Article, communication shall be conducted by post, courier service, or by a combination thereof and the electronic means.

Contracting authority/entity is not obliged to use the electronic means to the extent that the use of means other than electronic is necessary, because of a breach of security of the electronic means or for the protection of particularly sensitive information, including confidential information referred to in Article 39 of this Law, that require such a high level of protection which cannot be properly ensured by using electronic tools and devices that are either generally available to economic operators or can be otherwise made available to them, by alternative means of access.

Where free of charge, unrestricted and full direct access to tender documents cannot be ensured by electronic means due to the reasons set forth under paragraphs 3 and 5 of this Article, the contracting authority/entity shall indicate in the contract notice how access can be obtained to tender documents, and measures aimed at protecting the confidential nature of the information required, and the means of access to such documents.

Contracting authority/entity shall elaborate, both in tender documents and in report on the public procurement procedure, the reasons for using the means of communication other than electronic, in accordance with paragraphs 3 and 5 of this Article.

### ***Oral communication***

#### **Article 46**

Exceptionally, oral communication between contracting authority/entity and economic operators in a public procurement procedure may be used, provided that such communication does not concern the essential elements of a public procurement procedure, and unless otherwise provided for by this Law, on the condition that its content is documented to a sufficient degree.

The essential elements of public procurement procedure include procurement documents, requests and tenders.

Oral communication with economic operators which could have a substantial impact on the contents and assessment of tenders must be documented to a sufficient extent and by appropriate means, such as by drafting written notes or the minutes, or audio records or summaries of the main elements of the communication, etc.

### ***Alternative means of access***

#### **Article 47**

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

It shall be considered that contracting authority/entity offers suitable alternative means of access if it:

1) enables free-of-charge, unrestricted and full direct access by electronic means to those tools and devices from the date of publication of the contract notice, or from the date when the invitation to confirm interest is sent, provided that it has specified in the text of the notice or of the invitation to confirm interest the internet address at which those tools and devices are accessible;

2) ensures that tenderers, which have no access to such tools and devices, or no possibility of obtaining them within the relevant timeframe, provided that the lack of access is not attributable



to the tenderer concerned, may access the procurement procedure through the use of provisional tokens made available free of charge via the internet, or

3) supports an alternative channel for electronic submission of tenders.

For public works contracts and design contests contracting authority/entity may require the use of specific electronic tools, such as virtual display of building models or similar, but then it must provide an alternative means of access, until such time as those tools become generally available.

#### **Article 48**

Requirements concerning tools and devices for the electronic transmission and submission of tenders, requests, plans and designs on the Public Procurement Portal are listed in Annex 3 of this Law.

### **18. Preventing corruption and conflict of interest**

#### ***General measures for preventing corruption***

#### **Article 49**

Contracting authority/entity shall take all necessary measures to prevent corruption in the public procurement planning, in a public procurement procedure, or during implementation of public procurement contract, in order to detect corruption on time, to remedy or mitigate adverse consequences of the corruption, and to sanction the actors of corruption in compliance with the law.

Contracting authority/entity shall regulate in a special act in greater detail the manner of planning, conducting public procurement procedures and monitoring of the execution of the public procurement contract, (the manner of communication, the rules, duties and responsibilities of persons and organisational units), the manner of planning and conducting procurements exempted from the law and procurements of social and other specific services.

The contracting authority/entity shall publish the act referred to paragraph 2 of this Article on its website.

#### ***Conflict of interest***

#### **Article 50**

Contracting authority/entity shall undertake all measures in order to identify, prevent and eliminate conflicts of interest related to public procurement procedure, so to avoid violation of the principles of competition and equal treatment of economic operators.

Conflict of interest between contracting authority/entity and economic operator covers situations in which representatives of the contracting authority/entity, who are involved in the conducting of that procedure, or may influence the outcome of that procedure, have direct or indirect financial, economic or other private interest, which might be perceived to compromise their impartiality and independence in that same procedure.

Conflict of interest in terms of paragraph 2 of this Article includes, in particular, the following instances:

1) where contracting authority/entity's representative takes part in economic operator's management, or

2) where contracting authority/entity's representative holds more than 1% of economic operator's share or stocks.

Contracting authority/entity's representative, in terms of paragraph 2 of this Article, shall, in particular, be:

- 1) contracting authority/entity's manager, or responsible person, or member of the administrative, executive or supervisory board of the contracting authority/entity,
- 2) a member of public procurement committee, i.e., person conducting of public procurement procedure.

Economic operator in terms of paragraph 2 of this Article shall be tenderer, member of a group of tenderers, and subcontractor.

Paragraphs 2 and 3 of this Article shall also apply to persons related to the contracting authority/entity's representatives referred to in paragraph 4 of this Article, specifically those who are in: lineal consanguinity; collateral kinship up to the third degree; in-laws up to the second degree of kinship; relationship of adopter and adoptee; marriage, irrespective of whether the marriage is terminated or not; extramarital union; living together, and in relationship of guardian and ward.

In the event of learning about the existence of a conflict of interest, the contracting authority/entity's representative referred to in paragraph 4 of this Article shall exclude himself/herself from such public procurement procedure.

Upon the opening of tenders or requests, the contracting authority/entity's representative referred to in paragraph 4, point 2) of this Article shall sign a statement on the existence or non-existence of conflict of interest.

## **II. PUBLIC PROCUREMENT PROCEDURES**

### **1. Types of procedures**

#### ***General provisions***

#### **Article 51**

Public procurement procedures are as follows:

- 1) open procedure;
- 2) restricted procedure;
- 3) competitive procedure with negotiations;
- 4) competitive dialogue;
- 5) negotiated procedure with publication of the contract notice;
- 6) innovation partnership;
- 7) negotiated procedure without publication of the contract notice.

As a rule, contracting authority awards contracts in open or restricted procedures, and may also award contracts in other public procurement procedures if the requirements regulated by this Law are met, with the exception of negotiated procedure with publication of the contract notice.

As a rule, contracting entity awards contracts in open procedure, restricted procedure, negotiated procedure with publication, or in competitive dialogue, and may also award contracts in other

public procurement procedures, if the requirements set forth by this Law are met, with the exception of the competitive procedure with negotiations.

### ***Open procedure***

#### **Article 52**

Open procedure is a procedure wherein all interested economic operators may submit tenders.

In open procedure, contracting authority/entity shall publish a contract notice.

The minimum time limit for the submission of tenders in open procedure shall be:

- 1) 35 days from the date of sending the contract notice in case of procurement whose estimated value is equal or exceeds the amounts of European thresholds;
- 2) 25 days from the date of sending the contract notice in case of procurement whose estimated value is less than the amounts of European thresholds;
- 3) 15 days from the date of sending the contract notice in case of procurement of works whose estimated value is less than RSD 30,000,000.00;
- 4) 10 days from the date of sending the contract notice in case procurement of supplies and services whose estimated value is less than RSD 10,000,000.00.

In the event of publication of prior information notice or periodic indicative notice, contracting authority/entity may reduce the minimum time limit for the submission of tenders referred to in paragraph 3, points 1) and 2) of this Article to 15 days, under the conditions set forth in Article 107, paragraph 6 and Article 108, paragraph 14 of this Law.

Contracting authority/entity may reduce the time limits for the submission of tenders referred to in paragraph 3, points 1) and 2) of this Article by five days, when tenders can be submitted by electronic means.

Contracting authority/entity may set a shorter time limit for the submission of tenders, but not shorter than 15 days from the date of sending for publication a contract notice, if the time limit referred to in paragraph 3, points 1) and 2) of this Article is not adequate due to a justified urgency, for which contracting authority/entity possesses valid evidence.

In the event under Article 45, paragraph 6 of this Law, minimum time limits for submission of tenders referred to in paragraph 3 of this Article shall be extended for five days, except in urgent situations referred to in paragraph 6 of this Article.

In the events under paragraph 3, points 3) and 4) of this Article, contracting authority/entity may, simultaneously with sending for publication a contract notice, invite economic operators which, according to their knowledge, are capable of performing the procurement.

### ***Restricted procedure***

#### **Article 53**

Restricted procedure is a two-stage procedure, in which all interested economic operators in the first phase may submit a request to participate, whereas in the second phase only candidates with recognized qualification may be invited to submit tender.

In the first phase of restricted procedure, contracting authority/entity shall publish contract notice.

The minimum time limit for the submission of request to participate in restricted procedure shall be:

1) 30 days from the date on which contract notice was sent for publication in case of procurement with estimated value equal or exceeding the amounts of European thresholds, i.e., from the date on which the invitation to confirm interest was sent when the contracting entity used the periodic indicative notice as a contract notice in accordance with Article 108 of this Law;

2) 20 days from the date on which contract notice was sent for publication a in case of procurement with estimated value less than the amounts of European thresholds, i.e. from the date on which the invitation to confirm interest was sent when the contracting entity used the periodic indicative notice as a contract notice in accordance with Article 108 of this Law.

Contracting authority/entity may set a shorter time limit for the submission of requests, but not shorter than 15 days, if time limit under paragraph 3 of this Article is not adequate due to a justified urgency, for which contracting authority/entity possesses valid evidence.

Contracting authority/entity shall evaluate the timely submitted requests on the basis of criteria for qualitative selection of economic operator specified in tender documents, compile report thereon, and submit a notification on recognition of qualification to each candidate whose qualification has been recognized, and to those candidates whose qualification has not been recognized it shall send a decision with the explanation of reasons due to which their qualification was not recognised, in each case paying attention not to disclose information about other candidates.

Contracting authority/entity may, in accordance with Article 64 of this Law, limit the number of candidates with recognized qualifications that it will invite to submit tenders, in which case it is obliged to submit a decision with an explanation to candidates whose qualification has been recognized who will not be invited to submit tenders, paying attention not to disclose information about other candidates.

#### **Article 54**

In the second phase of restricted procedure contracting authority/entity shall send invitation to tender to candidates that it has not excluded from public procurement procedure.

The minimum time limit for the submission of tenders when the procedure is carried out by the contracting authority shall be:

1) 30 days from the date on which the invitation to tender was sent in case of public procurement with estimated value equal or exceeding the amounts of European thresholds;

2) 15 days from the date on which the invitation to tender was sent, in case of public procurement with estimated value less than the amounts of European thresholds.

Contracting entities may set the time limit for the submission of tenders by agreement with all candidates so that all candidates in the procedure have the same time limit for preparation and submission of their tenders.

In the absence of agreement on time limit for the submission of tenders referred to in paragraph 3 of this Article, the minimum time limit for submission of tenders shall be at least ten days from the date on which the invitation to tender was sent.

Where contracting authority has published a prior information notice, the minimum time limit for submission of tenders referred to in paragraph 2 of this Article may be reduced to ten days, provided that requirements referred to in Article 107, paragraph 6 of this Law are met.

Contracting authority may set a shorter time limit for the submission of tenders, but not shorter than 10 days from the date on which the invitation to tender was sent, if the time limit referred to in paragraph 2 of this Article is not adequate due to a justified urgency, for which contracting authority possesses valid evidence.

Contracting authority may reduce time limit for submission of tenders referred to in paragraph 2 of this Article by five days, when tenders in restricted procedure may be submitted electronically.

In the event under Article 45, paragraph 6 of this Law, the minimum time limits for the submission of tenders referred to paragraph 2 of this Article shall be extended for five days, except in urgent situations referred to in paragraph 6 of this Article.

### ***Competitive procedure with negotiations***

#### **Article 55**

Contracting authority may conduct competitive procedure with negotiations for the procurement of supplies, services or works, in the following cases:

- 1) the needs of contracting authority cannot be met without adaptation of the readily available solutions;
- 2) contract involves design or innovative solutions;
- 3) contract may not be awarded without prior negotiations because of specific circumstances related to the nature, complexity, legal or financial structure of the subject-matter of public procurement, or because of the risks related thereto;
- 4) contracting authority cannot determine with sufficient precision the technical specifications of the subject-matter of public procurement in terms of Article 98, paragraphs 2 to 5 of this Law, or
- 5) in the previously conducted open or restricted procedure, only unacceptable tenders are received.

Contracting authority shall publish a contract notice in response to which each interested economic operator may submit a request to participate.

In the case of paragraph 1, point 5) of this Article, contracting authority is not required to publish a contract notice, where it invites to this procedure to submit initial tenders all of, and only, tenderers who have submitted a tender in an open or restricted procedure and satisfy criteria for qualitative selection of economic operator and provided that initial conditions of public procurement are not substantially modified.

In the procurement documents the contracting authority shall identify the criteria for qualitative selection of economic operator, contract award criteria, subject-matter of the procurement with description of the needs and the characteristics required of the supplies, services or works, indicating which elements of description of the needs and the characteristics required of the supplies, services or works define the minimum requirements to be met by all tenders and that may not change during the procedure.

Information provided in procurement documents must be sufficiently clear and precise to enable economic operators to identify the nature and the scope of procurement and to assess their own interest in submitting requests to participate.

The minimum time limit for the submission of requests shall be:

- 1) 30 days from the on which the contract notice was sent in case of public procurement with estimated value equal or exceeding the amounts of European thresholds;
- 2) 20 days from the date on which the contract notice was sent in case of public procurement with estimated value less than the amounts of European thresholds.

The contracting authority may set a shorter time limit for the submission of requests, but not shorter than 15 days, if the time limit referred to in paragraph 6 of this Article is not adequate for the reason of justified urgency, for which the contracting authority possesses valid evidence.

Contracting authority shall evaluate the timely submitted requests on the basis of criteria for qualitative selection of economic operator specified in tender documents, compile report thereon, and submit a notification on recognition of qualification to each candidate whose qualification has been recognized, and to those candidates whose qualification has not been recognized it shall send a decision with the explanation of reasons due to which their qualification was not recognised, in each case paying attention not to disclose information about other candidates.

Contracting authority may, in accordance with Article 64 of this Law, limit the number of candidates with recognized qualifications that it will invite to submit initial tenders, in which case it is obliged to submit a reasoned decision to those candidates with recognized qualification who will not be invited to submit initial tenders, paying attention not to disclose information about other candidates.

### **Article 56**

Contracting authority shall send an invitation for initial tenders to candidates that it has not excluded from public procurement procedure.

The minimum time limit for submission of initial tenders shall be:

- 1) 30 days from the date on which the invitation for initial tenders was sent, in case of public procurement with estimated value equal or exceeding the amounts of European thresholds;
- 2) 20 days from the date on which the invitation for initial tenders was sent, in case of public procurement with estimated value less than the amounts of European thresholds.

Where a prior information notice was published, the minimum time limit for submission of initial tenders referred to in paragraph 2 of this Article may be reduced to ten days, under the condition referred to in Article 107, paragraph 6 of this Law.

Contracting authority may set a shorter time limit for submission of initial tenders, but not shorter than 10 days from the date on which the invitation to initial tenders was sent, if the time limit referred to in Paragraph 2 of this Article is not adequate due to a justified urgency, for which contracting authority possesses valid evidence.

Contracting authority may reduce the time limit for submission of initial tender referred to in paragraph 2 of this Article for five days, when tenders may be submitted by electronic means.

In the event under Article 45, paragraph 6 of this Law, the minimum time limits for submission of initial tenders referred to paragraph 2 of this Article shall be extended for five days, except in urgent situations referred to in paragraph 4 of this Article.

Contracting authority negotiates initial and all subsequent tenders with tenderers, so to improve the contents of tenders, except in case of the final tender, and compiles report on negotiation.

Notwithstanding paragraph 7 of this Article, a public procurement contract may be awarded without negotiation, on the basis of initial tenders, where such option was envisaged in the contract notice.

The minimum requirements relating to the description of needs and characteristics required of supplies, services or works and contract award criteria indicated in the procurement documents may not be subject to negotiation.

During the negotiations the contracting authority shall ensure the equal treatment of all tenderers, and may not provide information in a discriminatory manner, which certain tenderers might tend to make use of at the expense of the others.

Contracting authority may negotiate in successive stages in order to reduce the number of tenders to be negotiated, by applying the contract award criteria specified in the procurement documents.

In the event referred to in paragraph 11 of this Article, contracting authority shall indicate in its procurement documents whether it will use that option.

Contracting authority shall send decision on exclusion of tenderers from the further course of negotiation to tenderers which will not be invited to the next phase of the procedure.

Contracting authority shall notify, simultaneously and in writing, all tenderers whose tenders are not excluded from the further course of negotiation, of any changes to the technical specifications or other procurement documents, other than those representing minimum requirements, and, if necessary, to provide the tenderers sufficient time to prepare and re-submit amended tenders.

Contracting authority shall notify tenderers not excluded from the further course of negotiation about the conclusion of negotiations, and set a common deadline for the submission of final tenders.

Contracting authority shall verify whether the final tenders comply with the minimum requirements specified in the procurement documents, evaluate the final tenders, and award public procurement contract on the basis of the contract award criteria.

### ***Competitive dialogue***

#### **Article 57**

Contracting authority may use competitive dialogue for procurements of supplies, services or works under the conditions referred to under Article 55, paragraph 1 of this Law, whereas contracting entity may use this procedure irrespective of such conditions.

Contracting authority shall publish a contract notice, whereas contracting entity shall publish a contract notice, periodic indicative notice or notice of existence of qualification system.

Exceptionally, in the event under Article 55, paragraph 1, point 5) of this Law, contracting authority is not required to publish a contract notice, where it invites to this procedure all of, and only, tenderers who have submitted tenders in an open or restricted procedure and satisfy criteria for qualitative selection of economic operator.

The contract award criteria and indicative time frame for the conduct of the procedure contracting authority shall indicate in the contract notice and contracting entity in the contract notice or periodic indicative notice or notice of the existence of qualification system and their needs and requirements they may set out in the descriptive document.

Contracting authority/entity may specify prizes or payments for participants in the dialogue.

#### **Article 58**

In competitive dialogue, any interested economic operator may submit a request.

The minimum time limit for the submission of request shall be:

- 1) 30 days from the date on which the contract notice was sent for publication, in case of public procurement with estimated value equal or exceeding the amounts of European thresholds;
- 2) 20 days from the date on which the contract notice was sent for publication, in case of public procurement with estimated value less than the amounts of European thresholds.

Contracting authority/entity shall evaluate the timely submitted requests on the basis of criteria for qualitative selection of economic operator specified in tender documents, compile report thereon, and submit a notification on recognition of qualification to each candidate whose qualification has been recognized, and to those candidates whose qualification has not been recognized it shall send a decision with the explanation of reasons due to which their qualification was not recognized, in each case paying attention not to disclose information about other candidates.

Contracting authority/entity may, in accordance with Article 64 of this Law, limit the number of candidates with recognized qualifications that it will invite to dialogue, in which case it shall send a reasoned decision to those candidates with recognized qualification which will not be invited to dialogue, paying attention not to disclose information about other candidates.

Contracting authority/entity shall send an invitation to participate in the dialogue to candidates with recognised qualification, namely, those it has not excluded from public procurement procedure.

Contracting authority/entity shall open the dialogue the aim of which is to identify and define one or several solutions best suited to satisfying its needs, and shall compile the minutes thereon.

During the dialogue, contracting authority/entity may discuss with the participants all elements of procurement, provided that it ensures equal treatment among all candidates and, in particular, it may not provide information in a discriminatory manner, which certain candidates might tend to make use of at the expense of the others.

The contracting authority/entity may not, without the agreement of the candidate or tenderer participating in the dialogue, reveal to the other participants of the procedure the proposed solutions or confidential information communicated by the candidate or tenderer concerned, whereby such agreement may only be given with reference to individually specific information and cannot take the form of a general waiver.

Contracting authority/entity may conduct the dialogue in successive stages in order to reduce the number of solutions to be discussed during a dialogue stage, by applying the contract award criteria specified in the tender documents.

In the event referred to in paragraph 9 of this Article, contracting authority/entity shall indicate in the tender documents, whether it will use this option.

Contracting authority/entity shall send a decision on rejecting a solution to those participants in the dialogue whose solution is rejected.

Contracting authority/entity shall continue the dialogue until it can identify one or several solutions which are capable of meeting its needs.

Contracting authority/entity shall notify participants in the dialogue, whose solutions were not rejected, about the conclusion of the dialogue and simultaneously invite them to submit final tenders on the basis of one or several solutions presented and specified during the dialogue.

The final tenders shall contain all the elements required and necessary for the performance of the subject-matter of procurement.

Contracting authority/entity may ask the tenderers to clarify, specify and adjust their final tenders or to supply additional information, but this may not involve changes to the essential elements of the final tender or of the subject-matter of procurement indicated in the tender documents, where such variations are likely to distort competition or have a discriminatory effect.

Contracting authority/entity shall evaluate final tenders on the basis of the contract award criteria laid down in the contract notice or in descriptive document.

In competitive dialogue, the sole contract award criterion is the best price-quality ratio.



After having evaluated the final tenders, contracting authority/entity may carry out negotiation with the tenderer identified as having submitted the tender presenting the best price-quality ratio, in order to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract, on the condition that this does not have the effect of materially modifying essential elements of the tender or of the subject-matter of procurement, including the needs and requirements set out in the contract notice or in the descriptive document, and that this does not distort competition or cause discrimination.

### ***Innovation partnership***

#### **Article 59**

The innovation partnership shall aim at the development of innovative supplies, services or works and their subsequent purchase, provided that they correspond to the performance level and maximum costs agreed between the contracting authority/entity and participants in the innovation partnership.

Contracting authority/entity may conduct the procedure of innovation partnership if it has need for innovative supplies, services or works that cannot be met by purchasing the supplies, services or works already available on the market.

Innovation partnership shall be conducted in several successive phases, following the sequence of steps in the research and innovation process, which may include the manufacturing of supplies, the provision of services or the execution of works.

The innovation partnership procedure shall set intermediate targets to be attained by partners in each phase, and payment of the remuneration in appropriate amounts.

Based on targets referred to in paragraph 4 of this Article, contracting authority/entity may terminate innovation partnership after each phase or, in the case of an innovation partnership with several partners, reduce the number of partners by terminating individual contracts, provided it has indicated in tender documents those possibilities and the conditions for their use.

Contracting authority/entity shall ensure that the structure of innovation partnership and, in particular, the duration and value of each phase, reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market.

The estimated value of supplies, services or works shall not be disproportionate in relation to the investment required for their development.

In an innovation partnership, the sole contract award criterion is the best price-quality ratio.

#### **Article 60**

Contracting authority/entity intending to award a public procurement contract in the procedure of innovation partnership shall publish the contract notice.

In the tender documents, the contracting authority/entity shall describe the needs for innovative supplies, services or works, and indicate which elements of the description define minimum requirements to be met by all tenders.

Information contained in tender documents shall be sufficiently clear and precise to enable economic operators to identify the nature and the scope of the required solution, and assess own interest for taking part in the procedure.

In tender documents, contracting authority/entity shall define arrangements applicable to the intellectual property rights.

Contracting authority/entity may set up an innovation partnership with one or with several partners, conducting separate research and development activities.

In innovation partnership, any interested economic operator may submit request.

The minimum deadline for the submission of request shall be:

- 1) 30 days from the date on which the contract notice was sent for publication, in case of public procurement with estimated value equal or exceeding the amounts of European thresholds;
- 2) 20 days from the date on which the contract notice was sent for publication, in the case of public procurement with estimated value less than the amounts of European thresholds.

In selecting the candidates, contracting authority/entity may apply criteria concerning the economic operators' capacity in the field of research and development and in developing and implementing innovative solutions.

Contracting authority/entity shall evaluate the timely submitted requests on the basis of criteria for qualitative selection of economic operator specified in tender documentation, compile report thereon, and submit a notification on recognition of qualification to each candidate whose qualification has been recognized, and to the candidate whose qualification has not been recognized a decision with the explanation of reasons due to which their qualification was not recognised, in each case paying attention not to disclose information about other candidates.

Contracting authority may, in accordance with Article 64 of this Law, limit the number of candidates with recognized qualifications that it will invite to negotiations, in which case it shall send a reasoned decision to those candidates with recognized qualification which will not be invited to negotiate, paying attention not to disclose information about other candidates.

Contracting authority/entity shall send an invitation to submit initial tenders to candidates not excluded from public procurement procedure.

Contracting authority/entity shall negotiate with tenderers the initial and all subsequent tenders to improve the content thereof, except for the final tender, and shall compile report thereof.

The minimum requirements and the contract award criteria, specified in the procurement documents, shall not be subject to negotiations.

During the negotiations, contracting authority/entity shall ensure equal treatment of all tenderers in the negotiations, and may not provide information in a discriminatory manner, which certain tenderers might tend to make use of at the expense of the others.

Contracting authority/entity may conduct negotiations in successive phases in order to reduce the number of tenders to be negotiated, by applying the contract award criteria specified in the contract, invitation to submit requests or in tender documents.

In the event referred to in paragraph 15 of this Article, contracting authority/entity shall indicate in the procurement documents whether it will use this option.

Contracting authority/entity shall send the decision on exclusion from the further course of negotiation to tenderers which will not be invited to the next phase of the procedure.

Contracting authority/entity shall notify, simultaneously and in writing, all tenderers whose tenders are not excluded from the further course of negotiation, of any changes in technical specifications or other procurement documents, other than those representing minimum requirements, and, if necessary, provide the tenderers sufficient time to prepare and re-submit their amended tenders.

Contracting authority/entity shall notify the remaining tenderers about the conclusion of negotiations and to set a common deadline for the submission of final tenders.

Contracting authority/entity shall verify whether the final tenders comply with the minimum requirements specified in the procurement documents, evaluate the final tenders, and award a public procurement contract on the basis of the contract award criteria.

### ***Negotiated procedure without publication of the contract notice***

#### **Article 61**

Contracting authority/entity may conduct negotiated procedure without publication of the contract notice:

1) where only a particular economic operator is capable of delivering supplies, provide services or execute works, for any of the following reasons:

(1) the aim of procurement is the creation or acquisition of a unique work of art or of an artistic performance;

(2) competition is absent for technical reasons or

(3) for the protection of exclusive rights, including intellectual property rights;

2) to the extent as is strictly necessary where, for reasons of extreme urgency brought about by events that the contracting authority/entity could not foresee, it is not possible to act within the time limits set forth for open procedures or restricted procedure, or for competitive procedure with negotiations or for negotiated procedure with publication, provided that the circumstances invoked by the contracting authority/entity to justify extreme urgency are not in any event caused by the contracting authority/entity's actions.

The reasons referred to in paragraph 1, point 1), and sub-points (2) and (3) of this Article may only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of intention to unduly favouring, or disadvantaging a specific economic operator.

Contracting authority/entity may conduct negotiated procedure without publication of the contract notice for the procurement of supplies:

1) for additional deliveries by the initial supplier, which are intended for partial replacement of products, materials or installations, or for the extension of volume of the existing products, materials or installations, where a change of supplier would oblige the contracting authority/entity to acquire supplies having different technical characteristics, which would result in incompatibility or disproportionately great technical difficulties in operation and maintenance, with the proviso that for contracting authorities duration of such contracts may not be longer than three years;

2) in the case of public procurement of supplies quoted and purchased on a commodity market;

The contracting authority/entity may conduct negotiated procedure without publication of the contract notice for the procurement of supplies or services on particularly advantageous terms, either from supplier which is definitely winding up or has already wound up its business activities, or from bankruptcy or liquidation administrator within a pertinent procedure, an arrangement with creditors, or another appropriate procedure under national laws of the state of economic operator.

Contracting authority/entity may conduct negotiated procedure without publication of the contract notice for the procurement of services:

1) following the design contest which has been conducted pursuant to the provisions of this Law, where under the rules provided for in the design contest, the contract is to be awarded to a winning candidate or one of the winning candidates in the design contest, in which case all winning candidates shall be invited to negotiate;

2) for new services consisting in the repetition of similar services entrusted to the economic operator to whom the contracting authority/entity has awarded the basic contract, if all the following requirements are met:

- (1) such services conform to the basic project for which the basic contract was awarded;
- (2) the basic contract was awarded pursuant to a conducted public procurement procedure in which a contract notice was published;
- (3) the extent of possible services which will repeat, and the conditions under which these would be awarded, were indicated in procurement documentation for the basic contract;
- (4) the option of applying this procedure was envisaged in the contract notice for the basic contract;
- (5) when calculating the estimated value of procurement for the basic contract, the total estimated value of new services to be repeated was included in calculation, and
- (6) in the case that the procedure is conducted by the contracting authority, this procedure may be used within three years from the conclusion of the basic contract.

Contracting authority/entity may conduct negotiated procedure without publication of the contract notice for procurement of works, for new works consisting in the repetition of similar works entrusted to the economic operator to whom the contracting authority/entity has awarded the basic contract, if all the following requirements are met:

- 1) such works conform to the basic project for which the basic contract was awarded;
- 2) the basic contract was awarded pursuant to a conducted public procurement procedure in which a contract notice was published;
- 3) the extent of possible works which will repeat, and the conditions under which these would be awarded, were indicated in procurement documentation for the basic contract;
- 4) the option of applying this procedure was envisaged in the contract notice for the basic contract;
- 5) when calculating the estimated value of procurement for the basic contract, the total estimated value of new works to be repeated was included in calculation, and
- 6) where the procedure is conducted by the contracting authority, this procedure may be used within three years from the conclusion of the basic contract.

Contracting authority may conduct a negotiated procedure without publication of a contract notice, where no tenders or no suitable tenders or no requests or no suitable requests have been submitted in an open procedure or restricted procedure, provided that the initial conditions of the public procurement are not substantially altered.

The contracting entity may conduct a negotiated procedure without publication of a contract notice, where no tenders or no suitable tenders or no requests or no suitable requests have been submitted in a procedure in which a contract notice has been published, provided that the initial conditions of the public procurement are not substantially altered.

A tender shall be considered not to be suitable within the meaning of paragraphs 7 and 8 of this Article where it does not correspond to the subject-matter of public procurement, i.e., the required technical specifications, so that obviously without substantial changes it is incapable of meeting the needs and requirements of the contracting authority as specified in the tender documentation.

A request shall be considered not to be suitable within the meaning of paragraphs 7 and 8 of this Article where it was submitted by the candidate for which it was determined that it does not meet the criteria for qualitative selection of the economic operator.

Contracting authority may conduct negotiated procedure without publication of a contract notice for the procurement of supplies, where the supplies are manufactured purely for the purpose of research, experiment, study or development, provided that the manufactured volume of supplies does not result in securing profit or in recovering the research and development costs.

The contracting entity may conduct a negotiated procedure without publication of a contract notice for award of a contract purely for the purpose of research, experiment, study or development, and not for the purpose of achieving profit or recovering the cost of research and development, and insofar the award of that contract does not prevent the possibility of competitive award of subsequent contracts.

Contracting entity may conduct negotiated procedure without publication of the contract notice for procurement of supplies in a case of bargain purchases, by taking advantage of using a particularly advantageous opportunity available only for a very short time at a price considerably lower than usual market prices.

## **Article 62**

On the Public Procurement Portal, the contracting authority/entity shall publish a notice on the implementation of the negotiated procedure without publication a contract notice containing the justification for the application of this procedure.

In the case of the implementation of the procedure referred to in Article 61, paragraph 1, points 1) and 2) of this Law, the contracting authority/entity shall, simultaneously with the publication of the notice referred to in paragraph 1 of this Article, submit to the Public Procurement Office the justification and all documentation regarding the reasons justifying the implementation of this type of procedure.

The Public Procurement Office is obliged to examine within 10 working days from the date of receipt of the justification and documentation referred to in paragraph 2 of this Article the existence of the basis for conducting the negotiated procedure referred to in Article 61 paragraph 1 points 1) and 2) of this Law and submit to the contracting authority/entity opinion on the grounds for application of this type of procedure.

After the publication of the notice referred to in paragraph 1 of this Article, the contracting authority/entity shall send in writing an invitation to negotiate to one or, if possible, to a greater number of economic operators.

With the invitation referred to in paragraph 4 of this Article, the contracting authority/entity shall submit the tender documents in which it determines the criteria for the qualitative selection of the economic operator and the contract award criteria, the subject-matter of procurement with a description of the needs and required characteristics of the supplies, services or works, specifying which elements of the description of the needs and the required characteristics of supplies, services or works represent the minimum requirements that all tenders need to meet, as well as the elements of the contract to be negotiated and the method of negotiation.

The minimum requirements specified in tender documents shall not be subject to negotiations.

Contracting authority/entity shall keep the minutes of negotiation.

During negotiations contracting authority/entity shall ensure equal treatment among all tenderers, and must not provide information in a discriminatory manner, which certain tenderers might tend to make use of at the expense of the others.

Contracting authority/entity is not obliged to act as prescribed in paragraphs 1 to 6 of this Article in the case of conducting the procedure:

- 1) referred to in Article 61, paragraph 1, point 2) of this Law with the purpose of procurement in order to provide basic living conditions in cases of natural disasters or technical and technological accidents whose consequences endanger the safety, health and lives of people, material goods or the environment in accordance with the regulations governing emergency situations and
- 2) referred to in Article 61, paragraph 3, point 2) and paragraph 4 of this Law.

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

#### **Article 63**

Contracting entity may conduct negotiated procedure with publication of a contract notice by using contract notice, periodic indicative notice or notice of the establishment of qualification system.

The minimal time limit for the submission of requests shall be:

- 1) 30 days from the date on which the contract notice was sent for publication or, where the periodic indicative notice is used as a contract notice in line with Article 108 of this Law, from the date on which the invitation to confirm interest was sent, in case of public procurement with estimated value equal to or exceeding the amount of European thresholds;
- 2) 20 days from the date on which the contract notice was sent for publication or, where the periodic indicative notice is used as a contract notice in line with Article 108 of this Law, from the date on which the invitation to confirm interest was sent, in case of public procurement with estimated value lower than the amount of European thresholds.

Contracting entity may set a shorter time limit for the submission of requests, but not shorter than 15 days, if the time limit referred to in paragraph 2 of this Article is not adequate for the reason of justified urgency, for which contracting entity possesses valid evidence.

Contracting entity shall indicate in tender documents the criteria for qualitative selection of economic operator, contract award criteria, subject-matter of the procurement with description of the needs and the required characteristics of supplies, services or works, specifying which elements of description of the needs and the required characteristics of supplies, services or works represent the minimum requirements that all tenders should meet.

Information contained in tender documentation must be sufficiently clear and precise so that economic operators are able to identify the nature and the scope of procurement and to assess their own interest in submitting requests.

Contracting entity shall evaluate the timely submitted requests on the basis of criteria for qualitative selection of economic operator specified in tender documents, compile report thereon, and submit a notification on recognition of qualification to each candidate whose qualification was recognized, and to those candidates whose qualification has not been recognized it shall send the decision with the explanation of reasons due to which their qualification was not recognized, paying attention in each case not to disclose information about other candidates.

Contracting entity may, in accordance with Article 64 of this Law, limit the number of candidates with recognized qualifications that it will invite to submit initial tenders, in which case it shall send a reasoned decision to those candidates with recognized qualifications which will not be invited to submit initial tenders, paying attention not to disclose information about other candidates

Contracting entity shall send an invitation for initial tenders to the candidates with recognized qualification which it has not excluded from the public procurement procedure.

In the negotiated procedure with the publication of a contract notice, contracting entity may set the time limit for the submission of initial tenders by agreement with all candidates, so that all

candidates in the procedure have the same time limit for preparation and submission of their tenders.

In the absence of the agreement on the time limit for submission of tenders referred to in paragraph 9 of this Article, the minimum time limit for submission of initial tenders shall be at least ten days from the date on which the invitation to initial tender was sent.

In the case under Article 45, paragraph 6 of this Law, the minimum time limit for the submission of tenders referred to in paragraph 10 of this Article shall be extended for five days.

During negotiations, contracting entity shall ensure equal treatment among all tenderers, and shall not provide information in a discriminatory manner, which certain tenderers might tend to make use of at the expense of the others.

Contracting entity shall verify whether the final tenders comply with the minimum requirements specified in the procurement documents, evaluate the final tenders, and award a public procurement contract on the basis of the award criteria.

## **2. Minimum number of candidates**

### ***Minimum number of candidates***

#### **Article 64**

In restricted procedure, competitive procedure with negotiation, negotiated procedure with the publication of a contract notice, competitive dialogue and innovation partnership, contracting authority/entity may limit the number of candidates it will invite to tenders or to participate in dialogue.

In case of using the option referred to in paragraph 1 of this Article, the minimum number of candidates in a restricted procedure, shall be five, and in the competitive procedure with negotiations, negotiated procedure with the publication of a contract notice, competitive dialogue and innovation partnership, the minimum number of candidates shall be three.

In case of using the option referred to in paragraph 1 of this Article, in the contract notice or in the invitation to confirm interest, the contracting authority/entity shall indicate the objective and non-discriminatory criteria or rules it intends to apply in order to reduce the number of candidates, the minimum number of candidates it intends to invite and, if needed, their maximum number.

Where the number of candidates meeting the criteria for qualitative selection is below the minimum number indicated in the contract notice or in the invitation to confirm interest, contracting authority/entity may continue the procedure by inviting the candidates who meet the criteria for qualitative selection.

The contracting authority/entity shall not include economic operators that did not request to participate, or candidates that have not satisfied the criteria for qualitative selection.

### ***Invitation the selected candidates***

#### **Article 65**

In restricted procedure, competitive procedure with negotiation, competitive dialogue, innovation partnerships and negotiated procedure with publication of contract notice, contracting authority/entity shall simultaneously and in writing invite all selected candidates to submit their tenders or, in the case of a competitive dialogue, to take part in the dialogue.

Invitation referred to in paragraph 1 of this Article shall contain information referred to in Annex 6 of this Law, and the notification that the procurement documents are available at the Public Procurement Portal.

In the case under Article 45, paragraph 6 of this Law, contracting authority/entity shall also attach tender documentation, unless it has already been made otherwise available to the selected candidates.

### **III. TECHNIQUES AND INSTRUMENTS IN PUBLIC PROCUREMENT PROCEDURES**

#### ***1. Framework agreements***

##### **Article 66**

A framework agreement is an agreement between one or more contracting authorities/entities and one or more tenderers, which establishes the terms and the manner of awarding contracts during the period of validity of the framework agreement, in particular with regard to price and, where appropriate, quantity.

Contracting authority/entity may conclude a framework agreement following conducted public procurement procedure provided for by this Law.

Where the framework agreement is concluded with several tenderers, the procurement documents must contain the objective conditions for determining which of the tenderers party to the framework agreement will be awarded a contract on the basis of the framework agreement, as well as the criteria for awarding contracts in the situations referred to in Article 67, paragraph 3, points 2) and 3) of this Law.

The framework agreement concluded by the contracting authority/entity shall not exceed four years, save in exceptional cases duly justified related to the subject-matter of public procurement, which the contracting authority/entity must explain.

A public procurement contract concluded on the basis of the framework agreement must be awarded before the expiry of the framework agreement, whereas its duration does not have to coincide with the duration of the framework agreement, but depending on the needs, may cover a shorter or a longer period.

Framework agreement and the contract awarded on the basis of the framework agreement may not be used in such a way as to prevent, restrict or distort competition and equal treatment of tenderers.

In the contract notice, the contracting authority/entity shall indicate with the number of tenderers it will conclude the framework agreement with.

Contracting authority/entity that intends to conclude a framework agreement with more than one tenderer may conclude a framework agreement with a lesser number of tenderers, or with one tenderer only, where it does not receive a predetermined number of tenders that meet the conditions for awarding a framework agreement.

Public procurement contracts based on framework agreement may be awarded by the contracting authorities/entities who have concluded the framework agreement, by the contracting authorities/entities on whose behalf the framework agreement has been concluded, and by those contracting authorities/entities that may be clearly inferred from the procurement documents as the ones for whom the framework agreement is intended.



Public procurement contract based on a framework agreement may not entail substantial modifications to the terms laid down in the agreement concerned.

### **Article 67**

Where framework agreement is concluded with a single tenderer, the contract is awarded within the limits of the terms laid down in the framework agreement.

In the case under Article 1 of this Law, contracting authority/entity may ask the tenderer with whom the framework agreement is concluded in writing to supplement its tender with the data for the realisation of the contract, if necessary.

Where framework agreement is concluded with several tenderers, a public procurement contract based on framework agreement may be awarded in one of the following ways:

- 1) following the terms and conditions for awarding contract laid down in the framework agreement, without reopening competition amongst the tenderers, where the framework agreement sets out all terms for the delivery of supplies, provision of services or execution of works, and the objective conditions for the determining which of the tenderers party to the framework agreement, shall perform the contract;
- 2) through reopening competition amongst the tenderers, where not all the terms for the delivery of supplies, provision of services or execution of works are laid down in the framework;
- 3) partly without reopening competition in accordance with point 1) of this paragraph, and partly with reopening competition in accordance with point 2) of this paragraph, where the framework agreement sets out all terms for the delivery of supplies, provision of services or execution of works and where the contracting authority/entity has envisaged in the procurement documents for the framework agreement the objective criteria pursuant to which it will be determined when the reopening of competition will be conducted and specified the terms under the framework agreement which may be the subject of the reopening of competition.

The reopening of competition referred to in paragraph 3, points 2) and 3) of this Article shall be conducted by contracting authority/entity based on the terms under the framework agreement and, where necessary, more precisely formulated terms or other terms referred to in the procurement documents for the framework agreement, whereby the contracting authority/entity shall:

- 1) for each individual contract it awards, send written invitation to tender to all tenderers with whom it has concluded framework agreement;
- 2) for each individual contract it awards, foresee a time limit which is sufficiently long for the submission of tenders, taking into account factors such as complexity of the subject-matter of procurement and the time needed to prepare and make a tender;
- 3) ensure that tenders submitted in writing are not opened before the expiry of time limit for the submission of tenders;
- 4) adopt a decision on award of the contract to the tenderer which has submitted most advantageous tender on the basis of the contract award criteria set out in the procurement documents for the framework agreement.

In the case of paragraph 4 of this Article, contracting authority/entity shall publish the decision on award of the contract on the Public Procurement Portal.

## **2. Dynamic purchasing systems**

### **Article 68**

Contracting authority/entity may establish a dynamic purchasing system for those subject-matters of procurement which are generally available on the market and, as such, meet its needs.

The dynamic purchasing system shall be established and operated by using exclusively electronic means and shall be open throughout the period of validity to any economic operators that satisfy the criteria for qualitative selection, free of charge.

The dynamic purchasing system may be divided into categories of supplies, services or works that are objectively defined on the basis of characteristics of the procurement to be undertaken under the category concerned, such as the maximum allowable size of contracts to be awarded through the validity of the dynamic purchasing system, or of specific geographic areas in which these contracts will be performed.

Contracting authority/entity shall establish and operate a dynamic purchasing system by following the rules of the restricted procedure.

In the dynamic purchasing system, any interested economic operator may submit a request throughout the period of its validity, and those candidates admitted to the system will have access to the system throughout the period of its validity.

Contracting authority/entity may not limit the number of candidates to be admitted to the dynamic purchasing system in line with Article 64 of this Law.

Where the contracting authority/entity has divided the dynamic purchasing system into categories of supplies, services or works in line with Article 3, it shall define in the procurement documents the criteria for qualitative selection of economic operator for each of these categories.

The time limits in the dynamic purchasing system shall be as follows:

- 1) the minimum time limit for submission of requests shall be 30 days from the date on which the contract notice was sent for publication or, where a periodic indicative notice is used as the contract notice, from the date on which the invitation to confirm interest was sent, in case of public procurement with estimated value equal to or exceeding the amounts of European thresholds;
- 2) the minimum time limit for submission of requests shall be 20 days from the date on which the contract notice was sent for publication, or, where a periodic indicative notice is used as a contract notice, from the date on which the invitation to confirm interest was sent, in case of public procurement with estimated value less than the amount of European thresholds;
- 3) the minimum time limit for submission of tenders shall be 10 days from the date on which the invitation to tender to the candidates admitted into system was sent.

Contracting entities may set the time for the submission of tenders by agreement with all candidates, so that all candidates in the procedure have the same time limit for preparation and submission of their tenders.

In the absence of the agreement on the time limit for the submission of tenders referred to in paragraph 9 of this Article, the minimum time limit for submission of tenders shall be at least ten days from the date on which the invitation to tender was sent.

In the dynamic purchasing system, contracting authority/entity may not apply Article 54 paragraph 5 and 7 of this Law.

For the purpose of establishing dynamic purchasing system, contracting authority/entity shall:

- 1) publish a contract notice, clearly indicating that it establishes a dynamic purchasing system and the period of its validity;
- 2) indicate in tender documents at least the information about the nature and estimated quantity of the envisaged purchases as well as all the necessary information concerning the dynamic purchasing system, including information how the dynamic purchasing system operates, the electronic equipment used and the technical connection arrangements and specifications;
- 3) indicate any division into categories of supplies, works or services and the characteristics defining them;
- 4) ensure free of charge, unlimited and full direct access to procurement documents by electronic means throughout the validity of the dynamic purchasing system.

Contracting authority/entity shall evaluate requests in accordance with the criteria for qualitative selection of economic operator within ten working days from the date of their receipt, and adopt a decision on admission of the economic operator into the dynamic procurement system.

Exceptionally, the deadline referred to in paragraph 13 of this Article may be extended to 15 working days in individual cases where justified, in particular because of the need to examine additional documentation or to otherwise verify whether the criteria for qualitative selection of economic operator are met.

Notwithstanding paragraphs 13 and 14 of this Article, as long as the invitation to tender for the first specific procurement under the dynamic purchasing system has not been sent, contracting authority/entity may extend the deadline for evaluation of the requests provided that no invitation to tender is sent during the extended evaluation period, and that it has defined in the procurement documents the length of the extended evaluation period that it intends to apply.

Following the evaluation of requests, contracting authority/entity shall send decision on the evaluation outcome to all economic operators, without delay.

Contracting authority/entity shall simultaneously, by electronic means, invite all selected candidates admitted into the dynamic purchasing system to submit tenders for each individual procurement within the system in accordance with Article 65, paragraphs 2 and 3 of this Law.

Where a dynamic purchasing system is divided into categories of supplies, services or works, contracting authority/entity shall invite all selected candidates, having been admitted to the category corresponding to the individual procurement concerned, to submit tender.

Contracting authority/entity shall award a public procurement contract within the dynamic purchasing system to the tenderer that submitted the most advantageous tender on the basis of the award criteria set out in the contract notice or invitation to confirm interest, with proviso that criteria concerned may be formulated more precisely in the invitation to tender.

Contracting authority/entity may, at any time during the period of validity of the dynamic purchasing system, require selected candidates admitted into the system, to submit renewed and updated declaration of fulfilment of the criteria for the qualitative selection of the economic operator within five working days from the date on which that request was transmitted to the candidates.

Throughout the period of validity of a dynamic purchasing system, contracting authority/entity may apply the provisions of Article 119, paragraph 3 of this Law.

Where contracting authority/entity changes the system's validity period during the duration of dynamic purchasing system, it shall publish this information in the contract notice.

Where a dynamic purchasing system is terminated before expiry of the period for which it was established, contracting authority/entity shall publish this information on the contract award notice form.

### **3. Qualification system**

#### **Article 69**

Contracting entity may establish and operate a qualification system of economic operators.

Contracting entity shall publish notice on the existence of a qualification system.

The notice referred to in paragraph 2 of this Article shall contain information listed in Annex 4, Part G of this Law.

Contracting entity shall ensure that the economic operators are at all times throughout the period of validity of the qualification system able to submit request for qualification.

Where during the period validity of qualification system contracting entity changes period of validity of system, it shall publish this information in the notice on the existence of the qualification system.

Where a qualification system is terminated before expiry of the period for which it was established, contracting entity shall publish this information on the contract award notice form.

Qualification system may involve various stages of qualification.

Contracting entity shall establish objective criteria and rules for qualitative selection of economic operator, and objective criteria and rules for the operation of the qualification system that include the rules for registering in the system, options for periodic updating of the criteria and the rules for qualitative selection of economic operator, where necessary, as well as the duration of the system.

The criteria and the rules for functioning of the qualification system (henceforth 'criteria and rules') may also include technical specifications, whereby the provisions of this Law that govern the method for establishing technical specifications shall apply.

The criteria and the rules may be updated, as necessary.

Contracting entity shall send the criteria and the rules, and the information on the updated criteria and the rules, for publication on the Public Procurement Portal.

Where contracting entity ascertains that the qualification system of other contracting entities meets its conditions, it shall communicate this to interested economic operators.

#### **Article 70**

Contracting entity shall keep written records of qualified economic operators.

The records referred to in paragraph 1 of this Article may be divided into categories by the type of contracts corresponding to the qualification.

Contracting entity which establishes and operate a qualification system, shall make the decision on qualification and send it to the applicants no later than six months from the date of submission of the application.

In the event that decision making referred to in paragraph 3 of this Article will take longer than four months from the date of submission of applications, contracting entity shall inform the applicant within two months from the date of submission of application of the reasons justifying a longer period for making the decision and of the date by which the contracting entity will decide about the requests, whereby this period may in no case be longer than six months.

Contracting entity shall send its decision on refusal of the application for qualification with the explained reasons for refusal, to the applicant without delay, and no later than 15 days from the day this decision was made. The reasons for refusal shall be based on criteria for qualifications referred to in Article 69 paragraphs 8 and 9 of this law.

During the period of validity of the qualification system, contracting entity may exclude a candidate from the system if such candidate ceases to meet the conditions for qualification.

In the event referred to in paragraph 6 of this Article, contracting entity shall send its decision on exclusion to the candidate to be excluded from the qualification system at least 15 days before the date on which the qualification is due to be terminated, with the explained reasons that justify such exclusion from the system.

When a contract notice is made by a notice on the existence of the qualification system, the contracts covered by the qualification system shall be awarded by applying the rules governing the second phase of the restricted procedure, negotiated procedure with publication, competitive dialogue, or innovation partnership, by inviting all qualified economic operators within the qualification system or within the specific categories under the qualification system.

#### **4. Electronic auctions**

##### ***Conditions for the use of electronic auction***

###### **Article 71**

In an open procedure, restricted procedure, competitive procedure with negotiation and negotiated procedure with publication, in the procedure of reopening competition on the basis of concluded framework agreement under Article 67, paragraph 3, points 2) and 3) of this Law, and for the award of contract within dynamic purchasing system, contracting authority/entity may indicate that the award of the public procurement contract shall be preceded by an electronic auction, when the contents of procurement documents and, in particular, of technical specifications of the procurement subject-matter, can be established with precision.

Public service contracts or public works contracts having as their subject-matter intellectual performance, such as the design of works, which cannot be ranked using automatic evaluation methods, shall not be the object of electronic auction.

Contracting authority/entity shall ensure that the conduct of an electronic auction is documented in entirety during all its phases.

Contracting authority/entity which intends to hold an electronic auction shall indicate the fact of holding electronic auction in the contract notice or the invitation to confirm interest, and the procurement documents shall include at least the information referred to in Annex 5 of this Law.

##### ***Method of using electronic auction***

###### **Article 72**

Electronic auction is held as a repetitive electronic process, in new prices, revised downwards, which are offered, or new values concerning certain elements of the contract award criteria are presented, and enables the ranking of tenders by using automatic evaluation methods.

Electronic auction shall be based on one of the following criteria:

1) solely on price, where the contract is awarded on the basis of price only, or

2) on price and/or on the new values of certain elements of the contract award criterion indicated in the procurement documents, where the contract is awarded on the basis of the best price-quality ratio or of the lowest costs, by using the cost-effectiveness approach.

Before proceeding with the electronic auction, contracting authority/entity shall make initial evaluation of tenders in accordance with the requirements from tender documents concerning technical specifications, criteria for qualitative selection of economic operator and contract award criteria, and shall compile the report on the expert evaluation of tenders.

Contracting authority/entity shall invite, simultaneously and by electronic means, all tenderers that have submitted tenders that meet the criteria for contract award to participate in the electronic auction on the specified date and time, by using the connections in accordance with the instructions set out in the invitation.

The opening of tenders in case of electronic auction is not public and contracting authority/entity shall send the invitation to participate in electronic auction separately to each tenderer, and to attach to it the outcome of the initial evaluation of relevant tender, without disclosing information about the other tenderers.

The invitation referred to in paragraph 5 of this Article shall also contain the mathematical formula to be used in the electronic auction, to determine automatic re-rankings on the basis of the new prices or new values.

That mathematical formula shall include the weightings of all elements of the criterion of the economically most advantageous tender as indicated in the contract notice or tender documents, except where price is the sole criterion, whereby any ranges shall be reduced beforehand to a specified value.

Where submission of tenders with variants is allowed, a separate mathematical formula shall be provided for each variant.

Electronic auction may take place in a number of successive phases.

The electronic auction shall not start sooner than two working days after the date on which invitations to electronic auction are sent out.

During the electronic auction, at the moment of any change the contracting authority/entity shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings in relation to other tenderers.

Contracting authority/entity may also communicate to tenderers other information concerning other prices or values submitted, provided such an option was envisaged in procurement documents.

Contracting authority/entity may at any time announce the number of tenderers in a given phase of the auction.

Contracting authority/entity may in no case disclose the identities of the tenderers before the closing of the electronic auction.

### ***Closing of electronic auction***

#### **Article 73**

Contracting authority/entity shall close an electronic auction in one or more of the following manners:

1) at the previously indicated point of time (date and hour);

2) when there are no more new prices or new values which meet the requirements concerning the predetermined minimum reduction, provided that the previously determined length of time, which has to elapse after receiving the last tender, has actually passed;

3) upon completion of the number of phases of the electronic auction as indicated in tender documents.

Where contracting authority/entity intends to close an electronic auction in the manner referred to in paragraph 1, point 3) of this Article in combination with the manner referred to in paragraph 1, point 2) of this Article, it shall indicate in the invitation to electronic auction the length of time which has to elapse for each phase of the electronic auction after receiving the last tender before it closes the electronic auction.

After closing an electronic auction, the contracting authority/entity shall without delay announce the names and ranks of all tenderers participating in the auction, and shall make a public procurement contract award decision on the basis of the contract award criteria and the results of the electronic auction.

Where an electronic auction is terminated before its closure due to unforeseen circumstances related to the technical reasons, the contracting authority/entity shall notify without delay all participants thereon, whereby it may either hold a new electronic auction or suspend the public procurement procedure.

## ***5. Electronic catalogues***

### **Article 74**

Contracting authority/entity may require or accept the tenders to be presented in the format of electronic catalogues or that tenders include electronic catalogues.

Tenders presented in the form of an electronic catalogue may be accompanied by other documents.

An electronic catalogue shall be established by candidates or tenderers in accordance with technical specifications and in format established by the contracting authority/entity.

Electronic catalogue shall comply with the requirements applicable to electronic communication tools as well as with any additional requirements set by the contracting authority/entity in accordance with the provisions of this Law governing electronic communication.

Where contracting authority/entity requires or accepts the tenders to be presented in the form of electronic catalogues, it shall:

1) state so in the contract notice, invitation to confirm interest or when a notice on the existence of the qualification system is used as a contract notice it should be stated in the invitation to tender or for negotiate;

2) indicate in the procurement documents all necessary information concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.

Where a framework agreement has been concluded with several tenderers following the submission of tenders in the form of electronic catalogues, contracting authority/entity may stipulate that the reopening of competition for individual contracts will take place on the basis of the updated catalogues.

In the event referred to in paragraph 6 of this Article, contracting authority/entity shall use one of the following methods:

1) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the given contract, or

2) notify tenderers that it intends to collect from the electronic catalogues which have already been submitted the information needed to constitute tenders adapted to the requirements of the given contract, provided that the use of that option has been envisaged in the tender documents for the framework agreement.

Where contracting authority/entity reopens competition for specific contracts in accordance with paragraph 7, point 2, it shall notify all tenderers of the date and time at which it intends to collect the information needed to constitute tenders adapted to the requirements of that specific contract and shall give tenderers the possibility to refuse such collection of information.

Contracting authority/entity shall set an adequate period of time between the notification and the actual collection of information.

Before awarding the contract, contracting authority/entity shall present the collected information to the tenderers and thus avail them with an opportunity to contest or confirm that tenders thus constituted do not contain any material errors.

Contracting authority/entity may award contracts based on a dynamic purchasing system by requiring that tenders for individual contracts are submitted in the format of an electronic catalogue.

Contracting authority/entity may award contracts based on a dynamic purchasing system in accordance with paragraph 7, point 2) and paragraphs 8 through 10 of this Article, provided that the request to participate in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and the format established by it.

Electronic catalogues will be completed subsequently by the candidates, when they are informed of the contracting authority/entity's intention to constitute tenders according to the procedure set forth in paragraph 7, point 2) of this Article.

## **IV. SPECIAL PROCUREMENT REGIMES**

### **1. Social and other specific services**

#### ***Awarding contracts for social and other specific services***

##### **Article 75**

The following provisions govern the award of contracts and framework agreements for procurement of social and other specific services listed in Annex 7 of this Law.

For the public procurement of services referred to in paragraph 1 of this Article the contracting authority/entity shall publish:

1) a contract notice which contains the least information referred to in Annex 4, Part Z of this Law, or

2) prior information notice, periodic indicative notice, or notice of the existence of qualification system.

Notices under paragraph 2, point 2) of this Article shall be published continuously and shall contain the least information as referred to Annex 4, Part Z of this Law.

Notices under paragraph 2, point 2) of this Article shall refer specifically to the types of services that will be the subject of the contracts to be awarded, and shall indicate that the contracts will be



awarded without further publication of a contract notice and invite interested economic operators to express their interest in writing.

Contracting authority/entity shall not be obliged to publish notices under paragraph 2 of this Article, where the conditions for the use of negotiated procedure without publication of a contract notice are met.

Time limits in the procedure of awarding contracts for public procurement of services referred to in paragraph 1 of this Article may be shorter than the time limits prescribed for certain types of public procurement procedure, whereby the procurement authority/entity is obliged to determine the appropriate time limits for submission of requests and tenders, especially taking into account the complexity of the subject-matter of procurement and the time required for making requests and tenders.

Contracting authorities/entities that have awarded a public procurement contract of services under Article 1 of this Law shall publish the contract award notice, which shall contain information referred to in Annex 4, Part Z of this Law.

Contracting authority/entity may group and publish the notices referred to in paragraph 7 of this Article on a quarterly basis, within 30 days of the end of each quarter.

When awarding a public procurement contract for social and other specific services, the contracting authority/entity shall comply with the principles of public procurement, in particular the principles of transparency, equal treatment of tenderers and cost - effectiveness.

When awarding a public procurement contract for social and other specific services, the contracting authorities/entities shall apply the provisions of this Law that relate to the determination of the subject – matter of the contract and the technical specifications, whereby they may take into account the need for ensuring quality, continuity, accessibility, affordability, availability, as well as the comprehensiveness of services, the specific needs of different categories of users, including disadvantaged and vulnerable groups, the participation and empowerment of service users and innovation.

The contracting authority/entity awards the contract by applying the award criteria, in accordance with the provisions of this Law.

### ***Reserved contracts for certain services***

#### **Article 76**

Contracting authority/entity may reserve the right to participate in the public procurement procedures for the award of public procurement contracts of health services, social protection services and cultural services referred to in Article 75 of this Law which are covered by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 925000006, 92600000-7, 98133000-4, 98133110-8, only to organisations that meet the requirements referred to in paragraph 2 of this Article.

Organisation referred to in paragraph 1 shall meet all of the following requirements:

- 1) the objective of its establishment is linked to the delivery of services referred to in paragraph 1 of this Article;
- 2) profits are reinvested with a view to achieving the organisation's objective, whereby profits distribution or redistribution must be based on participatory principles;

3) the management or ownership structures of the organisation performing the contract are based on employee ownership or principles of active participation of employees, or require active participation of employees, service users or stakeholders;

4) the organisation has not been awarded a contract for the services concerned pursuant to this Article within the period of the previous three years.

Contracting authority/entity intending to award contract pursuant to this Article of the Law shall indicate in the contract notice that a tenderer may be only an organisation referred to in paragraph 2 of this Article.

The maximum duration of the services contract referred to in paragraph 1 of this Article shall not be longer than three years.

## **2. Design contest**

### **Article 77**

Design contest may be organised:

1) as part of a procedure leading to the award of a public service contract;

2) as a procedure in which prizes are awarded or payments are made to participants of design contest.

In the case referred to in paragraph 1, point 1) of this Article, estimated value of public procurement is determined on the basis of the estimated value of public procurement of services, including any possible prizes or payments to participants of the design contest.

In the case referred to in paragraph 1, point 2) of this Article, estimated value of the public procurement is determined as the total amount of prizes or payments, including the estimated value of public procurement of services which might be awarded in accordance with Article 61, paragraph 5, point 1) of this Law.

Contracting authorities/entities which intend to conduct a design contest shall make their intention known by means of a contest notice which shall contain the least information referred to in Annex 4, part DJ of this Law.

In the event they intend to award a subsequent service contract in accordance with Article 61, paragraph 5, point 1) of this Law, they shall indicate so in the contest notice.

Contracting authority/entity shall hold a design contest in accordance with the provisions of this Chapter of the Law and the rules of public procurement procedures, unless otherwise provided for under this Article.

The admission of participants to design contests shall not be limited:

1) to a specific geographical area or a part of such area;

2) on the grounds of requirement the participants would be required to be either legal or natural persons.

Contracting authority/entity may limit the number of participants in the design contest whereby it shall lay down clear and non-discriminatory criteria for qualitative selection of economic operator, provided that the number of candidates invited to participate shall be sufficient to ensure genuine competition.

Design, plan or project shall be chosen by an independent jury, composed exclusively of natural persons who are independent of participants in the design contest.

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

The jury shall be autonomous in its decisions and opinions, and it shall examine the designs, plans or projects submitted anonymously by the candidates and solely on the basis of the criteria indicated in the contest notice.

Anonymity of the participants shall be observed until the jury has reached its opinion or decision.

The jury shall record in the minutes, signed by all of its members, its ranking made according to the merits of the features of each design, plan or project, together with its remarks and any points that may need clarification.

Candidates may be invited, if need be, to answer questions that the jury has recorded in the minutes in order to clarify any aspect of the projects.

Complete minutes shall be drawn up of the dialogue between jury members and candidates.

The jury shall forward the minutes, decisions and opinions to contracting authority/entity for decision making.

Contracting authorities/entities that have held design contest shall send for publication the notice of the results of the contest which shall contain at least the information referred to in Annex 4, Part E.

## **V. CENTRALIZED AND JOINT PUBLIC PROCUREMENT**

### **1. Centralized public procurement**

#### ***Centralized purchasing activities***

##### **Article 78**

Contracting authority/entity may acquire supplies or services from the central purchasing body performing centralized purchasing activity referred to in Article 2, paragraph 1, point 15) sub-point (1) of this Law.

Contracting authority/entity may acquire supplies, services or works:

- 1) on the basis of a framework agreement concluded by the central purchasing body performing centralized purchasing activities referred to in Article 2, paragraph 1, point 15) sub-point (2) of this Law, in accordance with Article 66, paragraph 9 of this Law
- 2) on the basis of a contract awarded by the central purchasing body performing centralized purchasing activities referred to in Article 2, paragraph 1, point 15,) sub-point (2) of this Law, or
- 3) by using a system of dynamic procurement operated by a central purchasing body performing centralized purchasing activities referred to in Article 2, paragraph 1, point 15) sub-point (2) of this Law.

Where the dynamic procurement system which is operated by the central purchasing body may be used by other contracting authorities/entities, this shall be stated in the contract notice establishing the dynamic purchasing system.

It is considered that the contracting authority/entity acts in accordance with this Law when it acquires supplies, services or works, in accordance with paragraphs 1 and 2 of this Article.

The contracting authority/entity that acquire supplies, services or works in accordance with paragraph 2 of this Article shall be responsible for fulfilling obligations in accordance with this Law in respect of parts of the procurement procedure which it independently conducts, such as:

- 1) implementation of the procedure for reopening the competition, in accordance with the framework agreement concluded by the central purchasing body;
- 2) determining to which of the economic operators, party to the framework agreement, should be awarded a contract based on the framework agreement concluded by the central purchasing body, in accordance with Article 67, paragraph 3, point 1) or 3) of this Law;
- 3) awarding of a contract under the dynamic procurement system operated by the central purchasing body.

Contracting authority/entity may, without applying the public procurement procedure, award a contract for provision of centralized purchasing activities to the central purchasing body, which may also include the provision of ancillary purchasing activities.

### ***Central purchasing body***

#### **Article 79**

Central purchasing body is contracting authority/entity which provides centralized purchasing activities and may also provide ancillary purchasing activities.

Central purchasing body is obliged to provide centralized purchasing activities in a manner that ensures access to the market to small and medium-sized enterprises, always when this is possible.

Centralized purchasing activities can be performed at the level of the Republic, province or local government level.

The joint central purchasing body can perform centralized purchasing activities for several local governments.

The organization and manner of performing centralized purchasing activities shall be regulated by law, by the Government regulation, by the decision of the contracting authority/entity or by an agreement between the contracting authorities/entities.

When centralized purchasing activities are performed at the level of the Republic, the Government regulation shall contain provisions on:

- 1) central purchasing body;
- 2) the contracting authorities/entities whose needs are satisfied through the central purchasing body;
- 3) the subject-matter of centralized public procurement;
- 4) the manner of planning and implementing centralized public procurement;
- 5) conditions for performing ancillary purchasing activities, as well as other activities;
- 6) other issues important for the work of the central purchasing body.

The regulation referred to in paragraph 6 of this Article shall be published in the "Official Gazette of the Republic of Serbia".

## **2. Occasional joint procurement**

### **Article 80**

The contracting authorities/entities may jointly conduct a particular procurement procedure or one contracting authority/entity may authorize another contracting authority/entity to conduct a public procurement procedure on its behalf and for its account or take certain actions in that procedure, in which case they are obliged to establish their rights and obligations by a special agreement.

Where the public procurement procedure is in its entirety carried out jointly on behalf and for the account of all contracting authorities/entities participating in the joint procurement or where one contracting authority/entity carries out the entire procedure acting on its own behalf and on the behalf of other contracting authorities/entities, all contracting authorities/entities shall be solidary liable for the fulfilment of obligations, in accordance with this Law.

Where the public procurement procedure is not in its entirety carried out jointly, joint contracting authorities/entities shall be solidary liable only for those parts of the procurement procedure carried out jointly, while each contracting authority/entity shall have sole responsibility for fulfilling its own obligations, in accordance with this Law, in respect of the parts of the procurement procedure which it conducts on its own behalf and for its own account.

If one contracting authority/entity authorizes another contracting authority/entity to carry out a public procurement procedure on its behalf and for its account or to take certain actions in that procedure, these contracting authorities/entities are solidary liable for the fulfilment of obligations, in accordance with this Law.

## **3. Procurement of contracting authority/entity involving procurement authorities/entities from different European Union Member States**

### **Article 81**

The contracting authority/entity may jointly conduct a public procurement procedure with contracting authorities/entities from different Member States of the European Union.

The contracting authority/entity may use the services of the centralized purchasing activities provided by central purchasing bodies located in a Member State of the European Union.

The contracting authorities/entities shall not use the options from paragraphs 1 and 2 of this Article for the purpose of avoiding the application of the provisions of this Law and other regulations in the Republic of Serbia.

### **Article 82**

Central purchasing body, located in a Member State of the European Union, carries out centralized purchasing activities in accordance with the law of the Member State in which it is located.

The law of a Member State of the European Union in which the central purchasing body is located applies also to:

- 1) the award of contract under a dynamic procurement system operated by the central purchasing body;
- 2) the conduct of the procedure for reopening of competition, in accordance with the framework agreement concluded by the central purchasing body;

3) the determination of economic operators, parties to the framework agreement, to whom the contract should be awarded based on the framework agreement concluded by the central purchasing body in accordance with Article 67, paragraph 3, point 1) and 3) of this Law.

### **Article 83**

Contracting authority/entity may jointly carry out a public procurement procedure with one or more contracting authorities/entities from the Member States of the European Union for the purpose of awarding a public procurement contract, concluding a framework agreement, operating the dynamic procurement system or awarding a contract based on the framework agreement in accordance with Article 66, paragraph 9 of this Law or the award of a contract under the dynamic procurement system.

In the case referred to in paragraph 1 of this Article, the contracting authorities/entities shall conclude the special agreement to regulate:

- 1) the responsibilities of each party and the relevant applicable national regulations to be applied;
- 2) the internal organization of the public procurement procedure, including the conduct of the procedure, the distribution of supplies, services or works being procured and the conclusion of a contracts.

In determining the responsibility and the applicable national law referred to in paragraph 2, point 1) of this Article, the contracting authorities/entities may allocate certain responsibilities among themselves and determine the applicable provisions of the national laws of their respective countries.

The allocation of responsibilities and the applicable national law shall be indicated in the procurement documents.

The agreement referred to in paragraph 2 of this Article shall not be obligatory if the international agreement concluded between the Republic of Serbia and the Member States of the European Union regulate the relevant issues.

The contracting authority/entity shall be deemed to comply with this Law if it procures supplies, services or works in accordance with this Article.

### **Article 84**

If contracting authority/entity has set up with another contracting authority/entity from a Member State of the European Union a joint entity or other entities established in accordance with European Union law, the contracting authorities/entities shall, by decision of the competent body of the joint entity, agree on the applicable national procurement rules of one of the following Member States:

- 1) the national regulations of the Member State in which the joint entity has its registered office;
- 2) the national regulations of the Member State in which the joint entity carries out its activities.

The agreement referred to in paragraph 1 of this Article may be applied for an indefinite period, if so established in the founding act of the joint entity or may be limited to a certain period of time, certain types of contracts or the award of one or more individual contracts.

## **VI. CALCULATING AND SETTING TIME LIMITS**

### ***1. Calculating time limits***

#### **Article 85**

The following provisions shall govern the method for calculating time limits in public procurement procedures, unless otherwise provided for by this Law.

Time limits shall be set in days, months and years.

Where time limit is set in days, the day on which notification was made or on which the event that triggers the time limit occurs, is excluded from time limit, so that the first day of the time limit is counted from the next day, or from the next working day if the time limit is set in working days

Time limit set in months or in years shall end upon expiry of such day, month, or year that corresponds by number to the day on which notification was made or on which occurred the event that triggered the counting of the time limit.

Where the last month has no such date, time limit shall end on the last day of that month.

State holidays, Saturdays and Sundays do not affect the commencement and course of the time limit, except where time limits are expressed in working days.

Where the last day of time limit is a state holiday, Saturday or Sunday, time limit shall end upon the expiry of the first following working day.

Any time limit comprising at least two days shall include two working days.

The notion of working day comprises all days except state holidays, Saturdays and Sundays.

The acting in the event of unavailability of the Public Procurement Portal shall be regulated in the manual for using the Public Procurement Portal referred to in Article 184 paragraph 3 of this Law.

### ***2. Setting the time limits***

#### **Article 86**

When setting time limits for the submission of requests and tenders, contracting authority/entity shall set appropriate time limits, in particular by taking into account the complexity of the subject-matter of procurement and the time required to prepare the requests and tenders, whereby observing the minimum time limit set forth by the provisions of this Law for each public procurement procedure separately.

Time limits for the submission of requests and tenders shall be fixed so as to establish a precise date and time by which the requests and tenders may be submitted in a timely fashion.

In competitive dialogue, innovation partnership and negotiated procedure without prior publication, contracting authority/entity shall set an appropriate time limit for the submission of initial, all subsequent, and the final tenders.

Where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the procurement documents, contracting authority/entity shall set the time limits for the submission of tenders, which shall be longer than the minimum time limits set out in the provisions of this Law for each public procurement procedure separately, so that all interested economic operators may become aware of all the information needed to prepare tenders.

## **Article 87**

Contracting authority/entity shall extend the time limits for the submission of requests or tenders in the following cases:

- 1) where additional information or clarifications relating to procurement document are not supplied at the latest within the time limit referred to in Article 97 paragraph 2 of this Law;
- 2) where significant changes are made to the procurement documents;
- 3) where Public Procurement Portal was unavailable in the period of four hours before the expiry of time limit for submission of requests to participate or tenders.

The procurement documents are deemed to have been significantly changed if the changes are such that economic operators would necessarily need additional time to prepare the tenders or requests, and in particular where those changes relate to the criteria for the qualitative selection of the economic operator, the contract award criteria or the technical specification of the subject-matter of the procurement.

In the events referred to in paragraph 1, points 1) and 2) of this Article, contracting authority/entity shall extend the time limit for the submission of tenders or requests proportionally to the importance of the information or changes made, whereby there shall be at least 10 days left until the expiry of the deadline for the submission of a request for the protection of the rights referred to Article 214, paragraph 2 of this Law.

Contracting authority/entity shall not be required to extend the time limit where additional information or clarifications have not been requested in good time or their importance with a view to preparing and submitting respective tenders or applications is insignificant.

In the event referred to in paragraph 1, point 3) of this Article, contracting authority/entity shall extend the time limit for the submission of requests to participate or tenders by at least four days.

Contracting authority/entity shall sent for publication the information about extension of the time limit in Corrigendum – notice for changes or additional information.

## **VII PREPARATION FOR CONDUCTING PUBLIC PROCUREMENT PROCEDURES**

### ***1. Public procurement plan***

#### **Article 88**

Contracting authority/entity shall adopt an annual public procurement plan, containing the following information:

- 1) subject-matter of public procurement and CPV code;
- 2) the estimated value of the public procurement;
- 3) the type of public procurement procedure;
- 4) the approximate starting time of the procedure.

Contracting authority/entity shall include in the procurement plan referred to in paragraph 1 of this Article whether the procurement is carried out through central purchasing body.

Contracting authority/entity shall publish its public procurement plan and all subsequent changes or supplements thereto on the Public Procurement Portal and on its own website within ten days from the day of adoption.



Changes and supplements to the public procurement plan shall be considered the planning of a new public procurement, changing the subject-matter of public procurement and increasing the estimated value of public procurement by more than 10%.

Contracting authority/entity shall not be obliged to publish the estimated value of the public procurement and the data from the public procurement plan which constitute business secret in terms of the law governing the protection of business secrets or of classified information in terms of the law governing confidentiality of data.

Contracting authority/entity may initiate the public procurement procedure if procurement is foreseen in the annual plan of procurement.

Exceptionally, where it is not possible to plan in advance the public procurement or due to urgency, the contracting authority/entity may initiate the public procurement procedure even if it was not foreseen in the procurement plan.

### ***Market research***

#### **Article 89**

Before launching a public procurement procedure, contracting authority/entity may conduct a market research with a view to preparing the public procurement procedure and informing economic operators of its procurement plans and requirements.

Contracting authority/entity may seek or take into account advice from independent experts, competent authorities or economic operators in relation to the preparation and conducting the public procurement procedure, provided that this does not distort the principles of ensuring competition, prohibition of discrimination and equal treatment of economic operators, and transparency.

### ***Protection of procedure integrity***

#### **Article 90**

Where a tenderer, candidate or a related person within the meaning of the law regulating the position of economic operators and the law governing corporate income tax has in any way been involved in the preparation of the procurement procedure, the contracting authority/entity shall take appropriate measures to ensure that competition is not distorted by the participation of that tenderer or candidate.

The measures referred to in paragraph 1 of this Article shall include the communication to other economic operators of relevant information exchanged in the context of or resulting from the involvement of the tenderer or candidate in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders.

A tenderer or a candidate may be excluded from the public procurement procedure in relation to paragraph 1 of this Article only if there are no other means to ensure compliance with the obligation of observing the principle of ensuring competition and the equal treatment of economic operators.

Prior to the exclusion referred to in paragraph 3 of this Article, the contracting authority/entity shall be obliged to enable the tenderer or candidate to prove that his involvement in the preparation of the procurement procedure cannot distort the competition.

Contracting authority/entity is obliged to document the measures taken under this Article in the expert evaluation of the tenders or requests.

## ***Initiating public procurement procedure***

### **Article 91**

Contracting authority/entity shall adopt a decision on conducting the public procurement procedure containing, in particular, information about the subject-matter of procurement, type of the procedure and the total estimated value of public procurement and separately for each lot, and also information on the composition of the public procurement commission.

In the case of application of competitive procedure with negotiations, competitive dialogue, innovation partnership and negotiated procedure without the publication of a contract notice contracting authority shall specify in the decision referred to in paragraph 1 of this Article the reasons for the use of this procedure.

In the case of application of the innovation partnership and negotiated procedure without the publication of a contract notice, contracting entity shall specify in the decision referred to in paragraph 1 of this Article the reasons for the use of this procedure.

A public procurement procedure is considered to be initiated upon sending a contract notice and other notices that are used as a contract notice for publication, except in case of negotiated procedure without publication of a contract notice, in which the procedure is considered initiated on the date on which the invitation to tender was sent.

## ***Public procurement commission***

### **Article 92**

Public procurement procedure is conducted by a public procurement commission appointed by the contracting authority/entity.

Where the estimated value of the public procurement does not exceed the amount of RSD 3,000,000.00, the contracting authority/entity is not obliged to appoint a public procurement commission, in which case the public procurement procedure is conducted by a person appointed by the contracting authority/entity.

The Commission must have an odd number of members, and at least three members.

At least one member of the Commission must be a person who has acquired higher education in the legal field of study of postgraduate level (postgraduate academic studies – a master's degree, specialist academic studies, specialized professional studies), that is, higher education that has been made equal by law with the academic title of Master in basic studies of duration of at least four years or a public procurement officer who has acquired higher education of a second degree studies (academic studies – a master's degree, specialist academic studies, specialized professional studies), that is, higher education that has been made equal by law with the academic title of Master in basic studies of duration of at least four years or a person who has acquired a certificate for a public procurement officer before this Law entered into force.

A person with appropriate expertise in the subject-matter of the public procurement shall be appointed a member of the commission, whenever it is necessary.

Members of the public procurement commission, i.e. a person referred to in paragraph 2 of this Article may be persons not employed by the contracting authority/entity if the contracting authority/entity does not have employed persons with the relevant expert knowledge

The public procurement commission, or the person referred to in paragraph 2 of this Article, shall undertake all actions in the procedure, and in particular prepare public procurement notices, tender documents, carry out expert evaluation of tenders and requests, prepare reports on the public procurement procedure, performs the necessary communication in the public procurement

procedure in accordance with the provisions of this Law and undertakes the necessary actions in the case of filing a request for protection of rights.

The public procurement commission, or the person referred to in paragraph 2 of this Article shall see to it that public procurement procedures are conducted in accordance with law.

## **2. Tender documentation**

### ***Contents***

#### **Article 93**

Tender documentation shall be made so to enable preparation and submission of the tender, i.e., request.

The tender documentation, depending on the type of public procurement procedure, shall in particular contain information on the subject-matter of procurement, technical specifications, criteria for the qualitative selection of the economic operator, contract award criteria, contract terms, format of document submitted by candidates and tenderers, information on prescribed obligations and other information needed for the preparation and submission of a tender, unless they are indicated in a contract notice and other notices used as a contract notice.

Information contained in tender documents and information stated in the contract notice and other notices used as a notice shall not be contradictory.

The Public Procurement Office shall regulate in detail the content of tender documents.

### ***Security instruments***

#### **Article 94**

Contracting authority/entity may require an economic operator to supply the security instrument:

1) for the seriousness of tender, in the events that tenderer withdraws its tender within the period of its validity, fails to supply evidence on fulfilment of criteria for qualitative selection of economic operator- in compliance with Article 119 of this Law, groundlessly refuses to conclude the public procurement contract or framework agreement, or fails to supply performance guarantee for public procurement contract or framework agreement:

2) for fulfilment of contractual obligations;

3) for rectifying defects within the warranty period;

4) for warranting the rectification of damages which might occur in connection with the performance of a specific activity;

5) for the refund of advance payment.

The security instrument referred to in paragraph 1, point 1) of this Article may not exceed 3% of tender value without value added tax.

The security instrument referred to in paragraph 1, points 2) and 3) of this Article may not exceed 10% of the value of public procurement contract without value added tax.

The security instrument referred to in paragraph 1, point 5) of this Article must equal the amount of advance payment.

Direct beneficiaries of budgetary funds that are included in the consolidated account of the Treasury of the Republic of Serbia, not having their own account and executing their expenditures

and costs through the budget of the Republic of Serbia are not obliged to supply the security required in accordance with this Article.

### ***Publication and delivering tender documentation***

#### **Article 95**

Simultaneously with sending for publication the contract notice, the invitation to confirm interest or the invitation to tender or invitation to negotiate in the qualification system, contracting authority/entity shall also send tender documents for publication on the Public Procurement Portal.

In the case that the tender documents cannot be published by electronic means on the Public Procurement Portal due to the reasons set forth in Article 45 paragraph 3 of this Law, in contract notice, the invitation to confirm interest or the invitation to tender or invitation to negotiate in the qualification system, contracting authorities/entities shall specify that tender documents shall be transmitted by other means than electronic means.

In the case that the tender documents contain confidential information in terms of Article 45, paragraph 5 of this Law, in contract notice, the invitation to confirm interest or the invitation to tender or invitation to negotiate in the qualification system, the contracting authority/entity shall specify which measures aimed at protecting the confidential information it requires and how access to tender documentation can be obtained.

Contracting authority/entity may not request the economic operators to reimburse any expenses it has had for developing and making available tender documentation, i.e., for the accessing the tender documentation.

### ***Changes or supplements to, and additional clarifications of, procurement documents***

#### **Article 96**

Where contracting authority/entity changes or supplements tender documents within the time limit for submission of tenders, it shall send relevant changes or supplements without delay for publication on the Public Procurement Portal, i.e., make them available in the same manner as the basic documents.

Where contracting authority/entity changes or supplements tender documents, it shall act in accordance with Article 87 of this Law.

After the expiry of deadline for the submission of tenders, contracting authority/entity may not change or supplement the procurement documents.

#### **Article 97**

Economic operator may require the contracting authority/entity, in writing through the Public Procurement Portal, additional information or clarifications related to tender documents, whereby it may point out to the contracting authority/entity where it deems that there are deficiencies or irregularities in the procurement documents, no later than:

- 1) on the eighth day before the expiry of the time limit for the submission of tenders or requests, in case of public procurement with estimated value equal to or exceeding the amounts of European thresholds;
- 2) on the sixth day before the expiry of the time limit for submission of tenders or requests, in case of public procurement with estimated value less than the amounts of European thresholds.

Provided that the request referred to in paragraph 1 of this Article has been submitted in good time, contracting authority/entity shall publish additional information and clarifications on the Public Procurement Portal, or make them available in the same manner as the basic documents-without disclosing information on the person requesting them, no later than:

1) on the sixth day before the expiry of the time limit for the submission of tenders or requests, in case of public procurement with estimated value equal to or exceeding the amounts of European thresholds;

2) on the fourth day before the expiry of the time limit for the submission of tenders or requests, in case of public procurement with estimated value less than the amounts of European thresholds and in the procedures in which the contracting authority/entity has used the option to shorten the time limits due to the reasons of urgency.

The subject of dispute in the procedure of protection of rights may not be any alleged deficiencies or irregularities of the procurement documents that are not pointed out to in the manner provided for in paragraph 1 of this Article.

### **3. Technical specifications**

#### ***General rules on technical specifications***

##### **Article 98**

The technical specifications, which shall be set out in the tender documents, lay down the characteristics required of the works, supplies or services that are procured and all other circumstances of relevance for the performance of the contract and, thus, for making the tender (the place and deadlines for performance, special requirements for the manner of performance of the contract, etc.).

Technical specifications in the case of public works contracts include the totality of the technical requirements contained in the tender documentation defining the required characteristics of the material or supplies in order to fulfil the purpose attributed by the contracting authority/entity, such as the level of environmental impact and climate change, solutions for all requirements (including accessibility for people with disabilities), conformance assessment method, performance, safety or dimension, quality assurance procedures, technology, symbols, testing and test methods, packaging, labelling and marking, user instructions and production processes and methods at each stage of the life cycle of works, design and costing rules, conditions for testing, control and acceptance of works and methods or techniques of construction, and any other technical conditions which the contracting authority/entity may prescribe, in accordance with general or special regulations, in connection with completed works the materials or parts they include.

Technical specifications in the case of a public supply or service contract include determining the required characteristics of supplies or services such as environmental impacts and climate change, solutions for all requirements (including accessibility for persons with disabilities) and performance evaluation, performance, product use, safety or dimensions, product requirements for the name under which the product is sold, terminology, symbols, testing and methods at each stage of the life cycle of a supply or service and conformity assessment procedures.

Technical specifications referred to in paragraphs 2 and 3 of this Article, may also refer to the specific process or method of production of supplies, provision of services or execution of works, or to a specific process for another stage of their life cycle, even where such factors do not form part of their material substance, provided that they are linked to the subject-matter of procurement and proportionate to its value and its objectives.

For the purpose of this Article, technical specifications are also the standards adopted by a recognized standardization body, for repeated or continuous application, with which compliance is not compulsory, whereby:

- 1) "international standard" means standard adopted by the international standardization organization and available to the general public;
- 2) "European standard" means standard adopted by the European standardization organization and available to the general public;
- 3) "national standard" means standard adopted by the national standardization organization and available to the general public.

The contracting authority/entity as a technical specification may also use:

- 1) European technical assessment, which implies a documented assessment of the performance of a construction product in relation to its key characteristics, in accordance with the relevant European Evaluation Document;
- 2) technical reference, which implies every document, other than European standards, developed by the European standardization bodies in accordance with procedures adapted to the development of market needs.

The technical specifications shall afford equal access to all economic operators and shall not unjustifiably restrict the competition in the public procurement procedure.

The technical specifications may also specify whether the transfer of the intellectual property rights will be needed.

Contracting authority/entity shall specify, as needed, in tender documents that any fee for the use of patents and the responsibility for violation of protected intellectual rights are to be borne by tenderers.

The technical specifications, if necessary, contain designs, project documentation, drawings, models, samples and other available documentation relating to the performance of the subject-matter of public procurement, where this is needed.

For all subjects-matter of the procurement intended for use by natural persons, the technical specifications shall, except in objectively justified cases, be drawn up so as to take into account the accessibility criteria for persons with disabilities, or design all users.

Where special legislation defines the mandatory accessibility requirements for persons with disabilities, technical specifications shall, as far as the accessibility criteria for persons with disabilities or design for all users are concerned, be defined by reference thereto.

### ***Formulating technical specifications***

#### **Article 99**

Technical specifications shall be formulated in one of the following ways:

- 1) in terms of performance or functional requirements that may include environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities/entities to award the contract;
- 2) by reference to technical specifications and, observing the following priority order, to national standards transposing the European standards, to the European technical assessments, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or, in the event that any of those do not exist,

to the national standards, national technical approvals or national technical specifications relating to the design, calculation of costs and execution of the works and use of the supplies, whereby each reference shall be accompanied by the words 'or equivalent';

3) in terms of performance or functional requirements as referred to in point 1) of this Article, with reference to the technical specifications referred to in point 2) of this Article which are deemed presume conformity with such performance or functional requirements;

4) by reference to the technical specifications referred to in point 2) of this Article for certain characteristics, and by reference to the performance or functional requirements referred to in point 1) of this Article for other characteristics.

### ***The use of technical specifications***

#### **Article 100**

Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process which characterises the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production which would have the effect of favouring or eliminating certain economic operators or certain products.

Exceptionally, a reference made as set forth under paragraph 1 of this Article shall be permitted where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to Article 99 of this Law is not possible, whereby such reference shall be accompanied by the words 'or equivalent'.

#### **Article 101**

In the event of formulating technical specification as provided for under Article 99, paragraph 1, point 1) of this Law, contracting authority/entity shall not reject a tender for the works, supplies or services which comply with the national standard transposing a European standard, a European technical assessment, a common technical specification, an international standard or a technical reference system established by a European standardisation body, where those such specifications address the performance or functional requirements laid down by this contracting authority/entity.

In the event referred to in paragraph 1 of this Article, the tenderer shall in its tender prove, by any appropriate means including by means of proof referred to under Article 103 of this Law, that supplies, services or works, which are in compliance with the standard, meet the performance or functional requirements of the contracting authority/entity.

Where the technical specifications are formulated as provided for under Article 99, paragraph 1, point 2) of this Law, contracting authority/entity shall not reject a tender on the grounds that the supplies, services or works do not comply with the technical specifications to which it has referred, if the tenderer proves in its tender by any appropriate means, including by means of proof referred to in Article 103 of this Law, that the solutions proposed satisfy in an equivalent manner the requirements defined by the technical specifications.

### ***4. Using labels***

#### **Article 102**

Where contracting authority/entity intends to purchase supplies, services or works with specific environmental, social or other characteristics it may, in the technical specifications, the award

criteria or the contract performance conditions, require specific labels as means of proof that the supplies, services or works correspond to the required characteristics, provided that all of the following conditions are fulfilled:

- 1) the label requirement concerns solely the criteria which are linked to the subject-matter of the public procurement contract and is appropriate to define characteristics of the subject-matter of the public procurement;
- 2) the label requirement is based on objectively verifiable and non-discriminatory criteria;
- 3) the labels are established in an open and transparent procedure with participation of all relevant stakeholders, such as government bodies, users of services, social partners, consumers, manufacturers, distributors, non-governmental organisations, and the like;
- 4) the labels are accessible to all interested parties;
- 5) the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

Where contracting authorities/entities do not require the supplies, services or works to meet all of the label requirements, they shall indicate which label requirements are referred to.

Where contracting authority/entity requires a specific label, it shall also accept all labels that confirm that the supplies, services or works meet equivalent label requirements.

Where an economic operator had demonstrably no possibility of obtaining the specific label indicated by the contracting authority/entity in tender documents or an equivalent label, the contracting authority/entity shall accept other appropriate means of proof, which may include a technical dossier from the manufacturer, provided that the economic operator concerned proves that the supplies, services or works to be provided by it fulfil the requirements of the specific label or the specific requirements indicated by the contracting authority/entity.

Where a label fulfils the conditions set forth under paragraph 1, points 2) - 5) of this Article but also relates to the requirements not linked to subject-matter of procurement, contracting authorities/entities shall not refer to the label as such but rather shall define the technical specification by reference to the detailed specifications of that label, or, as necessary, parts thereof, that are linked to the subject-matter of the procurement and are appropriate to define characteristics of subject-matter of procurement.

## ***5. Test reports, certificates and other means of proof***

### **Article 103**

Contracting authorities/entities may require that economic operators provide a test report from a conformity assessment body or a certificate issued by such a body as means of proof of conformity with requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

Where contracting authorities/entities require the submission of certificates drawn up by a specific conformity assessment body, they shall also accept certificates issued by other equivalent conformity assessment bodies.

A conformity assessment body, in terms of paragraphs 1 and 2 of this Article shall be a body that performs conformity assessment activities including testing, calibration, inspection and certification accredited in accordance with the law regulating accreditation and the work of the national body for accreditation in the Republic of Serbia, as well as other issues of importance for accreditation.



In addition to the means of referred to in paragraph 1 of this Article, contracting authorities/entities shall also accept other appropriate means of proof, such as a technical dossier of the manufacturer where the economic operator concerned has no possibility of obtaining test reports or certificates referred to in paragraph 1 of this Article, or no possibility of obtaining them within the relevant time limits, provided that the inability to obtain them is not caused by its action and provided the economic operator thereby proves that the supplies, services or works it offers meet the requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

## **6. Communication of technical specifications**

### **Article 104**

On request from economic operator interested in a specific public procurement contract, contracting entity shall make available the technical specifications regularly referred to in its public supply, service or works contracts, or technical specifications it intends to apply to contracts for which a periodic indicative notice is used as a contract notice.

Technical specifications shall be made available by electronic means through a free of charge, unrestricted and unlimited access.

In the event that technical specifications cannot be transmitted by electronic means, due to the reasons set forth in Article 45 paragraph 3 of this Law, contracting entities shall make the technical specifications available by other appropriate means of communication.

Where the technical specifications are based on documents available by electronic means through a free of charge, unrestricted and full direct access to interested economic operators, the inclusion of a reference to those documents shall be sufficient.

## **VIII PUBLICATION AND TRANSPARENCY**

### **1. Procurement notices**

#### **Article 105**

Public procurement notices published by contracting authorities/entities shall be:

- 1) contract notice;
- 2) prior information notice;
- 3) periodic indicative notice;
- 4) notice on the existence of the qualification system;
- 5) notice on the conduct of the negotiation procedure without publication of a contract notice;
- 6) contract award notice, discontinuation of procedure or cancellation of procedure;
- 7) notice on the contracting authority/entity's profile;
- 8) contract modification notice;
- 9) notice on social and other specific services;
- 10) design contest notice;
- 11) notice on the results of the design contest;

12) Corrigendum – notice for changes or additional information;

13) voluntary ex ante transparency notice;

14) notice on submitted request for protection of rights.

Notice referred to in paragraph 1, point 2) of this Article uses only contracting authority, whereas notices referred to in paragraph 1, points 3) and 4) uses only contracting entity.

For the description of the subject-matter of procurement in the public procurement notices, contracting authority/entity shall use codes referred to in Common Procurement Vocabulary.

The Common Procurement Vocabulary, in accordance with the corresponding European Union's vocabulary (Common Procurement Vocabulary), shall be established by the Public Procurement Office.

The content of procurement notices is listed in Annex 4 of this Law.

Notices shall be published through Public Procurement Portal on the standard forms whose content is established by the Public Procurement Office.

The Public Procurement Office shall draw up instruction on how to send and publish notices, as well as on other matters of relevance for the publication of notices, and publish it on its website.

Advertisements referred to in paragraph 1, points 1) to 4) of this Article in public procurement procedures the estimated value of which is equal to or exceeding RSD 5,000,000 shall be published also on the Official Gazette of the Republic of Serbia and regulatory base in a form for publication which shall be available at the Public Procurement Portal.

The Government grants approval to the amount of the fee for publishing the public procurement notices on the "Official Gazette of the Republic of Serbia" and the regulatory base.

Notices for public procurement with estimated value equal to or exceeding the value of European thresholds shall also be published in the Official Journal of the European Union.

### ***Contract notice***

#### **Article 106**

Contracting authority/entity shall publish a contract notice in all public procurement procedures, except in the negotiated procedure without publication of a contract notice and in the cases otherwise provided for by the provisions of this Law.

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

#### **Article 107**

Contracting authority may make known its intentions on procurement of supplies, services or works through publication of a prior information notice containing the information set out in Annex 4, Part A II of this Law on the Public Procurement Portal.

Contracting authority may publish a prior information notice on its buyer's profile.

In the case referred to in paragraph 2 of this Article, the contracting authority shall send a notice of publication on its profile containing the information set out in Annex 4, Part A I on the Public Procurement Portal.

In the case referred to in paragraph 2 of this Article, the contracting authority shall send a notice of publication on its profile containing the information set out in Annex 4, Part A I also in the Official Journal of the European Union.

Contracting authority shall not publish prior information notice on its buyer's profile before sending the notice referred to in paragraph 3 of this Article and it must specify on its profile the date of dispatch of such notice for publication.

The contracting authority has the right to use the reduced time limit for the submission of a tender in an open procedure referred to in Article 52, paragraph 4, in restricted procedure referred to in Article 54, paragraph 5 and competitive procedure with negotiations referred to in Article 56, paragraph 3 of this Law, if the following conditions are met:

- 1) prior information notice includes all the information required for the contract notice referred to in Annex 4, part A II of this Law in so far as that information was available at the time of publication of the prior information notice and
- 2) the prior information notice was sent for publication between 35 days 12 months before the date on which the contract notice was sent for publication.

### ***Periodic indicative notice***

#### **Article 108**

Contracting entity may make known its intentions on procurement of supplies, services or works through publication of a periodic indicative notice containing information set out in Annex 4, Part B II Point 1 of this Law on the Public Procurement Portal.

Contracting entity may publish a periodic indicative notice on contracting entity's profile, except in the case referred to in paragraph 5 of this Article.

In the event referred to in paragraph 2 of this Article, the contracting entity shall send a notice of publication on its profile containing the information referred to in Annex 4, Part B I on the Public Procurement Portal.

In the event referred to in paragraph 2 of this Article, the contracting entity shall send a notice of publication on its profile containing the information referred to in Annex 4, Part B I also in the Official Journal of the European Union.

Contracting entity shall not publish a periodic indicative notice on its contracting entity's profile before sending the notice referred to in paragraph 3 of this Article and it must specify on its buyer's profile the date of dispatch of such notice for publication.

In restricted procedure or negotiated procedure with publication of a contract notice the contracting entity may use a periodic indicative notice as contract notice.

In the case referred to in paragraph 6 of this Article, periodic indicative notice shall meet the following conditions:

- 1) it contains description of supplies, services or works that will be the subject-matter of the contracts to be awarded;
- 2) it indicates that the contract will be awarded by restricted procedure or negotiated procedure without further publication of a contract notice and invites interested economic operators to express their interest;
- 3) it contains, in addition to information set out in Annex 4, Part B II Point 1, the information set out in Annex 4, Part B II Point 2 of this Law;
- 4) periodic indicative notice has been sent for publication between at least 35 days and not more than 12 months prior to the date on which the contracting entity sends an invitation to confirm interest referred to in paragraph 9 of this Article.

In the case referred to in paragraph 6 of this Article, economic entities shall express in writing to the contracting entity their interest in participating in the public procurement procedure within the time limit specified by the contracting entity in the periodic indicative notice, which shall not be shorter than 35 days from the date on which the periodic indicative notification was sent for publication.

The contracting entity shall simultaneously and in writing invite the economic operators which have expressed their interest in accordance with paragraph 8 of this Article to confirm their continuing interest without further publication of a contract notice.

Following the submission of the requests to participate by economic operators within the time limit determined in accordance with Article 53, paragraph 3, or Article 63, paragraph 2 of this Law, the contracting entity shall apply the provisions of this Law relating to the first stage of the restricted procedure or negotiated procedure with the publication of a contract notice.

The contracting entity shall submit an invitation to tender or initial tenders to candidates it has not excluded from the public procurement procedure and shall apply the provisions of this Law relating to the second phase of the restricted procedure or negotiated procedure with the publication of a contract notice.

The period covered by the periodic indicative notice shall be no more than 12 months from the date on which the notice was sent for publication.

Notwithstanding paragraph 12 of this Article, in the case of a public procurement contracts for social and other specific services, periodic indicative notice may cover a period longer than 12 months.

The contracting entity has the right to use the reduced time limit for submission of a tender in an open public procurement procedure referred to in Article 52, paragraph 4 of this Law, if the following requirements are met:

- 1) periodic indicative notice which is not used as a contract notice includes, in addition to the information referred to in Annex 4, Part B II, Point 1 the information referred to in Annex 4, Part B, Point 2 of this Law in so far as that information was available at the time of publication of the periodic indicative notice, and
- 2) the periodic indicative notice was sent for publication between 35 days 12 months before the date on which the contract notice was sent for publication.

***Contract award notice, discontinuation of the procedure or annulment of the procedure, voluntary ex ante transparency notice***

**Article 109**

Contracting authority/entity shall send for publication the contract award notice within 30 days from the date on which public procurement contract or framework agreement was concluded.

In the case of contracts concluded on the basis of framework agreement and dynamic purchasing system contracting authority/entity shall quarterly publish grouped contract award notices, within 30 days of the end of each quarter within which concerned contracts were concluded.

Exceptionally, contracting authority/entity may withheld from publication certain information on the award of a public procurement contract or a framework agreement, where its release would impede the provisions of this Law, or would otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, or might prejudice fair competition on the market.

In the case of suspension or annulment of a public procurement procedure, contracting authority/entity shall publish information thereof in the contract award notice form within 30 days from the day the decision on suspension or annulment of a public procurement procedure became final.

The contracting authority/entity may publish a voluntary ex ante transparency notice for procurements conducted on the basis of provisions of Article 11-21 of this Law.

### ***Contracting authority/entity's profile***

#### **Article 110**

Contracting authority/entity may post its own profile on its website.

On contracting authority/entity's profile are to be posted general information about the contracting authority/entity, the public procurement plan, prior information notice or periodic indicative notice, information about public procurement procedures, as well as other information concerning public procurement.

## **IX CHOICE OF PARTICIPANTS AND AWARD OF CONTRACTS**

### **1. Criteria for qualitative selection of economic operator**

#### ***Exclusion grounds***

#### **Article 111**

Contracting authority/entity shall exclude an economic operator from public procurement procedure if:

1) the economic operator fails to prove that it or its legal representative in the period of the previous five years up to the date of expiry of the time limit for submission of tenders, i.e., requests, has not been convicted by the final judgment, unless where different period of exclusion from the participation in the public procurement procedures has been set by the final judgment for:

(1) the criminal offense he/she committed as a member of an organised criminal group and criminal offense of organising for the purpose of committing criminal offenses;

(2) the criminal offense of abuse of the position of the responsible person, the criminal offense of misconduct in connection with public, the criminal offense of taking bribe in performing an economic activity, the criminal offense of giving bribe in performing an economic activity, the criminal offense of abuse of official position, the criminal offense of trafficking in influence, the criminal offense of accepting bribe and the criminal offense of bribery; the criminal offense of fraud, the criminal offense of obtaining and using the loan and other benefits, the criminal offense of fraud in performing an economic activity and the criminal offense of tax evasion; the criminal offense of terrorism, criminal offense of public incitement to commit terrorist acts, the criminal offense of recruitment and training for the commission of terrorist acts and the criminal offense of terrorist association; the criminal offense of money laundering and the criminal offense of financing terrorism; the criminal offense of trafficking in human beings and the criminal offense of establishing a slavery relation and transportation of persons in slavery relation;

2) the economic entity fails to prove it has settled due taxes and contributions for compulsory social insurance or that the payment of debt has been postponed, in accordance with a special regulation, under a binding agreement or decision, including any interests accrued and fines;

3) it determines that the economic operator has in the period of the previous two years up to the date of expiry of the time limit for submission of tenders, i.e., requests, violated applicable obligations in the area of the environmental protection, social and labour law, including collective agreements, and in particular the obligation to disburse the contracted wages, or other compulsory payments, including obligations in accordance with the provisions of the international conventions listed in Annex 8 of this Law;

4) there is a conflict of interest, within the meaning of this Law, which cannot be remedied by other measures;

5) it determines that the economic operator has undertaken to unduly influence the decision-making process of the contracting authority/entity or obtain confidential information that may confer upon it undue advantage in the public procurement procedure or to has provided misleading information that may have effect on decisions concerning the exclusion of economic operator, the selection of an economic operator or the award of a contract.

The contracting authority/entity shall at any time during the public procurement procedure exclude an economic operator from the public procurement procedure where it establishes by any means that there are grounds for exclusion referred to in paragraph 1 of this Article.

The contracting authority/entity may withdraw from the exclusion of economic operator from the public procurement procedure for the reasons referred to in paragraph 1 of this Article for overriding reasons relating to the public interest, such as public health or environmental protection.

## **Article 112**

The contracting authority/entity may in the procurement documents provide that it will exclude an economic operator from the public procurement procedure where at any moment during the public procurement procedure:

1) it determines that the economic operator is bankrupt, insolvent, or is the subject of the winding-up proceedings, that its assets are being administered by a bankruptcy trustee (liquidator) or by the court, that it is in an arrangement with creditors, that its business activities are suspended, or that it is in any analogous situation arising from a similar procedure under national laws and regulations;

2) it determines that under the final judgement or decision of another competent authority, responsibility of the economic operator has been determined of grave professional misconduct which brings into question its integrity, in the period of the previous three years up to the date of expiry of the time limit for submission of tenders, i.e., requests, unless where different period of exclusion from the participation in the public procurement procedures has been set by the final judgment or decision;

3) it determines that under the decision of the competent authority for the protection of competition it has been determined that the economic operator has entered into agreements with other economic operators aimed at distorting competition, in the period of the previous three years until the date of expiry of the time limit for submission of tenders;

4) it determines that a distortion of competition, due to the prior involvement of the economic operator in the preparation of the procurement procedure, as referred to in Article 90 of this Law, cannot be remedied by other measures;

5) it determines that the economic in the period of previous three years until the date of expiry of the time limit for the submission of tender did not meet obligations under the previously concluded public procurement contract, or of a previously concluded concession contract, which resulted in termination of that prior contract, collection of security instruments, damages or other;

6) it determines that the economic operator has in the public procurement procedures in the period of the previous three years until the date of expiry of the time limit for submission of tenders supplied false information required for the verification of grounds for exclusion or the criteria for the selection of economic operator, or has not been able to submit evidence on fulfilment of the criteria for qualitative selection of economic operator, if it had used as evidence a declaration referred to in Article 118 of this Law.

Contracting authority/entity may opt not to exclude the economic operator in the event referred to in paragraph 1, point 1) of this Article, where it establishes that economic operator in question will be able to perform the public procurement contract, taking into account the legislation and measures on the continuation of business.

### **Article 113**

An economic operator having the grounds for exclusion set forth under Article 111, paragraph 1, points 1), 3) and 4) and Article 112 of this Law may provide evidence to the contracting authority/entity that it has taken measures to demonstrate its reliability despite of the existence of an exclusion ground, proving, to that effect:

- 1) that it has paid or undertaken to pay compensation in respect of any damage caused by the criminal offense or professional misconduct, and
- 2) that it has fully clarified the facts and circumstances by actively collaborating with the investigating authorities, and
- 3) that it has taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offenses or professional misconduct.

The measures taken by the economic operators shall be evaluated taking into account the gravity and particular circumstances of the criminal offense or professional misconduct, whereby the contracting authority/entity shall elaborate the reasons for accepting or non-accepting those measures.

The contracting authority/entity shall not exclude an economic operator from public procurement procedure if it evaluates the measures undertaken to be appropriate.

Economic operator which has been excluded, by final judgement, from participating in public procurement procedures or concession award procedures shall not be entitled to use the possibility set forth under paragraph 1 of this Article until the ban period expires.

### ***Criteria for selection of economic operator***

#### **Article 114**

The criteria for selection of the economic operator in a public procurement procedure may relate to:

- 1) fulfilment of conditions to pursue the professional activity;
- 2) economic and financial capacity;
- 3) technical and professional capacity.

The contracting authority/entity shall determine the criteria for selection of economic operator referred to in paragraph 1 of this Article whenever necessary, bearing in mind the subject-matter of public procurement.

When determining the selection criteria referred to in paragraph 1 of this Article, contracting authority/entity may only require level of capacities that will ensure that economic operator is capable of performing the public procurement contract.

The selection criteria referred to in paragraph 1 of this Article shall be logically related and proportionate to the subject-matter of procurement.

Where contracting authority/entity determines the selection criteria referred to in paragraph 1 of this Article, in the contract notice it shall indicate the required level of capacities and the appropriate means of proof.

### ***Fulfilment of conditions to pursue the professional activity***

#### **Article 115**

Contracting authority/entity may require economic operator to prove it is enrolled in the registry of economic operators, a court registry, a professional registry or in another appropriate register, if such register is kept in the country where the economic operator is established.

In so far as economic operator has to possess a particular authorisation, or a permit issued by the competent authority for the performance of activity which is the subject-matter of public procurement, or to be a member of a particular organisation in order to be able to perform the activity concerned, contracting authority/entity may require them to prove that they hold such authorisation, permit, or membership.

### ***Economic and financial capacity***

#### **Article 116**

In the public procurement documents, contracting authority/entity may determine economic and financial capacity ensuring that economic operators possess economic and financial capacity necessary to perform the public procurement contract and, in particular, to:

- 1) have a certain minimum income, including a certain minimum income in the area covered by the subject-matter of public procurement, over the period of time not longer than the last three financial years, depending on the date of establishment of the economic operator, i.e., the start of performance of activity of economic operator;
- 2) have certain ratios between assets and liabilities, or another financial indicator concerning the financial statements of economic operators, over the period of time not longer than the last three financial years;
- 3) have the appropriate level of professional risk indemnity insurance.

The minimum income referred to in paragraph 1, point 1) shall not exceed two times the estimated value of public procurement, save in exceptional cases when this is necessary due to the special risks attached to the subject-matter of public procurement, that contracting authority/entity has to duly justify in procurement documents.

Where contracting authority/entity sets the requirement referred to in paragraph 1, point 2) of this Article, in its tender documents it shall indicate transparent, objective and non-discriminatory methods and criteria for their evaluation.

Where the subject-matter of public procurement is divided into several lots, the requirements referred to in paragraph 1 of this Article shall be determined in proportionality to each individual lot.



Exceptionally, contracting authority/entity may require the minimum income in relation to the estimated values of groups of lots in the event that the successful tenderer is awarded several lots which are to be executed at the same time.

In the procedure of awarding contracts based on a framework agreement following a reopening of competition, the requirement referred to in paragraph 1, point 1) of this Article shall be calculated on the basis of the expected maximum values of individual contracts that will be performed at the same time or, where it is not known, on the basis of the estimated value of the framework agreement.

In a dynamic purchasing system, the requirement referred to in paragraph 1, point 1) of this Article shall be calculated on the basis of the expected maximum values of specific contracts to be awarded during the period of validity of the dynamic purchasing system.

### ***Technical and professional capacities***

#### **Article 117**

With regard to technical and professional capacities, contracting authority/entity may set requirements ensuring that economic operators possess the necessary human and technical resources and experience necessary to perform the public procurement contract to an appropriate quality level, and may require, in particular, that economic operator has sufficient experience in terms of contracts performed in the past.

If contracting authority/entity establishes that economic operator has conflicting interests, i.e. interests which may adversely affect the performance of the public procurement contract, it may be deemed that economic operator does not possess required professional capacity.

In a public procurement procedure whose subject-matter is the delivery of supplies involving the siting or installation works, the provision of services or the execution of works, the professional capacity of economic operators to execute the siting or installation works of supplies, to provide the services, or execute works, may be evaluated with regard to its skills, efficiency, experience and reliability.

### ***2. Means of proof of criteria for qualitative selection of economic operator***

#### **Declaration of fulfilment of criteria for qualitative selection of economic operator**

#### **Article 118**

The economic operator in the tender, i.e., request submits a declaration of fulfilment of criteria for qualitative selection of economic operator (hereinafter: Declaration of fulfilment of criteria) using a standard form, confirming that:

- 1) there are no grounds for exclusion;
- 2) meets the required selection criteria for the economic operator;
- 3) fulfils the rules or criteria that have been set for the limitation of the number of qualified candidates in accordance with Article 64 of this Law, where applicable.

If a tender, i.e. request to participate is submitted by a group of economic operators, a separate declaration for each of the members in a group of economic operators shall be submitted in a tender i.e. request to participate containing the data referred to in paragraph 1, points 1) and 2) of this Article for the relevant capacity of a member of the group.

If the economic operator intends to award a part of a contract to a subcontractor or intends to relies on the capacities of other entities, it shall also provide a separate declaration containing

the information referred to in paragraph 1, point 1) and information referred to in paragraph 1, point 2) of this Article for the relevant capacities of the subcontractor or other entity it relies on.

In the declaration of fulfilment of criteria, economic operators shall indicate the issuers of evidence on the fulfilment of criteria for qualitative selection of the economic operator and declare that they will be able to submit such evidence upon request of contracting authority/entity and without delay.

In the declaration of fulfilment of criteria, economic operators may also include information such as the internet address of the database, any necessary identification data and declaration of consent, on the basis of which evidence on the fulfilment of criteria for qualitative selection of the economic operator may be obtained, or accessed.

Economic operator may reuse its declaration of fulfilment of criteria already used in a previous public procurement procedure, provided that it confirms that the information contained therein continues to be correct.

The standard form of declaration of fulfilment of criteria shall be determined by the Public Procurement Office, in accordance with the European single procurement document, established by the European Commission.

The standard form referred to in paragraph 7 of this Article shall be published on internet site of the Public Procurement Office.

### **Article 119**

Before making a decision in the public procurement procedure, the contracting authority/entity shall require the tenderer which has submitted the most economically advantageous tender, to submit evidence on fulfilment of the criteria for qualitative selection of economic operator, in the form of unverified copies, within an appropriate time limit not shorter than five working days.

Contracting authority/entity will not be obliged to act pursuant to paragraph 1 of this Article in the case of the public procurement with estimated value equal or less than RSD 5,000,000.00.

Regardless of the estimated value of the public procurement, contracting authority/entity may ask tenderers and candidates to submit all or part of the evidence on fulfilment of the criteria for qualitative selection of economic operator for the sake of verifying the information stated in the declaration of fulfilment of the criteria, where this is necessary to ensure the proper conduct of the procedure.

Contracting authority/entity shall not require tenderers and candidates to submit evidence on fulfilment of the criteria for qualitative selection of economic operator, if:

- 1) on the basis of the information contained in the declaration on fulfilment of criteria, it can obtain the evidence, or have access to the evidence on fulfilment of the criteria for qualitative selection of economic operator;
- 2) contracting authority/entity already possesses relevant valid evidence.

The contracting authority/entity may invite tenderers or candidates to supplement or clarify the evidence on fulfilment of the criteria for qualitative selection of economic operator pursuant to Article 142 of this Law.

Where the tenderer which has submitted the most economically advantageous tender fails to supply required evidence within the specified time limit, or fails to prove by submitted evidence that it fulfils the criteria for qualitative selection of economic operator, the contracting authority/entity shall reject the tender of the tenderer concerned, and shall either act in compliance with paragraph 1 of this Article in relation to the tenderer submitting the next most

advantageous tender, or discontinue the public procurement procedure if there are grounds for discontinuation.

### **3. Evidence on fulfilment of criteria for qualitative selection of economic operator**

#### **Article 120**

In the procurement documents, contracting authority/entity shall indicate certificates, documents, statements and other means of proof by which the economic operator proves it fulfils the criteria for qualitative selection of economic operator.

In case of doubt about the veracity of information supplied by the economic operator, contracting authority/entity may verify such data with the issuer of evidence, a competent authority, or a third party that possesses knowledge of the relevant facts and, exceptionally, it may require the tenderer to supply the originals or the verified copies of all or of only certain evidence, for the purpose of insight.

An economic operator may rely on the capacities of other economic operators, in accordance with this Law, and may prove to the contracting authority/entity by any appropriate means that it has at its disposal the necessary resources.

#### **Article 121**

The absence of the exclusion grounds:

- 1) referred to in Article 111 paragraph 1, point 1) of this Law shall be proved by a certificate of the competent court or a competent police authority;
- 2) referred to in Article 111 paragraph 1, point 2) of this Law shall be proved by a certificate of the competent tax authority and organisation for the mandatory social insurance, or certificate of the competent authority to the effect that the tenderer is undergoing the privatisation procedure;
- 3) referred to in Article 112 paragraph 1, point 1) of this Law shall be proved by a certificate of the competent court or another competent authority.

Where an economic operator has its seat in another country, as an evidence for the absence of the exclusion grounds:

- 1) referred to in Article 111, paragraph 1, point 1) of this Law, contracting authority/entity shall accept an extract from the criminal records or another relevant register or, failing that, an equivalent document issued by a competent judicial or administrative authority in the country of the economic operator's seat or the country of citizenship of the person concerned.
- 2) referred to in Article 111, paragraph 1, point 2) and Article 112, paragraph 1, point 1) of this Law, contracting authority/entity shall accept a certificate of the competent authority in the country of the economic operator's seat.

Where the country of the economic operator's seat or the country of citizenship of the person concerned does not issue evidence referred to in paragraph 2 of this Law, or where these do not cover all information specified in Article 111 paragraph 1, point 1), Article 111, paragraph 1, point 2) and Article 112, paragraph 1, point 1) of this Law, economic operator may replace such evidence by a written declaration given under criminal responsibility and liability verified before a competent judicial or administrative authority, a notary or another competent body of the country concerned, to the effect that none of the listed exclusion grounds of the economic operator exists.

In the event referred to in paragraph 3 of this Article, contracting authority/entity may verify, through the online repository of certificates under Article 125 of this Law or by other relevant means, whether such evidence is not issued or whether they do not cover all relevant information.

## **Article 122**

Suitability to pursue the professional activity shall be proved by:

- 1) an excerpt from the court, trade, professional or other appropriate registers kept in the country of the economic operator's seat;
- 2) a permit issued by a competent authority or by confirmation of membership in a particular organisation issued in the country of the economic operator's seat.

## **Article 123**

As a rule, the economic operator's economic and financial capacity shall be proved by:

- 1) appropriate bank statements or, as necessary, by evidence of relevant professional risk indemnity insurance;
- 2) financial statements or by extracts from financial statements, where the publication of such financial statements is mandatory;
- 3) report of the economic operator's overall income and, as necessary, of the income of supplies, services or works covered by the public procurement contract, for the last three available accounting (financial) years, depending on the date of establishment or the date of the commencement of the economic operator's business activities, provided that information on these incomes is available.

Where, for any valid reason, an economic operator is unable to provide the documents and proofs referred to in paragraph 1 of this Article requested by the contracting authority/entity, it may prove its financial and economic capacity by any other document, from whose content the contracting authority/entity may undoubtedly establish the fulfilment of required financial and economic capacity.

## **Article 124**

The technical and professional capacity shall be proved by one or more of the following evidences:

- 1) list of works performed over a period at the most the past five years prior to expiry of the time limit for submission of tenders, i.e., requests, accompanied by certificates of the satisfactory execution and the outcome for the most important works, and where necessary in order to ensure an adequate level of competition, contracting authorities/entities may indicate that evidence of relevant works carried out in the period longer than five years before will be taken into account;
- 2) list of deliveries of relevant supplies or services provided over a period at the most the past three years prior to the expiry of the time limit for submission of tenders, i.e., requests, with the sums, dates and names of recipients, and where necessary in order to ensure an adequate level of competition, contracting authorities/entities may indicate that evidence of relevant supplies or services delivered or provided in the period longer than three years before will be taken into account;
- 3) information about the technicians or technical bodies involved, whether or not directly employed by, or belonging to the economic operator, especially in terms of responsibility for quality control and, in the case of public works contracts, in terms of carrying out the works;
- 4) description of the technical facilities and measures used by the economic operator for ensuring quality and of the study and research facilities at its disposal;

- 5) educational and professional qualifications of the service provider or contractor or of its managerial staff, provided that such qualifications are not evaluated as a contract award criterion;
- 6) indication of the supply chain management and of the tracking systems that the economic operator will be able to apply when performing the contract;
- 7) declaration of the economic operator on accepting the quality control to be performed by contracting authority/entity or authorised body in the country in which the economic operator is established that will on behalf of the contracting authority/entity perform control in terms of the economic operator's production or technical capacities and, where necessary, in terms of the means of study and research which are available to it, and of the quality control measures that will be applied, where the supplies or services to be delivered are complex or required for a special purpose;
- 8) indication of the environmental protection management measures that the economic operator will be able to apply when performing the contract;
- 9) statement of the average annual number of employees of the service provider or contractor, and the number of managerial staff within the last three years before the expiry of the time limit for the submission of tenders, i.e., requests;
- 10) statement of the tools, plant or technical equipment available to the service provider or contractor for the performance of the contract;
- 11) indication of the proportion of the contract which the economic operator intends to subcontract where the relevant criterion for qualitative selection is proved by relying on the subcontractor's capacity;
- 12) with regard to the products which are the subject-matter of public procurement:
  - (1) samples, descriptions or photographs, the authenticity of which must be certified where the Contracting authority so requests;
  - (2) certificates drawn up by the official quality control institutes or agencies of recognised competence, attesting the conformity of products clearly identified by references to technical specifications or standards.

#### ***4. Online repository of certificates (e-Certis)***

##### **Article 125**

Contracting authority/entity shall have recourse to e-Certis system to obtain data on types and forms of documentary evidence referred to in Articles 120 - 124 of this Law and on the competent authorities issuing those in the European Union Member States.

Contracting authority/entity shall require primarily types and forms of evidence referred to in Articles 120 - 124 of this Law that are covered by e-Certis.

#### ***5. Quality assurance standards and environmental management standards***

##### **Article 126**

Where for the purpose of proving criteria for qualitative selection the contracting authority/entity requires the submission of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, it shall refer to quality assurance systems based on the relevant standards certified by accredited bodies.

Contracting authority/entity shall recognise equivalent certificates from bodies established in the European Union Member States or bodies established in other states.

Contracting authority/entity shall also accept evidence of equivalent quality assurance measures where the economic operator, due to objective reasons, cannot obtain certificates referred to in paragraphs 1 and 2 of this Article within the relevant time limit, provided that the economic operator proves that these measures comply with the required quality assurance standards.

#### **Article 127**

Where contracting authority/entity requires the submission of certificates drawn up by independent bodies attesting the economic operator's compliance with certain environmental management systems or standards, they shall refer to the Eco-Management and Audit Scheme (EMAS) or to other environmental management systems as recognised in accordance with the law regulating the system of environmental protection or environmental management standards based on the relevant European or international standards by accredited bodies.

Until the day of accession of the Republic of Serbia to the European Union contracting authority/entity shall recognise equivalent certificates from bodies established in the European Union Member States or certificates from bodies established in other states.

The contracting authority/entity shall recognise equivalent certificates from bodies established in the European Union Member States.

Contracting authority/entity shall accept evidence of equivalent environmental management measures, where the economic operator demonstrably has no access to certificates referred to in paragraphs 1 - 3 of this Article, or where the economic operator due to objective reasons has no possibility of obtaining them within the relevant time limit, on the condition that it proves these measures are equivalent to the required environmental management systems or standards.

### ***6. Register of bidders in the Republic of Serbia***

#### **Article 128**

The organization responsible for registration of economic operators shall maintain the public register of bidders - entrepreneurs and legal entities (hereinafter: the register of bidders).

The organization responsible for registration of economic operators shall make the registration available to economic operators in accordance with this law.

The register of bidders shall be available on the website of the organisation referred to in paragraph 1 of this Article.

Any economic operator may file application for registration in the register of bidders, by supplying documents proving the lack of an exclusion grounds referred to in Article 111, paragraph 1, points 1) and 2) of this Law.

The organization responsible for issuing evidence under Article 121, paragraph 1, points 1) and 2) of this Law or the body responsible for imposition of sanctions and measures to person registered in the register of bidders, shall, after having detected changes or after having imposed a sanction or measure to a person registered in the register of bidders, immediately notify thereon the organisation responsible for registration of economic operators.

It shall be deemed that the economic entity registered in the register of bidders shall not have the exclusion grounds referred to in Article 111, paragraph 1, points 1) and 2) of this Law.

In the register of bidders the following information and changes of are registered:

- 1) personal identification number/registration number;
- 2) tax identification number;
- 3) business name and address;
- 4) personal name and JMBG (unified personal identification citizen' number) or a number of passport and the country of its issue of a legal representative of the tenderer if the legal representative is a natural person and business name and personal number of legal representative of the tenderer, if the representative is a legal person.

Date of registration of the economic operator and the date of change of information about the economic operator which are the subject of registration shall also be registered in the register of bidders.

An economic operator shall be deleted from the register of bidders on the basis of the tenderer's request for deletion or ex officio where it ceases to meet any of the conditions provided for by the law.

A decision of registrar in charge of the register of bidders may be challenged by appeal addressed to the minister competent for economy.

Minister competent for finance shall regulate the contents of the register of bidders and of documentation to be attached to the application to register a bidder.

### ***Official registers of economic operators and certification by competent bodies***

#### **Article 129**

In a public procurement procedure economic operator may submit a certificate of registration to the official register of economic entities issued by a competent authority or body, or a certificate issued by a competent certification body in a European Union Member State proving that it fulfils criteria for qualitative choice of economic operator encompassed by those certificates.

Notwithstanding paragraph 1 of this Article, contracting authority/entity may additionally request the economic operator in a public procurement procedure, which has supplied a certificate, to also supply in appropriate time limit documents under Article 121, paragraph 1, point 2) of this Law.

### ***7. Using the capacities of other operators***

#### **Article 130**

Economic operators can prove the fulfilment of the criteria for qualitative selection referred to in Articles 116 and 117 of this Law by using the capacities of participants in a group of economic operators or by using the capacities of other entities in a manner prescribed by this Article.

All participants in a group of economic operators are jointly and severally liable for the performance of a public procurement contract.

An economic operator may in a public procurement procedure, for the purpose of proving the fulfilment of the criteria for qualitative selection referred to in Article 117 of this Law, use the capacities of other entities, regardless of the legal nature of their mutual relations, in a manner prescribed by this Article.

Where economic operator uses the capacities of other entities, it shall prove to the contracting authority/entity that it will have at its disposal the resources necessary for the performance of the contract, by having those other operators accepted the obligation to put these resources at the disposal of the economic operator.

With regard to proving the fulfilment of the criteria for qualitative selection relating to the educational and professional qualifications referred to in Article 124, paragraph 1, point 5) of this Law, or to the relevant professional experience as referred to under Article 124, paragraph 1, points 1) and 2) of this Law, an economic operator in a public procurement procedure may only use the capacities of other entities where the latter will as subcontractors perform the works or provide the services for which these capacities are required, while the economic operator is obliged to prove, in line with Articles 118 - 125 of this Law, that these operators meet the relevant criteria for selection of economic operator and whether there are grounds for their exclusion.

In the case of public works contract, public service contract or public supply contract that includes siting or installation operations, a contracting authority/entity may require that certain key tasks or works be performed directly by the tenderer itself or by a participant in a group of tenderers.

## **8. Subcontractors**

### **Article 131**

The contracting authority/entity may not require or restrict the economic operators to subcontract a share of public procurement contract to a subcontractor or to engage specific subcontractors, unless otherwise provided for by a separate regulation or an international agreement.

Economic operator which intends to subcontract a share of public procurement contract to subcontractor, in its tender shall indicate:

- 1) which share of the contract it intends to subcontract (by subject-matter or in terms of quantity, value or percentage);
- 2) information about subcontractors;
- 3) that the payment will be made directly to the subcontractor for the part of the contract it has executed, where the subcontractor requests that direct payments of due claims are made directly to it.

Where the economic operator has subcontracted a share of public procurement contract to a subcontractor, information referred to in paragraph 1 of this Article shall be included in the public procurement contract.

In the case referred to in paragraph 2, point 3) of this Article, the contracting authority/entity shall affect direct payments for due claims to the subcontractor for the part of the contract it has executed.

Where direct payment of due claims to the subcontractor for the part of the contract it has executed is not envisaged, the contracting authority/entity, after payment to the economic operator with whom the contract has been concluded, is obliged to demand from this economic operator to submit to it, within a time limit of 60 days, a proof and statement of the subcontractor confirming that the payment to subcontractor of its claims has been settled.

Where the economic operator with whom the contract was concluded fails to submit the proof and the subcontractor's statement within the time limit referred to in paragraph 5 of this Article, the contracting authority/entity is obliged to submit to the Public Procurement Office a proposal for the initiation of misdemeanour proceedings.

The economic operator shall remain fully responsible to the contracting authority/entity for the execution of contractual obligations, regardless of the involvement of subcontractors.



## **9. The Contract Award Criteria**

### **a) General rules**

#### ***Determining the criteria***

##### **Article 132**

In the public procurement procedure, the contracting authority/entity shall award the contract to the most economically advantageous tender determined on the basis of one of the following criteria:

1) price or

2) costs by applying a cost-effectiveness approach, such as life-cycle costing in accordance with Article 134 of this Law, or

3) the price-quality ratio i.e. cost-quality ratio which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public procurement contract in question, which may in particular comprise:

(1) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics, trading and its conditions;

(2) organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff can have a significant impact on the level of performance of the contract; or

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

The contracting authority/entity may determine the element of price or cost as a predetermined price or cost, so that the economically most advantageous tender is identified on the basis of the quality criteria.

##### **Article 133**

The contracting authority/entity shall specify the contract award criteria in the procurement documents.

The contract award criteria shall be described and weighted, they shall not be discriminatory, shall be linked to the subject-matter of the public procurement contract, and shall ensure the possibility of effective competition.

The contract award criteria shall be considered to be linked to the subject-matter of the public procurement contract where they relate to the supplies, works or services that are the subject-matter of the contract in any respect and at any stage of their life cycle, including the factors that relate to a specific production process, execution of works, delivery of supplies, or provision of services, or to trading of the above, or to a specific process for another stage of their life cycle, even where such factors do not form a part of their material substance.

The contracting authority/entity shall determine the criteria in a manner which will enable its subsequent objective verification and evaluation of tenders, as well as verification of information supplied by tenderers, in order to assess the extent to which the tenders fulfil the contract award criteria, and in the case of doubt, the contracting authority/entity shall verify the veracity of information and evidence supplied by tenderers.

The contracting authority/entity shall specify in the procurement documents the relative weightings for each contract award criterion, and shall indicate the methodology for allocating the weighting to each criterion, except where the criterion is the price only.

The weightings may be expressed by providing for a range with an appropriate maximum spread.

Where weighting is not possible due to objective reasons, the contracting authority/entity shall indicate the criteria in descending order of importance.

The contracting authority/entity shall also determine the spare criteria on the basis of which it will award the contract in the case when application of the award criteria results in two or more tenders being equally ranked.

When evaluating tenders, the contracting authority/entity shall apply only those criteria indicated in the procurement documents, in a manner they are described and weighted therein.

### ***b) Life-cycle costing***

#### **Article 134**

Life cycle costing shall, to the extent relevant, cover parts or all of the following costs over the life cycle of a supply, service or works:

1) costs, borne by the contracting authority/entity or other users, such as:

- (1) costs of acquisition,
- (2) costs of use, such as consumption of energy and other resources,
- (3) maintenance costs,
- (4) end of life cycle costs, such as collection and recycling costs.

2) cost imputed to external environmental factors linked to the supply, service or works during its life cycle, provided their monetary value can be determined and verified, and which may include the cost of emissions of greenhouse gases and of other pollutant emissions, as well as other climate change mitigation costs.

Where the contracting authority/entity uses the life-cycle costing approach, it shall indicate in the procurement documents the data to be provided by the tenderers and the method which the contracting authority/entity will use to determine the life-cycle costs on the basis of those data.

The method used for the assessment of costs imputed to external environmental factors shall fulfil all of the following conditions:

- 1) it is based on objectively verifiable and non-discriminatory criteria, and where it has not been established for repeated or continuous application, it shall not unduly favour or disadvantage certain economic operators;
- 2) it is accessible to all interested parties;
- 3) the data required can be provided with reasonable effort by diligent economic operators, including economic operators from third states parties to the Agreement on Government Procurement – GPA, or other international agreements by which the European Union and the Republic of Serbia are bound.

Contracting authority/entity shall apply a common method for the calculation of life-cycle costs, where the obligation to apply this method is laid down by legislative acts of the European Union listed in Annex 9, Part II of this Law.

## **10. Tender in public procurement procedure**

### **a) General provisions**

#### ***Submission of a tender***

##### **Article 135**

A tender shall be submitted in electronic form through Public Procurement Portal, unless otherwise regulated in this Law.

A tenderer may submit only one tender.

Within the time limit for the submission of tenders, a tenderer may modify, supplement or recall its tender, in the same manner in which it was submitted.

A tender may be submitted by a group of tenderers as a joint tender.

The contracting authority/entity may not request from a group of tenderers that, in order to submit a joint tender, they adopt a specific legal form.

The contracting authority/entity may require group of tenderers to assume a specific legal form once they have been awarded the contract, to the extent that this is necessary for the performance of the contract.

A tenderer who has submitted a tender independently may not simultaneously participate in a joint tender or as a subcontractor nor the same person can participate in several joint tenders.

The contracting authority/entity shall be obliged to reject all tenders submitted in contravention of the prohibition referred to in paragraph 7 of this Article.

The provisions of this Article apply accordingly to the manner of the submission of requests to participate.

#### ***Tender with variants***

##### **Article 136**

Contracting authorities/entities may authorise or require submission of tenders with variants.

In the event referred to in paragraph 1 of this Article, the contracting authority/entity shall indicate in the contract notice whether submission of tenders with variants is authorised or required. If the contracting authority/entity has not indicated in the contract notice whether submission of tenders with variants is authorised or required, it is deemed that the submission of tenders with variants is not authorised.

Variants shall be linked to the subject-matter of the contract.

Where the submission of tenders with variants is authorised or required, procurement documents shall indicate the minimum requirements to be met by the variants and all specific requirements for their submission.

The chosen award criteria shall be determined so that they can be applied to variants meeting those minimum requirements, as well as to tenders which are in line with minimum requirements and which are not with variants.

Only the variants meeting the minimum requirements set by the contracting authority/entity shall be considered.

In procedures for awarding public supply or service contracts, contracting authorities/entities that have authorised or required tenders with variants shall not reject a variant on the sole ground that

it would, where successful, lead either to a public service contract instead of a public supply contract, or to a public supply contract instead of a public service contract.

### ***Validity of tender***

#### **Article 137**

The contracting authority/entity shall determine the period of validity of tenders, which may not be shorter than 30 days from the date of opening of tenders.

In the event the period of validity of tender expired, the contracting authority/entity shall request the tenderer, in writing, to extend the period of validity of the tender.

The tenderer who accepts the request for extension of the period of validity of tender may not change its tender.

### ***Tender preparation costs***

#### **Article 138**

Costs for preparation and submission of a tender shall be borne solely by the tenderer, who may not ask the contracting authority/entity to compensate these costs.

Notwithstanding paragraph 1 of this Article, where the public procurement procedure was discontinued due to reasons attributable to the contracting authority/entity, the contracting authority/entity shall compensate the costs for producing a sample or a model if they have been created in compliance with the technical specifications of the contracting authority/entity and costs of obtaining the security instruments, on the condition that the tenderer has requested the compensation for such costs in its tender.

## **b) Receipt and opening of tenders**

### ***Receipt of tenders***

#### **Article 139**

Upon receipt of a tender by electronic means, the tenderer shall be given confirmation of the receipt of tender indicating the date and time of the receipt.

Where the parts of tender may not be submitted by electronic means within the meaning of Article 45, paragraph 3, during the receipt, the contracting authority/entity shall register on an envelope or a box containing them the time of the receipt. Where the parts of tender are delivered directly, the contracting authority shall give the tenderer a confirmation of receipt.

In the case referred to in paragraph 2 of this Article, if parts of tender are submitted untimely, the contracting authority/entity shall, upon completion of tender opening procedure, return the unopened parts of tender to the tenderer, indicating that they have been submitted untimely.

It is forbidden to provide information on the received tenders until the opening of tenders, and the contracting authority/entity is obliged to save tenders in such a manner to prevent their coming into possession of unauthorised persons.

## ***Opening of tenders***

### **Article 140**

Tenders shall be opened immediately upon the expiry of the time limit for submission of tenders, that is, on the same day.

The opening of tenders shall be public.

The contracting authority/entity shall exclude the public from the process of opening of tenders, where it is necessary for the sake of the protection of information which constitutes business secret in terms of the law governing the protection of trade secrets, or which constitutes classified data in terms of the law governing the confidentiality of information.

In the event referred to in paragraph 3 of this Article, the contracting authority/entity shall issue a decision indicating the reasons for exclusion of the public and whether exclusion of the public also refers to representatives of the tenderers.

The separate minutes shall be kept on the process of opening of tenders.

The manner of opening of tenders, the contents of the minutes on the process of tender opening as well as other issues relevant for the tender opening procedure shall be prescribed by the Public Procurement Office.

## **11. Contract award**

### ***Examination and expert evaluation of tenders and requests to participate***

#### **Article 141**

Following the opening of tenders, or requests to participate, an examination, expert evaluation and ranking of tenders, or requests to participate, shall be carried out based on the conditions and requirements stipulated in the procurement documents and a report on the public procurement procedure shall be compiled.

### ***Additional clarification, control, and permitted corrections***

#### **Article 142**

The contracting authority/entity may require additional clarifications that will help it in the course of examining, evaluating and comparing tenders or requests to participate, and it may also conduct control (site inspection) of tenderer or its subcontractor.

Where information or documentation submitted by a tenderer or candidate is incomplete or unclear, the contracting authority/entity may, while observing the principles of equality and transparency, request the tenderers or candidates to supply necessary information or additional documents within an appropriate time limit which shall not be shorter than five days.

The acting in accordance with paragraphs 1 and 2 of this Article must not result in changing the elements of tender that are of relevance for applying the contract award criteria or in changing the offered subject-matter of procurement.

If a tender contains an arithmetic error, the contracting authority/entity shall request the tenderer to accept the correction of the arithmetic error, whereas the tenderer is obliged to submit its response within the time limit of five days from the day of receipt of such request.

If a tenderer disagrees with the correction of arithmetic error, the contracting authority/entity shall reject its tender.

In the case of disparity between the unit price and the total price, the unit price shall be applicable.

## ***Abnormally low tender***

### **Article 143**

For the purpose of this Law, the abnormally low tender is a tender containing the price or cost which substantially deviates from comparable market price or cost thus raising doubts regarding the feasibility of execution of the public procurement in accordance with the requirements of the contracting authority/entity set in the procurement documents.

Where the contracting authority/entity assesses that a tender is abnormally low, it is obliged to request the tenderer to explain the price or cost stated in the tender within the appropriate time limit.

The explanation referred to in paragraph 2 of this Article shall in particular refer to:

- 1) the economics of the manufacturing process, of the services provided or of the construction method;
- 2) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the delivery of the supplies or services or for the execution of the works;
- 3) the originality of supplies, services or works, proposed by the tenderer;
- 4) compliance with obligations referred to in Article 5 paragraph 4 of this Law;
- 5) the engagement of subcontractors;
- 6) the possibility for the tenderer to obtain State aid.

The contracting authority/entity may only reject the tender where the explanation and evidence supplied do not satisfactorily account for the abnormally low tender, taking into account the information referred to in paragraph 3 of this Article.

Where a contracting authority/entity establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected only where, after the request of the contracting authority/entity within an appropriate time limit fixed by the contracting authority/entity, the tenderer does not submit a valid evidence that the State aid was legally awarded.

Where the contracting authority/entity in public procurement procedures with estimated value equal or above the European thresholds rejects a tender in accordance with paragraph 5 of this Article, it shall inform the European Commission thereof.

Where the contracting authority/entity establishes that a tender is abnormally low because the tenderer failed to act in line with the obligations referred to in Article 5 paragraph 4 of this Law, it is obliged to reject such tender as unacceptable.

## ***Conditions for awarding the contract***

### **Article 144**

Having performed examination and expert evaluation of tenders, the contracting authority/entity shall reject a tender as unacceptable if:

- 1) it establishes that there are grounds for exclusion of the economic operator;
- 2) the criteria for the selection of economic operator have not been met;
- 3) the requirements and conditions related to the subject-matter of procurement and technical specifications have not been met;

- 4) the security instrument for the seriousness of the tender in accordance with the procurement documents has not been submitted;
- 5) there is valid evidence of collusion or corruption;
- 6) it establishes other deficiencies due to which it is not possible to determine the actual content of the tender or to compare it with other tenders.

The contracting authority/entity may reject as unacceptable the tender which exceeds the amount of the estimated value of the subject-matter of public procurement or available funds.

The contracting authority/entity may reject as unacceptable the tender where it establishes that the tender is abnormally low in accordance with Article 143, paragraphs 4 and 5 of this Law.

The non-rejected tenders shall be evaluated and ranked according to the contract award criteria laid down in the procurement documents.

Where two or more tenders are equally ranked following the application of the contract award criteria, the contracting authority/entity shall award the contract in accordance with the spare criteria.

Where even the application of the spare criteria results in two or more equally ranked tenders, the contracting authority/entity shall award the contract to the tenderer chosen by drawing lots.

### ***Report on the public procurement procedure***

#### **Article 145**

Following the expert evaluation of tenders or requests to participate, the procurement commission shall compile a report on the public procurement procedure.

The report referred to in paragraph 1 of this Article shall include in particular the following information:

- 1) the subject-matter of public procurement, estimated value of public procurement, both in total and separately for each lot;
- 2) the value of the contract, framework agreement or dynamic purchasing system;
- 3) basic information about tenderers or candidates;
- 4) the name of the selected tenderer or a candidate, the reasons for selecting its tender or accepting its request to participate, the share of the contract or framework agreement to be performed by a subcontractor and names of subcontractors, if any;
- 5) the results of assessing the tenders and fulfilment of the criteria for qualitative selection of economic operator and, where applicable, criteria or rules for the reduction of number of candidates, tenders, and solutions, as follows:
  - (1) the names of the selected candidates or tenderers and the reasons for their selection;
  - (2) the names of the rejected/excluded candidates or tenderers, the reasons for the rejection of their requests to participate or tenders and prices proposed in those tenders;
- 6) the reasons for the rejection of tenders established to be abnormally low;
- 7) the method for ranking of the tenders;
- 8) for negotiated procedure without publication of the contract notice, the circumstances justifying the use of this procedure;
- 9) for competitive procedures with negotiations and competitive dialogues conducted by the contracting authority, the circumstances justifying the use of those procedures;

10) the reasons why the contracting authority/entity has decided to discontinue a public procurement procedure;

11) the reasons referred to in paragraphs 3 and 5 of Article 45 of this Law due to which electronic means for the submission of tenders have not been used;

12) detected conflict of interests and subsequent measures taken in that regard, where applicable;

13) the explanation of reasons due to which the subject-matter of the public procurement has not been divided into lots in accordance with Article 36 paragraph 2 of this Law.

For contracts concluded on the basis of framework agreement in accordance with Article 67, paragraph 1, and Article 67, paragraph 3, point 1) of this Law, the report on the public procurement procedure shall not be necessary.

The contracting authority/entity shall submit the report on the public procurement procedure to the Public Procurement Office or other competent authority upon their request and within the time limit they set.

### ***Contract award decision***

#### **Article 146**

If it has been established during the expert evaluation of tenders that the conditions for the contract award have been met, the contracting authority/entity shall adopt a contract award decision.

The contracting authority/entity may award the contract to the tenderer whose tender contains an offered price higher than the estimated value of public procurement.

The contracting authority/entity shall take the contract award decision within 30 days from the expiry of time limit for the submission of tenders, unless it has defined a longer time limit in the tender documents.

The contract award decision shall be reasoned and shall specifically contain data from the report on the public procurement procedure as well as advice on legal remedy.

The contracting authority/entity shall publish the contract award decision on the Public Procurement Portal within three days from the day the decision was taken.

Where publication of certain data from the contract award decision would impede the provisions of this Law, or would otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, or might prejudice fair competition on the market, such data from the decision shall not be published.

The provisions of this Article shall apply accordingly to the taking of decision to conclude a framework agreement.

### ***Decision on discontinuation of the procedure***

#### **Article 147**

The contracting authority/entity shall take a decision to discontinue the public procurement procedure:

1) if there are verifiable reasons which could not have been anticipated at the time of initiating the procedure and which make it impossible for the initiated procedure to be completed;



- 2) if there are verifiable reasons due to which the contracting authority's need for the relevant procurement has ceased, due to which reasons it will not be repeated during the same budget year or within the following six months;
- 3) if circumstances become known, had they been known before, would have resulted in the substantially different contents of the procurement documents;
- 4) where not a single tender or a request to participate has been submitted;
- 5) where not a single candidate does meet the criteria for qualitative selection of economic operator;
- 6) where, in case of public procurement with estimated value less than the amounts of the European threshold, the price offered in all tenders is equal to or higher than the amounts of the European thresholds;
- 7) if it has not received a predetermined number of candidates or tenders to conclude a framework agreement, except in the case referred to in Article 66, paragraph 8, of this Law;
- 8) where, following the examination and expert evaluation of tenders, it establishes that all tenders are unacceptable.

Where the procedure is discontinued before the expiry of time limit for the submission of tenders, the Public Procurement Portal shall permanently disable the access to such tenders or requests to participate while the contracting authority/entity shall return to tenderers unopened tenders, requests to participate and other documents which are not submitted by electronic means on the Public Procurement Portal.

The decision on discontinuation of the procedure shall be reasoned, and shall specifically contain data from the report on public procurement procedure, that is reasons for the discontinuation of the procedure, and advice on legal remedy.

The contracting authority/entity shall publish decision on discontinuation of the procedure on the Public Procurement Portal within three days from the day decision was taken.

In its decision on discontinuation of the public procurement procedure, the contracting authority/entity shall decide on the costs for preparation of tenders referred to Article 138, paragraph 2 of this Law.

Where publication of certain data from the decision on discontinuation of the procedure would impede the provisions of this Law, or would otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, or might prejudice fair competition on the market, such data from the decision shall not be published.

### ***Decision on exclusion of candidates***

#### **Article 148**

In restricted procedures, competitive procedures with negotiations, competitive dialogues, negotiated procedures with publication of a contract notice and innovation partnerships, the contracting authority/entity shall take decision on exclusion of candidate for each individual participant which will not be invited to tender or to participate in dialogue, in accordance with previously defined criteria for qualitative selection of economic operator and/or the criteria or rules for the reduction of number of candidates in those procedures, and on the basis of the outcome of the examination and evaluation of requests to participate.

The decision on exclusion shall be reasoned, and shall contain, in particular, the reasons for failure to meet the criteria for qualitative selection of economic operator or the criteria or rules for reduction of number of candidates, if applicable, as well as the instruction on legal remedy.

The decision on exclusion shall be taken within 30 days from the expiry of time limit for submission of the request to participate, unless the contracting authority/entity has set a longer time limit in procurement documents.

### ***Inspection of documents***

#### **Article 149**

After having published the contract award decision, decision on conclusion of framework agreement, or decision on discontinuation of the procedure, the contracting authority/entity shall, within two days from the date of receiving the written request, enable the economic operator having submitted a tender or a request to participate in the public procurement procedure to have insight into documents and to make copies of documents from the procedure, at the expense of the applicant, i.e. download the documents in an appropriate manner, whereby the contracting authority/entity shall be obliged to protect confidential data in line with the provisions of this Law.

#### **Article 150**

The provisions of Articles 141 – 149 of the Law shall apply accordingly to the procedure of examination and evaluation of requests to participate.

## **12. Public procurement contract and framework agreement**

### ***Conditions for conclusion of public procurement contract and framework agreement***

#### **Article 151**

The contracting authority/entity may conclude a public procurement contract i.e a framework agreement after taking a contract award decision or decision on concluding a framework agreement if, within the time limit set forth by this Law, no request for the protection of rights has been filed or, if filed, it has been rejected or dismissed by a final decision, as well as if the procedure for the protection of rights has been discontinued.

The contracting authority/entity may conclude a public procurement contract even before the expiry of time limit for submission of request for the protection of rights:

- 1) on the basis of a framework agreement;
- 2) in the case of applying dynamic purchasing system;
- 3) where only one tender had been submitted, which is acceptable;
- 4) in the case of applying the negotiated procedure without prior publication of a contract notice referred to in Article 61, paragraph 1, point 2) of this Law.

### ***Conclusion of a public procurement contract and a framework agreement***

#### **Article 152**

A public procurement contract or a framework agreement shall be concluded in writing with the tenderer to whom the contract or framework agreement has been awarded.

The contracting authority/entity shall submit to the tenderer the public procurement contract or framework agreement within 10 days after the time limit for filing a request for the protection of rights has expired.

Where a tenderer refuses to conclude a public procurement contract or a framework agreement, the contracting authority/entity may conclude the contract or framework agreement with the next most advantageous tenderer.

Where in the event referred to in paragraph 3 of this Article due to the weighting methodology it is necessary to determine who is the next most advantageous tenderer, the contracting authority/entity shall conduct expert re-evaluation of tenders and make the contract award decision or decision on awarding framework agreement.

A public procurement contract or a framework agreement shall be concluded in accordance with the requirements laid down in the procurement documents and the selected tender.

A contract based on a framework agreement shall be concluded in writing, and the same legal effect may also produce a purchase order, provided that it contains all essential elements of the contract.

Obligations assumed by the contracting authority/entity under the public procurement contract have to be stipulated in accordance with legislation governing the budgetary system i.e. the allocation of the financial means.

### ***Electronic format of the contract***

#### **Article 153**

A public procurement contract may be concluded in electronic format in accordance with the law governing electronic documents and the law governing electronic signature.

## **X CONTRACT PERFORMANCE**

### **1. Performance and modifications of public procurement contracts**

#### ***General rules for the performance of a public procurement contract***

#### **Article 154**

A public procurement contract shall be performed in accordance with the conditions specified in the procurement documents and the selected tender.

The contracting authority/entity shall control the performance of the public procurement contract in accordance with the conditions specified in the procurement documents and the selected tender.

The contracting authority/entity shall not make substantial modification of the public procurement contract.

A modification of contract shall be considered to be substantial where it renders the contract materially different in character from the one initially concluded, or where the nature of the initially concluded contract would be substantially modified, whereas a substantial modification of the contract always exists where one or more of the following conditions are met:

1) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than the one initially accepted, or would have enabled greater competition in the public procurement procedure preceding to the conclusion of the contract;

- 2) the modification changes the economic balance of the contract in favour of the economic operator with whom the contract has been concluded in a manner which was not provided for in the initial contract;
- 3) the modification considerably extends the scope of the contract;
- 4) the change of economic operator with whom the public procurement contract has been concluded, except in cases referred to in Article 159 of this Law.

The ministry in charge of financial affairs carries out supervision over the performance of the public procurement contract.

### ***General rules on the modification of contract***

#### **Article 155**

The contracting authority/entity may modify a public procurement contract during its term in accordance with the provisions of Articles 156 - 161 of this Law without conducting public procurement procedure.

In the event of modification of contract referred to in Articles 157 and 158 of this Law, the contracting authority/entity shall send the modification notice for publication on the on the Public Procurement Portal within ten days from the date of modification of contract.

### ***Modifications pursuant to the provisions of the contract***

#### **Article 156**

A public procurement contract may be modified, irrespective of the modification value, where the modifications have been provided for in the procurement documents and the public procurement contract in a clear, precise and unequivocal manner, and which may include the price revision clauses or options.

The scope and nature of possible modifications, as well as the conditions under which they may be applied, shall be stipulated in the public procurement contract.

The clauses of the contract shall not provide for such modifications that would alter the overall nature of the contract.

The adjustment of price according to the clearly defined parameters in the public procurement contract shall not be deemed a change in price.

### ***Modifications in terms of additional supplies, services or works***

#### **Article 157**

A public procurement contract may be modified for the purpose of procuring additional supplies, services or works that have become necessary and that were not included in the initial public procurement contract, where a change of the economic operator with whom the contract has been concluded:

- 1) cannot be made for economic or technical reasons such as requirements of compatibility with existing equipment, services or works procured under the initial procurement and
- 2) would cause significant inconvenience or substantial increase in costs for the contracting authority/entity.

In the event referred to in paragraph 1 of this Article, an increase in contract value shall not exceed 50% of the value of the initial contract and shall not be aimed at circumventing the application of this Law.

The limitation referred to in paragraph 2 of this Article refers to the total value of the all modifications, where the contract is modified more than once.

Where contract contains a price indexation clause with clearly predetermined parameters, the basis for calculating the increase of the contract value referred to in paragraph 2 of this Article shall be the updated value of the initial contract at the moment of modification.

The contracted surpluses of works shall not constitute a modification of the public procurement contract.

### ***Modifications due to unforeseeable circumstances***

#### **Article 158**

A public procurement contract may be modified where all of the following conditions are fulfilled:

- 1) the need for modification has been brought about by circumstances which a diligent contracting authority/entity could not foresee;
- 2) the modification does not alter the nature of the contract;

In the event referred to in paragraph 1 of this Article, an increase of the contract value shall not exceed 50 % of the value of the initial contract and shall not be aimed at circumventing the application of this Law.

The limitation referred to in paragraph 2 of this Article refers to the total value of all modifications, where the contract is modified more than once.

Where a contract contains a price indexation clause with clearly predetermined parameters, the basis for calculating an increase of the contract value referred to in paragraph 2 of this Article shall be the updated value of the initial contract at the moment of modification.

### ***A change of a contractor***

#### **Article 159**

A public procurement contract may be modified for the purpose of replacing the economic operator with whom the contracting authority/entity has concluded the initial public procurement contract in the case of universal or partial legal succession of that economic operator, following corporate restructuring, including takeover, merger, acquisition or insolvency, with another economic operator that fulfils the initially established criteria for the qualitative selection of economic operator, provided that this does not entail substantial modifications to the contract and is not aimed at circumventing the application of this Law.

### ***Increasing the volume of procurement***

#### **Article 160**

A public procurement contract may be modified so as to increase the volume of the procurement if all of the following conditions have been fulfilled:

- 1) the value of modification shall be below 10% of the initial value of a public supply or service contract, or below 15% of the initial value of a public works contract, and

2) the value of modification shall be below RSD 15,000,000.00 in the case of a public supply or service contract, or below RSD 50,000,000.00 in the case of a public works contract.

The limitation under paragraph 1 of this Article shall refer to the total value of all the modifications, where the contract is modified more than once.

A contract modification may not alter the overall nature of the contract i.e. of the subject of public procurement.

### ***Replacing a subcontractor***

#### **Article 161**

The contracting authority/entity may modify a contract in the case when the economic operator with whom the contract has been concluded, during the course of performance of a public procurement contract requests the contracting authority/entity:

- 1) to replace the subcontractor for the part of the public procurement contract which it has initially subcontracted to the subcontractor;
- 2) to introduce one or more new subcontractors, whose total share shall not exceed 30% of value of the public procurement contract without the value added tax, regardless of whether a part of the public procurement contract has, or has not been, initially subcontracted to the subcontractor;
- 3) to take over the performance of the part of the public procurement contract that has been initially subcontracted to the subcontractor.

With the request referred to in paragraph 1, points 1) and 2) of this Article, the economic operator with whom the contract has been concluded shall supply to the contracting authority/entity evidence of absence of the exclusion grounds under Article 111 of this Law concerning the new subcontractor.

The contracting authority/entity shall not endorse the request of the economic operator with whom the contract has been concluded in case:

- 1) referred to in paragraph 1, points 1) and 2) of this Article, where the economic operator with whom the contract has been concluded in the public procurement procedure, for proving the fulfilment of the criteria for qualitative selection of economic operator has relied on the capacities of the subcontractor now to be replaced and the new subcontractor does not fulfil the same requirements or the exclusion grounds exists;
- 2) referred to in paragraph 1, point 3) of this Article, where the economic operator with whom the contract has been concluded in the public procurement procedure, for proving the fulfilment of the criteria for qualitative selection of economic operator has relied on the capacities of the subcontractor for the performance of that part of the contract, and it does not possess such capacities of its own.

### ***Extended applicability (mutatis mutandis)***

#### **Article 162**

Provisions of Articles 154 - 161 of this Law shall apply accordingly to the modifications of framework agreement.

## **2. Termination of the contract**

### **Article 163**

The contracting authority/entity shall terminate a public procurement contract, in particular where:

- 1) the circumstances arise that would result in a substantial modification of the contract which would require conducting of a new public procurement procedure;
- 2) the economic operator with whom the contract has been concluded should have been excluded from the procedure due to existence of the grounds for exclusion of economic operator;
- 3) the contract should not have been awarded with a view of a serious infringement of the obligations under the Treaty on the Functioning of the European Union and Directives 2014/24/EU and 2014/25/EU that has been established by the Court of Justice of the European Union, pursuant to Article 258 of the Treaty on the Functioning of the European Union.

## **XI PUBLIC PROCUREMENT IN THE FIELD OF DEFENCE AND SECURITY**

### ***Subject of public procurement in the fields of defence and security***

#### **Article 164**

Public procurement in the fields of defence and security is the procurement of:

- 1) military equipment, including any parts, components or assembly thereof;
- 2) security-sensitive equipment, including any parts, component or assembly thereof;
- 3) supplies, services or works directly related to the equipment referred to in points 1) and 2) of this paragraph during any of their terms or during their entire life cycle;
- 4) services and works for specifically military purposes;
- 5) security-sensitive works and security-sensitive services.

For procurements referred to in paragraph 1 of this Article the Government shall regulate the types of public procurement procedures, conditions and the manner of their conducting as well as communication in the public procurement procedure.

## **XII UTILITY ACTIVITIES**

### ***Gas and heat***

#### **Article 165**

Activities in the areas of gas and heat in terms of this Law shall be:

- 1) the provision or operation of fixed networks intended to provide service to the public in connection with the production, transport or distribution of gas or heat;
- 2) the supply of gas or heat to networks referred to in paragraph 1, point 1) of this Article.

The supply of gas or heat to fixed networks intended to provide services to the public, by contracting entity referred to in Article 4, paragraph 1, points 2) and 3) of this Law, shall not be

considered to be an activity in terms of paragraph 1 of this Article, where all of the following conditions are met:

- 1) the production of gas or heat by such contracting entity is the unavoidable consequence of carrying out an activity other than those referred to in paragraph 1 of this Article or in Articles 166 through 168 of this Law;
- 2) the sole purpose of supplying a public network is economic exploitation of that production and amounts to not more than 20% of this contracting entity's income on the basis of the average for the preceding three years including the current year.

### ***Electricity***

#### **Article 166**

Activities in the area of electricity in terms of this Law shall be:

- 1) the provision or operation of fixed networks intended to provide services to the public in connection with the production, transport or distribution of electricity;
- 2) the supply of electricity to networks referred to in paragraph 1, point 1) of this Article.

The supply of electricity to the fixed networks intended to provide services to the public, by the contracting entity referred to in Article 4, paragraph 1, points 2) and 3) of this Law, shall not be considered to be an activity in terms of paragraph 1 of this Article, where all of the following conditions are met:

- 1) the production of electricity by such contracting entity takes place because the consumption of electricity is necessary for carrying out an activity other than one of activities referred to in paragraph 1 of this Article or in Articles 165, 167 and 168 of this Law;
- 2) the supply to the public network depends solely on own consumption of the contracting entity concerned and does not exceed 30% of that contracting entity's total energy production, on the basis of the average for the preceding three years including the current year.

### ***Water management***

#### **Article 167**

Activities in the area of water management in terms of this Law shall be:

- 1) the provision or operation of fixed networks intended to provide services to the public in connection with the production, transport or distribution of drinking water;
- 2) the supply of drinking water to networks referred to in paragraph 1, point 1) of this Article.

The provisions of this Law relating to contracting entities shall also apply to contracts or design contests awarded or organised by contracting entities carrying out any of the activities referred to in paragraph 1 of this Article and which are connected with one of the following activities:

- 1) hydraulic engineering projects, irrigation or drainage of soil, provided that quantity of water that should be used for the supply of drinking water represents more than 20% of the total quantity of water made available by these projects or installations for irrigation or drainage;
- 2) disposal or treatment of waste water.

The supply of drinking water to the fixed networks intended to provide services to the public, by contracting entity referred to in Article 4, paragraph 1, points 2) and 3) of this Law, shall not be considered to be an activity in terms of paragraph 1 of this Law, where all of the following requirements are met:



1) the production of drinking water by this contracting entity takes place because the consumption of drinking water is necessary for carrying out an activity other than one of activities referred to in paragraphs 1 and 2 of this Article or in Articles 165, 166 and 168 of this Law;

2) the supply to the public network depends solely on own consumption of contracting entity concerned and does not exceed 30% of that contracting entity's total production of drinking water, on the basis of the average for the preceding three years including the current year.

### ***Transport services***

#### **Article 168**

Activities in the area of transport in terms of this Law shall be activities relating to the provision and operation of networks intended to provide services to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

Network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority, such as conditions on the necessary lines to be served, the capacity to be made available or the frequency of the service.

### ***Ports and airports***

#### **Article 169**

Activities of ports and airports in terms of this Law shall be activities relating to exploitation of a geographical area for the purpose of the provision of airports, inland ports or other terminal facilities to carriers by air or inland waterway traffic.

### ***Postal services***

#### **Article 170**

Activities of postal services in terms of this Law shall be activities relating to the provision of:

1) postal services;

2) other services than postal services, on the condition that those are provided by an entity also providing postal services referred to in paragraph 2, point 2) of this Article and provided that the conditions set out in Article 173 of this Law are not satisfied in respect of those services.

For the purpose of this Article:

1) 'postal item' means an item addressed in the final form in which it is to be delivered, including items of correspondence, books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;

2) 'postal services' mean services consisting of the clearance, sorting, routing and delivery of postal items, that include both services falling within as well as services falling outside the scope of the universal postal services defined in accordance with the law governing the postal services;

3) 'other services than postal services' mean services provided in the following areas:

(1) mail service management services (services preceding and subsequent to dispatch, including mailroom management services);

(2) services concerning postal items not included under point 1) of this paragraph, such as direct mail bearing no address.

***Extraction of oil and gas and exploration for, or extraction of, coal  
or other solid fuels***

**Article 171**

Activities of extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels in terms of this Law shall be activities relating to the exploitation of a geographical area for the purpose of:

- 1) extracting oil or gas;
- 2) exploring for, or extracting, coal or other solid fuels.

**Article 172**

The supply, in terms of Articles 165 to 167 of this Law, shall include generation/production, wholesale and retail, whereby the production of gas in the form of gas extraction shall be governed by Article 171 of this Law.

***Activities directly exposed to competition***

**Article 173**

This Law shall not apply to awarding contracts and design contests intended for carrying out utility activities where the Republic of Serbia or the contracting entities having introduced the request pursuant to Article 174 of this Law can demonstrate that the utility activity which is carried out in the Republic of Serbia is directly exposed to competition on markets to which access is not restricted.

Utility activity referred to in paragraph 1 of this Article may form a part of a larger sector or be carried out only in certain territory of the Republic of Serbia.

The market competition assessment referred to in paragraph 1 of this Article shall be made in accordance with the provisions of Article 174 and 175 of this Law and of the legislation governing the protection of competition.

Such assessment shall be made having regard to the market for the activities in question and the geographical reference market within the meaning of paragraphs 5 - 8 of this Article.

The matter of direct exposure of an activity to market competition shall be decided on the basis of criteria that are in conformity with the provisions on competition of the Treaty on the Functioning of the European Union.

The criteria referred to in paragraph 5 of this Article may include the characteristics of the products or services concerned, the existence of alternative products or services considered to be substitutable on the supply side or on the demand side, the prices, and the actual or potential competition of more than one supplier of the products or provider of the services in question.

The geographical reference market, on the basis of which exposure to competition is assessed, shall consist of the area in which the economic operators concerned are involved in the supply and demand of products or services, in which the conditions of market competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of market competition are appreciably different in those areas.

Such market competition assessment shall take account in particular of the nature and characteristics of the products or services concerned, of the existence of entry barriers or of consumer preferences, of appreciable differences of the undertakings' market shares between the area concerned and neighbouring areas or of substantial price differences.

It shall be deemed that access to a market is not restricted in terms of paragraph 1 of this Article if the Republic of Serbia has transposed and is applying the European Union legislation listed in Annex 9, Part III of this Law.

If free access to a given market cannot be presumed on the basis of paragraph 9 of this Article, it must be demonstrated that access to the market in question is free de facto and de jure.

#### **Article 174**

Where the Republic of Serbia or a contracting entity considers that, on the basis of the criteria set out in Article 173, paragraphs 5 - 10 of this Law, a given activity is directly exposed to competition on markets to which access is not restricted, it may submit a request to the European Commission to establish that the Directive 2014/25/EU and, consequently, the provisions of this Law, do not apply to the award of contracts or the organisation of design contests for the pursuit of that activity, where possible together with the position adopted by an independent national authority that is competent for the activity concerned.

Requests referred to in paragraph 1 of this Article may concern activities which are part of a larger sector or which are exercised only in certain territory of the Republic of Serbia.

In the request referred to in paragraph 1 of this Article, the Republic of Serbia or contracting entity concerned shall inform the European Commission of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in Article 173, paragraphs 1 - 4 of this Law.

Upon request of the European Commission, contracting entity shall supplement request referred to in paragraph 1 of this Article where it has not been accompanied with a substantiated and justified position of an independent national authority competent for the activity concerned which, in accordance with Article 173, paragraphs 5 - 10 of this Law, thoroughly analyses the conditions for the possible applicability of Article 173, paragraphs 1 - 4 of this Law to the activity concerned.

In the case referred to in paragraph 4 of this Article, the Republic of Serbia shall notify European Commission of all relevant fact and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in Article 173, paragraphs 1 - 4 of this Law.

#### **Article 175**

The provisions of this Law shall not apply to awarding contracts and organising design contests intended for the pursuit of utility activities, if the European Commission:

- 1) adopts the implementing act within the set period, establishing that the activity concerned is directly exposed to market competition, or
- 2) does not adopt the implementing act within the set period.

After the submission of a request, the Republic of Serbia or the contracting entity concerned may, with the European Commission's agreement, substantially modify own request, in particular as regards the activities or the geographical areas concerned.

In the event referred to in paragraph 2 of this Article, period for the adoption of the implementing act referred to in paragraph 1 of this Article begin to run from the beginning, unless a shorter period is agreed on by the European Commission and the Republic of Serbia or the contracting entity concerned.

## **XIII TENDERS COMPRISING PRODUCTS ORIGINATING IN THIRD STATES, AND RELATIONS WITH THOSE STATES**

### ***Tenders comprising products originating in third countries***

#### **Article 176**

These provisions shall be applied by contracting entities to tenders covering products originating in third states with which the European Union has not concluded an agreement ensuring equal and effective access for economic operators from the European Union to the markets of those third states.

The provisions of this Article shall be without prejudice to the obligations of the Republic of Serbia in respect of third states.

Any tender submitted for the award of public supply contract may be rejected where the proportion of the products originating in third states, in accordance with legislation governing the customs system, exceeds 50% of the total value of the products constituting the tender.

For the purposes of this Article, software used in telecommunications network equipment shall be regarded as product.

Where two or more tenders are equivalent in the light of the contract award criteria, preference shall be given to those tenders which may not be rejected pursuant to paragraph 3 of this Article.

The prices of tenders referred to in paragraph 5 of this Article shall be considered equivalent if the price difference does not exceed 3%.

A tender shall not be preferred to another tender pursuant to paragraphs 5 and 6 of this Article, where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, thus resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.

Third states to which the access to procurement market has not been restricted by a decision of the European Union Council pursuant to paragraphs 1 and 2 of this Article, shall not be taken into account for determining the proportion of products originating in third states referred to in paragraph 3 of this Article.

### ***Relations with third states as regards public procurement contracts***

#### **Article 177**

The Republic of Serbia shall inform the European Commission of any difficulties, in law or in fact, as encountered and reported by its economic operators:

- 1) when concluding service contracts in third states;
- 2) due to the non-observance of the international labour law provisions listed in Annex 8 of this Law when participating in public procurement procedures in third states.

## **XIV THE PUBLIC PROCUREMENT OFFICE**

### ***Basic provisions***

#### **Article 178**

The Public Procurement Office is a special organisation.

The Public Procurement Office shall be managed by a director appointed by the Government from among the ranks of public procurement experts, after having conducted public competition.

As director of the Public Procurement Office it may be appointed a person who has acquired higher education in the fields of legal, economic or technical sciences at the second level studies (post-graduate academic studies - master, specialist academic studies, specialist vocational studies), or higher education equated by the law with the academic title of master in the basic studies with at least four years of duration, and who has at least seven years of work experience in public procurements and who meets other requirements set forth for the work in state administration bodies.

The director of the Public Procurement Office shall issue a legal act regulating its internal organization and the job systematisation.

The operation and organisation of the Public Procurement Office shall be regulated by legislation governing public administration, unless otherwise provided by this Law.

### ***Activities of the Public Procurement Office***

#### **Article 179**

The Public Procurement Office shall perform the following expert activities:

- 1) prepares a strategy for development and improvement of public procurement in the Republic of Serbia;
- 2) performs monitoring over the application of public procurement legislation and prepares annual report on the conducted monitoring;
- 3) files a request to initiate a misdemeanour procedure for the offences stipulated by this Law, files a request for the protection of rights and initiates enforcement of other relevant procedures before the competent authorities when, on the basis of the monitoring, it notices irregularities in the implementation of public procurement regulations;
- 4) participates in the drafting laws and other regulations in the field of public procurement and adopts bylaws in the field of public procurement;
- 5) provides opinions regarding the application of the provisions of this Law and other regulations in the field of public procurement;
- 6) provides expert assistance, prepares guidelines, manuals as well as other publications in the field of public procurement and takes care that they are equally available to contracting authorities/entities and economic operators free of charge;
- 7) collects statistical and other data on the conducted procedures, concluded public procurement contracts and prepares a special annual report on public procurement;
- 8) prescribes the procedure and conditions for obtaining the certificate for public procurement officer and maintains the register of public procurement officer;
- 9) manages the Public Procurement Portal;

- 10) undertakes necessary activities in relation to the EU accession negotiations, in the field of public procurement;
- 11) cooperates with domestic and foreign institutions and experts in the field of public procurement in order to improve the public procurement system;
- 12) cooperates with other state authorities and organisations, bodies of territorial autonomies and of local self-governments;
- 13) performs other activities in accordance with the law.

### ***Monitoring over the application of public procurement legislation***

#### **Article 180**

The Public Procurement Office shall perform monitoring over application of public procurement legislation for the purpose of preventing, detecting and removing irregularities that may arise or that have arisen in the application of this Law.

The monitoring procedure shall be carried out pursuant to an annual monitoring plan that is adopted by the Public Procurement Office by the end of the current year for the following year, in the event of the implementation of the negotiation procedure without prior publication referred to in Article 61, paragraph 1, points 1) and 2) ex officio, as well as on the basis of notification from a legal or natural person, state administration body, the autonomous province authority and the local self-government unit and other state authorities.

The monitoring performed during the conducting of a public procurement procedure shall not suspend the concerned public procurement procedure.

Upon request of the Public Procurement Office, the state administration bodies, bodies of territorial autonomies and units of local self-governments, contracting authorities/entities, and economic operators are obliged to supply the requested data and information of relevance for the monitoring, within 15 days from the date of receiving such request.

The monitoring shall not be carried out:

- 1) where it is established that the Public Procurement Office is not competent;
- 2) where the period of three years has elapsed since the completion of the public procurement procedure or the conclusion of the contract without conducting the procedure;
- 3) when the applicant and information relevant for monitoring cannot be identified from the notification.

The Public Procurement Office shall prepare an annual report on the conducted monitoring, which shall be submitted to the Government and National Assembly no later than March 31 of the current year for the previous year.

The Public Procurement Office shall closely regulate the manner in which monitoring is performed.

### ***Records and procurement reports***

#### **Article 181**

The Public Procurement Office shall keep records on public procurement procedures and public procurement contracts, by means of automated collection from the Public Procurement Portal.

The Public Procurement Office may request, if needed, from contracting authority/entity information on each individual public procurement procedure or each concluded contract,

whereby the latter shall respond upon request as soon as possible and no later than within eight days from receiving the request.

Contracting authority/entity shall record data on values and types of public procurements referred to in Article 11 - 21 of this Law, for each exemption ground separately, as well as the public procurements referred to in Article 27, paragraph 1 of this Law.

Contracting authorities/entities shall aggregately publish data referred to in paragraph 3 of this Article on the Public Procurement Portal, no later than January 31 of the current year for the previous year, pursuant to the instruction published by the Public Procurement Office on the Public Procurement Portal.

### **Article 182**

The Public Procurement Office shall prepare a special annual report on public procurement that contains in particular:

- 1) information on the most frequent causes of incorrect application of this law, including possible structural or recurring problems in the application of this Law and bylaws adopted pursuant to this Law;
- 2) information on degree of participation of small and medium enterprises in public procurement procedures;
- 3) statistical data on public procurement in the Republic of Serbia, based on the data referred to in Article 181 of this Law;
- 4) information on the measures taken regarding prevention, detection and reporting of corruption, conflict of interest and other irregularities in the application of this Law;
- 5) proposal of measures for the suppression of irregularities and corruption in public procurement, strengthening the efficiency of the public procurement system and increasing competition in public procurement procedures;
- 6) other information of relevance to the public procurement system.

The report referred to in paragraph 1 of this Article shall be submitted to the Government by the Public Procurement Office and published on the Public Procurement Portal no later than March 31 of the current year for the previous year.

## **XV THE PUBLIC PROCUREMENT PORTAL**

### **Article 183**

The Public Procurement Portal is a single information system enabling:

- 1) contracting authorities/entities to draw-up, send for publication and publish the public procurement notices in standard forms, make available procurement documents, and publish and deliver decisions in public procurement procedures, as well as to publish the public procurement plans;
- 2) contracting authorities/entities to send public procurement notices in standard forms to the Publication Office in order to publish those in the Official Journal of the European Union;
- 3) any interested persons to have free of charge, unrestricted and direct access, to search, review and download published public procurement notices and procurement documents;

- 4) economic operators to submit tenders, requests to participate, plans and projects;
- 5) opening of tenders, requests to participate, plans and projects;
- 6) communication and exchange of information between contracting authorities/entities and economic operators, in accordance with the provisions of this Law;
- 7) communication and exchange of information between the Public Procurement Office and contracting authorities/entities in accordance with Article 62 paragraphs 2 and 3 of this Law;
- 8) filing requests for the protection of rights, other communication and exchange of documents between tenderers, contracting authorities/entities and the Republic Commission for the Protection of Rights in Public Procurement Procedures;
- 9) keeping of records of registered subjects;
- 10) managing of database of information published and exchanged on the Portal;
- 11) access to the database, for the Public Procurement Office, the Republic Commission for the Protection of Rights in Public Procurement Procedures, the State Audit Institution, and the Republic Public Prosecutor's Office, for the needs of performing activities under the scope of their respective competences.

The use of the Public Procurement Portal is free of charge for all users.

#### **Article 184**

The Government Office in charge of designing, harmonization, development and functioning of the electronic administration system shall establish the Public Procurement Portal and provide technical conditions for its application.

The Government Office in charge of designing, harmonization, development and functioning of the electronic administration system shall:

- 1) establish, maintain and upgrade the Public Procurement Portal;
- 2) ensure technical support to the users of the Public Procurement Portal;
- 3) ensure availability and security of the Public Procurement Portal to all users.

The Public Procurement Office and the Government Office in charge of designing, harmonization, development and functioning of the electronic administration system shall prepare a manual for using the Public Procurement Portal.

Users are obliged to use the Public Procurement Portal in accordance with the provisions of this Law and the manual for using the Public Procurement Portal, and are solely responsible for the veracity and accuracy of the data entered.

## **XVI TRAINING AND DEVELOPMENT FOR THE PERFORMANCE OF PUBLIC PROCUREMENT ACTIVITIES**

#### **Article 185**

The contracting authority/entity shall provide to the persons performing the public procurement activities the training for performing the public procurement activities and taking the exam for public procurement officer as well as continuous development.



The Public Procurement Office shall lay down the procedure and conditions for obtaining the certificate for public procurement officer and maintain the register of public procurement officers.

## **XVII LEGAL PROTECTION**

### ***1. The Republic Commission for the Protection of Rights in Public Procurement Procedures***

#### **Article 186**

The Republic Commission for the Protection of Rights in Public Procurement Procedures (hereinafter: the Republic Commission) is an autonomous and independent body of the Republic of Serbia, which ensures the protection of rights, in accordance with this Law.

The Republic Commission shall have the status of a legal entity.

The seat of the Republic Commission shall be in Belgrade.

The Republic Commission shall have its seal, in accordance with the law.

The funds for the operation of the Republic Commission shall be provided under the budget of the Republic of Serbia, within a special budgetary division.

#### ***Competences***

#### **Article 187**

Within its competences, the Republic Commission:

- 1) decides on requests for the protection of rights;
- 2) decides on appeals against the decision of the contracting authority/entity;
- 3) decides on the proposal of the contracting authority/entity that the filed request for the protection of rights shall not suspend any further action in the public procurement procedure;
- 4) decides on the proposal of the applicant who filed request for protection of rights that the continuation of the public procurement procedure, conclusion and performance of the public procurement contract shall be prohibited;
- 5) decides on the costs of the procedure for the protection of rights and costs of tender preparation;
- 6) monitors and controls the enforcement of the decisions it takes;
- 7) imposes fines, in accordance with this Law;
- 8) annuls a contract, in accordance with this Law;
- 9) files requests for initiation of misdemeanour proceedings when, acting within its competences, it has established that there was a violation of this Law which may constitute the grounds for the misdemeanour liability;
- 10) cooperates with national and foreign institutions and experts in the field of public procurement, for the purpose of upgrading the public procurement system, and in particular of the protection of rights and other procedures under the competences of the Republic Commission;
- 11) also performs other activities in accordance with the law.

## ***Prohibition to exert influence on the Republic Commission***

### **Article 188**

Any attempt to influence, and any actual influencing on the decision-making of the Republic Commission, is hereby forbidden.

It is forbidden to use public authority and public statements with a view to influence the course of the proceedings or decision-making within the Republic Commission.

## ***Composition and appointment of the Republic Commission***

### **Article 189**

The Republic Commission shall have its president and eight members.

The National Assembly shall appoint and dismiss from office the president and members of the Republic Commission on the proposal of the National Assembly committee responsible for finance (hereinafter: the competent committee), after conducted public competition.

President and members of the Republic Commission shall be appointed for the period of five years.

The competent committee shall initiate the procedure for formulating the proposal for appointment of president and members of the Republic Commission no later than six months prior to expiration of their term of office, whereas the selection procedure shall be finalized no later than a month prior to the expiry of their mandates.

## ***President of the Republic Commission***

### **Article 190**

President of the Republic Commission represents the Republic Commission, manages its work, and performs other tasks in compliance with the law.

President of the Republic Commission shall be in charge of the dynamics of the sessions of the panel and the composition of the panel, and shall coordinate the work of the panel.

In the absence of president of the Republic Commission, the Republic Commission shall be represented by the deputy or deputies of president of the Republic Commission, who shall be appointed by the president of the Republic Commission from among its members.

## ***Eligibility requirements for appointment***

### **Article 191**

Persons eligible for appointment as president of the Republic Commission shall be those with acquired higher education in the scientific fields of legal science, at the second level studies (graduate academic studies - master, specialist academic studies, specialist vocational studies), or higher education that is legally equal with the academic title of master in basic studies of at least four years, and have at least seven years of working experience in legal profession following the bar exam and at least five years of working experience in the field of public procurement.

Persons who may be appointed as members of the Republic Commission shall be those with acquired higher education in the scientific fields of legal science, at the second level studies (graduate academic studies - master, specialist academic studies, specialist vocational studies), or higher education that is legally equal with the academic title of master in basic studies of at

least four years, and have at least five years of working experience in legal profession following the bar exam and at least five years of working experience in the field of public procurement.

Persons who also may be appointed as members of the Republic Commission are those with acquired higher education in the scientific fields of legal science, at the second level studies (graduate academic studies - master, specialist academic studies, specialist vocational studies), or higher education that is legally equal with the academic title of master in basic studies of at least four years, and have at least seven years of working experience in public procurement tasks and who meet other requirements set forth for the employment in the government bodies.

At least five members of the Republic Commission shall be selected from among the persons who meet the requirements referred to in paragraph 2 of this Article.

### ***Material independence of the president and members of the Republic Commission***

#### **Article 192**

The president and members of the Republic Commission shall enjoy the right to salary, fitting for dignity of the function they perform and their responsibility.

The salaries of the president and members of the Republic Commission shall represent the guarantee of their independence.

#### **Article 193**

President of the Republic Commission shall be entitled to a basic salary, which shall be determined in the amount of the basic salary of a civil servant in the position that is placed in the first group of positions with the highest pay grade, increased by 40 percent.

A member of the Republic Commission shall be entitled to a basic salary, which shall be determined in the amount of the basic salary of a civil servant in the position that is placed in the first group of positions with the highest pay grade, increased by 20 percent.

### ***Liability of the president and members of the Republic Commission***

#### **Article 194**

President and members of the Republic Commission cannot be called to account for stated opinion or for voting when making decisions under the competences of the Republic Commission, and they cannot be held liable for the opinion they express or vote they cast when making decisions, unless this has to do with the perpetration of a criminal offense.

### ***Service of the Republic Commission***

#### **Article 195**

The Republic Commission shall have its Service which performs professional, general-legal, financial-material and administrative-technical tasks which are necessary for the operation of the Republic Commission.

The Service shall be managed by the secretary, who shall be appointed and dismissed by president of the Republic Commission.

Persons who may be appointed as secretary of the Republic Commission are those with acquired higher education in the scientific fields of legal sciences, at the second level studies, or higher

education that is legally equal with the academic title of master in basic studies of at least four years, and have at least five years of working experience in legal profession.

The secretary and employees in the Service are subject to regulations governing employment in government bodies.

Provisions of Article 196 of this Law shall apply accordingly to the secretary and employees of the Service.

The internal organization and systematization of jobs in the Service shall be regulated by the Republic Commission.

### ***Preventing conflict of interest and exemption***

#### **Article 196**

President or a member of the Republic Commission may not perform any other public function, hold any office in a political party or perform any other office, post, job, duty or activity that could affect their independence in the work and actions, or that would diminish their reputation or the reputation of the office of president or a member of the Republic Commission.

President or a member of the Republic Commission may not decide in the protection of rights procedure or any other procedure in accordance with this Law if there are reasons that cast doubt on their impartiality.

The president or a member of the Republic Commission may not decide in the procedure for the protection of rights or any other procedure in accordance with this law if he/she is in a relation with a participant in the concerned procedure, with legal or authorized representative of the participant, or with legal representatives, members of managing bodies or supervisory bodies of the participant, that cast doubt on their impartiality, including: business relation, lineal consanguinity, regardless of a degree of kinship, and in collateral kinship up to the fourth degree, marriage (even if the marital union has ceased to be), extramarital union, shared household, in-law kinship up to the second degree, guardianship as well as a relation of adopter or adoptee.

The president or a member of the Republic Commission may not decide in the procedure for the protection of rights or in any other procedure in accordance with this Law if he/she owns more than 3% of shares or actions of a participant in the protection of rights procedure.

The president or a member of the Republic Commission may not decide in the procedure for the protection of rights or in any other procedure in accordance with this Law if he/she has previously been employed with a participant of the protection of rights procedure, except where more than two years have lapsed since the termination of employment.

A party to the protection of rights procedure has the right to request the exclusion of the Republic Commission president or member for reasons specified under paragraphs 2 - 5 of this Article.

The request for the exclusion of members shall be decided by the president of the Republic Commission.

The request for the exclusion of president of the Republic Commission shall be decided on the session attended by all members of the Republic Commission which shall be convened and chaired by the deputy president of the Republic Commission.

### ***Termination of the term of office of the Republic Commission president and members***

#### **Article 197**

The term of office of the president and members of the Republic Commission shall be terminated by dismissal.

The reasons for dismissal of president or members of the Republic Commission are as follows:

- 1) if he/she has been convicted for a criminal offense to an unconditional sanction of imprisonment in duration of at least six months and if the concerned offence makes him/her unfit for performing this function;
- 2) when convicted for a criminal offense related to an infringement of this Law;
- 3) if by negligent conduct infringes reputation, impartiality and independence of the decision making of the Republic Commission;
- 4) in the event of loss of working capacity;
- 5) when found not to fulfil the requirements for the appointment;
- 6) when he/she resigns, and
- 7) upon expiry of the period of time to which he/she was appointed

The competent committee shall submit to the National Assembly a reasoned proposal for dismissal of president or a member of the Republic Commission with proofs for the dismissal, where it establishes that the requirements under paragraph 2 of this Article are met.

President or member of the Republic Commission shall be allowed to explain the reasons for his/her dismissal before the National Assembly.

The president or member of the Republic Commission in whose case there is a reason for dismissal as referred to in paragraph 2, points 1 - 6 of this Article shall cease to perform this function on the day the reason for dismissal occurred.

In the case of paragraph 5 of this Article, the function of president shall be exercised by deputy president, until the appointment of the new president.

If there are reasons for dismissal of the President or a member of the Commission referred to in paragraph 2 point 1) to 6) of this Article a new president or member of the Republic Commission shall be elected within the time limit of 90 days from the date of dismissal.

The President or a member of the Commission in whose case there is a reason for dismissal as referred to in paragraph 2, point 7 of this Article shall perform its function until the dismissal or until the appointment of the new president or a new member of the Commission.

### ***The manner of organisation of the Republic Commission's operations***

#### **Article 198**

The Republic Commission shall work and decide in panels with three members, unless otherwise regulated by this Law.

Each panel shall consist of at least two members appointed in accordance with Article 191, paragraph 2 of this Law, of whom one shall be the chair of the panel.

President of the Republic Commission may, at his/her own initiative or at the request of a member of the Republic Commission, if it so requires the complexity of deciding in a specific case, decide to have the decision made in panels with a bigger, but always odd, number of members of the panel.

Valid decision-making at the session of a panel requires the presence of all members of the panel.

Decisions at the session of the panel shall be made by the majority of members of the panel, and members may not abstain from voting.

The sessions of a Republic Commission panel are not public.

#### **Article 199**

The manner of organisation of work in the Republic Commission shall be regulated in detail by its Rules of Procedure.

### ***The plenary session and harmonising the practice within the Republic Commission***

#### **Article 200**

President of the Republic Commission, at his/her own initiative or at the request of at least four members, convenes the plenary session, consisting of the president and at least six members.

In a plenary session, decisions are made by two-thirds majority of votes of president and all members of the Republic Commission.

#### **Article 201**

The Republic Commission in a plenary session:

- 1) adopts its Rules of Procedure;
- 2) adopts general legal views concerning the application of legislation under the scope of its competences;
- 3) decides acting pursuant to the Administrative Court's decision which annulled the decision of the Republic Commission in an administrative dispute.
- 4) establishes legal opinions concerning the application of legislation under the scope of its competences for the purpose of harmonizing the legal practice of panels of the Republic Commission.

#### **Article 202**

When deciding, president and members of the Republic Commission shall act taking into account the existing practice of the Republic Commission, in order to ensure harmonised practice of panels of the Republic Commission and the legal certainty.

When president of the Republic Commission becomes aware of unequal practice in deciding, or of deviation from the established practice within the Republic Commission, he/she will convene a plenary session.

When member of the Republic Commission becomes aware of actions that is not in line with paragraph 1 of this Article, he/she will notify president of the Republic Commission thereon.

Any legal opinion adopted in a plenary session shall oblige all panels and members of the Republic Commission.

### ***Accountability for work and reporting***

#### **Article 203**

The Republic Commission is accountable for its work to the National Assembly.

The Republic Commission shall submit to the National Assembly its annual work report by March 31 of the current year for the previous year, which shall in particular contain:

- 1) statistical data on procedures for the protection of rights, decisions made, and time limits for making decisions;
- 2) information about contracting authorities/entities which failed to submit the report referred to in Article 230, paragraph 2, of this Law;
- 3) information about contracting authorities/entities which failed to comply with the instructions of the Republic Commission;
- 4) information about contracts it has annulled;
- 5) information about imposed fines;
- 6) information about submitted requests for initiation of misdemeanour proceedings;
- 7) information concerning the decisions of the Administrative Court related to the decisions of the Republic Commission;
- 8) most frequently detected irregularities in public procurement procedures and recommendations, for the purpose of preventing, detecting and removing irregularities in the application of public procurement legislation and harmonizing the practices concerning the application of public procurement legislation;
- 9) other matters of relevance for the work of the Republic Commission.

On request of the competent committee of the National Assembly, the Republic Commission is obliged to submit report for a period shorter than a year.

The Republic of Serbia shall be liable for the damage caused to natural and legal persons by the illegal acting of the Republic Commission

The Republic of Serbia may request reimbursement of paid damages only if it is established, in the procedure conducted in accordance with the law, that damage referred to in paragraph 4 was caused intentionally or by grave disregard.

## ***2. Protection of rights proceeding***

### **Article 204**

The protection of rights proceeding is a process of protecting rights regarding the public procurement procedure in accordance with this Law, the contract award procedure in accordance with the law regulating the public-private partnerships and concessions, as well as other cases in accordance with this law, including:

- 1) preliminary procedure, conducted by the contracting authority/entity and
- 2) the procedure before the Republic Commission.

The protection of rights procedure is initiated by submitting a request for legal protection.

A request for protection of rights is a submission which points out to the violation of the regulations as per paragraph 1 of this Article.

It is not permitted to file a request for protection of rights in order to fulfil another goal other than that to which this right is granted.

The request for protection of rights cannot challenge the type of the procedure chosen, contents of the contract notice and tender documents, if the subject of the dispute are alleged deficiencies

and irregularities which were not previously pointed out to the Contracting authority/entity in the manner stipulated by Article 97 of this Law.

### ***The principles of the procedure for protection of rights***

#### **Article 205**

The protection of rights in public procurement procedures is based on the principles of lawfulness, efficacy, accessibility, adversariality and writing.

Principles referred to in paragraph 1 of this Article are accordingly applicable to other proceedings within the remit of responsibilities of the Republic Commission.

### ***The principle of lawfulness***

#### **Article 206**

The participants in the legal protection proceedings are obliged to act in accordance with the regulations based on which the procedure which is the subject of the legal protection proceedings is initiated.

### ***The principle of efficacy***

#### **Article 207**

The legal protection proceeding is carried in such a way that the procedure is completed within a time limits and in the way prescribed by this Law, incurring the least possible cost related to the legal protection proceeding, making it possible to determine the facts regularly so that the decision may be reached in accordance with the regulations, and that the instances of violated regulations are removed as soon as possible.

The decisions in the protection of rights proceeding shall be executed efficiently.

### ***Accessibility Principle***

#### **Article 208**

Any person interested in the contract award has a right to participate in the legal protection proceeding under equal conditions, in accordance with the law, and the right to fair legal protection.

### ***Adversarial principle***

#### **Article 209**

The participants in the legal protection proceeding shall be allowed to make a statement about the facts which are relevant to the decision-making process, in accordance with the provisions of this Law.

### ***The principle of writing***

#### **Article 210**



Decisions in the legal protection proceeding are reached based on written documents, unless otherwise stipulated by this Law.

### ***Legal standing***

#### **Article 211**

A request for protection of rights may be submitted by an economic operator, candidate or tenderer having had or having an interest to be awarded a specific contract or framework agreement and who points out that due to the acts of the contracting authority/ entity, in violation of the provisions of this Law, has suffered or is likely to suffer damage due to the award of a contract or framework agreement contrary to the provisions of this Law (hereinafter: applicant).

A request for protection of rights in public interest shall also be submitted by the Public Procurement Office, the State Audit Institution, and the public attorney, should they while performing their duties find out about irregularities that occurred during public procurement procedures.

Authorities and organizations from paragraph 2 of this Article are not obliged to submit a request for protection of rights based on a notification of the economic operator who in the respective public procurement procedure has initiated a protection of rights proceedings or has omitted to do so in the given time limit.

In the case of submitting a request for protection of rights referred to in paragraph 2 of this Article, the same provisions from this Law shall apply as in the case when applicant from paragraph 1 of this Law submits a request for protection of rights, except the obligation to pay a fee for submitting a request for protection of rights.

### ***Application of the provisions of the law which regulate the administrative proceeding accordingly***

#### **Article 212**

The provisions of the law which regulate the administrative proceeding shall apply accordingly to the following issues in the proceedings under jurisdiction of the Republic Commission, unless otherwise stipulated by this Law, taking into consideration the principles of this Law and the specificities of the public procurement procedures and protection of rights proceedings:

- 1) representation through power of attorney;
- 2) rules on delivery and notification;
- 3) counting the time limits;
- 4) return to the previous state;
- 5) rules on public certificates;
- 6) the decision and the correction of mistakes in the decision;
- 7) cost of the proceeding;
- 8) termination of the procedure;
- 9) preliminary question;
- 10) the language of the proceeding,
- 11) repetition of the procedure;

12) examination of the file and notification of the course of the proceedings;

13) minutes.

### ***Method of submitting protection of rights request***

#### **Article 213**

The request for protection of rights is submitted electronically through the Public Procurement Portal to the contracting authority/entity and the Republic Commission simultaneously, or in print, directly submitted or sent by registered mail to the contracting authority/entity, in which case the applicant is required to send a copy to the Republic Commission.

### ***Time limits for submitting the request for protection of rights***

#### **Article 214**

A request for protection of rights may be submitted throughout the course of the public procurement procedure, unless it is otherwise stipulated by this Law, no later than 10 days from the day the decision of the contracting authority/entity on the completion of the public procurement in accordance with this Law was published on the Public Procurement Portal.

The request for protection of rights which disputes the actions of the Contracting authority/entity pertaining to determining the type of procedure, contents of the contract notice and tender documents shall be deemed timely if received by the contracting authority/entity no later than three days before the expiry of the time limit for submission of tenders, i.e. requests to participate, regardless of the method of delivery.

The request for protection of rights which disputes the actions of the contracting authority/entity undertaken after the time limit for submission of tenders or requests to participate shall be submitted within the time limit of ten days from the day the decision of the contracting authority/entity was published on the Public Procurement Portal, i.e. from the day of receipt of the decision in the cases when this Law does not require publication on the Public Procurement Portal.

In case of a negotiated procedure without publication of contract notice, the request for protection of rights which disputes the actions of the contracting authority/entity pertaining to determining the type of procedure, content of the notice on the conduct of the negotiation procedure without publication of a contract notice, invitation to tender and tender documents shall be considered timely if received by the contracting authority/entity no later than 10 days from the day the notice on the conduct of the negotiation procedure was published or tender documents, amendments and supplements to the tender documents were received.

After the time limit for submission of the request for protection of rights, the applicant cannot supplement the request by giving the reasons for the actions which are the subject of the dispute in the request or by disputing other actions of the contracting authority/entity of which they were aware or may have been aware before the expiry of the time limit for submission the request for protection of rights referred to in paragraphs 2 - 4 of this Article, and which were not mentioned in the submitted request.

A request for protection of rights cannot dispute the actions of the Contracting authority/entity taken in the public procurement procedure if the applicant was or may have been aware of the reasons for submitting the request in question before the time limit for submission of the request has expired as per paragraphs 2 to 4 of this Article, and the applicant did not submit one before the time limit.

In case the same applicant submits another request for protection of rights in the same public procurement procedure, the actions of the Contracting authority/entity of which the applicant was aware or may have been aware when submitting the previous request, cannot be disputed in this request.

The Contracting authority/entity shall publish the notice on submitted request for protection of rights on the Public Procurement Portal no later than the day after the receipt of the request for protection of rights.

### **Article 215**

A request for protection of rights which disputes the legality of the contract award by applying the provisions of Articles 11 - 21 of this Law, shall be considered timely if submitted within the time limit of 10 days from the day of publication of the voluntary ex ante transparency notice referred to in Article 109 paragraph 5 of this Law and provided the contracting authority/entity has published it.

The applicant which failed to submit a request for protection of rights in accordance with paragraph 1 of this Article does not have the right to submit a request for protection of rights after the publication of the contract award notice, provided the contracting authority/entity has published it.

In case the contracting authority/entity has published solely the contract award notice, for contracts concluded by applying the provisions of Articles 11 - 21 of this Law, the request for protection of rights which disputes the legality of concluding such a contract shall be deemed timely if submitted no later than 30 days from the day of publication the contract award notice.

A request for protection of rights which disputes the legality of the contract concluded without the public procurement procedure will be considered timely if submitted within 60 days from the day of becoming aware of such a contract, and no later than 6 months from the day of conclusion of the contract.

### ***Consequences of submitting the request for protection of rights and temporary measures***

### **Article 216**

Submitting a request for protection of rights suspends the public procurement procedure by the contracting authority/entity until the procedure of protection of rights is completed, except in the case of negotiated procedure referred to in Article 61 paragraph 1 point 2) of this Law.

The Republic Commission, if presented with a reasoned proposal by the contracting authority/entity, may allow the contracting authority/entity to continue with the public procurement procedure before the procedure for protection of rights is completed if it proves or shows the probability of the existence of reasons related to the possibility that damage may occur which is disproportionately larger than the value of the subject-matter of public procurement, protection of the public interest, possible endangering of people's lives, health, the environment or other serious danger.

The Republic Commission shall rule on the proposal of the contracting authority/entity referred to in paragraph 2 of this Article within five days of the date of the receipt of the proposal and the complete documentation required to reach a decision.

The contracting authority/entity may submit a proposal referred to in paragraph 2 of this Article until the Republic Commission has reached a decision on the submitted request for protection of rights.

If the request for protection of rights is submitted after the contract has been concluded in accordance with Article 151 paragraph 2 points 1) - 3) of this Law the contracting authority/entity cannot continue with execution of the public procurement contract until a decision has been reached on the request for protection of rights, unless the conditions referred to in paragraph 2 of this Article have been fulfilled and the Republic Commission decides differently following the proposal of the contracting authority/entity.

If the request for protection of rights has been submitted in the case of the negotiated procedure referred to in Article 61 paragraph 1 point 2) of this Law, the applicant may propose that the Republic Commission reaches a decision whereby the contracting authority/entity would be prevented to continue the public procurement procedure or conclude or execute the public procurement contract. The applicant shall deliver the reasoned proposal also to the contracting authority/entity at the same time which may deliver its statement to the Republic Commission within three days from the date of receipt of the proposal.

The Republic Commission shall accept the proposal of the applicant referred to in paragraph 6 of this Article by a decision within five days from the date of receipt of the reasoned proposal and the statement of the contracting authority/entity, where it establishes that conclusion or execution of the public procurement contract without previously checking the regularity of the procedure may cause considerable damage to public assets.

If the Republic Commission reaches a decision referred to in paragraph 7 of this Article, the contracting authority/entity cannot conclude or execute the public procurement contract.

The provisions of this Article apply to the framework agreement accordingly.

### ***Contents of the request for legal protection***

#### **Article 217**

The request for protection of rights contains:

- 1) name and address of the applicant and contact person;
- 2) name and address of the contracting authority/entity;
- 3) information on the public procurement to which the request pertains, i.e. the contracting authority/entity's decision;
- 4) facts and proofs of infringement of provisions referred to in Article 204 paragraph 1 of this Law;
- 5) signature of the applicant.

If the applicant proceeds in the proceedings through proxy, it shall accompany the request for protection of rights by a power of attorney for representation in the protection of rights proceedings.

The applicant who has temporary or permanent residence, or headquarters abroad shall name a proxy for receiving mail in the Republic of Serbia in the request for protection of rights, specifying all the information necessary for communication with the proxy.

When submitting the request for protection of rights the applicant shall provide a proof of payment of the fee referred to in Article 225 of this Law.

The proof referred to in paragraph 4 of this Article is any document from which it can be determined that the transaction has been processed with the appropriate amount referred to in Article 225 of this Law and that it pertains to the request for protection of rights concerned.

### ***Preliminary proceedings***

## **Article 218**

The contracting authority/entity shall provide a copy of the request for protection of rights without delay to the chosen tenderer, who may deliver its opinion regarding the submitted request, to be received by the contracting authority/entity no later than two working days from the date the chosen tenderer received the copy of the request.

### ***Preliminary check of the request for protection of rights***

## **Article 219**

After receiving the request for protection of rights, the contracting authority/entity shall determine:

- 1) if the request for protection of rights has been submitted together with the proof of payment of the fee in accordance with Article 225 of this Law;
- 2) if the request for protection of rights has been submitted within time limit;
- 3) if the applicant has the legal standing;
- 4) if the request for protection of rights contains the information stipulated in Article 217 paragraph 1 of this Law.

If the request for protection of rights does not contain the information stipulated in Article 217 paragraph 1 of this Law, preventing further proceeding, the contracting authority/entity shall without delay invite the applicant to supplement the request for protection of rights within three working days and indicate to the applicant which steps to undertake in order to remove the determined deficiencies and what are the consequences of failing to do so.

If a proof of payment of the fee referred to in Article 225 of this Law has not been included in the submitted request for protection of rights, such a request of the applicant shall be dismissed by a decision of the contracting authority/entity without prior invitation to the applicant to supplement the request.

If the applicant who has temporary or permanent residence, or headquarters abroad does not assign a proxy for receiving documents in the Republic of Serbia in the request for protection of rights with all the information needed for communication with the proxy, the Contracting authority/entity shall dismiss such a request by a decision without prior invitation to the applicant to supplement the request.

The contracting authority/entity shall dismiss the request for protection of rights by a decision if it was submitted by a person without a legal standing or if it was submitted late, or if the applicant does not take action within the time limit referred to in paragraph 2 of this Article, i.e. if it fails to supplement the request for protection of rights in accordance with the invitation for supplementation.

If the content of the request for the protection of rights submitted on behalf of an applicant by a proxy from among the ranks of lawyers is lacking in such a way that further proceeding is not possible, the contracting authority/entity shall dismiss such a request by a decision without prior invitation to the applicant to supplement the request.

The contracting authority/entity shall deliver the decision referred to in paragraphs 3 - 6 of this Article to the applicant and the Republic Commission within three days from the date it was taken.

The applicant may appeal to the Republic Commission against the decision as per paragraphs 3 - 6 of this Article within three days from the date of receipt of the decision.

The appeal shall be filed electronically through the Public Procurement Portal to the Republic Commission and the contracting authority/entity simultaneously, or in print, by direct delivery or

mailing as registered mail to the Republic Commission, in which case the applicant shall deliver at the same time a copy of the appeal to the contracting authority/entity.

The contracting authority/entity shall provide the Republic Commission the documentation from the public procurement procedure necessary for reaching a decision on the appeal within three days after the receipt of the copy of the appeal.

***Proceeding of the Contracting authority/entity after the preliminary check of the request for the protection of rights***

**Article 220**

The contracting authority/entity shall within five working days from the day of receipt of the procedurally compliant request for protection of rights:

1) in case it deems the allegations grounded, reach a decision to accept the request for protection of rights and cancel the public procurement procedure in part, in which in which it will respond to all allegations of the request for protection of rights and deliver the decision to the applicant, tenderers and the Republic Commission within three days from the day the decision was taken, or

2) in case it believes that the groundedness of the allegations may result in cancelling the public procurement proceedings entirely or if it considers the allegations are not grounded, deliver to the Republic Commission a response with a statement regarding all the allegations in the request for protection of rights and a complete documentation from the public procurement procedure, for the sake of reaching a decision regarding the request for protection of rights, and provide a copy of the response to the applicant.

The applicant may deliver its opinion about the response of the contracting authority/entity referred to in paragraph 1 point 2) of this Article, within two working days from the day of receipt of the response.

In case the contracting authority/entity by a decision referred to in paragraph 1 point 1) of this Article did not find grounded all the allegations in the request for protection of rights, the applicant may within two working days from the date of receipt of the decision submit a written statement to the Republic Commission on the continuation of the procedure before the Republic Commission which will decide in accordance with Article 226 of this Law, and they shall at the same time notify the contracting authority/entity by delivering a copy of the statement.

If the contracting authority/entity fails to proceed in the manner stipulated in paragraph 1) of this Article, the applicant of may deliver a written statement to the Republic Commission on the continuation of the procedure before the Republic Commission within 20 days from the date of submission of the request for protection of rights and shall at the same time notify the contracting authority/entity by delivering a copy of the statement.

Within three days of the receipt of the copy of the statement referred to in paragraphs 3 and 4 of this Article, the contracting authority/entity shall provide the Republic Commission with the complete documentation necessary to reach a decision in accordance with Article 226 of this Law.

If the applicant does not deliver the statement on the continuation of the procedure before the Republic Commission referred to in paragraph 4 of this Article, it shall be considered that the protection of rights proceeding has not been initiated.

Upon receipt of the written notification on withdrawing the request for protection of rights before undertaking the actions referred to in paragraph 1 of this Article, the contracting authority/entity shall discontinue the protection of rights proceedings by a decision.

The contracting authority/entity shall deliver the decision on discontinuation the proceedings to the Republic Commission and the applicant within three days from the date it was taken.

### **3. The procedure before the Republic Commission**

#### ***Preliminary check of the request for protection of rights***

#### **Article 221**

Upon receipt of the response from the Contracting authority/entity referred to in Article 220 paragraph 1 point 2) of this Law or a written statement of the applicant on the continuation of the procedure before the Republic Commission referred to in Article 220 paragraphs 3 and 4 of this Law the Republic Commission shall determine:

- 1) whether the request for protection of rights contains the proof of payment of the fee in accordance with Article 225 of this Law;
- 2) whether the request for protection of rights, or the written statement on the continuation of the procedure before the Republic Commission was submitted on time;
- 3) whether the applicant has a legal standing;
- 4) whether the request for protection of rights contains the information referred to in Article 217 paragraph 1 of this Law.

If no proof of payment of the fee referred to in Article 225 of this Law was submitted with the request for protection of rights, the Republic Commission shall dismiss such a request by a decision without prior invitation to the applicant to supplement the request.

If the applicant who has a temporary or permanent residence, or headquarters abroad does not assign a proxy in the request for protection of rights for receiving mail in the Republic of Serbia with all the information necessary for communication with the assigned person, the Republic Commission shall dismiss such a request by a decision without prior invitation to the applicant to supplement the request.

Should the request for protection of rights lack the contents referred to in Article 217 paragraph 1 of this Law so that further proceeding is impossible, the Republic Commission shall without delay invite the applicant to supplement the request for protection of rights within three working days, and at the same time shall instruct the applicant how to proceed in order to remove the determined deficiencies and what are the consequences of failing to do so.

The Republic Commission shall dismiss the request for protection of rights by a decision if it was submitted by a person without a legal standing or was submitted late, or if the applicant does not proceed within the time limit referred to in paragraph 4 of this Article, i.e. does not supplement the request for protection of rights in accordance with the invitation for supplementation.

If the request for protection of rights submitted on behalf of the applicant by a proxy from among the ranks of lawyers lacks contents which make further proceeding possible, the Republic Commission shall dismiss such a request without prior invitation to the applicant to supplement the request.

The Republic Commission shall dismiss by a decision the statement on the continuation of the procedure before the Republic Commission which is not allowed or if it was submitted after the time limit referred to in Article 220 paragraphs 3 and 4 of this Law.

The Republic Commission shall deliver the decision referred to in paragraphs 2), 3), 5) 6) and 7) of this Article to the applicant and the contracting authority/entity.

## **Article 222**

The Republic Commission may before making the decision within its competences request additional documentation, data, clarification and opinions from the contracting authority/entity, the applicant or other participants in the proceedings, competent authorities or other persons and to inspect other documentation of the parties of the public procurement procedure and to collect other data necessary for making a decision.

All persons and authorities referred to in paragraph 1 of this Article are obliged to proceed within the time limits set by the Republic Commission in the request for submission of documentation, data, clarification and opinions.

Should the applicant or the contracting authority/entity fail to submit the requested documentation, data, clarification or opinions within the time limit referred to in paragraph 2 of this Article, then the Republic Commission shall decide in accordance with the available proofs, while the doubt resulting from the lack of the listed documentation shall be taken into account to the disadvantage of the party which did not act in accordance with the request.

The contracting authority/entity, the applicant and the chosen tenderer shall have the possibility to make a statement on the matter of proofs and facts obtained by the Republic Commission in accordance with this Article, should it be necessary for making a decision.

## ***Expert advice***

### **Article 223**

The Republic Commission may seek an expert advice, if proposed by the contracting authority/entity, the applicant or the Republic Commission itself.

The Republic Commission may request an expert advice from any legal or natural person with relevant knowledge and expertise in order to establish the facts.

An expert advice cannot be given by an individual if there are reasons for exemption in accordance with Article 196 of this Law.

A natural person hired directly for giving expert advice is obliged to sign a written statement stating under criminal and material liability that there are no reasons for his or her exemption in accordance with Article 196 of this Law

An individual giving expert advice is entitled to remuneration.

The Republic Commission defines terms and methods of acquiring expert advice.

## ***Oral hearing***

### **Article 224**

The contracting authority/entity and the applicant can propose an oral hearing should the complexity of findings of facts or legal situation call for it.

The applicant can propose an oral hearing in a request for protection of rights, and the contracting authority/entity may propose it in response to the request for protection of rights.

The Republic Commission shall decide on the proposal for an oral hearing.

The Republic Commission can decide that an oral hearing will be held even in the case when the parties from paragraph 1 of this Article have not proposed an oral hearing, in cases when it is deemed necessary in order to establish the facts in the protection of rights proceedings.



The notification on the decision to hold an oral hearing shall be submitted with explanation by the Republic Commission to the contracting authority/entity and the applicant for the protection of the right.

The oral hearing will be held in the premises of Republic Commission.

A record on the oral hearing is kept.

### ***Fees and procedure expenses***

#### **Article 225**

The applicant of the protection of rights is obliged to pay a fee in the amount of RSD 120,000 dinars onto a specified bank account of the budget of the Republic of Serbia, if the request for protection of rights is submitted in accordance with Article 214, paragraphs 2 and 4 and Article 215 of this Law, regardless of the estimated value of public procurement.

If the request for protection of rights is submitted in accordance with Article 214, paragraph 3 of this Law, the applicant is obliged to pay a fee to a specified bank account of the budget of the Republic of Serbia in the amount of:

- 1) RSD 120,000 if the estimated value of public procurements is below RSD 120,000,000;
- 2) RSD 120,000 if the aggregated estimated value of all contested lots values is below RSD 120,000,000, if the public procurement is divided by lots;
- 3) 0,1% of the estimated value of public procurements, if the value is above RSD 120,000,000, but not more than RSD 1,200,000;
- 4) 0,1% of the aggregated estimated value of all contested lots, if the public procurement is divided into lots, if this value is above RSD 120,000,000, but not more than RSD 1,200,000.

The procedure costs for the protection of rights are expenses that occurred during the protection of rights proceeding.

Each party to the proceedings shall bear the costs incurred by their own actions.

If the request for protection of rights is founded, then the applicant may exercise the right of reimbursement by the contracting authority/entity of all necessary and justified procedure costs for the protection of rights.

If the request for protection of rights is not founded, then the contracting authority/entity may exercise the right of reimbursement by the applicant of all necessary and justified procedure costs for the protection of rights.

The Republic Commission can decide that each party to the proceedings shall bear their own costs or determine the pro rata part of the costs.

A reimbursement of the costs can be requested until the contracting authority/entity or the Republic Commission have made a decision regarding the request for protection of rights.

The parties need to indicate precise costs for which the reimbursement is being claimed.

The Republic Commission shall decide on the matter of costs. The decision of the Republic Commission is the title of execution.

### ***Decision of the Republic Commission***

#### **Article 226**

The Republic Commission decides within the scope of the procedural orderly request for the protection of rights and is obliged to make a statement regarding the breaches of those provisions of this Law the applicant could not be aware of and which have influenced the decision of the contracting authority/entity in the public procurement procedure.

The Republic Commission may also cancel the public procurement procedure in its entirety where during the protection of rights proceedings and relating to the allegations in the request for protection of rights, the breaches of provisions of this Law have been identified which make it impossible to conclude the procedure in a lawful manner.

The Republic Commission shall present the evidence which it deems necessary for making the right and lawful decision regarding the submitted request for protection of rights.

By the decision the Republic Commission shall:

- 1) accept the request for protection of rights as grounded and cancel the public procurement procedure in its entirety or partially;
- 2) reject the request for protection of rights due to groundlessness;
- 3) dismiss the request for protection of rights in accordance with the provisions of this Law;
- 4) discontinue the procedure on the grounds of receiving a written notification on withdrawing from the request for protection of rights before the decision has been made;
- 5) dismiss the appeal against the decision of the contracting authority/entity in accordance with the provisions of this Law;
- 6) accept or reject a proposal referred to in Article 216, paragraphs 2, 5 and 6;
- 7) impose fines;
- 8) annul the contract;
- 9) accept the appeal as grounded and cancels the decision of contracting authority/entity;
- 10) reject the appeal as ungrounded and confirms the decision of contracting authority/entity;
- 11) discontinue the procedure on the grounds of receiving a written notification on withdrawing from the appeal before the decision has been made;
- 12) dismiss the written statement on continuing the procedure before the Republic Commission in accordance with the provision of this Law;
- 13) decide regarding the procedure costs for the protection of rights.

The Republic Commission is obliged to give a statement of reason for the decision it has made and can order the contracting authority/entity to take certain actions within a time limit that cannot exceed 25 days in order to conclude the public procurement procedure in orderly and lawful way.

### ***Time limit for making and delivering the decision***

#### **Article 227**

The Republic Commission is obliged to make a decision regarding the request for protection of rights within the time limit of 30 days from the date of receiving the complete documentation needed for establishing the facts and decision making.

The Republic Commission is obliged to decide on the appeal against the decision of the contracting authority/entity within the time limit of 8 days from the date of receiving the complete documentation needed for determining facts and making a decision.

The time limit referred to in paragraph 1 of this Article can in exceptional cases be extended for 15 days whereby, an information about extension with justification for the extension of time limit shall be submitted to the applicant and the contracting authority/entity.

The Republic Commission shall deliver the decision referred to in paragraphs 1 and 2 of this Article to the contracting authority/entity, the applicant and the chosen tenderer within the time limit of 10 days from the date of making the decision.

The decision of the Republic Commission shall be published on the webpage of the Republic Commission and on the Public Procurement Portal, after submission to the parties of the proceedings.

The contracting authority/entity is obliged to inform all participants in the procedure about the decision of the Republic Commission.

#### **4. Judicial protection**

##### ***Right to Administrative Dispute***

###### **Article 228**

The decision of the Republic Commission is final.

The decision of the Republic Commission cannot be appealed.

Against the decision of the Republic Commission an administrative dispute can be initiated within 15 days from the date on which the decision was received by the applicant of the request.

Administrative dispute can be initiated even when the Republic Commission has not made a decision within the time limits set forth in Article 227 of this Law. The time limit for initiating an administrative dispute starts to be counted from the expiry of the time limit for making a decision referred to in paragraph 1 of this Article.

Initiating an administrative dispute does not suspend the effect of the decision of the Republic Commission.

The Republic Commission shall inform the contracting authority/entity about initiation of the administrative dispute.

##### ***Award of damages***

###### **Article 229**

The right to be awarded damages occurred due to violations of this Law may be exercised in the procedure before the competent court.

#### **5. Specific powers of the Republic Commission**

##### ***Submitting reports and documentation***

###### **Article 230**

The contracting authority/entity is obliged to act in accordance with the orders of the Republic Commission as stated in its decision.

The Republic Commission may request from the contracting authority/entity to submit a report on how the decision of the Republic Commission has been implemented.

The contracting authority/entity is obliged to submit the report referred to in paragraph 2 of this Article within a deadline set by the Republic Commission.

### ***Fines***

#### **Article 231**

The Republic Commission shall impose a fine to the contracting authority/entity in the amount from RSD 80,000 to RSD 1,000,000 and the responsible person of the contracting authority/entity in the amount from RSD 20,000 to RSD 80,000 if the contracting authority/entity:

- 1) does not act as requested and within the time limit set in Article 220, paragraph 1 of this Law, per submitted request for protection of rights;
- 2) does not submit the additional documentation, data, clarification and opinions in accordance with the request of the Republic Commission;
- 3) denies the tenderer or candidate access to the file regarding the public procurement procedure.

The Republic Commission shall by a decision impose a fine for the applicant in the amount from RSD 80,000 to RSD 1,000,000 and for the responsible person of the applicant in the amount from RSD 20,000 to RSD 80,000 if the applicant fails to submit additional documentation, data, clarification or opinions in accordance with the request of the Republic Commission.

#### **Article 232**

The Republic Commission shall impose a fine for the Contracting authority/entity and the responsible person of the Contracting authority/entity, or for the applicant and the responsible person of the applicant, should it while acting within its competences find out that during the public procurement procedure Article 231 of this Law was breached.

A fine shall be imposed with a final decision which, after being submitted to the person referred to in paragraph 1 of this Article, shall be published on the webpage of the Republic Commission.

The decision referred to in paragraph 2 of this Article is the title of execution.

Against the decision referred to in paragraph 2 of this Article an administrative dispute can be initiated within 15 days from the date the decision was received. Initiating an administrative dispute is denied suspensory effect of the decision.

The Republic Commission shall define the amount of the fine by considering the severity of the determined irregularities, the estimated value of the public procurement, the impact the irregularities had on the outcome of the public procurement procedure and on the rights of other persons in the procedure, the duration and frequency of the irregularities and the readiness to eliminate the consequences of those irregularities.

A fine can be imposed no later than three years from the date of the infringement.

### ***Annulment of the public procurement contract***

#### **Article 233**

The Republic Commission shall annul the public procurement contract if acting upon the submitted request for protection of rights or upon the request of persons referred to Article 211 of this Law it establishes that the contracting authority/entity:

- 1) has concluded a public procurement contract by using the negotiated procedure without publication of a contract notice, whereby conditions for using this procedure as stipulated by this Law did not exist or did not publish a notice on the conduct of the negotiation procedure without publication of a contract notice and contract award decision;
- 2) has concluded a public procurement contract before the expiry of time limit for submission of requests for protection of rights;
- 3) has concluded a public procurement contract after request for protection of rights was submitted, but before the decision of the Republic Commission;
- 4) has concluded a public procurement contract against the Republic Commission' decision referred to in Article 226 of this Law;
- 5) has concluded a public procurement contract by violating the terms and conditions of the framework agreement or has concluded a public procurement contract by using the dynamic purchasing system, against the provisions of this Law;
- 6) has concluded a public procurement contract without previously conducting a public procurement procedure, binding for the contracting authority/entity in accordance with the provisions of this Law.

The persons referred to in paragraph 1 of this Article shall submit a request for annulment of the contract within 60 days from the day of obtaining the knowledge for the reason for the annulment, and at the latest within six months from the date of conclusion of the contract.

The Republic Commission decides on annulling the contract by a decision regarding the request for protection of rights or a special decision.

In a decision referred to in paragraph 3 of this Article the Republic Commission shall determine what consequences the annulment of the contract might have for contracting parties, as well as for the public procurement procedure.

In cases when the Republic Commission annuls a public procurement contract, the contract ceases to have effect from the date the decision was made, and a fine shall be imposed for the contracting authority/entity in the amount of up to 30% of the concluded contract value, but not less than the amount defined with Article 231 of this Law, considering all relevant facts, the severity of the breach, the acts of the Contracting authority/entity, as well as the residual duration of the contract.

In the case of paragraph 1, point 2 and 3 from this Article, if the breach of the public procurement procedure legislation established during the protection of rights proceedings did not substantially influence the possibility of the applicant for protection of rights to be awarded a specific public procurement contract, the Republic Commission shall impose a fine defined in Article 231 of this Law to the contracting authority/entity instead of annulling the contract.

The Republic Commission shall not annul a public procurement contract if considering all relevant facts, the severity of the breach, the acts of the contracting authority/entity, as well as the residual duration of the contract it comes to the conclusion that annulling the public procurement contract would have disproportionate consequences regarding work and business of the contracting authority/entity or the interests of the Republic of Serbia, but shall impose a fine to the contracting authority/entity in the amount of up to 30% of the concluded contract value, but not less than the amount stipulated in Article 231 of this Law.

In the case referred to in paragraph 5 - 7 of this Article the Republic Commission shall impose a fine for the responsible person of the contracting authority/entity in the amount stipulated in Article 231 of this Law.

Should the Republic Commission impose a fine from paragraph 5 - 7 of this Article, then the provisions of Article 232 of this Law shall be applied.

### ***Request for initiation of misdemeanour proceedings***

#### **Article 234**

The Republic Commission files a request for initiating misdemeanour proceedings in cases when during the protection of right proceedings, it establishes that there was a violation of provisions of this Law which may constitute the grounds for the misdemeanour liability.

### ***Special competence of the organisation in charge of the protection of competition***

#### **Article 235**

The organisation in charge of the protection of competition can issue a measure against the economic operator banning it from participation in the public procurement procedure should it determine that the economic operator has committed infringement of competition during the public procurement procedure within the meaning of the law regulating the competition.

The measure referred to in paragraph 1 of this Article can last up to two years.

An administrative dispute may be initiated against the decision referred to in paragraph 1 of this Article within 30 days from the date of receiving decision.

## **XVIII PENAL PROVISIONS**

### ***1. Misdemeanour of the Contracting authority/entity***

#### **Article 236**

The Contracting authority/entity shall be fined from RSD 100,000 to RSD 1,000,000 for misdemeanour if it:

- 1) splits a subject-matter of procurement into multiple procurements with the aim to avoid the application of provisions of this Law or respective rules of the public procurement procedure (Articles 29 – 35);
- 2) awards a public procurement contract without conducting the public procurement procedure, except when this is permissible in accordance with this Law (Article 51);
- 3) procures supplies, works or services using the negotiated procedure without publication of a contract notice if the condition for doing so established by this Law are not fulfilled (Article 61);
- 4) fails to fix the time limits for submission of tenders or requests to participate in accordance with this Law (Articles 52 – 56, Article 58, 60 and 63);
- 5) fails to publish an annual public procurement plan (Article 88);
- 6) fails to act in accordance with the provision of Article 90 of this Law;
- 7) fails to publish the tender documents in accordance with the provisions of this Law (Article 95);
- 8) fails to publish the notices referred to in Article 105, paragraph 1, point 6), 8) and 11) of this Law;

- 9) concludes a public procurement contract with a tenderer where grounds for exclusion in accordance with Article 111, paragraph 1, point 1) and 2) of this Law exist and no grounds to apply the provisions of Article 111, paragraph 3 and article 113 of this Law exist;
- 10) fails to submit to the Public Procurement Office a proposition to initiate misdemeanour proceedings in accordance with Article 131, paragraph 6 of this Law;
- 11) fails to publish or to submit the decisions in accordance with the provisions of this Law (Articles 146 – 148);
- 12) concludes a public procurement contract although the conditions defined in Article 151 of this Law were not fulfilled;
- 13) fails to act in accordance with Article 154, paragraph 1 of this Law during the contract performance;
- 14) modifies the concluded public procurement contract against the provisions of this Law (Articles 155 – 161);
- 15) fails to submit a report on how the decision of the Republic Commission has been implemented (Article 230);
- 16) fails to submit to the Public Procurement Office within the prescribed time limit the requested information and notifications which are relevant to the implementation of the monitoring (Article 180);
- 17) fails to register data on the value and type of public procurement or fails to publish them within a set time limit on the Public procurement portal or fails to deliver data on individual public procurement procedure or concluded contract to the Public Procurement Office (Article 181);
- 18) fails to act in accordance with the decision of the Republic Commission (Article 226, paragraph 4, point 1) and 9)).

For a misdemeanour referred to in paragraph 1 of this Article the responsible person of the contracting authority/entity shall also be fined from RSD 30,000 to RSD 80,000.

The representative of the contracting authority/entity shall be fined from RSD 30,000 to RSD 80,000 in the case of participating in a public procurement procedure against the provisions of this Law regarding conflict of interest (Article 50).

### ***Misdemeanour of the tenderers***

#### **Article 237**

A tenderer, candidate or subcontractor shall be fined from RSD 100,000 to RSD 1,000,000 for misdemeanour if he:

- 1) submits a request to participate or a tender which contains false data or upon the request of the Contracting authority/entity submits documentation containing false data (Articles 118, 119 and 130);
- 2) fails to submit requested evidence and statement referred to in Article 131, paragraph 5 of this Law to the Contracting authority/entity within the prescribed time limit;
- 3) hires as a subcontractor a person not named in the tender or in the public procurement contract, against the provisions of this Law (Article 131 and 161);
- 4) fails to conclude a public procurement contract upon the request of the Contracting authority/entity, except when there are reasons the tenderer could neither influence, nor foresee, prevent, remove or avoid and due to which conclusion or execution of the contract in accordance

with the requirements stated in the procurement documents and chosen tender is not possible (Article 152).

For an offense committed under paragraph 1 of this Article the responsible person of the tenderer, candidate or subcontractor shall be fined from RSD 30,000 up to 80,000.

For an offense committed under paragraph 1 of this Article an entrepreneur as the tenderer, candidate or subcontractor shall be fined from RSD 30,000 up to 200,000.

For an offense committed under paragraph 1 of this Article a natural person as the tenderer, candidate or subcontractor shall be fined from RSD 30,000 up to 80,000.

For an offense referred to in paragraph 1, points 2) and 4) of this Article the tenderer or candidate referred to in paragraphs 1, 3 or 4 of this Article, or offending subcontractor, shall be imposed a safeguard measure of prohibition to participate in public procurement procedures, which prohibits that person to participate in public procurement procedures for a period of no longer than two years.

The Court shall decide on the safeguard measure of prohibition to participate in public procurement procedures referred to in paragraph 5 of this Article, in accordance with the Law on misdemeanour. The Court is obliged to notify the Public Procurement Office thereof within three working days from the day the sentence becomes final. This notification of the Court shall contain the full name and registry number of the tenderer, the candidate or subcontractor and the date until the safeguard measure of exclusion from public procurement procedures is valid for this subject and the Public Procurement Office shall publish this data on its website.

#### **Article 238**

The statute of limitations for misdemeanour procedure occurs upon expiry of three years from the day on which the offence referred to in Articles 236 and 237 of this Law was committed.

## **XIX TRANSITIONAL AND FINAL PROVISIONS**

### ***Initiated public procurement procedures and adjustment of public procurement plans***

#### **Article 239**

Public procurement procedures initiated before this Law becomes applicable shall be finalised in line with regulations in accordance with which they were initiated.

As of the day this Law becomes applicable the contracting authorities/entities shall adjust their public procurement plans to the provisions of this Law.

### ***Initiated procedures for protection of rights***

#### **Article 240**

Procedures for protection of rights shall be governed by the provisions in accordance with which the public procurement procedures triggering the procedures for protection of rights were initiated.

The procedures of financial penalties and annulment of contracts within the competences of the Republic Commission shall be governed by the provisions in accordance with which public procurement procedures which resulted in procedures of financial penalties and annulment were initiated.



### ***Harmonization of the activities of the Public Procurement Office***

#### **Article 241**

As of the day this Law becomes applicable the Public Procurement Administration will continue its work as the Public Procurement Office.

### ***Harmonization of the activities of the Republic Commission***

#### **Article 242**

The president and the members of the Republic Commission elected in accordance with the provisions of the Public procurement law („Official Gazette of the Republic of Serbia”, No. 124/12, 14/15 and 68/15) shall perform their duties until the expiry of their term.

The Republic Commission shall harmonize its Rules of Procedure with the provisions of this Law within 120 days from the day this Law enters into force.

### ***Adopting bylaws***

#### **Article 243**

Bylaws for implementation of this Law shall be adopted before the day this Law becomes applicable.

### ***Application of specific provisions***

#### **Article 244**

The provisions of Article 14, paragraph 1, point 3) and 4) and Article 127, paragraph 2 of this Law shall be applicable until the day of accession of the Republic of Serbia to the European Union.

### ***Entering into force and application start***

#### **Article 245**

On the day this Law becomes applicable the Law on public procurement („Official gazette of the Republic of Serbia”, No. 124/12, 14/15 and 68/15) ceases to have effect, as well as the bylaws adopted based on that Law.

#### **Article 246**

The provisions of Article 87, paragraph 2, point 1) and Article 100, paragraph 2 of the Law on misdemeanour („Official gazette of the Republic of Serbia”, No. 65/13, 13/16 and 98/16 – Decision of the Constitutional court) cease to have effect on the day this Law becomes applicable.

The Republic Commission shall submit to the competent Misdemeanour Courts all files referring to offenses related to the Public procurement law („Official gazette of the Republic of Serbia”, No. 124/12, 14/15 and 68/15) no later than 30 days from the day this Law becomes applicable.

#### **Article 247**

This Law enters into force on the eighth day from the day of publishing in the "Official Gazette of the Republic of Serbia" and shall become applicable from 1 July 2020, except the provisions referred to in:

1) Article 192 and 193 of this Law which shall become applicable on the day this Law enters into force;

2) Article 128, paragraph 2 of this Law which shall become applicable on 1 March 2020;

3) Article 1, paragraph 4, point 9), Article 2, paragraph 1, point 4), sub-point (3), Article 4, paragraph 5, point 2, Article 11, paragraph 5 and 6, Article 20, paragraph 2 and 3, Article 28, paragraph 4, Article 82, Article 84, Article 105, paragraph 10, Article 107, paragraph 4, Article 108, paragraph 4, Article 125, Article 127, paragraph 3, Article 134, paragraph 3, point 3) and 4), Article 143, paragraph 6, Article 163, paragraph 1, point 3), Articles 173 – 175, Article 176, paragraph 8, Article 177 and Article 183, paragraph 1, point 2) of this Law which shall become applicable as of the day of accession of the Republic of Serbia to the European Union.

## Annex 1

### LIST OF ACTIVITIES IN CONSTRUCTION

In the event of any difference of interpretation between the CPV and the NACE, the CPV nomenclature will apply.

SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: —construction of new buildings and works, restoring and common repairs.	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	This class includes: —demolition of buildings and other structures, —clearing of building sites, —earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. —site preparation for mining: —overburden removal and other development and preparation of mineral properties and sites.  This class also includes: —building site drainage.	45110000

				—drainage of agricultural or forestry land.	
		45.12	Test drilling and boring	<p>This class includes:</p> <ul style="list-style-type: none"> <li>—test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>—drilling of production oil or gas wells, see 11.20.</li> <li>—water well drilling, see 45.25,</li> <li>—shaft sinking, see 45.25,</li> <li>—oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20.</li> </ul>	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> <li>—construction of all types of buildings construction of civil engineering constructions,</li> <li>—bridges, including those for elevated highways, viaducts, tunnels and subways,</li> <li>—long-distance pipelines,</li> </ul>	<p>45210000</p> <p>Except:</p> <ul style="list-style-type: none"> <li>– 45213316</li> <li>45220000</li> <li>45231000</li> <li>45232000</li> </ul>

				<p>communication and power lines,</p> <p>—urban pipelines, urban communication and power lines,</p> <p>—ancillary urban works,</p> <p>—assembly and erection of prefabricated constructions on the site.</p> <p>This class excludes:</p> <p>—service activities incidental to oil and gas extraction, see 11.20,</p> <p>—erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28,</p> <p>—construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23,</p> <p>—building installation, see 45.3,</p> <p>—building completion, see 45.4,</p> <p>—architectural and engineering activities, see 74.20,</p> <p>—project management for construction, see 74.20.</p>	
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		45.22	Erection of roof covering and frames	This class includes: — erection of roofs, — roof covering, — waterproofing.	45261000
		45.23	Construction of highways, roads, airfields and sport facilities	This class includes: —construction of highways, streets, roads, other vehicular and pedestrian ways, —construction of railways, —construction of airfield runways, —construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, —painting of markings on road surfaces and car parks.  This class excludes: —preliminary earth moving, see 45.11.	45212212 and DA03 45230000 except: — 45231000 — 45232000 — 45234115
		45.24	Construction of water projects	This class includes — construction of: —waterways, harbour and river works, pleasure ports (marinas), locks, etc., — dams and dykes, — dredging, — subsurface work.	45240000
		45.25	Other construction work involving special trades	This class includes: —construction activities specialising in one aspect common to	45250000 45262000

				<p>different kinds of structures, requiring specialised skill or equipment,</p> <ul style="list-style-type: none"> <li>—construction of foundations, including pile driving,</li> <li>—water well drilling and construction, shaft sinking,</li> <li>—erection of non-self-manufactured steel elements,</li> <li>— steel bending,</li> <li>—bricklaying and stone setting,</li> <li>—scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms,</li> <li>—erection of chimneys and industrial ovens.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>—renting of scaffolds without erection and dismantling, see 71.32</li> </ul>	
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	<p>This class includes: installation in buildings or other construction projects of:</p> <ul style="list-style-type: none"> <li>—electrical wiring and fittings,</li> <li>—telecommunications systems,</li> <li>—electrical heating systems,</li> </ul>	<p>45213316 45310000</p> <p>Except: – 45316000</p>

				<ul style="list-style-type: none"> <li>—residential antennas and aerials,</li> <li>— fire alarms,</li> <li>—burglar alarm systems,</li> <li>—lifts and escalators,</li> <li>—lightning conductors, etc.</li> </ul>	
		45.32	Insulation work activities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>—installation in buildings or other construction projects of thermal, sound or vibration insulation.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>—waterproofing, see 45.22.</li> </ul>	45320000
		45.33	Plumbing	<p>This class includes:</p> <ul style="list-style-type: none"> <li>—installation in buildings or other construction projects of:</li> <li>—plumbing and sanitary equipment,</li> <li>— gas fittings,</li> <li>—heating, ventilation, refrigeration or air-conditioning equipment and ducts,</li> <li>—sprinkler systems.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>—installation of electrical heating systems, see 45.31.</li> </ul>	45330000
		45.34	Other building installation	<p>This class includes:</p> <ul style="list-style-type: none"> <li>—installation of illumination and signalling systems for roads, railways,</li> </ul>	45234115 45316000 45340000



				airports and harbours, —installation in buildings or other construction projects of fittings and fixtures n.e.c.	
	45.4		Building completion		45400000
		45.41	Plastering	This class includes: —application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.	45410000
		45.42	Joinery installation	This class includes: —installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials,  —interior completion such as ceilings, wooden wall coverings, movable partitions, etc.  This class excludes: —laying of parquet and other wood floor coverings, see 45.43.	45420000
		45.43	Floor and wall covering	This class includes: —laying, tiling, hanging or fitting in buildings or other construction projects of:	45430000

				<ul style="list-style-type: none"> <li>—ceramic, concrete or cut stone wall or floor tiles,</li> <li>—parquet and other wood floor coverings carpets and linoleum floor coverings,</li> <li>—including of rubber or plastic,</li> <li>—terrazzo, marble, granite or slate floor or wall coverings,</li> <li>— wallpaper.</li> </ul>	
		45.44	Painting and glazing	<p>This class includes:</p> <ul style="list-style-type: none"> <li>—interior and exterior painting of buildings,</li> <li>—painting of civil engineering structures,</li> <li>—installation of glass, mirrors, etc.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>—installation of windows, see 45.42,</li> </ul>	45440000
		45.45	Other building completion	<p>This class includes:</p> <ul style="list-style-type: none"> <li>—installation of private swimming pools,</li> <li>—steam cleaning, sand blasting and similar activities for building exteriors,</li> <li>—other building completion and finishing work n.e.c.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>—interior cleaning of buildings and other structures, see 74.70.</li> </ul>	45212212 and DA04 45450000
	45.5		Renting of construction or		45500000

			demolition equipment with operator		
		45.50	Renting of construction or demolition equipment with operator	This class excludes: —renting of construction or demolition machinery and equipment without operators, see 71.32.	45500000

## **Annex 2**

# **LIST OF MILITARY EQUIPMENT AND LIST OF SUPPLIES PURCHASED BY CONTRACTING AUTHORITIES IN THE FIELD OF DEFENCE**

### **I LIST OF MILITARY EQUIPMENT**

- 1) Portable and automatic firearms, such as rifles, carbines, revolvers, pistols, sub-machine guns and machine guns, except for hunting weapons, pistols and other low calibre weapons of the calibre less than 7mm.
- 2) Artillery and smoke, gas and flame-throwing weapons, such as:
  - (1) cannon, howitzers, mortars, artillery, anti-tank guns, rocket launchers, flame-throwers, recoilless guns
  - (2) military smoke and gas guns.
- 3) Ammunition for the weapons listed in points 1 and 2 of this Annex.
- 4) Bombs, torpedoes, rockets and guided missiles:
  - (1) bombs, torpedoes, grenades, including smoke grenades, smoke bombs, rockets, mines, guided missiles, underwater grenades, incendiary bombs
  - (2) military apparatus and components specially designed for the handling, assembly, dismantling, firing or detection of the articles under (1).
- 5) Military fire control equipment:
  - (1) firing computers and guidance systems in infra-red and other night guidance devices
  - (2) telemeters, position indicators, altimeters
  - (3) electronic tracking components (gyroscopic, optical and acoustic)
  - (4) bomb sights and gun sights, periscopes for the equipment specified in this Annex.
- 6) Tanks and specialist fighting vehicles:
  - (1) tanks
  - (2) military type vehicles, armed or armoured, including amphibious vehicles
  - (3) armoured cars
  - (4) half-tracked military vehicles
  - (5) military vehicles with tank bodies
  - (6) trailers specially designed for the transportation of the ammunition specified in points 3) and 4) of this Annex.
- 7) Toxic or radioactive agents:
  - (1) toxic, biological or chemical agents and radioactive agents adapted for destructive use in war against persons, animals or crops
  - (2) military apparatus for the propagation, detection and identification of substances listed under (1)
  - (3) counter-measures material for items listed under (1).

8) Powders, explosives and liquid or solid propellants:

(1) powders and liquid or solid propellants specially designed and constructed for use with the material listed under points 3), 4) and 7) of this Annex

(2) military explosives

(3) incendiary and freezing agents for military use.

9) Warships ships and their specialist equipment:

(1) ships of all kinds for military purposes

(2) equipment specially designed for laying, detecting and sweeping mines

(3) underwater cables.

10) Aircrafts, helicopters and equipment for military use.

11) Military electronic equipment.

12) Camera equipment specially designed for military use.

13) Other equipment and material, such as military boots and uniforms etc.

14) Specialised parts and items of material included in this Annex insofar as they are of a military nature.

15) Machines, equipment and items exclusively designed for the study, manufacture, testing and control of arms, munitions and apparatus of an exclusively military nature included in this Annex.

## II LIST OF SUPPLIES PURCHASED BY CONTRACTING AUTHORITIES IN THE FIELD OF DEFENCE

The only text applicable for the purposes of this Law is that in Annex 1 point 3 of the Government Procurement Agreement (GPA) on which the following indicative list of products is based:

Chapter 25:	Salt, sulphur, earths and stone, plastering materials, lime and cement
Chapter 26:	Metallic ores, slag and ash
Chapter 27:	Mineral fuels, mineral oils and products of their distillation, bituminous substances, mineral waxes except: ex 27.10: special engine fuels
Chapter 28:	Inorganic chemicals, organic and inorganic compounds of precious metals, of rare-earth metals, of radioactive elements and of isotopes except: ex 28.09: explosives ex 28.13: explosives ex 28.14: tear gas ex 28.28: explosives ex 28.32: explosives ex 28.39: explosives ex 28.50: toxic products ex 28.51: toxic products ex 28.54: explosives
Chapter 29:	Organic chemicals except: ex 29.03: explosives ex 29.04: explosives ex 29.07: explosives ex 29.08: explosives ex 29.11: explosives ex 29.12: explosives ex 29.13: toxic products ex 29.14: toxic products ex 29.15: toxic products

	<p>ex 29.21: toxic products</p> <p>ex 29.22: toxic products</p> <p>ex 29.23: toxic products</p> <p>ex 29.26: explosives</p> <p>ex 29.27: toxic products</p> <p>ex 29.29: explosives</p>
Chapter 30:	Pharmaceutical products
Chapter 31:	Fertilisers
Chapter 32:	Tanning and dyeing extracts, tannings and their derivatives, dyes, colours, paints and varnishes, putty, fillers and stoppings, inks
Chapter 33:	Essential oils and resinoids, perfumery, cosmetic or toilet preparations
Chapter 34:	Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and 'dental waxes'
Chapter 35:	Albuminoidal substances, glues, enzymes
Chapter 37:	Photographic and cinematographic goods
Chapter 38:	<p>Miscellaneous chemical products,</p> <p>except:</p> <p>ex 38.19: toxic products</p>
Chapter 39:	<p>Artificial resins and plastic materials, celluloses esters and ethers, articles thereof,</p> <p>except:</p> <p>ex 39.03: explosives</p>
Chapter 40:	<p>Rubber, synthetic rubber, factice, and articles thereof,</p> <p>except:</p> <p>ex 40.11: bullet-proof tyres</p>
Chapter 41:	Raw hides and skins (other than fur skins) and leather

Chapter 42:	Articles of leather, saddlery and harness, travel goods, handbags and similar containers, articles of animal gut (other than silk-worm gut)
Chapter 43:	Fur skins and artificial fur, manufactures thereof
Chapter 44:	Wood and articles of wood, wood charcoal
Chapter 45:	Cork and articles of cork
Chapter 46:	Manufactures of straw of esparto and of other plaiting materials, basketware and wickerwork
Chapter 47:	Paper-making material
Chapter 48:	Paper and paperboard, articles of paper pulp, of paper or of paperboard
Chapter 49:	Printed books, newspapers, pictures and other products of the printing industry, manuscripts, typescripts and plans
Chapter 65:	Headgear and parts thereof
Chapter 66:	Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof
Chapter 67:	Prepared feathers and down and articles made of feathers or of down, artificial flowers, articles of human hair
Chapter 68:	Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials
Chapter 69:	Ceramic products
Chapter 70:	Glass and glassware
Chapter 71:	Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery
Chapter 73:	Iron and steel and articles thereof
Chapter 74:	Copper and articles thereof
Chapter 75:	Nickel and articles thereof



Chapter 76:	Aluminium and articles thereof
Chapter 77:	Magnesium and beryllium and articles thereof
Chapter 78:	Lead and articles thereof
Chapter 79:	Zinc and articles thereof
Chapter 80:	Tin and articles thereof
Chapter 81:	Other base metals employed in metallurgy and articles thereof
Chapter 82:	Tools, implements, cutlery, spoons and forks, of base metal, parts thereof, except: ex 82.05: tools ex 82.07: tools, parts
Chapter 83:	Miscellaneous articles of base metal
Chapter 84:	Boilers, machinery and mechanical appliances, parts thereof, except: ex 84.06: engines ex 84.08: other engines ex 84.45: machinery ex 84.53: automatic data-processing machines ex 84.55: parts of machines under heading No 84.53 ex 84.59: nuclear reactors
Chapter 85:	Electrical machinery and equipment, parts thereof, except: ex 85.13: telecommunication equipment ex 85.15: transmission apparatus
Chapter 86:	Railway and tramway locomotives, rolling-stock and parts thereof, railway and tramway tracks fixtures and fittings, traffic signalling equipment of all kinds (not electrically powered), except: ex 86.02: armoured locomotives, electric

	<p>ex 86.03: other armoured locomotives</p> <p>ex 86.05: armoured wagons</p> <p>ex 86.06: repair wagons</p> <p>ex 86.07: wagons</p>
Chapter 87:	<p>Vehicles, other than railway or tramway rolling-stock, and parts thereof, except:</p> <p>ex 87.08: tanks and other armoured vehicles</p> <p>ex 87.01: tractors</p> <p>ex 87.02: military vehicles</p> <p>ex 87.03: breakdown lorries</p> <p>ex 87.09: motorcycles</p> <p>ex 87.14: trailers</p>
Chapter 89:	<p>Ships, boats and floating structures, except:</p> <p>ex 89.01A: warships</p>
Chapter 90:	<p>Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus, parts thereof, except:</p> <p>ex 90.05: binoculars</p> <p>ex 90.13: miscellaneous instruments, lasers</p> <p>ex 90.14: telemeters</p> <p>ex 90.28: electrical and electronic measuring instruments</p> <p>ex 90.11: microscopes</p> <p>ex 90.17: medical instruments</p> <p>ex 90.18: mechano-therapy appliances</p> <p>ex 90.19: orthopaedic appliances</p> <p>ex 90.20: X-ray apparatus</p>
Chapter 91:	<p>Manufacture of watches and clocks</p>

Chapter 92:	Musical instruments, sound recorders or reproducers, television image and sound recorders or reproducers, parts and accessories of such articles
Chapter 94:	Furniture and parts thereof, bedding, mattresses, mattress supports, cushions and similar stuffed furnishings, except: ex 94.01A: aircraft seats
Chapter 95:	Articles and manufactures of carving or moulding material
Chapter 96:	Brooms, brushes, powder-puffs and sieves
Chapter 98:	Miscellaneous manufactured articles

## **Annex 3**

# **REQUIREMENTS RELATING TO TOOLS AND DEVICES FOR THE ELECTRONIC RECEIPT OF TENDERS, REQUESTS TO PARTICIPATE, AS WELL AS PLANS AND DESIGNS RELATED TO DESIGN CONTESTS**

Tools and devices for the electronic receipt of tenders, requests for participation as well as plans and designs must guarantee, through technical means and appropriate procedures, that:

- 1) the exact time and date of the receipt of tenders, requests to participate and the submission of plans and designs can be determined precisely;
- 2) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;
- 3) only authorised persons may set or change the dates for opening data received;
- 4) during the different stages of the procurement procedure or of the design contest access to all data submitted, or to part thereof, must be possible only for authorised persons;
- 5) only authorised persons may give access to data transmitted and only after the prescribed date;
- 6) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith;
- 7) where the access prohibitions or conditions referred to under points 2), 3), 4), 5) and 6) are infringed or there is an attempt to do so, it may be reasonably ensured that the infringements or attempts are clearly detectable.

# **Annex 4**

## **CONTENTS OF PUBLIC PROCUREMENT NOTICES**

### **Part A**

#### **I NOTICE OF THE PUBLICATION OF A PRIOR INFORMATION NOTICE ON THE CONTRACTING AUTHORITY'S PROFILE**

**(referred to in Article 107 paragraph 2 of the Law)**

- 1) Name, tax identification number, address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
- 2) Type of contracting authority and main activity exercised.
- 3) Where appropriate, indication that the contracting authority is a centralised purchasing body; or that any other form of joint procurement is involved.
- 4) CPV codes.
- 5) Internet address of the 'contracting authority's profile' (URL).
- 6) Date of dispatch of the notice of the publication of the prior information notice on the contracting authority's profile.

#### **II PRIOR INFORMATION NOTICE**

**(referred to in Article 107 of the Law)**

- 1) Name, tax identification number, address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
- 2) Email or internet address at which the procurement documents will be available for unrestricted and full direct access, free of charge.  

Where unrestricted and full direct access, free of charge, is not available for the reasons set out in Article 45 of this law, an indication of how the procurement documents can be accessed.
- 3) Type of contracting authority and main activity exercised.
- 4) Where appropriate, indication that the contracting authority is a centralised purchasing body or that any other form of joint procurement is involved.
- 5) CPV codes; where the contract is divided into lots, this information shall be provided for each lot.
- 6) NUTS code for the main location of works in case of works contracts or NUTS code for the main place of delivery or performance in supply and service contracts; where the contract is divided into lots, this information shall be provided for each lot.
- 7) Brief description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services.

- 8) Estimated date(s) for publication of a contract notice or contract notices in respect of the contract(s) referred to in this prior information notice.
- 9) Date of dispatch of the notice.
- 10) Any other relevant information.
- 11) Indication whether the contract is covered by the GPA.

## **Part B**

### **I NOTICE OF THE PUBLICATION OF A PERIODIC INDICATIVE NOTICE ON THE CONTRACTING ENTITY'S PROFILE NOT USED AS A MEANS OF CALLING FOR COMPETITION**

**(referred to in Article 108 paragraph 2 of the Law)**

- 1) Name, tax identification number, address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
- 2) Main activity exercised.
- 3) CPV Codes.
- 4) Internet address of the 'contracting entity's profile' (URL).
- 5) Date of dispatch of the notice of the publication of the prior information notice on the contracting entity's profile.

### **II PERIODIC INDICATIVE NOTICE**

**(referred to in Article 108 of the Law)**

#### **1. Information to be included in all cases**

- 1) Name, tax identification number, address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
- 2) Main activity exercised.
- 3) For:
  - (1) supply contracts: nature and quantity or value of the services or products to be supplied (CPV codes).
  - (2) works contracts: nature and extent of the services to be provided, the general characteristics of the work or of the lots by reference to the work (CPV codes).
  - (3) service contracts: intended total procurement in each of the service categories envisaged (CPV codes).
- 4) Date of dispatch of the notice or of dispatch of the notice of the publication of this notice on the contracting entity's profile.

- 5) Any other relevant information.

## **2. Additional information where periodic indicative notice is used as a means of calling for competition (Article 108 paragraphs 5 and 6 of this law)**

- 1) Inviting interested economic operators to express to the contracting entity their interest for participation in the public procurement procedure or procedures.
- 2) E-mail or internet address at which the specifications procurement documents will be available for unrestricted and full direct access, free of charge.

Where unrestricted and full direct access, free of charge, is not available for the reasons set out in Article 45 of this law, an indication of how the procurement documents can be accessed.

- 3) Where appropriate, indication whether the contract is reserved for economic operators referred to in Article 37 paragraph 1 of this law or whether its performance is reserved in the context of sheltered employment programmes.
- 4) Time limit for the receipt of applications.
- 5) Nature and quantity of the products to be supplied or general nature of the work or category of service and description, stating if framework agreement(s) are envisaged, including any options for further procurement and the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, an estimate of the timing of the subsequent calls for competition. State whether purchase, lease, rental or hire-purchase or any combination of those is involved.
- 6) NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service; if the contract is divided into lots, this information shall be provided for each lot.
- 7) Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.
- 8) Address to which interested undertakings shall send their expressions of interest in writing.
- 9) Time limit for receipt of expressions of interest.
- 10) Language or languages authorised for the presentation of candidatures or tenders.
- 11) Economic and technical conditions, and financial and technical guarantees required of suppliers.
- 12):
  - (1) Estimated date for initiating the procurement procedures in respect of the contract or contracts (if known);
  - (2) Type of procurement procedure (restricted procedures, whether or not involving a dynamic purchasing system, or negotiated procedures).
- 13) Where appropriate, particular conditions to which the performance of the contract is subject.
- 14) Where appropriate, indication whether:
  - (1) electronic submission of tenders or requests to participate will be required/accepted,
  - (2) electronic ordering will be used,
  - (3) electronic invoicing will be used,

- (4) electronic payment will be accepted.
- 15) Name and address of the body responsible for legal protection. Precise information concerning time limits for lodging requests, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
- 16) Where known, criteria to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be mentioned, where they do not appear in the tender documents, or will not be indicated in the invitation to confirm interest referred to in Article 108 paragraph 8 of this law, in the invitation tender or initial tender.

## **Part C CONTRACT NOTICE**

### **I CONTRACT NOTICE (CONTRACTING AUTHORITY)**

- 1) Name, tax identification number, address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
- 2) Email or internet address at which the procurement documents will be available for unrestricted and full direct access, free of charge.  

Where unrestricted and full direct access, free of charge, is not available for the reasons set out in Article 45 of this law, an indication of how the procurement documents can be accessed.
- 3) Type of contracting authority and main activity exercised.
- 4) Where appropriate, indication that the contracting authority is a centralised purchasing body or that any other form of joint procurement is involved.
- 5) CPV codes; where the contract is divided into lots, this information shall be provided for each lot.
- 6) NUTS code for the main location of works in case of works contracts or NUTS code for the main place of delivery or performance in supply and service contracts; where the contract is divided into lots, this information shall be provided for each lot.
- 7) Brief description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services. Where the contract is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.
- 8) Estimated total order of magnitude of contract(s); where the contract is divided into lots, this information shall be provided for each lot.
- 9) Admission or prohibition of variants.
- 10) Time-frame for delivery or provision of supplies, works or services and, as far as possible, duration of the contract.



(1) In the case of a framework agreement, indication of the planned duration of the framework agreement, stating, where appropriate, the reasons for any duration exceeding four years; as far as possible, indication of value or order of magnitude and frequency of contracts to be awarded, number and, where appropriate, proposed maximum number of economic operators to participate.

(2) In the case of a dynamic purchasing system, indication of the planned duration of that system; as far as possible, indication of value or order of magnitude and frequency of contracts to be awarded.

11) Conditions for participation, including:

(1) where appropriate, indication whether the right to participate is reserved for economic operators referred to in Article 37 paragraph of this law 1 or whether the performance of a public contract is reserved in the context of sheltered employment programmes,

(2) where appropriate, indication whether the provision of the service is reserved by law, regulation or administrative provision to a particular profession; reference to the relevant law, regulation or administrative provision,

(3) a list and brief description of criteria regarding the personal situation of economic operators that may lead to their exclusion and of selection criteria; minimum level(s) of standards possibly required; indication of required information (self-declarations, documentation).

12) Type of public procurement procedure; where appropriate, reasons for use of an accelerated procedure (in open and restricted procedures and competitive procedures with negotiation);

13) Where appropriate, indication whether:

(1) a framework agreement is involved,

(2) a dynamic purchasing system is involved,

(3) an electronic auction is involved (in the event of open or restricted procedures or competitive procedures with negotiation).

14) Where the contract is to be subdivided into lots, indication of the possibility of tendering for one, for several or for all of the lots; indication of any possible limitation of the number of lots that may be awarded to any one tenderer. Where the contract is not subdivided into lots, indication of the reasons therefor, unless this information is provided in the individual report.

15) In the case of a restricted procedure, a competitive procedure with negotiation, a competitive dialogue or an innovation partnership, where recourse is made to the option of reducing the number of candidates to be invited to submit tenders, or to engage in dialogue: minimum and, where appropriate, proposed maximum number of candidates and objective criteria to be used to choose the candidates in question.

16) In the case of a competitive procedure with negotiation, a competitive dialogue or an innovation partnership, indication, where appropriate, of recourse to a staged procedure in order gradually to reduce the number of tenders to be negotiated or solutions to be discussed.

17) Where appropriate, particular conditions to which performance of the contract is subject.

18) Criteria to be used for award of the contract or contracts. Except where the most economically advantageous offer is identified on the basis of price alone, criteria

representing the most economically advantageous tender as well as their weighting shall be indicated where they do not appear in the tender documents or, in the event of a competitive dialogue, in the descriptive document.

- 19) Time limit for receipt of tenders (open procedures) or requests to participate (restricted procedures, competitive procedures with negotiation, dynamic purchasing systems, competitive dialogues, innovation partnerships).
- 20) Address to which tenders or requests to participate shall be transmitted.
- 21) In the case of open procedures:
  - (1) minimum time limit for validity of tender,
  - (2) date, time and place for the opening of tenders,
  - (3) persons authorised to be present at opening.
- 22) Language or languages in which tenders or requests to participate must be drawn up.
- 23) Where appropriate, indication whether:
  - (1) electronic submission of tenders or requests to participate will be required/accepted,
  - (2) electronic ordering will be used,
  - (3) electronic invoicing will be accepted,
  - (4) electronic payment will be used.
- 24) Information whether the contract is related to a project and/or programme financed by Union funds.
- 25) Name and address of the body responsible for legal protection. Precise information concerning deadlines for lodging requests, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
- 26) Date(s) and reference(s) of previous publications relevant to the public procurement(s) advertised in this notice.
- 27) In the case of recurrent procurement, estimated timing for further notices to be published.
- 28) Date of dispatch of the notice.
- 29) Indication whether the contract is covered by the GPA.
- 30) Any other relevant information.

## **II CONTRACT NOTICE (CONTRACTING ENTITY)**

- 1) Name, tax identification number, address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
- 2) Main activity exercised.
- 3) Where appropriate, indication whether the right to participate is reserved for economic operators referred to in Article 37 paragraph 1 of this law or whether the performance of a public contract is reserved in the context of sheltered employment programmes.

- 4) Type of the public procurement (supply, works or service, where appropriate, state if it is a framework agreement or a dynamic purchasing system), description (CPV codes). Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of those.
- 5) NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service.
- 6) For supplies and works:
  - (1) nature and quantity of the products to be supplied (CPV codes), including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the products to be procured or the nature and extent of the services to be provided and general nature of the work (CPV codes);
  - (2) indication of whether the suppliers may tender for some and/or all the products required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;
  - (3) for works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.
- 7) For services:
  - (1) The nature and quantity of the products to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
  - (2) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
  - (3) Reference of the law, regulation or administrative provision;
  - (4) Indication of whether legal persons shall indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
  - (5) Indication of whether service providers may tender for a part of the services concerned.
- 8) Where known, indication of whether authorisation to submit variants exists or not.
- 9) Time limits for delivery or completion or duration of service contract and, as far as possible, the starting date.
- 10) E-mail or internet address at which the procurement documents will be available for unrestricted and full direct access, free of charge.

Where unrestricted and full direct access, free of charge, is not available for the reasons set out in Article 45 of this law, an indication of how the procurement documents can be accessed.
- 11) In the case of restricted procedure, negotiated procedure with publication of a contract notice, competitive dialogue and innovation partnership:
  - (1) Final date for submission of requests to participate;

- (2) Address to which they shall be sent;
  - (3) Language or languages in which they shall be drawn up;
  - (4) Final date for dispatch of an invitation to submit (initial) tender, or to participate in the dialogue.
- 12) In the case of open procedure:
- (1) Final date for submission of tenders;
  - (2) Address to which they shall be sent;
  - (3) Language or languages in which they shall be drawn up;
- 13) In the case of open procedure:
- (1) Persons authorised to be present at opening;
  - (2) Date, time and place for the opening of tenders.
- 14) Where applicable, any deposits and guarantees required.
- 15) Main terms concerning financing and payment and/or references to the provisions in which those are contained.
- 16) A list and brief description of criteria regarding the personal situation of economic operators that may lead to their exclusion and of selection criteria; minimum level(s) of standards possibly required; indication of required information (self-declarations, documentation).
- 17) Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.
- 18) Minimum economic and technical conditions required of the economic operator to whom the contract is awarded.
- 19) Period during which the tenderer is bound to keep open his tender.
- 20) Where appropriate, particular conditions to which the performance of the contract is subject.
- 21) Criteria to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be indicated where they do not appear in the tender documents, or, in the case of restricted procedure, negotiated procedure with publication of a contract notice, competitive dialogue and innovation partnership or will not be indicated in the invitation to (initial) tender in the invitation to participate in dialogue.
- 22) Where appropriate, date(s) and the reference(s) to publication of the periodic information notice or of the notice of the publication of this notice on the contracting entity's profile to which the contract refers.
- 23) Name and address of the body responsible for legal protection. Precise information concerning deadlines for lodging requests, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
- 24) Date of dispatch of the notice.
- 25) Any other relevant information.

## **Part D**

### **I NOTICE ON THE CONDUCT OF THE NEGOTIATION PROCEDURE WITHOUT PUBLICATION OF A CONTRACT NOTICE**

- 1) Name, tax identification number, address including NUTS code, telephone, fax number, email and internet address of the contracting authority/entity and, where different, of the service from which additional information may be obtained.
- 2) Type of contracting authority/entity and main activity exercised.
- 3) Where appropriate, indication that the contracting authority/entity is a centralised purchasing body or that any other form of joint procurement is involved.
- 4) Type of contract, brief description of the procurement including CPV codes; where the contract is divided into lots, this information shall be provided for each lot.
- 5) NUTS code for the main location of works in case of works contracts or NUTS code for the main place of delivery or performance in supply and service contracts; where the contract is divided into lots, this information shall be provided for each lot.
- 6) Brief description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services. Where the contract is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.
- 7) Justification of the contracting authority/entity to award a contract without prior publication, explanation of specific cases and circumstances which justify its application.
- 8) The criteria for the award of contract.
- 9) Information whether the contract is related to a project and/or programme financed by Union funds.
- 10) Name and address of the body responsible for legal protection. Precise information concerning deadlines for lodging requests, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
- 11) Any other relevant information.

### **II NOTICE ON THE EXISTENCE OF THE QUALIFICATION SYSTEM**

- 1) Name, tax identification number, address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
- 2) Main activity exercised.
- 3) Where appropriate, indication whether the right to participate is reserved for economic operators referred to in Article 37 paragraph 1 of this law or whether the performance of a public contract is reserved in the context of sheltered employment programmes.
- 4) Purpose of the qualification system (description of the products, services or works or categories thereof to be procured through the system — CPV codes). NUTS code for the

main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service.

- 5) Conditions to be fulfilled by the economic operators in view of their qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of such conditions and verification methods is voluminous and based on documents available to interested economic operators, a summary of the main conditions and methods and a reference to those documents shall be sufficient.
- 6) Period of validity of the qualification system and the formalities for its renewal.
- 7) Reference to the fact that the notice acts as the contract notice.
- 8) Address where further information and documentation concerning the qualification system can be obtained (where different from the addresses mentioned under point 1).
- 9) Name and address of the body responsible for legal protection procedures. Precise information concerning time limits for lodging requests for protection, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
- 10) Where known, criteria to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria, shall be mentioned where they do not appear in the tenders documents or will not be indicated in the invitation to tender or to negotiate.
- 11) Where appropriate, indication whether:
  - (1) electronic submission of tenders or requests to participate will be required/accepted,
  - (2) electronic ordering will be used,
  - (3) electronic invoicing will be used,
  - (4) electronic payment will be accepted.
- 12) Any other relevant information.

## **Part E**

### **CONTRACT AWARD NOTICE, DISCONTINUATION OF PROCEDURE OR CANCELLATION OF PROCEDURE**

#### **I CONTRACT AWARD NOTICE, DISCONTINUATION OF PROCEDURE OR CANCELLATION OF PROCEDURE (CONTRACTING AUTHORITIES)**

- 1) Name, tax identification number, address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
- 2) Type of contracting authority and main activity exercised.

- 3) Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of joint procurement is involved.
- 4) CPV codes.
- 5) NUTS code for the main location of works in case of works contracts or NUTS code for the main place of delivery or performance in supply and service contracts.
- 6) Description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services. Where the contract is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.
- 7) Type of public procurement procedure; in the case of negotiated procedure without publication of a contract notice, justification.
- 8) Where appropriate, indication whether:
  - (1) a framework agreement was involved,
  - (2) a dynamic purchasing system was involved.
- 9) Criteria which were used for award of the contract(s). Where appropriate, indication whether the holding of an electronic auction was involved (in the event of open or restricted procedure or competitive procedure with negotiation).
- 10) Date of the conclusion of the contract(s) or of the framework agreement(s) following the contract award decision(s).
- 11) Number of tenders received with respect of each contract awarded, including:
  - (1) number of tenders received from economic operators which are small and medium enterprises,
  - (2) number of tenders received from a Member State or from a third country,
  - (3) number of tenders received electronically.
- 12) For each contract awarded, name, address including NUTS code, telephone, fax number, email address and internet address of the successful tenderer(s) including
  - (1) information whether the successful tenderer is small and medium enterprise,
  - (2) information whether the contract was awarded to a group of economic operators (joint venture, consortium or other).
- 13) Value of the successful tender (tenders) or the highest tender and lowest tender taken into consideration for the contract award or awards.
- 14) Where appropriate, for each contract awarded, value and proportion of contract which has been or will be subcontracted to third parties.
- 15) Where applicable, information on non-award:
  - (1) not a single tender or a request to participate has been submitted,
  - (2) all tenders are unacceptable;
  - (3) other reasons for discontinuation of the procedure.
- 16) Information whether the contract is related to a project and /or programme financed by Union funds.
- 17) Name and address of the body responsible for legal protection procedures. Precise information concerning the deadline for lodging requests, or if need be, the name,

address, telephone number, fax number and email address of the service from which this information may be obtained.

- 18) Date(s) and reference(s) of previous publications relevant to the contract(s) advertised in this notice.
- 19) Date of dispatch of the notice.
- 20) Any other relevant information.

## **II CONTRACT AWARD NOTICE, DISCONTINUATION OF PROCEDURE OR CANCELLATION OF PROCEDURE (CONTRACTING ENTITIES)**

- 1) Name, tax identification number, address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
- 2) Main activity exercised.
- 3) Nature of the contract (supplies, works or services and CPV codes; where appropriate state if it is a framework agreement).
- 4) Short description of the nature and quantity of the products, works or services provided.
- 5) :
  - (1) Form of the call for competition (notice on the existence of a system of qualification; periodic notice; contract notice);
  - (2) Date(s) and reference(s) of publication of the notice;
  - (3) In the case of contracts awarded without publication of a contract notice, indication of the relevant provision of Article 61 of this law.
- 6) Public procurement procedure (open procedure, restricted procedure, negotiated procedure without publication of a contract notice, competitive dialogue or innovation partnership).
- 7) Number of tenders received, specifying
  - (1) number of tenders received from economic operators which are small and medium enterprises,
  - (2) number of tenders received from a Member State or from a third country,
  - (3) number of tenders received electronically.In the case of multiple awards (lots, multiple framework agreements), this information shall be given for each award.
- 8) Date of the conclusion of the contract(s) or of the framework agreement(s) following the award decision(s).
- 9) Criteria which were used for award of the contract(s).
- 10) For each contract awarded, name, address including NUTS code, telephone, fax number, email address and internet address of the successful tenderer(s) including
  - (1) information whether the successful tenderer is small and medium enterprise,



- (2) information whether the contract was awarded to a group of economic operators (joint venture, consortium or other).
- 11) Value of the successful tender (tenders) or the highest tender and lowest tender taken into consideration for the contract award or awards.
  - 12) Price paid for bargain purchases (by taking advantage of using a particularly advantageous opportunity available only for a very short time at a price considerably lower than usual market prices) pursuant to Article 61 paragraph 12 of this law.
  - 13) Where applicable, information on non-award:
    - (1) not a single tender or a request to participate has been submitted,
    - (2) all tenders are unacceptable;
    - (3) other reasons for discontinuation of the procedure.
  - 14) Value and proportion of contract which has been or will be subcontracted.
  - 15) Name and address of the body responsible for legal protection procedures. Precise information concerning the deadline for lodging requests, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
  - 16) Country of origin of the product or service (the Republic of Serbia, European union or third country).
  - 17) Was the contract awarded to a tenderer who submitted a variant, in accordance with Article 136 of this law?
  - 18) Were any tenders excluded on the grounds that they were abnormally low, in accordance with Article 143 of this law?
  - 19) Date of dispatch of the notice.

## **Part F**

### **DESIGN CONTEST NOTICE (CONTRACTING AUTHORITY AND CONTRACTING ENTITY)**

- 1) Name, tax identification number, address including NUTS code, telephone, fax number, email and internet address of the contracting authority/entity and, where different, of the service from which additional information may be obtained.
- 2) Email or internet address at which the procurement documents will be available for unrestricted and full direct access, free of charge.

Where unrestricted and full direct access, free of charge, is not available for the reasons set out in Article 45 of this law, an indication of how the procurement documents can be accessed.
- 3) Type of contracting authority/entity and main activity exercised.
- 4) Where appropriate, indication whether the contracting authority/entity is a central purchasing body or that any other form of joint procurement is involved.
- 5) CPV codes; where the contract is divided into lots, this information shall be provided for each lot.

- 6) Description of the principal characteristics of the project.
- 7) Number and value of any prizes.
- 8) Type of design contest (open or restricted).
- 9) In the event of an open design contest, time limit for the submission of plans, projects or designs.
- 10) In the event of a restricted design contest:
  - (1) number of participants contemplated,
  - (2) criteria for the selection of participants,
  - (3) time limit for requests to participate.
- 11) Where appropriate, indication that the participation is restricted to a specified profession.
- 12) Criteria to be applied in the evaluation of the projects.
- 13) Indication whether the jury's decision is binding on the contracting authority/entity.
- 14) Payments to be made to all participants, if any.
- 15) Indication whether any contracts following the design contest will or will not be awarded to the winner or winners of the design contest.
- 16) Name and address of the body responsible for legal protection procedures. Precise information concerning the deadline for lodging requests, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
- 17) Date of dispatch of the notice.
- 18) Any other relevant information.

## **Part G**

### **NOTICE ON THE RESULTS OF THE DESIGN CONTEST (CONTRACTING AUTHORITY AND CONTRACTING ENTITY)**

- 1) Name, tax identification number, address including NUTS code, telephone, fax number, email and internet address of the contracting authority/entity and, where different, of the service from which additional information may be obtained.
- 2) Type of contracting authority/entity and main activity exercised.
- 3) Where appropriate, indication whether the contracting authority/entity is a central purchasing body or that any other form of joint procurement is involved.
- 4) CPV codes.
- 5) Description of the principal characteristics of the project.
- 6) Value of the prizes.
- 7) Type of design contest (open or restricted).
- 8) Criteria which were applied in the evaluation of the projects.
- 9) Date of the jury decision.
- 10) Number of participants.

- (1) Number of participants who are SMEs.
- (2) Number of participants from abroad.
- 11) Name, address including NUTS code, telephone, fax number, email address and internet address of the winner(s) of the contest and indication whether the winner(s) are small and medium enterprises.
- 12) Information whether the design contest is related to a project or programme financed by Union funds.
- 13) Date(s) and reference(s) of previous publications relevant to the project(s) concerned by this notice.
- 14) Date of dispatch of the notice.
- 15) Any other relevant information.

## **Part H**

### **CONTRACT MODIFICATION NOTICE (CONTRACTING AUTHORITY AND CONTRACTING ENTITY)**

- 1) Name, tax identification number, address including NUTS code, telephone, fax number, email and internet address of the contracting authority/entity and, where different, of the service from which additional information may be obtained.
- 2) CPV codes.
- 3) NUTS code for the main location of works in case of works contracts or NUTS code for the main place of delivery or performance in supply and service contracts.
- 4) Description of the procurement before and after the modification: nature and extent of the works, nature and quantity or value of supplies, nature and extent of services.
- 5) Where applicable, increase in price caused by the modification.
- 6) Description of the circumstances which have rendered necessary the modification.
- 7) Date of contract award decision.
- 8) Where applicable, the name, address including NUTS code, telephone, fax number, email address and internet address of the new economic operator or operators.
- 9) Information whether the contract is related to a project and /or programme financed by Union funds.
- 10) Name and address of the body responsible for legal protection procedures. Precise information concerning the deadline for lodging requests, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
- 11) Date(s) and reference(s) of previous publications relevant to the contract(s) concerned by this notice.
- 12) Date of dispatch of the notice.
- 13) Any other relevant information.

**Part I**  
**SOCIAL AND OTHER SPECIFIC SERVICES**

**I CONTRACT NOTICE**

**(referred to in Article 75 paragraph 3 of this Law)**

- 1) Name, tax identification number, address including NUTS code, email and internet address of the contracting authority/entity.
- 2) NUTS code for the main location of works in the case of works or NUTS code for the main place of delivery or performance in the case of supplies and services.
- 3) Brief description of the contract in question including CPV codes.
- 4) Conditions for participation, including
  - (1) where appropriate, indication whether the right to participate is reserved for economic operators referred to in Article 37 paragraph 1 of this law or whether the performance of a public contract is reserved in the context of sheltered employment programmes.
  - (2) where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.
- 5) Time limit(s) submission of tenders or requests to participate.
- 6) Brief description of the main features of the award procedure to be applied.

**II PRIOR INFORMATION NOTICE**

**(referred to in Article 75 paragraph 3 of this Law)**

- 1) Name, tax identification number, address including NUTS code, email and internet address of the contracting authority.
- 2) Brief description of the contract in question including the estimated total value of the contract and CPV codes.
- 3) As far as already known:
  - (1) NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services
  - (2) time-frame for delivery or provision of supplies, works or services and duration of the contract.
  - (3) conditions for participation, including:
    - where appropriate, indication whether the right to participate is reserved for economic operators referred to in Article 37 paragraph 1 of this law or whether the performance of a public contract is reserved in the context of sheltered employment programmes,
    - where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession,
  - (4) brief description of the main features of the award procedure to be applied.

- 4) A reference to the fact that interested economic operators shall advise the contracting authority of their interest in the contract or contracts and time limits for receipt of expressions of interest and address to which expressions of interest shall be transmitted.

### **III PERIODIC INDICATIVE NOTICE**

#### **(referred to in Article 75 paragraph 3 of this Law)**

- 1) Name, tax identification number, address including NUTS code, e-mail and internet address of the contracting entity.
- 2) Type of contracting entity and main activity exercised.
- 3) Brief description of the contract in question including CPV codes.
- 4) As far as already known:
  - (1) NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services,
  - (2) time-frame for delivery or provision of supplies, works or services and duration of the contract,
  - (3) conditions for participation, including:
    - where appropriate, indication whether the right to participate is reserved for economic operators referred to in Article 37 paragraph 1 of this law or whether the performance of a public contract is reserved in the context of sheltered employment programmes,
    - where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession,
  - (4) brief description of the main features of the award procedure to be applied.
- 5) A reference to the fact that interested economic operators shall advise the contracting entity of their interest in the contract or contracts and time limits for receipt of expressions of interest and address to which expressions of interest shall be transmitted.

### **IV NOTICE ON THE EXISTENCE OF THE QUALIFICATION SYSTEM**

#### **(referred to in Article 75 paragraph 3 of this Law)**

- 1) Name, tax identification number, address including NUTS code, e-mail and internet address of the contracting entity.
- 2) Type of contracting entity and main activity exercised.
- 3) Brief description of the contract in question including CPV codes.
- 4) As far as already known:
  - (1) NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services,
  - (2) time-frame for delivery or provision of supplies, works or services and duration of the contract,
  - (3) conditions for participation, including:

- where appropriate, indication whether the right to participate is reserved for economic operators referred to in Article 37 paragraph 1 of this law or whether the performance of a public contract is reserved in the context of sheltered employment programmes,
  - where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession,
  - (4) brief description of the main features of the award procedure to be applied.
- 5) A reference to the fact that interested economic operators shall advise the contracting entity of their interest in the contract or contracts and time limits for receipt of expressions of interest and address to which expressions of interest shall be transmitted.
  - 6) Period of validity of the qualification system and the formalities for its renewal.

## **V CONTRACT AWARD NOTICE**

### **(referred to in Article 75 paragraph 8 of this Law)**

- 1) Name, tax identification number, address including NUTS code, email and internet address of the contracting authority/entity.
- 2) Brief description of the contract in question including CPV codes.
- 3) NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services.
- 4) Number of tenders received.
- 5) Price or range of prices (maximum/minimum) paid.
- 6) For each award, name, address including NUTS code, email address and internet address of the successful economic operator or operators.
- 7) Any other relevant information.
- 8) Date of dispatch of the notice.

## **Part J**

### **VOLUNTARY EX ANTE TRANSPARENCY NOTICE**

- 1) Name, tax identification number, address including NUTS code, email and internet address of the contracting authority/entity and, where different, of the service from which additional information may be obtained.
- 2) Type of contracting authority/entity and main activity exercised.
- 3) Type of contract, short description including CPV codes.
- 4) Estimated value of procurement.
- 5) Justification of the contracting authority/entity for the award of contract without prior publication of a contract notice:
  - (1) In the case of negotiated procedure without publication of a contract notice, justification of the special cases and circumstances which justify its use.
  - (2) Where appropriate, justification for the award of the contract based on the exclusion from the application of the law.

- 6) Contract award criteria.
- 7) The name and contact details of the selected tenderer.
- 8) Information on the value of the contract which is intended to be awarded, or the highest tender and lowest tender taken into consideration.
- 9) Information whether the contract is related to a project and /or programme financed by Union funds.
- 10) Name and address of the body responsible for legal protection procedures. Precise information concerning the deadline for lodging requests, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
- 11) Any other relevant information.

**Part K**  
**NOTICE ON SUBMITTED REQUEST FOR PROTECTION OF RIGHTS**

- 1) Name, tax identification number, address including NUTS code, email and internet address of the contracting authority/entity and, where different, of the service from which additional information may be obtained.
- 2) Type of contracting authority/entity and main activity exercised.
- 3) Where appropriate, indication whether the contracting authority/entity is a central purchasing body or that any other form of joint procurement is involved.
- 4) Type of contract, short description including CPV codes; where the contract is divided into lots, this information shall be provided for each lot.
- 5) Type of public procurement procedure.
- 6) Stage of the public procurement procedure in which request for protection of rights was submitted.
- 7) Information whether the contracting authority/entity suspends further activities in the public procurement procedure.
- 8) Any other relevant information.

## **Annex 5**

### **CONTENTS OF PROCUREMENT DOCUMENTATION RELATING TO ELECTRONIC AUCTION**

Where contracting authorities/entities have decided to hold an electronic auction, the procurement documents shall include at least the following details:

- 1) the features, the values for which will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
- 2) any limits on the values which may be submitted, as they result from the specifications relating to the subject-matter of procurement;
- 3) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
- 4) the relevant information concerning the electronic auction process;
- 5) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
- 6) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.



## **Annex 6**

# **CONTENTS OF INVITATION TO SUBMIT A TENDER, INVITATION TO PARTICIPATE IN THE DIALOGUE, INVITATION TO NEGOTIATE, OR INVITATION TO SUBMIT REQUESTS**

**(referred to in Article 65 and 108 of the Law)**

1) The invitation to submit a tender, to participate in the dialogue or to negotiate must contain at least:

- (1) a reference to the contract notice published;
- (2) the deadline for the submission of the tenders, the address to which the tenders must be sent and the language or languages in which the tenders must be drawn up;
- (3) in the case of competitive dialogue the date and the address set for the start of dialogue and the language or languages used;
- (4) a reference to any possible adjoining documents to be submitted;
- (5) the criteria for the award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, the criteria representing the most economically advantageous tender, as well as their relative weighting or, where appropriate, the descending order of importance for such criteria, where they are not given in the contract notice, in the invitation to confirm interest, in the technical specifications or the descriptive document.

In the case of a competitive dialogue or an innovation partnership, the information referred to in point (2) shall not appear in the invitation to participate in the dialogue or to negotiate but it shall appear in the invitation to submit a tender.

2) When a call for competition is made by means of a periodic indicative notice, contracting entity shall before beginning the selection of tenderers or participants in negotiations invite all candidates to confirm their interest on the basis of detailed information on the contract concerned.

That invitation shall include at least the following information

- (1) nature and quantity, including all options concerning complementary contracts and, where possible, the estimated time available for exercising these options for renewable contracts, the nature and quantity and, where possible, the estimated publication dates of future contract notices in public procurement procedure for works, supplies or services;
- (2) type of procedure: restricted or negotiated procedure with publication;
- (3) where appropriate, the date on which the delivery of supplies or the execution of works or services is to commence or terminate;
- (4) where electronic access cannot be offered, the address and closing date for the submission of requests for procurement documents and the language or languages in which they are to be drawn up;
- (5) the address of the contracting entity which is to award the contract;
- (6) economic and technical conditions, financial guarantees and information required from economic operators;
- (7) the form of the contract which is the subject of the invitation to tender: purchase, lease, hire or hire-purchase, or any combination of these;

(8) the contract award criteria and their weighting or, where appropriate, the order of importance of such criteria, where this information is not given in the periodic indicative notice or the technical specifications or in the invitation to tender or to negotiate.

## Annex 7

### SOCIAL AND OTHER SPECIFIC SERVICES

CPV Code	Description
75200000-8; 75231200-6; 75231240-8; 79611000-0; 79622000-0 [Supply services of domestic help personnel]; 79624000-4 [Supply services of nursing personnel] and 79625000-1 [Supply services of medical personnel] from 85000000-9 to 85323000-9; 98133100-5, 98133000-4; 98200000-5; 98500000-8 [Private households with employed persons] and 98513000-2 to 98514000-9 [Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services]	Health, social and related services
85321000-5 and 85322000-2, 75000000-6 [Administration, defence and social security services], 75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 Education and training services to 80660000-8; from 92000000-1 to 92700000-8  79950000-8 [Exhibition, fair and congress organisation services], 79951000-5 [Seminar organisation services], 79952000-2 [Event services], 79952100-3 [Cultural event organisation services], 79953000-9 [Festival organisation services], 79954000-6 [Party organisation services], 79955000-3 [Fashion shows organisation services], 79956000-0 [Fair and exhibition organisation services]	Administrative social, educational, healthcare and cultural services
75300000-9	Compulsory social security service
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services
98000000-3; 98120000-0; 98132000-7; 98133110-8 and 98130000-3	Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services
98131000-0	Religious services

<p>55100000-1 to 55410000-7; 55521000-8 to 55521200-0 [55521000-8 Catering services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service]</p> <p>55520000-1 Catering services, 55522000-5 Catering services for transport enterprises, 55523000-2 Catering services for other enterprises or other institutions, 55524000-9 School catering services</p> <p>55510000-8 Canteen services, 55511000-5 Canteen and other restricted-clientele cafeteria services, 55512000-2 Canteen management services, 55523100-3 School-meal services</p>	<p>Hotel and restaurant services</p>
<p>79100000-5 to 79140000-7; 75231100-5</p>	<p>Legal services, to the extent not excluded pursuant to Article 12 point 4) of this law</p>
<p>75100000-7 to 75120000-3; 75123000-4; 75125000-8 to 75131000-3</p>	<p>Other administrative services and government services</p>
<p>75200000-8 to 75231000-4</p>	<p>Provision of services to the community</p>
<p>75231210-9 to 75231230-5; 75240000-0 to 75252000-7; 794300000-7; 98113100-9</p>	<p>Prison related services, public security and rescue services to the extent not excluded pursuant to Article 12 point 9) of this law</p>
<p>79700000-1 to 79721000-4 [Investigation and security services, Security services, Alarm-monitoring services, Guard services, Surveillance services, Tracing system services, Absconder-tracing services, Patrol services, Identification badge release services, Investigation services and Detective agency services] 79722000-1 [Graphology services], 79723000-8 [Waste analysis services]</p>	<p>Investigation and security services</p>
<p>98900000-2 [Services provided by extra-territorial organisations and bodies] and 98910000-5 [Services specific to international organisations and bodies]</p>	<p>International services</p>
<p>64000000-6 [Postal and telecommunications services], 64100000-7 [Post and courier services], 64110000-0 [Postal services], 64111000-7 [Postal services related to newspapers and periodicals], 64112000-4 [Postal services related to letters], 64113000-1 [Postal services related to parcels], 64114000-8 [Post office counter services],</p>	<p>Postal services</p>

64115000-5 [Mailbox rental], 64116000-2 [Post-restante services], 64122000-7 [Internal office mail and messenger services]	
50116510-9 [Tyre-remoulding services], 71550000-8 [Blacksmith services]	Miscellaneous services

## **Annex 8**

### **LIST OF INTERNATIONAL CONVENTIONS IN THE DOMAIN OF SOCIAL AND LABOUR LAW AND CONVENTIONS ON THE PROTECTION OF THE ENVIRONMENT**

- 1) Convention of International Labour Organisation (ILO), number 87 concerning the Freedom of Association and Protection of the Right to Organise, with Regulation on ratification of Convention (Official journal FNRS – International contracts, number 8/58);
- 2) Convention of International Labour Organisation (ILO), number 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, (Official journal FNRS – International contracts, number 11/58);
- 3) Convention of International Labour Organisation (ILO), number 29 concerning Forced or Compulsory Labour (Official journal no. 297-CHI 1932);
- 4) Convention of International Labour Organisation (ILO), number 105 concerning the Abolition of Forced Labour, with the Law on ratification of Convention (Official journal SRJ – International contracts, number 13/02);
- 5) Convention of International Labour Organisation (ILO), number 138 concerning Minimum Age for Admission to Employment, with the Law on ratification of Convention (Official journal SRJ – International contracts, number 14/82);
- 6) Convention of International Labour Organisation (ILO), number 111 concerning Discrimination in Respect of Employment and Occupation, with Regulation on ratification of Convention (Official journal FNRS – International contracts, number 3/61);
- 7) Convention of International Labour Organisation (ILO), number 100 concerning equal remuneration for men and women workers for work of equal value (Official journal FNRJ, number 12/52);
- 8) Convention of International Labour Organisation (ILO), number 182 concerning the Worst Forms of Child Labour i and ILO Recommendations number 190 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Official journal – International contracts, number 2/03);
- 9) The Vienna Convention for the Protection of the Ozone Layer with annexes I and II (Official journal – International agreements, number 1/90) and the Montreal Protocol on Substances That Deplete the Ozone Layer (Official journal SFRJ – International contracts, number 16/90 and Official journal of Serbia and Montenegro – International contracts, number 24/04);
- 10) Law confirming the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (the Basel Convention) - (Official journal SRJ – International contracts, number 2/99);
- 11) Law confirming the Stockholm Convention on Persistent Organic Pollutants (the Stockholm POP Convention) - (Official journal RS – International contracts, number 42/09);
- 12) Law confirming the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade as amended (Official journal RS – International contracts, no. 38/09).

## **Annex 9**

### **LIST OF LEGAL ACTS OF THE EUROPEAN UNION**

#### **I LIST OF LEGAL ACTS OF THE EUROPEAN UNION**

##### **(Article 4 paragraph 5 point 2 of this Law)**

Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria do not constitute special or exclusive rights within the meaning of Article 4 of this Law. The following lists procedures, ensuring adequate prior transparency, for granting authorisations on the basis of other legal acts of the Union which do not constitute 'special or exclusive rights' within the meaning of Article 4 of this Law:

- 1) granting authorisation to operate natural gas installations in accordance with the procedures laid down in Article 4 of Directive 2009/73/EC;
- 2) authorisation or an invitation to tender for the construction of new electricity production installations in accordance with Directive 2009/72/EC;
- 3) the granting in accordance with the procedures laid down in Article 9 of Directive 97/67/EC of authorisations in relation to a postal service which is not or shall not be reserved;
- 4) a procedure for granting an authorisation to carry on an activity involving the exploitation of hydrocarbons in accordance with Directive 94/22/EC;
- 5) public service contracts within the meaning of Regulation (EC) No 1370/2007 for the provision of public passenger transport services by bus, tramway, rail or metro which have been awarded on the basis of a competitive tendering procedure in accordance with Article 5(3) thereof, provided that its length is in conformity with Article 4(3) or (4) of that Regulation.

#### **II LIST OF LEGAL ACTS OF THE EUROPEAN UNION**

##### **(Article 134 paragraph 4 of this Law)**

Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles.

#### **III LIST OF LEGAL ACTS OF THE EUROPEAN UNION**

##### **(Article 173 paragraph 9 of this Law)**

##### **Transport or distribution of gas or heat**

Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC;

##### **Production, transmission or distribution of electricity**

Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC;

##### **Contracting entities in the field of postal services**

Directive 97/67/EC Common rules for the development of the internal market of Community postal services and the improvement of quality of service;

**Extraction of oil or gas**

Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons.