

134/2016 Coll.

ACT

of 19 April 2016

on Public Procurement

the Parliament has adopted the following Act of the Czech Republic:

BOOK ONE

GENERAL PROVISIONS

TITLE I

BASIC PROVISIONS

Section 1

Scope of regulation

This Act implements the relevant legislation of the European Union¹⁾ and regulates

- a) the public procurement rules including specific procedures preceding the award of public contracts,
- b) the obligations of economic operators with regard to public procurement and specific procedures preceding the award of public contracts,
- c) the publication of public procurement information,
- d) the special requirements for invoicing the performance of public contracts,
- e) the special grounds for termination of contractual obligations arising from public contracts,
- f) the Information System on Public Contracts,
- g) the qualified economic operators system,
- h) the certified economic operators system,
- i) the supervision over compliance with this Act.

Section 2

Award of the public contract

(1) For the purposes of this Act, an award of the public contract means the conclusion of a contract for pecuniary interest between a contracting authority and an economic operator which establishes the economic operator's obligation to supply supplies, provide services or execute works. Conclusion of the contract, which establishes an employment or similar relationship and contracts regulating cooperation of the contracting authority when awarding public contracts pursuant to sections 7 to 12, 155, 156, 189 and 190, shall not be considered an award of a public contract.

(2) Public supply contracts pursuant to Section 14 (1), public service contracts pursuant to Section 14 (2), public works contracts pursuant to Section 14 (3), services concessions pursuant to Section 174 (3) and works concessions pursuant to Section 174 (2) are public contracts.

(3) The contracting authority shall use the procurement procedure to award a public contract, unless otherwise provided below. Such obligation shall be considered fulfilled where the public contract is awarded on the grounds of a framework agreement by the procedure laid down in Title II of Book Six, under the dynamic purchasing system pursuant to Title III of Book Six or is acquired from the central purchasing body or through it pursuant to Section 9.

Section 3

Types of procurement procedures

For the purposes of this Act, procurement procedure means

- a) simplified below-threshold procedure,
- b) open procedure,

- c) restricted procedure,
- d) negotiated procedure with prior publication,
- e) negotiated procedure without prior publication,
- f) competitive dialogue,
- g) innovation partnership,
- h) concession procedure, or
- i) procedure to award a public contract in the simplified regime.

Section 4

Contracting authority

(1) Contracting authority means

- a) the Czech Republic; with regard to the Czech Republic its organisational units of the state²⁾ shall be considered independent contracting authorities,
- b) the Czech National Bank,
- c) a partially state budget-funded organisation,
- d) a territorial self-government unit or its partially budget-funded organisation,
- e) another legal person, provided that
 1. it was founded or established to satisfy public interest needs, which are not of industrial or commercial nature, and
 2. it is funded mainly by a different public authority, that may exercise its decisive influence over it or such public authority elects more than half of the members of its governing or controlling body.

(2) A contracting authority is a person that uses more than CZK 200,000,000 or more than 50 % of financial resources provided from

- a) the budget of any contracting authority,
- b) the European Union budget or public budget of a foreign state excluding cases where the public contract is performed outside the territory of the European Union.

(3) When awarding utilities public contracts pursuant to Section 151 including utilities concession contracts pursuant to Section 176 (3) the contracting authority shall be also the person referred to in Section 151 (2).

(4) Where the contracting authority defined in subsections (1) to (3) commences the procurement procedure, although it was not obliged to do so, it shall, with respect to the public contract being awarded, comply with this Act.

(5) Another person, that has commenced the procurement procedure, although it was not obliged to do so, shall be considered the contracting authority with respect to that procurement procedure and until it is terminated.

Section 5

Economic operator

Economic operator means any person or joint group of persons that offer supply of supplies, provision of services or execution of works. A branch of a business shall be also considered an economic operator; in such case the registered office of the branch of a business shall be considered the registered office of the economic operator.

Section 6

Principles of procurement

(1) When proceeding pursuant to this Act, the contracting authority shall act in a transparent and proportionate manner.

(2) The contracting authority shall treat economic operators equally and without discrimination.

(3) The contracting authority shall not restrict participation in the procurement procedure of such economic operators that have a registered office in

- a) a Member State of the European Union, European Economic Area or the Swiss Confederation (hereinafter the "Member State") or

b) another state with which the Czech Republic or European Union has concluded an international agreement on the basis of which access of economic operators from such states to the public contract being awarded is guaranteed.

TITLE II

COOPERATION OF THE CONTRACTING AUTHORITY DURING THE PUBLIC PROCUREMENT PROCESS

Section 7

Joint procurement

(1) Contracting authorities may award a public contract jointly. The contracting authority may also award a public contract jointly with a person that is not obliged to proceed pursuant to this Act.

(2) Prior to the launching of procurement procedure the persons participating in joint procurement shall conclude a written agreement which shall regulate their mutual rights and obligations relating to the procurement procedure and determine how to act in relation to third parties.

(3) Participating contracting authorities shall be jointly liable for compliance with this Act when jointly awarding public contracts except for actions that the participating contracting authority conducts in its own name and on its behalf.

Section 8

Cross-border joint procurement between contracting authorities from different Member States

(1) Where more contracting authorities jointly award the public contract and at least one of those persons is a contracting authority pursuant to the laws of another Member State, the governing law for public procurement and its review shall be the law of the Czech Republic or the law of that Member State. The governing law shall be determined by

a) international agreement, or

b) the agreement of persons participating in the joint procurement, unless the rule specified in paragraph a) is applied.

(2) Where the public contract is awarded by the person that was founded or established jointly by a contracting authority and a contracting authority with a registered office in a different Member State, such contracting authorities shall agree that the governing law for public procurement and its review will be the law of the Member State where the person, who founded or established in such manner,

a) has its registered office, or

b) performs its activities.

Section 9

Central purchasing body

(1) Central purchasing body means a contracting authority pursuant to Section 4 (1) or Section 4 (3) or a contracting authority governed by the law of a different Member State that provides centralised purchasing activities involving specific procedures pursuant to Book Six, in which

a) it acquires supplies or services that it subsequently assigns to one or more contracting authorities for the price which is not higher than the price they were acquired for, or

b) another contracting authority or contracting authorities acquire supplies, services or works.

(2) When using the centralised purchasing activities the central purchasing body shall be liable for compliance with this Act. However, the contracting authority shall be liable for compliance with this Act where it awards public contracts independently

a) under the dynamic purchasing system operated by the central purchasing body, or

b) on the grounds of a framework agreement concluded as a part of centralised purchasing activities.

(3) A group of contracting authorities, for whom the centralised purchasing activities are conducted, shall be defined in procurement documents by listing or by a different manner which enables participants to identify them; this does not apply to any procurement procedure in which the dynamic purchasing system is first set up.

(4) The central purchasing body and the contracting authority, for whom the centralised purchasing activities should be conducted, shall conclude a written agreement before the award of the contract at the latest, in which they shall regulate their mutual rights and obligations with regard to the centralised purchasing activities; without prejudice to Section 132 (2). Such agreement may also include other services related to public procurement provided by the central purchasing body.

(5) Where the central purchasing body solely conducts central purchasing activities of utilities public contracts, it shall proceed in accordance with such provisions of this Act that regulate utilities public contracts.

(6) Within the central purchasing activities the central purchasing body may acquire supplies, services or works even for itself.

(7) Where the central purchasing body is a contracting authority pursuant to the law of a different Member State, the governing law for a public contract awarded by the central purchasing body and its review shall be the law of a Member State in which it has its registered office.

Section 10

Ban on cooperation or choice of law

(1) The procedure pursuant to Section 8 or Section 9 shall not apply with regard to concession contracts referred to in Section 174. The procedure pursuant to Section 8 shall not apply with regard to public contracts in the field of defence and security referred to in Section 187. Choice of law of a different Member State pursuant to Section 8 and choice of central purchasing activity pursuant to Section 9 shall not be possible where the public contract being awarded is awarded by the procedure for the utilities public contract even though it is not a utilities public contract referred to in Book Seven.

(2) The contracting authority shall not avoid compliance with other legal regulations by way of cooperation of the contracting authority when awarding a public contract.

Section 11

Vertical cooperation

(1) A contract concluded between the contracting authority and another legal person as the economic operator shall not be considered the award of a public contract where

a) the contracting authority itself or in joint cooperation with other contracting authorities exercises over such person a control which is similar to that which it exercises over its own departments,

b) there is no capital participation of another person in the controlled person with the exception of the controlling contracting authority or controlling contracting authorities, and

c) more than 80 % of the activities of the controlled person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or controlling contracting authorities or by other legal persons controlled by that controlling contracting authority or controlling contracting authorities as its own departments.

(2) The contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person. Such control may also be exercised by another legal person, which is itself controlled by the contracting authority in the same way as its own department.

(3) The contracting authorities exercise joint control over the legal person referred to in paragraph a) of subsection (1) where

a) the decision-making bodies of the controlled legal person are composed or established on the basis of the concerted activity of all participating contracting authorities,

b) controlling contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of such controlled legal person, and

c) such controlled legal person does not pursue any interests which are contrary to those of the controlling contracting authorities.

(4) It shall not be regarded as the award of a public contract when the legal person controlled in accordance with paragraph a) of subsection (1) concludes a contract with an economic operator, in which there is no direct capital participation of a private person and who is

a) a contracting authority that exercises a control over such legal person, or

b) another legal person controlled by the contracting authority referred to in paragraph a).

(5) For the purposes of subsection (4), the private person shall be deemed a person different from the state, a body governed by public law, another legal person established by law or a legal person in which there is only participation of the state, a body governed by public law or another legal person established by law.

(6) Subsections (1) to (5) apply by analogy to the contracting authorities referred to in Section 4 (2).

Section 12

Horizontal cooperation

A contract concluded exclusively between contracting authorities shall not be considered an award of a public contract where

a) the contract establishes or implements cooperation between the contracting authorities with the aim of achieving their joint

- objectives in ensuring the needs in the general interest that such contracting authorities are established to ensure,
- b) the cooperation referred to in paragraph a) is governed solely by considerations relating to the public interest, and
- c) each of the participating contracting authorities performs on the market less than 20 % of the activities concerned by the cooperation referred to in paragraph a).

Section 13

Percentage of activities

(1) Provided that the activity which is the subject-matter of the contract is fully paid by its recipients, the average total turnover shall be taken into consideration to determine the percentage of activities referred to in Section 11 (1) c) or Section 12 c). Where such turnover may not be determined then, with regard to vertical cooperation, total costs of such a legal person shall be used as the grounds for calculation and with regard to horizontal cooperation, costs incurred with respect to activities relating to such cooperation shall be used as the grounds for calculation.

(2) Percentage of activities shall be calculated as the sum of the 3 years preceding the accounting period in which the contract was awarded. Where, because of the date on which the legal person commenced relevant activities or because of a reorganisation of its activities, it shall be sufficient to show that the requirements specified in subsection (1) is credible, in particular by means of business projections.

TITLE III

PUBLIC PROCUREMENT TYPES AND REGIMES

Chapter 1

Types of public contracts

Section 14

(1) Public supply contract means a public contract having as its object the acquisition of things, animals or controllable forces of nature, other than those that are part of public works contracts pursuant to subsection (3). The acquisition includes but is not limited to purchase, lease and usufructuary lease.

(2) Public service contract means a public contract having as its object the provision of services other than those referred to in subsection (3).

(3) Public works contract means a public contract having as its object

a) the provision of the service defined in division 45 of the main vocabulary of the single classification system of the European Union³⁾ (hereinafter referred to as "the main vocabulary of the single classification system"),

b) the execution of a work, or

c) the provision of related design works provided that they are awarded jointly with works referred to in paragraphs a) or b).

(4) For the purposes of this Act, work means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical functions. Notwithstanding the legal form of cooperation between the contracting authority and the economic operator, even the realisation of a work corresponding to the requirements specified by the contracting authority, meaning such work where the contracting authority exercises a decisive influence on the type or design of the work, shall be considered the public works contract.

Section 15

Main subject of public contract

(1) Public contracts which have as their subject two or more types of procurement shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject of the contract in question.

(2) In the case of public contracts consisting partly of services and partly of supplies, which are not public works contracts, the main subject shall be determined in accordance with which of the estimated values of the respective services or supplies is the highest.

(3) In other cases the main subject shall be determined with respect to the main object of a public contract.

Chapter 2

Estimated value

Section 16

Estimated value of procurement

(1) Prior to the launching of the procurement procedure or the award of a public contract on the grounds of the exclusion pursuant to Section 30, the contracting authority shall determine the estimated value of a procurement. The estimated value of a procurement means the amount expressed in terms of money that the contracting authority estimates to pay for performance of the public contract. The estimated value of a procurement shall be the net of the value-added tax.

(2) The calculation of the estimated value of a procurement shall include the total value of the performance which may arise from the public contract unless otherwise provided below.

(3) The calculation of the estimated value of a procurement shall include the value of estimated supplements to the contract which have been reserved in the procurement documents in accordance with Section 100. Where the contracting authority reserves performance pursuant to Section 100 (3) it shall state the estimated value of a reserved performance in the procurement documents.

(4) The calculation of the estimated value of a procurement shall include estimated prizes, remuneration or other payments, that the contracting authority provides to economic operators based on their participation in the procurement procedure.

(5) The estimated value shall be valid at the moment at which the contracting authority commences the procurement procedure, or in cases where the contract is not awarded using the procurement procedure, at the moment at which the public contract is awarded.

(6) The estimated value of a procurement shall be based on data and information of public contracts with the same or similar subject-matter; where the contracting authority does not have such data or information available, then it shall be based on information gained by means of market research, preliminary market consultations or by other appropriate means.

Section 17

Operational units

(1) The contracting authority shall determine the estimated value of a procurement for all its operational units.

(2) But where a separate operational unit is independently responsible for its procurement or certain categories thereof, the estimated value of a procurement may be determined at the level of the unit in question.

Section 18

Estimated value of public contracts being divided into lots

(1) Where a public contract is divided into lots, the estimated value shall be calculated as the total of the estimated values of all such lots notwithstanding whether such public contract is awarded

a) in one or more procurement procedures, or

b) by the contracting authority independently or in cooperation with another contracting authority or another person.

(2) The total of estimated values of all lots of the public contract pursuant to subsection (1) shall include the estimated value of all performances which constitute one functional unit and are awarded in temporal connection. Except for cases referred to in subsection (3) each lot of the public contract shall be awarded by procedures corresponding to the total estimated value of the procurement.

(3) Each lot of the public contract may be awarded by procedures corresponding to the estimated value of such lot, provided that the aggregate estimated value of the lots thus awarded shall not exceed 20 % of the aggregate estimated value and that the estimated value of each lot is lower than the amount determined by the government decree.

Section 19

Estimated value of public contracts which are regular in nature

(1) The estimated value of the public contract having as its subject-matter regularly acquired or continuing supplies or services shall be determined as

a) the actual price paid by the contracting authority for supplies or services of the same type during the preceding 12 months or the preceding accounting period which is longer than 12 months adjusted to the changes in quantity or prices which would occur in the course of the following 12 months, or

b) the total estimated value of individual supplies and services which will be awarded by the contracting authority during the following 12 months or during the accounting period which is longer than 12 months in cases where the data pursuant to

paragraph a) is not available.

(2) Where the term of the contract is greater than 12 months, the estimated value of the public contract determined pursuant to subsection (1) shall be adjusted pursuant to Section 20 and Section 21.

(3) Public contracts having such subject-matter, unit price of which is changing during the accounting period and the contracting authority acquires such supplies or services repeatedly according to its current needs, shall not be considered public contracts within the meaning of subsection (1).

Section 20

Specific rules for the estimated value of public supply contracts

With regard to public supply contracts the value to be taken as a basis for calculating the estimated contract value shall be as follows:

- a) payment for the total term of the contract, with regard to fixed-term public contracts,
- b) the estimated value for 48 months, with regard to public contracts without a fixed term or the term of which cannot be defined.

Section 21

Specific rules for the estimated value of public service contracts

(1) With regard to public service contracts, where the total contract price is not determined, the basis for calculating the estimated contract value shall be the amount of estimated payment

- a) for the total term of the contract, where that term is less than or equal to 48 months
- b) for 48 months in the case of the contract without a fixed term or with a term greater than 48 months.

(2) The contracting authority shall also involve in the estimated value

- a) the premium, commission and other corresponding payments, with regard to insurance services,
- b) the fees, commissions, interest and other corresponding payments, with regard to banking and other financial services,
- c) fees, commissions and other corresponding remuneration, with regard to design contracts.

Section 22

Specific rules for the estimated value of public works contracts

Where the contracting authority provides the economic operator with supplies, services or works that are necessary for executing the works required by the contracting authority, it shall include their value in the total estimated value.

Section 23

Estimated value in specific cases

(1) With regard to framework agreements and dynamic purchasing systems, the value to be taken into consideration shall be the maximum estimated value of all the public contracts envisaged for the total term of the framework agreement or the dynamic purchasing system.

(2) In the case of innovation partnerships, the contracting authority shall set the estimated value of the research and development activities to take place during all stages of the envisaged partnership as well as the total estimated value of the supplies, services or works to be developed and acquired under the innovation partnership; the estimated value of the procurement shall be the total of estimated values pursuant to the first sentence.

Chapter 3

Public procurement regime

Section 24

Public procurement regime shall be determined on the basis of its estimated value with the exception of the light regime pursuant to Section 129. The contracting authority shall keep the regime determined when the procurement procedure is launched even when it was allowed to use a different regime.

Section 25

Above-threshold public contract

The above-threshold public contract means a public contract having an estimated value equal to or greater than the threshold determined in the government decree that implements the relevant European Union legislation⁴⁾. The contracting

authority shall award the above-threshold public contract under the above-threshold regime pursuant to Book Four, unless it is awarded pursuant to Book Five, Book Six or Book Seven or the contracting authority has applied an exclusion from the obligation to award it using the procurement procedure.

Section 26

Below-threshold public contract

(1) Below-threshold public contract means a public contract having an estimated value below the threshold specified in Section 25 and exceeding the values laid down in Section 27.

(2) The contracting authority shall award the below-threshold public contract under the below-threshold regime pursuant to Book Three, unless it is awarded under the light regime or the contracting authority has applied an exclusion from the obligation to award it using the procurement procedure.

Section 27

Small-scale public contract

Small-scale public contract means a public contract having an estimated value equal to, or lower than,

- a) CZK 2,000,000 in the case of a public supply contract or a public service contract, or
- b) CZK 6,000,000 in the case of a public works contract.

Section 28

Further definitions

(1) For the purposes of this Act, the following definitions apply

- a) 'award criteria' mean all of the following requirements, conditions, criteria and rules laid down by the contracting authority including
 1. requirements for the conduct of the procurement procedure,
 2. conditions for participation in the procurement procedure,
 3. rules for reduction of the number of participants or reduction of the number of tenders and solutions,
 4. evaluation criteria,
 5. other requirements for awarding the public contract pursuant to Section 104,
- b) 'procurement documents' mean all written documents containing award criteria that are communicated or made available to participants at the moment of launching the procurement procedure including forms pursuant to Section 212 and invitations referred to in Annex 6 to this Act,
- c) 'qualification' means economic operator's capacity and ability to perform the public contract,
- d) 'request to participate' means data or documents proving the economic operator's qualifications, which were submitted in writing by the economic operator on the basis of procurement documents,
- e) 'indicative tender' means data or documents which were submitted in writing by the economic operator to the contracting authority on the basis of procurement documents,
- f) 'tender' means data or documents, which were submitted in writing by the economic operator to the contracting authority on the basis of procurement documents,
- g) 'identification data' means the corporate name or name, registered office, legal form, where a legal person is concerned and the corporate name or name or given name and surname, where a natural person is concerned,
- h) 'selected economic operator' means a participant which the contracting authority selected to be awarded the contract,
- i) 'electronic tool' means software or, where applicable, its parts which are connected to it by a network or electronic communication service and by means of this network or service it enables receipt of
 1. tenders,
 2. indicative tenders,
 3. requests to participate,
 4. requests to be admitted to the qualification system pursuant to Section 166 (5),
 5. requests to participate or designs in design contests, or
 6. auction values in electronic auctions,by electronic means and the processing of such receipts using digital compression and storage of data and making records of performed tasks which form an integral part of their software,
- j) 'contracting authority profile' means an electronic tool which enables unlimited remote access and in which the contracting authority publishes information and documents relating to its public contracts,
- k) 'life cycle' means all consecutive and/or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the subject-matter of the supply or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of

service or utilisation,

l) 'label' means any document, certificate or attestation confirming that the supply, service, works, process or procedures meet certain requirements,

m) 'electronic auction' means a repetitive electronic process in which participants present, by means of the electronic tool, new prices, revised downwards, or new values corresponding to different evaluation criteria, and which enables the formation of an up-to-date rank of tenders using automatic evaluation methods,

n) 'military material' means arms, munition and other material which is specifically designed, constructed or adapted for military purposes; the list of military material is referred to in Annex 1 to this Act,

o) 'abnormally low price' means tender price or costs presented by the participant which appear to be abnormally low in relation to the subject-matter of the public contract.

(2) If the request to participate, indicative tender or tender was not delivered to the contracting authority within the time limit or in the manner laid down in the procurement documents it shall not be considered as submitted and it shall not be taken into consideration during the procurement procedure.

TITLE IV

EXCLUSIONS

Section 29

General exclusions

The contracting authority is not obliged to award the public contract using the procurement procedure

a) where the conduct of the procurement procedure would threaten protection of the basic security interests of the Czech Republic and simultaneously any measures to enable the conduct of the procurement procedure may not be adopted,

b) where confidential information would be disclosed⁵⁾

1. by publication of the contract notice,
2. by publication of the written invitation to tender in the simplified below-threshold procedure, or
3. by making available or providing procurement documents unless it is possible to adopt measures pursuant to Section 36 (8) which would enable the conduct of the procurement procedure.

c) where special security measures, in accordance with other legal regulations⁶⁾, apply with regard to the award or performance of public contracts and simultaneously any such measure to enable the conduct of the procurement procedure may not be adopted,

d) where its main purpose is to enable the contracting authority to provide or operate a public communications network or to provide to the public one or more electronic communications services⁷⁾,

e) where it is awarded pursuant to special rules laid down in an international agreement concluded between the Czech Republic and non-Member State or subdivisions thereof and covering supplies, services or works intended for the joint implementation or exploitation of a project by their signatories; the Czech Republic shall inform the European Commission of conclusion of such agreement,

f) where it is awarded according to the binding rules of an international organisation,

g) where it is awarded according to the rules of an international organisation or international financing institution and

1. is fully financed by that organisation or institution, or
2. is co-financed for the most part by that organisation or institution and the contracting authority agreed with it on application of that rules of public procurement,

h) where its subject-matter is acquisition, lease or usufructuary lease of an immovable thing or in rem rights therein,

i) where it is a public contract

1. which is awarded by audiovisual or radio media operator⁸⁾ or audiovisual media service provider on request⁹⁾ for the acquisition, development, production or co-production of programme material intended for broadcasting or distribution, or
2. for purchase of broadcasting time or for programme provision, which is awarded on request to audiovisual or radio media service operators or to audiovisual or radio media service providers,

j) with regard to arbitration, conciliation and similar services,

k) with regard to legal services,

1. which an attorney-at-law provides as a part of representing a client in court, arbitration, conciliation or administrative proceedings before the court, tribunal, or another public authority or in proceedings before international institutions for disputes resolution,
2. which an attorney-at-law provides in preparation of any of the proceedings referred to in subparagraph 1 or where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of proceedings referred to in subparagraph 1,
3. which shall be provided by a notary on the basis of another legal regulation¹⁰⁾ with regard to document certification and

authentication services, or

4. at which on the basis of another legal regulation¹¹⁾ the contracting authority exercises, even occasionally, official authority,

l) with regard to

1. investment services¹²⁾ in connection with the issue, purchase, sale or another transfer of securities including booked securities or other financial instruments¹²⁾,

2. services provided by the Czech National Bank in exercising its authority under another legal regulation¹³⁾, or

3. operations conducted with the European Financial Stability Facility and the European Stability Mechanism,

m) with regard to loan for consumption or credit contract,

n) with regard to the services referred to in Annex 2 to this Act provided by persons established for a different purpose than profit-making,

o) with regard to public passenger transport by rail¹⁴⁾,

p) with regard to services awarded by a political party or a political movement as a part of an election campaign having as their object advertising campaign, promotional films production or promotional videos production,

q) with regard to a public service contract awarded by a contracting authority to another contracting authority or several contracting authorities on the basis of an exclusive right which they enjoy pursuant to a legal regulation,

r) with regard to a public contract having as its subject-matter research and development services with the exemption of activities referred to in Annex 2 to this Act, if

1. the contracting authority solely pays the price for conduct of research and development and

2. the contracting authority exclusively takes advantage of the benefits of that research and development in the conduct of its own affairs,

s) with regard to a public contract having as its subject matter producing of or trading with military material and such procedure is necessary to protect the essential security interests of the Czech Republic provided that such procedure shall not adversely affect competition on the European Union's internal market with regard to products that are not designed for military purposes, or

t) with regard to a public contract, procurement of which is regulated by special rules stemming from international agreement relating to presence of armed forces of foreign states in the territory of the Czech Republic or deployment of armed forces of the Czech Republic or armed security corps of the Czech Republic (hereinafter referred to as "armed units of the Czech Republic") to the territories of foreign states, which the Czech Republic is bound by.

Section 30

Exclusions for below-threshold public contracts

The contracting authority is not obliged to use the procurement procedure to award a below-threshold public contract

a) for supplies or services directly related to visits of constitutional officers of foreign states and representatives authorized by them in the Czech Republic and translation services related to visits of constitutional officers of the Czech Republic and representatives authorized by them abroad,

b) for supplies, services, works provided by the Prison Service of the Czech Republic to the Czech Republic,

c) for supplies or services relating to provision of humanitarian aid¹⁵⁾,

d) being awarded by intelligence service pursuant to Act on Intelligence Services,

e) being awarded by a representative office of the Czech Republic abroad or a government department operating and administering abroad,

f) having as its subject-matter acquisition, maintenance or renovation of property of the Czech Republic abroad,

g) having as its subject-matter acquisition of things or a set of things intended for a museum collection¹⁶⁾, cultural heritage¹⁷⁾ or another object having cultural significance¹⁸⁾,

h) for purchase of books and other information resources intended for library funds,

i) having as its subject-matter acquisition of an animal for purposes of farming or breeding or for the needs of performance of tasks of armed units of the Czech Republic,

j) having as its subject-matter production, purchase or repairs of military material for armed units of the Czech Republic,

k) being awarded for the purpose of securing defensibility of the Czech Republic by the Ministry of Defence to the person, in which it has exclusive ownership interest or mutually between such persons, or

l) being awarded at the time of deployment of armed units of the Czech Republic outside the territory of the European Union and for the purposes of operational needs it is required for them to be awarded to the contracting authorities situated in territories of that operations.

Section 31

Exclusions for small-scale public contracts

The contracting authority is not obliged to use the procurement procedure to award the small-scale public contract. However, when awarding a small-scale public contract, the contracting authority shall comply with principles laid down in Section 6.

TITLE V

MIXED PROCUREMENT

Section 32

(1) For the purposes of this Act, mixed contract means a contract which is partly a public contract that the contracting authority shall award using the procurement procedure and partly a contract to which such obligation does not apply.

(2) In the case of a mixed contract which parts are objectively separable, the contracting authority may award separate contracts for its separate parts or award it as a single public contract.

(3) Where the contracting authority awards a mixed contract as a single contract and it is not the case covered by subsection 4, it shall use the procurement procedure to award it. The contracting authority shall determine the estimated value of a mixed contract according to the value of the part which it is obliged to award using the procurement procedure.

(4) The contracting authority is not obliged to use the procurement procedure to award a mixed contract where its parts are objectively not separable and

a) exclusion pursuant to Section 29 a) b) c) or s) applies to one of its parts, or

b) the contracting authority is not obliged to award the part of the public contract using the procurement procedure and the remaining part constitutes a public contract in the fields of defence and security.

BOOK TWO

BASIC PROVISIONS GOVERNING PUBLIC PROCUREMENT PROCEDURES

Section 33

Preliminary market consultations

The contracting authority may conduct market consultations with experts or economic operators with a view to preparing procurement documents and informing economic operators of its plans and requirements, provided that it does not distort competition; provisions of Section 211 (1) apply by analogy.

Section 34

Prior information notice

The contracting authority is entitled to publish its intention to commence a procurement procedure through publication of a prior information notice. In that case, the contracting authority shall send the prior information notice for publication in the manner described in Section 212.

Section 35

Public contracts divided into lots

The contracting authority may divide a public contract into several lots, provided that it will not thus circumvent its duties laid down by this Act. Where the contracting authority awards several lots of a public contract within one procurement procedure, it shall determine the extent of these lots and set the rules for the participation of economic operators in the individual lots and for the awarding of these lots.

Section 36

Award criteria

(1) The award criteria shall not be determined so as to give, directly or indirectly, certain economic operators undue competitive advantage, or so as to create unjust obstacles to competition.

(2) The contracting authority shall specify the award criteria in the procurement documents or communicate them to participants during the negotiations.

(3) The contracting authority shall lay down the award criteria and provide them to economic operators in such detail that is necessary for the participation of economic operators in the procurement procedure. The contracting authority may not transfer its responsibility for the accuracy and completeness of the award criteria to the economic operators.

(4) Where any part of the procurement documents has been drafted by a person other than the contracting authority, with the exception of an attorney-at-law or a tax adviser, the contracting authority shall mark this part, along with identifying the person who drafted it. Provided that the procurement documents contain information that has resulted from a preliminary market consultation, the contracting authority shall mark such information in the procurement documents, identify the persons who have taken part in the preliminary market consultation and provide all essential information that was the subject of the preliminary market consultation.

(5) The contracting authority is entitled to set time limits necessary for the conduct of the procurement procedure. The length of the time limits shall be set so as to ensure reasonable time to complete the actions requested from the economic operators.

(6) Where appropriate, the contracting authority may enable a visit to the site of performance.

(7) After the commencement of the procurement procedure, the award criteria may be amended or supplemented only where provided for in this Act.

(8) The contracting authority may require the economic operator to adopt reasonable measures to protect the confidential nature of the information that the contracting authority provides or makes available in the conduct of the procurement procedure.

(9) The contracting authority may award prizes or payments to all or some of the participants provided that it lays down the rules for their award in the procurement documents.

Section 37

Conditions for participation in procurement procedure

(1) The contracting authority may lay down the conditions for participation in the procurement procedure as

- a) qualification conditions,
- b) technical specifications defining the subject-matter of the public contract, including conditions for the treatment of industrial or intellectual property rights created in connection with the performance of the public contract,
- c) business terms or other contractual conditions relating to the subject-matter of the public contract, or
- d) special conditions for the performance of the public contract, including, but not limited to, conditions regarding the environmental impact of the subject-matter of the public contract, social consequences resulting from the subject-matter of the public contract, the economic sphere or innovations.

(2) The contracting authority may lay down conditions for the content, form or means of submitting requests to participate, indicative tenders or tenders.

(3) The contracting authority shall not require an economic operator to have a specific legal form as a condition for participation in the procurement procedure.

(4) Economic operators offering to perform a public contract jointly shall not be required by the contracting authority to have a specific form of cooperation as a condition for participation in the procurement procedure. Where necessary for due performance of a public contract, the contracting authority may allow or require in the procurement documents that selected economic operators offering to perform the public contract jointly adopt a specific form of cooperation in order to perform the public contract.

(5) The contracting authority shall allow natural as well as legal persons to participate in a procurement procedure even where the service to be provided under the public contract may, in accordance with Czech law, be provided solely by a natural person or solely by a legal person, provided that the economic operator is entitled to provide such a service pursuant to the law of the Member State where it has its registered office.

(6) The contracting authority may reserve the right to participate in procurement procedure to certain economic operators pursuant to Section 38.

(7) The government may lay down by a decree

- a) some binding conditions for participation in procurement procedure in certain categories of public contracts as well as the extent of their application, or
- b) more detailed conditions for the assessment of the reasonableness of some of the conditions for participation in procurement procedure as well as the extent of their application.

Section 38

Reserved public contracts

(1) If so stipulated by the contracting authority in the contract notice or in the invitation to tender in a simplified below-threshold procedure, only an economic operator operating a sheltered workshop where at least 50 % of its total number of employees are disabled workers under the employment law may participate in the procurement procedure.

(2) The fact that the economic operator employs at least 50 % of disabled persons out of the total number of its employees in a sheltered workshop under Section 38 (1) shall be indicated in its tender along with a certificate from the Employment Office of the Czech Republic; the average adjusted number of employees for the calendar quarter preceding the commencement of the procurement procedure shall be conclusive.

(3) The fulfilment of conditions set out in Section 38 (1) may not be proven by other persons. In the event of joint participation in a procurement procedure each participant shall prove the fulfilment of the conditions set out in subsection (1) separately.

Section 39

Conduct of procurement procedure

1) When conducting the procurement procedure, the contracting authority shall act pursuant to the provisions of this Act, while simultaneously observing the defined award criteria. Where rules for the conduct of the procurement procedure are not laid down by this Act, they shall be determined by the contracting authority pursuant to the principles set out in Section 6.

(2) When conducting a procurement procedure, the contracting authority shall select the economic operator from among the participants on the basis of

- a) an assessment of the fulfilment of the conditions for participation in the procurement procedure,
- b) a reduction of the number of participants or a reduction of the number of indicative tenders or solutions provided that it is allowed by this Act for the specific type of procurement procedure and reserved by the contracting authority,
- c) an evaluation of tenders.

(3) The contracting authority shall define the criteria for a reduction of the number of participants or reduction of the number of indicative tenders or solutions or evaluation of tenders, where such criteria express objective and verifiable facts relating to

- a) the subject-matter of the public contract, including the environmental impact of the subject-matter of the public contract and social consequences resulting from the subject-matter of the public contract, or
- b) the qualifications of the economic operator.

4) Unless otherwise stipulated by this Act, the contracting authority may assess the fulfilment of the conditions for participation in the procurement procedure before or after the evaluation of tenders. In respect of the selected economic operator, the contracting authority shall carry out an evaluation of its fulfilment of the conditions for participation in the procurement procedure and an evaluation of its tender in any case.

(5) The contracting authority shall assess the fulfilment of the conditions for participation or evaluate the criteria pursuant to subsection (3) on the basis of data, documents, samples or models provided by the participant. The contracting authority may verify the credibility of the data, documents, samples or models provided and it may also acquire them itself. The contracting authority may subject the samples to tests and rely on the outcomes of such tests.

(6) If the participant has submitted samples, the contracting authority shall return or pay the value of these samples without undue delay, upon the participant's written request and after the completion of the procurement procedure. In the procurement documents, the contracting authority may reserve to the economic operator the duty to take over the submitted samples after the completion of the procurement procedure.

Section 40

Award period

(1) The contracting authority may lay down an award period, which shall be understood as a time limit throughout which the participants may not withdraw from the procedure. The award period shall run from the expiry of the time limit for the submission of tenders. The award period shall be set out reasonably with regard to the type of the procurement procedure and the subject-matter of the public contract.

(2) The award period shall be suspended for the period of time during which the contracting authority shall not enter into a contract pursuant to Section 246.

(3) The contracting authority shall send notice of the selection of the economic operator within the award period, unless

- a) it agrees otherwise with the participants, or
- b) the procurement procedure was terminated before the expiry of the award period.

(4) If the contracting authority, contrary to subsection (3), does not send the notice of the selection of an economic operator within the award period, the procurement procedure is conclusively presumed to be terminated. In that case, the contracting authority shall reimburse the participants for the costs reasonably incurred in connection with their participation in the procurement procedure.

Section 41

Security

(1) If the contracting authority sets an award period, it may require in the procurement documents the participant to provide a security within the time limit for the submission of tenders.

(2) The contracting authority shall establish the amount of the security in the procurement documents as an absolute sum amounting up to 2 % of the estimated value of the public contract, or up to 5 % of the estimated value of the public contract in the case that an electronic auction is used.

(3) The participant shall provide the security in the form of

- a) a deposit of a sum of money into the account of the contracting authority (hereinafter referred to as 'the pecuniary security').
- b) a bank guarantee to the benefit of the contracting authority, or
- c) a suretyship insurance to the benefit of the contracting authority.

(4) The participant shall demonstrate in its tender that it has provided the security

- a) by communicating to the contracting authority the data of the payment made, where a pecuniary security is concerned,
- b) by submitting the original of a guarantee certificate containing the obligation to pay a security to the contracting authority under the conditions laid down in subsection (8), where a bank guarantee is concerned, or
- c) by submitting a written declaration of the insurer containing the obligation to pay a security to the contracting authority under the conditions laid down in subsection (8), where suretyship insurance is concerned.

(5) If the security is provided in the form of a bank guarantee or suretyship insurance, the participant shall ensure that it stays in force throughout the entire award period.

(6) The contracting authority shall return without undue delay the pecuniary security, including interest accounted by the relevant financial institution, the original of the guarantee certificate or the written declaration made by the insurer

- a) after the expiry of the award period, or
- b) after the participation of the participant in the procurement procedure terminates before the end of the award period.

(7) The contracting authority is obliged to keep a copy of the guarantee certificate or the written declaration of the insurer in the procurement documents.

(8) The contracting authority is entitled to payment from the security, including interest accounted by the relevant financial institution, provided that the participant's participation in the procurement procedure terminated after its exclusion pursuant to Section 122 (5) or Section 124 (2).

Section 42

Committee and invited experts

(1) The contracting authority may entrust a committee to carry out actions pursuant to this Act; without prejudice to the other legal regulations governing the method of decision-making by the contracting authority and to the responsibility of the contracting authority for complying with the provisions set out by this Act. For the purposes of this Act, the actions made by the committee shall be regarded as acts made by the contracting authority.

(2) In respect of public contracts with an estimated value exceeding CZK 300,000,000, the contracting authority shall ensure that the evaluation of tenders is carried out by a committee having at least 5 members, with a majority of them possessing relevant professional qualifications related to the subject-matter of the public contract.

(3) The contracting authority may also use the opinions of invited experts for its decision-making; this does not affect the responsibility of the contracting authority for complying with the provisions set out by this Act.

Section 43

Contractual representation of the contracting authority

(1) When carrying out actions under this Act related to a procurement procedure, the contracting authority may have another person to represent it on the grounds of the contract. This does not affect the responsibility of the contracting authority for complying with the provisions set out by this Act.

(2) The representative shall not carry out a selection of an economic operator, exclude a participant from the procurement procedure, cancel the procurement procedure or make a decision on objections; this does not apply to a corporate agent or a founder representing a partially budget-funded organisation the founder of which is the representative.

Section 44

Conflict of interest

(1) The contracting authority shall act so as no conflict of interest occurs. In the case of the procedure under Section 42 or Section 43, the contracting authority shall request a written declaration from all committee members, invited experts or persons representing the contracting authority confirming that they have no conflict of interest. If the contracting authority finds out that a conflict of interest has occurred, it will adopt corrective measures to remove it.

(2) A conflict of interest means a situation where the interests of the persons that

- a) are involved in the conduct of the procurement procedure, or
- b) have or could have an influence on the result of the procurement procedure, endanger their impartiality or independence in relation to the procurement procedure.

(3) For the purposes of this Act, a conflict of the persons stated under subsection (2) shall be understood as an interest in acquiring a personal advantage or reducing the property or other benefit of the contracting authority.

Section 45

Submission of documents

(1) Where this Act or the contracting authority requires a document to be submitted, the economic operator shall submit a copy of the document, unless this Act stipulates otherwise. When proceeding under Section 46 (1), the contracting authority may require the submission of the original or certified copy of the document.

(2) Where the contracting authority requires a document to be submitted and the economic operator is not able to submit the requested document for reasons that cannot be attributed to it, the economic operator is entitled to submit an equivalent document.

(3) Where this Act or the contracting authority requires a document to be submitted pursuant to the legal order of the Czech Republic, the economic operator may submit a similar document in accordance with the legal order of the state where this document is issued; this document shall be submitted along with its translation into the Czech language. Where the contracting authority has doubts regarding the correctness of the translation, it may require the submission of a certified translation of the document into the Czech language made by a court appointed interpreter/translator registered in the list of court appointed experts and interpreters/translators¹⁹⁾. A document in the Slovak language and a certificate of education in the Latin language shall be submitted without a translation. Where pursuant to the relevant legal order the required document is not issued, it may be substituted by an affirmation.

(4) The economic operator may comply with the duty to submit a document by making a reference to relevant information kept in the public administration information system²⁰⁾ or in a similar system kept in another Member State that enables unlimited long-distance access. Such a reference shall contain the internet address, credentials and data for the lookup of the requested information, where such data is necessary.

Section 46

Explanation or supplementing of data, documents, samples or models

(1) In order to ensure the proper conduct of the procurement procedure, the contracting authority may require a participant to explain the data, documents, samples or models submitted or to supplement other or missing data, documents, samples and models within a reasonable time limit. The contracting authority may make such a request repeatedly and may even extend the prescribed time limit or waive a lapsed time limit.

(2) After the expiry of the time limit for the submission of tenders, the tender cannot be altered, unless this Act stipulates otherwise; however, upon request made under subsection (1), the tender may be supplemented with data, documents, samples or models that will not be evaluated according to the evaluation criteria. In that case, a supplementation of the data providing a proof of the fulfilment of the conditions for participation shall not be considered an alteration of the tender, whereas the facts conclusive for assessing the fulfilment of the conditions for participation may occur even after the expiry of the time limit for the submission of tenders.

(3) An amendment of an itemized budget shall also be considered an explanation, provided that the total tender price or another criterion for evaluating tenders is not affected.

Section 47

Participant

(1) An economic operator becomes a participant at the moment when

- a) it expresses a preliminary interest pursuant to Section 58 (5) or Section 129 (4),
- b) it submits a request to participate or a tender, or
- c) it commences negotiations with the contracting authority within the procurement procedure.

(2) The participation of a participant excluded from the procurement procedure terminates at the moment when

- a) the time limit for the submission of objections against exclusion expires, provided that the participant has not filed any objections,
- b) in the event that the participant files such objections, the time limit for submitting a petition under Section 251 (2) or (3) expires, provided that the participant has not submitted such a petition, or
- c) in the event that the participant submits a petition under Section 251 (1), a decision on a discontinuance of administrative proceedings or a rejection of the tender comes into effect.

(3) When evaluating tenders or carrying out an electronic auction, the contracting authority is not obliged to take account of the participant excluded from the procurement procedure whose participation in the procurement procedure has not yet terminated; this does not apply to a situation where the exclusion of a participant from a procurement procedure has been cancelled.

(4) The participation in a procurement procedure also terminates

- a) by a withdrawal of the participant from the procurement procedure at a time other than during the award period, or
- b) by the expiry of the time limit for the submission of requests to participate, indicative tenders or tenders in respect of participants who have not submitted a request to participate, an indicative tender or a tender.

Section 48

Exclusion of a participant from a procurement procedure

(1) The contracting authority may exclude a participant from a procurement procedure at any time during the procurement procedure only on the grounds laid down by this Act.

2) The contracting authority may exclude a participant from a procurement procedure provided that the data, documents, samples or models submitted by the participant

- a) do not meet the award criteria or the participant has not submitted them within the prescribed time limit,
- b) have not been explained or supplemented by the participant upon request made pursuant to Section 46, or
- c) do not correspond to reality and have had or can have an influence on the assessment of the conditions for participation or on the fulfilment of the evaluation criteria.

(3) The contracting authority shall exclude a participant from the procurement procedure if the participant has failed to provide proof of the payment of the requested security or has failed to ensure the security for the entire duration of the award period.

(4) The contracting authority may exclude a participant from the procurement procedure provided that the tender submitted by the participant contains an abnormally low tender price that has not been justified by the participant.

(5) The contracting authority may exclude a participant from the procurement procedure on grounds of unsuitability provided that it demonstrates that

- a) the performance offered by the economic operator would result in a failure to comply with the duties set out in provisions of environmental, social and labour law or collective agreements relating to the subject-matter of the public contract.
- b) there is a conflict of interest, and another corrective measure, except for a cancellation of the procurement procedure, is not possible,
- c) competition has been distorted by a previous involvement of the participant during preparations for the procurement procedure, other corrective measures are not possible and the participant has failed to prove upon the contracting authority's request that competition has not been distorted,
- d) in the past 3 years from the commencement of the procurement procedure, the participant has shown grave or long-term deficiencies while performing a prior contract with the contracting authority awarding the public contract or with another contracting authority, which caused damage, led to an early termination of the prior contract or other comparable sanctions,
- e) the participant has made an unjustified attempt to influence the decision made by the contracting authority within the procurement procedure or has made an unjustified attempt to obtain non-public information that could provide it with undue advantages during the procurement procedure, or
- f) in the past three years prior or after to the commencement of the procurement procedure, the participant committed a grave professional misconduct, which renders its integrity questionable, including a misconduct for which it has been imposed a disciplinary punishment or a disciplinary measure under separate legal regulations²¹⁾.

(6) The contracting authority may also exclude a participant from the procurement procedure on the grounds of unsuitability provided that the contracting authority has sufficiently plausible indications based on trustworthy information to conclude that the participant has, in relation to the public contract, being awarded entered into a contract prohibited by another legal regulation²²⁾ with other persons .

7) The contracting authority may exclude from the procurement procedure a participant that is a joint-stock company or has a legal form similar to a joint-stock company and has issued other than exclusively booked shares.

(8) The contracting authority shall exclude a selected economic operator from participation in the procurement procedure provided that the contracting authority finds out that there are grounds for exclusion pursuant to subsection (2) or that it may prove that there are grounds for exclusion pursuant to paragraphs a) b) c) of subsection (5).

(9) In respect of the selected economic operator, the contracting authority shall verify that there are grounds for exclusion pursuant to subsection (7) on the basis of information kept in the Commercial Register. Provided that the information kept in the Commercial Register shows that there are grounds for exclusion pursuant to subsection (7), the contracting authority shall exclude the participant from the procurement procedure. If the selected economic operator has its registered office abroad and is a joint-stock company or has a legal form similar to a joint-stock company, the contracting authority shall require it to submit an affirmation in writing within a reasonable time limit showing which persons are holders of shares whose aggregate nominal value exceeds 10 % of the registered capital of the participant, and indicating the source on which the information on the amount of the share of shareholders is based; this request shall be considered a request under Section 46.

(10) The provisions of Section 48 (7) and (9) do not apply to a participant that is a joint-stock company whose shares in the aggregate nominal value of 100 % are owned by a municipality pursuant to the Act on Municipalities or by a region pursuant to the Act on Regions.

(11) The contracting authority shall send a notice of the exclusion of a participant from the procurement procedure with an explanation to the excluded participant without delay.

Section 49

Corrective measures

(1) Where the contracting authority establishes that it has proceeded contrary to this Act, it shall adopt a necessary and reasonable corrective measure at any time in the conduct of the procurement procedure. For the purposes of this Act, a corrective measure means actions carried out by the contracting authority that remedies the previous procedure that is in breach of this Act.

(2) The contracting authority shall adopt a corrective measure consisting in cancelling the decision to cancel the procurement procedure if it finds out that this decision has been made contrary to law, even if it has not obtained objections against such a decision; the contracting authority may, however, adopt such a corrective measure only within the time limit within which participants could file objections against the decision to cancel the procurement procedure.

Section 50

Notice of selection

The contracting authority shall send a notice of selection to all participants, specifying the identification data of the selected economic operator and the justification of the selection, unless otherwise provided below.

Section 51

Termination of procurement procedure

1) A procurement procedure is terminated by the conclusion of a contract or a framework agreement, by setting up a dynamic purchasing system or, in the event that the procurement procedure is cancelled, at the moment stipulated in subsection (2).

(2) If a procurement procedure is cancelled, it is terminated

a) at the moment of expiry of the time limit in which all participants could file objections against the cancellation of the procurement procedure by the contracting authority, where such objections have not been filed,

b) in the event that objections against the cancellation of the procurement procedure by the contracting authority have been filed, at the moment of expiry of the time limit for the submission of a petition pursuant to Section 251 (2) or (3), where the petition has not been submitted,

c) in the event that a petition was submitted pursuant to Section 251 (1) against the cancellation of the procurement procedure by the contracting authority, at the moment when a decision to discontinue the administrative proceedings or a rejection of the petition comes into force, or

d) at the moment when a decision to cancel the procurement procedure under Section 263 comes into force.

(3) The contract or framework agreement shall comply with the award criteria and the tender submitted by the selected economic operator and shall be made in writing.

(4) Before the termination of the procurement procedure, the contracting authority may commence a procurement procedure with a similar subject-matter of the public contract only where

a) it is required so by the operating needs of the contracting authority and

b) the public contract will only be awarded to the necessary extent and for a necessary period of time.

BOOK THREE

BELOW-THRESHOLD REGIME

Section 52

Choice of procurement procedures

To award a public contract in the below-threshold regime, the contracting authority may apply

- a) a simplified below-threshold procedure, with the exception of a public works contract whose estimated value exceeds CZK 50,000,000, or
- b) types of above-threshold procedures; in that case the contracting authority shall proceed pursuant to Book Four by analogy, whereas
 1. the contracting authority may apply a negotiated procedure with prior publication even if the conditions set out in Section 60 are not met,
 2. a negotiated procedure without prior publication shall comply with the condition of impossibility to observe the time limits for a simplified below-threshold procedure, provided that it concerns a below-threshold public contract that could otherwise be awarded by the contracting authority in a simplified below-threshold procedure,
 3. the provisions of Book Four apply to the time limits laid down in Section 54.

Section 53

Simplified below-threshold procedure

(1) The contracting authority shall commence a simplified below-threshold procedure by publication of an invitation to tender on the contracting authority profile under Section 214 by which it shall call an unlimited number of economic operators to submit tenders. The contracting authority may send the invitation only to some economic operators, in which case the invitation shall be sent to at least 5 economic operators. The invitation to tender shall contain the elements defined in Annex No. 6 to this Act.

(2) The contracting authority shall not negotiate the submitted tenders with the participants.

(3) The procurement documents shall be made public on the contracting authority profile for the entire duration of the time limit for the submission of tenders. Provisions of sections 96 to 100 apply to the procurement documents and award criteria by analogy; this does not apply to the time limit for the publication of explanation of the procurement documents under Section 98 (1) a) and to the time limit for a visit to the site of performance under Section 97.

(4) The contracting authority may apply individual procurement procedure rules to the above-threshold regime. The contracting authority may also apply other criteria for the qualification of economic operators than those specified in Book Four; provisions of sections 81 to 85, 87 and 88 apply by analogy. Economic operators shall submit their qualification documents within their tenders in copies and may substitute them by an affirmation or a European Single Procurement Document pursuant to Section 87. When conducting the procurement procedure, the contracting authority may request the submission of the originals or certified copies of the qualification documents. Documents demonstrating basic qualifications under Section 74 and professional qualifications under Section 77 (1) shall demonstrate the fulfilment of the required qualification criterion not later than 3 months before the date of the submission of the tender. The contracting authority is not entitled to reduce the number of participants pursuant to Section 111 or reduce the number of indicative tenders pursuant to Section 112. In respect of the technical requirements of a public works contract, Section 92 apply by analogy.

(5) If the contracting authority reserves the right to do so in the procurement documents, it may publish the notice of exclusion of a participant from the procurement procedure or the notice of selection of an economic operator on the contracting authority profile. In that case, the notices shall be considered to be delivered to all participants at the moment of their publication.

(6) In respect of the submission and evaluation of tenders and the selection of an economic operator, sections 107 to 110 and 114 to 122 apply by analogy. The contracting authority may also set criteria other than those stipulated in Section 116 as criteria of quality, provided that they are based on objective facts relating to the person of the economic operator or to the subject-matter of the public contract. The contracting authority shall allow all participants upon their request to inspect the written report on the evaluation of tenders and to make extracts, copies or transcripts.

(7) The procedure used for terminating a procurement procedure is governed by the provisions of sections 124 to 127 by analogy.

(8) The contracting authority shall publish the notice of cancellation of a simplified below-threshold procedure on the contracting authority profile within 5 working days from the decision to cancel the procurement procedure.

Section 54

Time limits for below-threshold public contracts

(1) The time limit for the submission of tenders in a simplified below-threshold procedure shall be set by the contracting authority for not less than 11 working days from the commencement of the procurement procedure.

(2) The time limit for the submission of tenders in an open procedure shall be set by the contracting authority for not less than

- a) 15 working days from the commencement of the procurement procedure in the case of public supply contracts and public service contracts, or
- b) 20 working days from the commencement of the procurement procedure in the case of public works contracts.

(3) The contracting authority shall set the time limit for not less than 15 working days from the commencement of the procurement procedure or from sending a call for publication in the case of

- a) a request to participate in a restricted procedure or in a negotiated procedure with prior publication,
- b) an indicative tender in a negotiated procedure with prior publication, or
- c) a tender in a restricted procedure.

(4) The time limit specified in Section 54 (2) may be shortened by up to 5 working days in the event that the contracting authority has published a prior information notice which was sent for publication between 16 working days and 12 months before the date on which the contract notice was sent.

(5) In respect of a below-threshold public contract, the contracting authority shall publish the explanation of the procurement documents not less than 4 working days before the expiry of the time limit for the submission of tenders.

(6) In respect of a below-threshold public contract, the contracting authority shall set the time limit for a visit to the site of performance so that it could take place not later than 5 working days before the expiry of the time limit for the submission of tenders.

BOOK FOUR

ABOVE-THRESHOLD REGIME

TITLE I

CHOICE OF THE TYPE OF PROCUREMENT PROCEDURE

Section 55

Where awarding a public contract in the above-threshold regime, the contracting authority may apply an open procedure or a restricted procedure as well as, provided that the conditions stipulated below are fulfilled, a negotiated procedure with prior publication, a negotiated procedure without prior publication, a competitive dialogue procedure or an innovative partnership procedure.

TITLE II

OPEN PROCEDURE

Section 56

(1) The contracting authority shall commence the open procedure by sending a contract notice for publication in the manner specified in Section 212, by means of which it invites an unlimited number of economic operators to submit tenders.

(2) The contracting authority shall not negotiate the submitted tenders with the participants.

(3) Economic operators shall submit their qualification documents within their tenders.

Section 57

Time limits in an open procedure

(1) The contracting authority shall set the time limit for the submission of tenders in an open procedure for not less than 30 days from the commencement of the procurement procedure. The time limit for the submission of tenders shall be extended

- a) by five days in the event that the contracting authority does not allow tenders to be submitted by electronic means,
- b) by five days in the event that the contracting authority proceeds pursuant to Section 96 (2); this does not apply to cases referred to in paragraph b) of subsection (2).

(2) In respect of public supply contracts or public service contracts, the time limit for the submission of tenders may be shortened to not less than 15 days where

a) the contracting authority published a prior information notice which was sent for publication between 35 days and 12 months before the date on which the contract notice was sent, or

b) urgent circumstances unforeseeable by and not attributable to the contracting authority renders impracticable the time limit laid down in subsection (1); the contracting authority shall justify such urgency in the procurement documents.

TITLE III

RESTRICTED PROCEDURE

Section 58

(1) The contracting authority shall commence the restricted procedure by sending a contract notice for publication in the manner specified in Section 212, by means of which it invites an unlimited number of economic operators to submit requests to participate.

(2) The contracting authority defined in Section 4 (1) c) d) e) may also commence the restricted procedure by sending a prior information notice under Section 34 for publication in the manner specified in Section 212 provided that it invites economic operators to express preliminary interest. In this case, by sending the prior information notice the contracting authority fulfils the duties for which this Act otherwise requires sending a contract notice.

(3) After the expiry of the time limit for the submission of requests to participate, the contracting authority shall assess the qualifications of participants, exclude from the procurement procedure those participants who have not demonstrated that they meet the qualification requirements, and invite the non-excluded participants to submit tenders. The invitation to tender shall contain the elements defined in Annex No. 6 to this Act.

(4) A tender may only be submitted by a participant who has been invited to submit a tender. The invited participants may not submit a joint tender. The contracting authority shall not negotiate the submitted tenders with the participants.

(5) If the restricted procedure is commenced by the sending of a prior information notice, economic operators may express their preliminary interest in any form. The contracting authority shall invite in writing all participants who have expressed preliminary interest to submit requests to participate. The invitation to submit requests to participate shall contain the elements defined in Annex No. 6 to this Act. The contracting authority shall send the invitation to submit requests to participate not sooner than 35 days from sending the prior information notice for publication and not later than 12 months after sending the prior information notice for publication.

Section 59

Time limits in a restricted procedure

(1) The contracting authority shall set the time limit for the submission of requests to participate for not less than 30 days from the commencement of the restricted procedure or from the sending of the invitation to submit requests to participate where the restricted procedure is commenced by means of sending a prior information notice.

(2) The contracting authority shall set the time limit for the submission of tenders for not less than 25 days from the sending of the invitation to tender. This time limit shall be extended

a) by five days in the event that the contracting authority does not allow tenders to be submitted by electronic means,

b) by five days in the event the the contracting authority proceeds pursuant to Section 96 (2); this does not apply to cases referred to in subsection (5).

(3) The contracting authority defined in Section 4 (1) c) d) e) may set the time limit for the submission of tenders for not less than 10 days from sending the invitation to tender; this time limit may be shortened upon a written consent of all participants in the procurement procedure.

(4) The time limit for the submission of tenders may be shortened to not less than 10 days from the sending of the invitation to tender in the event that the contracting authority has published a prior information notice which was not used as a means of commencing procurement procedure and which was sent for publication between 35 days and 12 months before the date on which the contract notice was sent.

(5) If urgent circumstances render it impracticable to apply the time limit under subsection (1), the time limit for the submission of requests to participate may be shortened to not less than 15 days from the commencement of the procurement procedure and the time limit for the submission of tenders may be shortened to not less than 10 days from the sending of the invitation to tender; the contracting authority shall justify such urgency in the procurement documents.

TITLE IV

NEGOTIATED PROCEDURE WITH PRIOR PUBLICATION

Section 60

Conditions for application

- (1) The contracting authority may apply a negotiated procedure with prior publication where
- a) the needs of the contracting authority cannot be met without adaptation of the performances that are readily available on the market,
 - b) the performance of the public contract includes a proposal for a solution or an innovative solution,
 - c) the public contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make-up connected with the subject-matter of the public contract, or
 - d) technical specifications cannot be established by reference to technical documents pursuant to Section 90 (1) and (2).
- (2) The contracting authority may also apply a negotiated procedure with prior publication where a previous open or restricted procedure was cancelled pursuant to Section 127 (1).

Section 61

Conduct of the procedure

- (1) The contracting authority shall commence the negotiated procedure with prior publication by sending a contract notice for publication in the manner specified in Section 212, by means of which it invites an unlimited number of economic operators to submit requests to participate.
- (2) The contracting authority specified in Section 4 (1) c) d) e) may also commence the negotiated procedure with prior publication by sending a prior information notice for publication in the manner specified in Section 212, where, by such notice, it invites economic operators to express preliminary interest. In this case, by sending the prior information notice the contracting authority fulfils the duties for which this Act otherwise requires sending a contract notice. Provisions of Section 58 (5) apply by analogy.
- (3) In the case of procedure under Section 60 (2), the sending of a contract notice may be replaced by the sending of an invitation to submit indicative tenders provided that the contracting authority carried out the assessment of qualifications in a previous procurement procedure and it will send the invitation to submit indicative tenders to all economic operators who submitted tenders in a previous procurement procedure and proved their qualifications; in such a case, subsection 4 does not apply.
- (4) The contracting authority shall indicate in the procurement documents which requirements for the performance of the public contract constitute the minimum technical specifications that shall be met by the tender.
- (5) After the expiry of the time limit for the submission of requests to participate, the contracting authority shall assess the conformity of qualifications of the participants and shall reduce the number of the participants pursuant to Section 111 provided that it has reserved the right to do so in the contract notice or in the prior information notice which was used as a means of commencing procurement procedure. The contracting authority shall exclude from the procurement procedure those participants who have not proven that they meet the qualification requirements or that were not selected when the number of participants was being reduced. The contracting authority shall invite the non-excluded participants to submit indicative tenders. The invitation to submit indicative tenders shall contain the elements defined in Annex No. 6 to this Act.
- (6) Indicative tenders may only be submitted by a participant who has been invited to submit an indicative tender. The invited participants may not submit a joint indicative tender. The participants may modify their indicative tenders during negotiations with the contracting authority.
- (7) The contracting authority shall negotiate the indicative tenders with the participants in order to improve the indicative tenders to the benefit of the contracting authority. Within the negotiations, the number of indicative tenders to be negotiated pursuant to Section 112 may be reduced provided that the contracting authority has reserved the right to do so in the contract notice or in the prior information notice which was used as a means of commencing procurement procedure.
- (8) The contracting authority may reserve the right in the procurement documents to not be obligated to negotiate indicative tenders and it may award the public contract on the basis of an indicative tender. In that case, the procedure for the opening of indicative tenders is governed by sections 108 to 110 by analogy.
- (9) During the negotiations, the contracting authority shall not provide the participants with information in a discriminatory manner. The contracting authority is entitled to disclose confidential information defined in Section 218 (1) to other participants only on the basis of a written consent granted by the participant in question in relation to the information in question.
- (10) During the negotiations, the contracting authority may alter or supplement the award criteria, in particular technical specifications, with the exception of the minimum technical specifications defined in subsection (4). The contracting authority shall inform the participants of such an alteration or supplementation of the award criteria in writing and provide them

with reasonable time to adjust their indicative tenders. The altered award criteria shall still meet the conditions for application of a negotiated procedure with prior publication.

(11) The contracting authority shall inform the participants of the moment at which the negotiations are terminated or of the means of determining such a moment. The contracting authority shall invite the participants to submit tenders. The invitation to tender shall contain the elements defined in Annex No. 6 to this Act.

Section 62

Time limits in a negotiated procedure with prior publication

(1) The contracting authority shall set the time limit for the submission of requests to participate for not less than 30 days from the commencement of the negotiated procedure with prior publication or from the sending of the invitation to submit requests to participate where the negotiated procedure with prior publication is commenced by means of sending a prior information notice.

(2) The contracting authority shall set the time limit for the submission of indicative tenders for not less than 25 days from the sending of the invitation to submit indicative tenders.

(3) The shortening of the time limit for the submission of requests to participate is governed by Section 59 (5) by analogy. The shortening or extending of the time limit for the submission of indicative tenders is governed by Section 59 (2) to (5) with the necessary modifications.

(4) The contracting authority shall set a reasonable time limit for the submission of tenders that shall start running, at the earliest, from the moment of termination of the negotiations.

TITLE V

NEGOTIATED PROCEDURE WITHOUT PRIOR PUBLICATION

Section 63

General conditions for application

(1) The contracting authority may apply a negotiated procedure without prior publication provided that it has not altered substantially the award criteria in comparison with a previous open procedure, restricted procedure or simplified below-threshold procedure in which

- a) no tenders or requests to participate were submitted,
- b) the submitted tenders did not meet the requirements for the subject-matter of the public contract set out by the contracting authority, or
- c) the participants did not meet the conditions for participation in their requests to participate.

(2) The contracting authority shall notify the European Commission, if so requested, of the reason for the application of a negotiated procedure without prior publication pursuant to subsection (1).

(3) The contracting authority may also apply a negotiated procedure without prior publication in a situation where the public contract can only be performed by a certain economic operator because

- a) the subject-matter of the public contract consists in a unique piece of art or performance,
- b) there is no competition for technical reasons, or
- c) it is necessary in order to protect exclusive rights, including intellectual property rights.

(4) The conditions laid down in subsection (3) b) and c) are met only if another procedure cannot be applied and if the contracting authority has not set out the award criteria for the public contract with the aim to eliminate competition.

(5) The contracting authority may also apply a negotiated procedure without prior publication where necessary because of an extreme urgency that was unforeseeable by and not attributable to the contracting authority and the time limits for an open procedure, restricted procedure or negotiated procedure with the publication cannot be observed.

Section 64

Time limits for application of a public supply contract

In the case of a public supply contract, the contracting authority may also apply a negotiated procedure without prior publication where

- a) the goods supplied are produced solely for the purposes of research, experiment, study or development; such a public contract shall not, however, include a supply intended for large-scale production performed for the purpose of achieving economic profitability or for the purpose of covering research or development related costs incurred by the contracting authority,

b) it concerns additional supplies from the same economic operator that are intended to constitute partial replacement for previous supplies or to extend the current scope of the supply, provided that a change of the economic operator would force the contracting authority to acquire supplies with different technical characteristics, which would result in incompatibility with the original performance or would mean unreasonable technical difficulties in operation and maintenance; the additional supplies pursuant to this paragraph may be acquired not later than three years from the conclusion of the original contract, unless a longer period is justified by specific circumstances,

c) it concerns supplies purchased on commodity exchanges²³, or

d) it concerns supplies that are acquired under particularly advantageous conditions from an economic operator who is in liquidation or, in the event that insolvency proceedings have been launched against the economic operator, from a person authorised to dispose of the insolvency estate.

Section 65

Conditions for application of a public service contract

(1) In the case of a public service contract, the contracting authority may also apply a negotiated procedure without prior publication provided that the public contract is being awarded in connection with a design contest pursuant to Section 143, under rules of which the contracting authority intends to award the public contract to the design contest participant whose design will be selected. If several designs are selected, the contracting authority shall invite all design contest participants whose designs have been selected to negotiate in a negotiated procedure without prior publication.

(2) The estimated value of the public contract awarded pursuant to subsection (1) shall include the estimated amount of prices, remunerations and other payments that the contracting authority shall provide to the design contest participants.

(3) The actual implementation of the design shall not constitute the subject-matter of the public contract awarded pursuant to subsection (1). This does not apply to cases where it is justified by the nature of the subject-matter of the design contest.

Section 66

Conditions for application of a public service contract or a public works contract

In the case of a public service contract or a public works contract, the contracting authority may also apply a negotiated procedure without prior publication if the contract provides for new services or new works that consist in repetition of services or works similar to those provided for in the original public contract and corresponding to the original public contract, provided that

a) the new services or new works will be awarded to the same economic operator,

b) the procurement documents of the original procurement procedure, commencement of which was published in the manner set out in Section 212 or Section 53 (1), indicated, pursuant to Section 100 (3), the possibility to award the public contract for new services or new works in a negotiated procedure without prior publication and simultaneously specified the extent of new services or new works,

c) the estimated value of the public contract for new services or new works was included, in accordance with Section 16 (3), in the estimated value of the original public contract,

d) the negotiated procedure without prior publication will be commenced within three years from the date of the conclusion of the original public contract, and

e) the real price of the public contract for new services or new works excluding value added tax will not exceed their estimated value by more than 30 % and will not exceed 30 % of the price of the original public contract.

Section 67

Conduct of the procedure

(1) The contracting authority shall commence the negotiated procedure without prior publication by sending an invitation to negotiate, an invitation to tender or by commencing negotiations with an economic operator.

(2) In a negotiated procedure without prior publication, the contracting authority shall negotiate the conclusion of a contract. During the negotiations, the contracting authority may alter the award criteria. The altered award criteria shall, however, still meet the conditions for application of a negotiated procedure without prior publication.

TITLE VI

COMPETITIVE DIALOGUE

Section 68

(1) The contracting authority is entitled to apply a competitive dialogue procedure provided that conditions stipulated in Section 60 are met.

(2) The contracting authority shall commence the competitive dialogue procedure by sending a contract notice for publication in the manner specified in Section 212, by means of which it invites an unlimited number of economic operators to submit requests to participate.

(3) The contracting authority shall set the time limit for the submission of requests to participate for not less than 30 days from the commencement of the procurement procedure. This time limit shall be extended by five days in the event that the contracting authority does not allow tenders to be submitted by electronic means. In the procurement documents, the contracting authority shall define an indicative timeframe for the competitive dialogue.

(4) The contracting authority shall assess the conformity of requests to participate with the award criteria and reduce the number of participants pursuant to Section 111 provided that it has reserved the right to do so in the contract notice. The contracting authority shall exclude from the procurement procedure those participants whose requests to participate do not meet the award criteria or that were not selected when the number of participants was being reduced. The contracting authority shall invite the non-excluded participants to participate in a competitive dialogue. The invitation to participate in a competitive dialogue shall contain the elements defined in Annex No. 6 to this Act.

Section 69

Conduct of a competitive dialogue

(1) The contracting authority shall conduct a competitive dialogue with the participants with the aim of finding suitable solutions to meet the needs of the contracting authority (hereinafter referred to as 'solutions').

(2) When conducting a competitive dialogue, the contracting authority may negotiate the public contract in all respects.

(3) The contracting authority is entitled to disclose information of the solutions and confidential information defined in Section 218 (1) to the other participants in the course of conducting the competitive dialogue only on the basis of a written consent granted by the participant in question in relation to the information in question.

(4) The competitive dialogue may take place in successive stages in order to reduce the number of solutions to be negotiated, pursuant to Section 112, provided that the contracting authority has reserved the right to do so in the contract notice.

(5) The contracting authority shall continue the competitive dialogue until it decides if the solutions submitted are suitable. The participant whose solution is not suitable shall be excluded from the procurement procedure.

(6) When the competitive dialogue is terminated, the contracting authority shall inform the participants of this fact without delay and invite all participants to submit tenders for the solutions that have been found. The invitation to tender shall contain the elements defined in Annex No. 6 to this Act. The tender shall contain all aspects of the solution.

(7) The contracting authority may invite a participant to explain, specify or modify its tender provided that this will not lead to such a change of the tender or the award criteria that it would endanger competition or have discriminatory effects.

(8) The contracting authority may conduct negotiations with a selected economic operator with the aim to have its tender confirmed and contractual conditions specified provided that this will not lead to a change of the basic parameters of the tender or of the award criteria and that these changes would not endanger competition or have discriminatory effects.

TITLE VII

INNOVATION PARTNERSHIP PROCEDURE

Section 70

Conditions for application

(1) The contracting authority may award a public contract in an innovation partnership procedure if the need for development of an innovative supply or service or innovative works and the subsequent purchase of the resulting supplies, services or works cannot be satisfied by solutions that are already available on the market.

(2) The estimated value of the supplies, services or works awarded in the innovation partnership procedure shall not be in disproportion to the investment needed for their development.

Section 71

Stages of innovation partnership

(1) In the procurement documents, the contracting authority shall define innovation partnership stages that shall follow the sequence of steps in the research and innovation process and the subsequent provision of supplies, services or works. The contracting authority shall determine successive targets in the research process upon the accomplishment of which individual stages of the innovation partnership shall be terminated as well as the rules for the payment of remuneration to the partners for the achievement of such targets. The contracting authority shall ensure that the structure of the innovation partnership and the remuneration provided reflect the degree of innovation of the solution proposed and the sequence of steps in the research and innovation process.

(2) After a stage of innovation partnership is terminated, the contracting authority may, based on the results achieved,

- a) terminate the innovation partnership provided that it has reserved the right to do so in the procurement documents, or
- b) reduce the number of partners in a case where the innovation partnership involves several partners provided that the contracting authority has defined the conditions for reducing the number of partners in the procurement documents.

(3) In the case of an innovation partnership with several partners, the contracting authority shall not reveal to the other partners solutions proposed or other confidential information communicated by a partner without that partner's agreement.

Section 72

Conduct of the procedure

(1) The contracting authority shall commence the innovative partnership procedure by sending a contract notice for publication in the manner specified in Section 212, by means of which it invites an unlimited number of economic operators to submit requests to participate.

(2) The contracting authority shall set the time limit for the submission of requests to participate for not less than 30 days from the commencement of the innovative partnership procedure. This time limit shall be extended by five days in the event that the contracting authority does not allow tenders to be submitted by electronic means.

(3) The contracting authority shall indicate in the procurement documents which requirements for the performance of the public contract constitute the minimum technical specifications that shall be met by the tenders. In the procurement documents, the contracting authority shall lay down rules governing the intellectual property rights created in connection with the innovation partnership and the performance of the public contract.

(4) The contracting authority shall assess the conformity of requests to participate with the award criteria and reduce the number of participants pursuant to Section 111 provided that it has reserved the right to do so in the contract notice. The contracting authority shall exclude from the procurement procedure those participants whose requests to participate do not meet the award criteria or that were not selected when the number of participants was being reduced. The contracting authority shall invite the non-excluded participants to submit indicative tenders. The invitation to submit indicative tenders shall contain the elements defined in Annex No. 6 to this Act.

(5) The contracting authority shall negotiate the indicative tenders with the participants in order to improve the tenders to the benefit of the contracting authority. The contracting authority is entitled to disclose confidential information defined in Section 218 (1) during the negotiations to the other participants only on the basis of a written consent granted by the participant in question in relation to the information in question. Within the negotiations, the number of indicative tenders to be negotiated pursuant to Section 112 may be reduced provided that the contracting authority has reserved the right to do so in the contract notice.

(6) During the negotiations, the contracting authority may alter or supplement the award criteria, in particular technical specifications, with the exception of the minimum technical specifications defined in subsection (4). The contracting authority shall inform the participants of such an alteration or supplementation of the award criteria in writing and provide them with reasonable time to adjust their indicative tenders. The altered award criteria shall still meet the conditions for the application of an innovation partnership procedure.

(7) During the negotiations, the contracting authority may alter or supplement the award criteria with the exception of the evaluation criteria and the minimum technical specifications. The contracting authority shall inform the participants of such an alteration or supplementation of the award criteria in writing and provide them with reasonable time to adjust their indicative tenders. The altered award criteria shall still meet the conditions defined in Section 70.

(8) The contracting authority may decide to set up the innovation partnership with one partner or with several partners conducting separate research and development activities.

TITLE VIII

AWARD CRITERIA IN THE ABOVE-THRESHOLD REGIME

Chapter 1

Qualifications for the above-threshold regime

Division 1

The scope of qualification requirements set out for the above-threshold regime by the contracting authority

Section 73

(1) In the above-threshold regime, the contracting authority shall request a proof of the basic qualification pursuant to Section 74.

(2) In the above-threshold regime, the contracting authority

a) shall request a proof of professional qualification pursuant to Section 77 (1), with the exception of negotiated procedure without prior publication, and

b) may request a proof of professional qualification pursuant to Section 77 (2).

(3) In the above-threshold regime, the contracting authority may request a proof of

a) economic qualification pursuant to Section 78, or

b) technical qualification pursuant to Section 79.

(4) In the above-threshold regime, the contracting authority is not entitled to request a proof of qualification other than those referred to in subsections (1) to (3); without prejudice to Section 48 (5) to (7).

(5) In the procurement documents, the contracting authority is obliged to determine which data, documents, samples or models are required as a proof of fulfilment of the required criteria.

(6) If the contracting authority requests a proof of economic or technical qualifications, it shall determine, in the procurement documents, proportionately to the complexity and scope of the subject-matter of the public contract

a) which economic and technical qualification criteria it requires, and

b) the minimum degree of their fulfilment.

Section 74

Basic qualification

(1) An economic operator shall not be qualified if it

a) was convicted by final judgement in the country of its registered seat of a crime specified in Annex No. 3 to this Act or another similar crime pursuant to the law of the country of its registered office in the past five years preceding the commencement of the procurement procedure; expunged convictions are disregarded,

b) has outstanding tax arrears registered in tax records in the Czech Republic or in the country of its registered office,

c) has outstanding arrears in respect of payments and penalties of public health insurance in the Czech Republic or in the country of its registered office,

d) has outstanding arrears in respect of payments and penalties of social security contributions and contribution to the national employment policy in the Czech Republic or in the country of its registered office,

e) is in liquidation²⁴⁾, has been declared insolvent²⁵⁾, in respect of whom the receivership has been imposed under another legal regulation²⁶⁾ or it is in a similar situation pursuant to the law of the country of its registered office.

(2) If the economic operator is a legal person, both this legal person and every member of its governing body shall meet the condition specified in paragraph a) of subsection (1). Where a legal person is a member of the governing body of the economic operator, the condition specified in paragraph a) of subsection (1) shall be met by

a) this legal person,

b) every member of the governing body of this legal person, and

c) the person representing this legal person in the governing body of the economic operator.

(3) If a participant in the procurement procedure is a branch of a business of

a) a foreign legal person, the condition specified in paragraph a) of subsection (1) shall be met by this legal person as well as the head of the branch,

b) a Czech legal person, the condition specified in paragraph a) of subsection (1) shall be met by the persons referred to in subsection (2) as well as the head of the branch.

(4) In the procurement documents, the contracting authority may determine that the condition specified in paragraph a) of subsection (1) shall also be met by persons other than those referred to in subsection (2); such persons may only include persons that have rights relating to representation, decision-making or control of the economic operator within the economic operator's structure.

Section 75

Proof of basic qualification

(1) The economic operator shall prove that it fulfils the basic qualification requirements in relation to the Czech Republic by submitting

a) a copy of an entry in the Criminal Records in respect of Section 74 (1) a),

b) a confirmation from a relevant tax office in respect of Section 74 (1) b),

- c) a written affirmation regarding excise duty in respect of Section 74 (1) b),
- d) a written affirmation in respect of Section 74 (1) c),
- e) a confirmation from a relevant district social security administration in respect of Section 74 (1) d),
- f) a copy of an entry in the Commercial Register, or a written affirmation in the event that the economic operator is not incorporated in the Commercial Register, in respect of Section 74 (1) e).

(2) The contracting authority is not obliged to apply the ground for exclusion of a participant from the procurement procedure even if the participant failed to meet the basic qualification requirements provided that

- a) the exclusion of the participant would make it impossible to award the public contract in this procurement procedure and
- b) an urgent public interest, including, but not limited to, public health and protection of the environment, requires the public contract to be performed.

Section 76

Renewal of suitability of a participant

(1) A participant may prove that in spite of having failed to meet the basic qualification criteria under Section 74 or the fact that there are grounds for its unsuitability pursuant to Section 48 (5) and (6) it has renewed its suitability to participate in the procurement procedure provided that it proves to the contracting authority in the course of conducting the procurement procedure that it has adopted sufficient corrective measures. This does not apply to the period for which the participant is serving a sentence of prohibition to perform public contracts or participate in concession award procedures that has been imposed on the participant by final judgement.

(2) The corrective measures may include, but are not limited to,

- a) a payment of amounts due or underpayments,
- b) full compensation for harm caused by the commission of a crime or by misconduct,
- c) an active collaboration with authorities performing investigation, oversight, supervision or review, or
- d) an adoption of technical, organisational or personnel preventive measures against crime or misconduct.

(3) The contracting authority shall assess whether it considers the corrective measures adopted by the participant sufficient to renew the suitability of the economic operator with regard to the gravity and the specific circumstances of the crime or other misconduct.

(4) Where the contracting authority arrives at the conclusion that the suitability of the participant has been renewed, it shall not exclude this participant from the procurement procedure and if the participant has already been excluded it shall cancel a previous exclusion of this participant from the procurement procedure.

Section 77

Professional qualification

(1) The economic operator shall prove its professional qualification in relation to the Czech Republic by submitting a copy of an entry in the Commercial Register or other similar records provided that registration in such records is required pursuant to another legal regulation.

(2) The contracting authority may request the economic operator to submit a document demonstrating that it

- a) has a licence to undertake business within a scope corresponding to the subject-matter of the public contract provided that such licence is required pursuant to other legal regulations,
- b) is a member of a professional self-governing chamber or another professional organisation provided that such membership is required for the performance of the public service contract under other legal regulations, or
- c) has a professional capability, or has at its disposal a person through whom it acquires a professional capability, where a professional capability is required for the performance of a public contract under other legal regulations.

(3) The economic operator is not obliged to submit the documents specified in subsections (1) or (2) if legal regulations in the country of its registered office do not require such professional qualification.

Division 2

Economic qualification

Section 78

Economic qualification criterion and its proof

(1) The contracting authority may require that the minimum yearly turnover of the economic operator or the turnover reached by the economic operator with respect to the subject-matter of the public contract for not more than three immediately preceding accounting periods reach a minimum level set by the contracting authority; where the economic operator came into existence later, it is sufficient if it submits documents on the required amount of its turnover for all accounting periods since its creation.

(2) The requirement of minimum yearly turnover shall not exceed twice the estimated value of the public contract. In the case of a procurement procedure in which a framework agreement following a reopening of competition is to be concluded, this requirement shall not exceed twice the average estimated value of the public contracts that are to be performed simultaneously on the basis of the framework agreement, or, where such value is not known, twice the estimated value of the framework agreement. In the case of a procurement procedure in which a dynamic purchasing system is to be set up, this requirement shall not exceed twice the maximum estimated value of the individual public contracts that are to be awarded under the dynamic purchasing system.

(3) Subsection (2) does not apply to cases justified by the contracting authority, which include in particular specific risks resulting from the nature of supplies, services or works.

(4) Where a public contract is divided into lots, the contracting authority shall set the requirement for economic qualification for each lot separately. The contracting authority may, however, set the economic qualification requirement by reference to groups of lots in the event that the selected economic operator is awarded several lots to be performed at the same time.

(5) The economic operator shall prove its turnover by submitting its profit and loss statement or by a similar document pursuant to the law of the country of its registered office.

(6) The contracting authority is not entitled to request economic qualification in the case of public service contracts listed in division 71 of the main vocabulary of the single classification system .

Division 3

Technical qualification

Section 79

Technical qualification criteria and their proof

(1) The contracting authority shall set technical qualification criteria in order to prove human resources, technical resources or professional abilities and experience that are necessary for the public contract to be performed to an appropriate level of quality. The contracting authority may consider the technical qualification to be not proven if it demonstrates that the economic operator has contrary interests that might have a negative effect on the performance of the public contract.

(2) In order for the technical qualification criteria to be proved, the contracting authority may request

a) a list of the works carried out over the past five years before the commencement of the procurement procedure, including certificates provided by the client proving due execution and completion of the most important of these works; the contracting authority may determine that evidence of relevant works carried out more than five years before the commencement of the procurement procedure shall also be taken into account where necessary in order to ensure an adequate level of economic competition,

b) a list of significant supplies or significant services provided over the past three years before the commencement of the procurement procedure, including prices and dates of their provision and the identification of clients; the contracting authority may determine that evidence for more than three years before the commencement of the procurement procedure shall also be taken into account where necessary in order to ensure an adequate level of economic competition,

c) a list of the technicians or technical bodies that will take part in the performance of the public contract, especially those responsible for quality control and those who will execute the works, regardless of whether they are employees of the economic operator or persons otherwise related to the economic operator,

d) certificates of education and professional qualifications related to the requested supplies, services or works, in respect of both the natural persons who can provide the supplies, services or works and their managerial staff,

e) a description of technical facilities, measures taken by the economic operator for ensuring quality or a description of research facilities,

f) an indication of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract,

g) where the products or services to be supplied are complex or are required for special purposes, a check on the technical capacity carried out by the contracting authority or on its behalf by a competent official body of the country of the economic operator's registered office, and, where necessary, on the means of the quality and research control measures,

h) measures in environmental protection management that the economic operator will be able to apply when performing the contract,

i) a statement of the average annual manpower of the economic operator or the number of managerial staff of the economic

operator or persons in a similar position for the last three years,

j) a statement of the tools or devices and plant or technical equipment available to the economic operator for performing the contract,

k) samples, descriptions or photographs of the products to be supplied, or

l) a certificate attesting the conformity of the requested product with a required technical standard or technical document.

(3) Unless the contracting authority stipulates in the procurement documents otherwise, the periods under paragraphs a) and b) of subsection (2) shall be considered fulfilled if the supply, service or works specified in a relevant list were completed in the course of such periods; this does not apply to contracts which are regular in nature in respect of which the scope of the contract implemented in the course of the period set out in paragraphs a) and b) of subsection (2) shall be considered decisive for the purpose of proving technical qualification.

(4) Unless the contracting authority stipulates in the procurement documents otherwise, the economic operator may prove the fulfilment of the qualification criteria pursuant to paragraphs a) or b) of subsection (2) by referring to supplies, services or works that it has provided

a) together with other economic operators, to the extent to which it participated in the performance of the contract, or

b) as a subcontractor, to the extent to which it participated in the performance of the supply, service or works.

(5) Equivalent documents proving the fulfilment of the criteria pursuant to paragraphs a) and b) of subsection (2) include, in particular contracts with clients and documents attesting to the performance provided by the economic operator.

(6) In the event that the proof of the requested technical qualification does not consist in submitting a document, the contracting authority is obliged to provide the economic operator with necessary assistance and the possibility to prove this part of the technical qualification criteria.

Section 80

Quality assurance standards and environmental management standards

(1) Where, for the purpose of proving the fulfilment of the technical qualification criteria pursuant to Section 79 (2) e), the contracting authority requires the compliance with quality assurance standards, including standards on accessibility for disabled persons, it shall refer to quality assurance systems based on the relevant European standards series certified by accredited bodies.

(2) Where, for the purpose of proving the fulfilment of the technical qualification criteria pursuant to Section 79 (2) h), the contracting authority requires the compliance with environmental management systems or standards, it shall refer to the Eco-Management and Audit Scheme (EMAS) of the European Union or to other environmental management systems as recognised in accordance with directly applicable legislation of the European Union²⁷⁾ or to other environmental management standards based on the relevant European or international standards adopted by accredited bodies.

Division 4

Common provisions governing qualifications

Section 81

Proving of qualification obtained abroad

Where qualification has been obtained abroad, it shall be proved by documents issued under the law of the country in which it has been obtained and to the extent required by the contracting authority.

Section 82

Qualification in the case of joint participation of economic operators

In the case of joint participation of economic operators, the basic and professional qualifications pursuant to Section 77 (1) shall be proved by each economic operator separately.

Section 83

Proving of qualification through other persons

(1) An economic operator may prove a certain part of the economic qualification, technical qualification or professional qualification, with the exception of the criterion set out in Section 77 (1), requested by the contracting authority through other persons. In that case, the economic operator is obliged to submit to the contracting authority

a) documents proving that the professional qualification pursuant to Section 77 (1) has been fulfilled by the other person,

b) documents proving that a missing part of the qualification has been fulfilled by the other person,

c) documents proving that the basic qualification was fulfilled pursuant to Section 74 by the other person and

d) a written commitment of the other person to provide performance intended for the performance of the public contract or to provide things or rights which the economic operator is entitled to use when performing the public contract, at least to the extent to which the other person has proved its qualification instead of the economic operator.

(2) It is presumed that the requirement set out in paragraph d) of subsection (1) is met if the written commitment of another person contains joint and several liability of such person and the economic operator for the performance of the public contract. Where, however, the economic operator proves qualification through the other person and submits documents pursuant to Section 79 (2) a) b) or d) relating to such person, the document under paragraph d) of subsection (1) shall contain a commitment that the other person shall carry out the works or services to which the qualification criterion in question relates.

(3) In the procurement documents, the contracting authority may request the economic operator or another person through whom the economic operator proves its economic qualification under Section 78 to bear joint and several liability for the performance of the public contract.

Section 84

Joint proving of qualification

In the procurement documents, the contracting authority may define more detailed rules for the proving of professional qualification pursuant to Section 77 (2), economic qualification or technical qualification provided that the economic operators participate in the procurement procedure jointly or prove qualification through other persons; the contracting authority shall not, however, exclude rules laid down in sections 82 and 83. Unless the contracting authority stipulates otherwise, the economic operators and other persons prove the qualification jointly.

Section 85

Requirement for proving subcontractor's qualification

(1) The contracting authority may require a participant to submit documents proving the basic qualification pursuant to Section 74 and professional qualification pursuant to Section 77 in respect of its subcontractors. In that case, the contracting authority is obliged to set the scope of the required qualification criteria in the procurement documents along with the means of their proof and potential sanctions for the failure to replace a subcontractor pursuant to subsection (2).

(2) Where a subcontractor fails to prove the fulfilment of the qualification criteria required by the contracting authority or where the contracting authority proves that there are grounds for unsuitability of a subcontractor pursuant to Section 48 (5), the contracting authority may request such a subcontractor to be replaced. In that case, the economic operator shall replace the subcontractor before the end of a reasonable time limit set by the contracting authority. The contracting authority may extend this time limit or excuse the economic operator's default.

(3) Where the subcontractor has not been replaced pursuant to subsection (2) and the procurement procedure has not been terminated in the meantime, the contracting authority may exclude the participant from the procurement procedure.

Section 86

Qualification documents

(1) In order for qualification to be proved, the contracting authority shall require primarily documents registered in the system that helps identify the certificates requested as a proof of qualification (e-Certis).

(2) Unless the contracting authority stipulates in the procurement documents otherwise, the economic operator may substitute the submission of documents in its request to participate, indicative tender or tender by an affirmation. The economic operator may replace the required documents by a European Single Procurement Document in any case.

(3) Before the contract is concluded, the contracting authority shall always request the selected economic operator to submit the originals or certified copies of the qualification documents, unless they have already been submitted during the procurement procedure.

(4) The economic operator is not obliged to submit documents supporting the facts contained in the European Single Procurement Document to the contracting authority provided that it informs the contracting authority that it had already submitted such documents in a previous procurement procedure.

(5) The documents demonstrating basic qualification under Section 74 and professional qualification under Section 77 (1) shall demonstrate the fulfilment of the required qualification criterion not later than three months before the date of the commencement of the procurement procedure.

Section 87

European Single Procurement Document

(1) For the purposes of this Act, the European Single Procurement Document means an affirmation made in writing by a participant in order to prove its qualification, including a proof through another person, which shall replace documents issued by public authorities or third parties on a form available in the information system e-Certis.

(2) The European Single Procurement Document shall attest to the fulfilment of the conditions for participation and,

where applicable, the fulfilment of the criteria for the reduction of the number of participants in the procurement procedure.

Section 88

Changes in qualification of a participant

(1) If the qualification of a participant changes after the submission of documents or affirmation regarding qualification, the participant is obliged to announce such change to the contracting authority within five working days and to submit new documents or affirmation of qualification within 10 working days from the announcement of such change; the contracting authority may extend these time limits or excuse their default. The participant shall not become obliged to announce changes and submit new documents under the first sentence if the qualification is changed in such a manner that

- a) the qualification requirements are still met,
- b) the criteria for the reduction of the number of participants or the number of tenders have not been influenced,
- c) the criteria for evaluation of tenders have not been influenced.

(2) If the contracting authority finds out that the economic operator has not fulfilled the duty defined in subsection (1), the contracting authority shall exclude such economic operator from the procurement procedure without delay.

Chapter 2

Technical specifications for the above-threshold regime

Section 89

(1) Technical specifications mean requirements for the properties of the subject-matter of the public contract which the contracting authority shall define by

- a) setting parameters expressing performance or functional requirements and describing the purpose or needs that are to be fulfilled,
- b) reference to standards or technical documents, or
- c) reference to labels.

(2) Technical specifications may also include characteristics in terms of environmental impact.

(3) Technical specifications may also refer to the specific production process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance provided that they are linked to the subject-matter of the public contract and proportionate to its value and its objectives.

(4) In the case of a public service contract or a public works contract, the contracting authority may indicate, in the procurement documents, the administrative body or other entity from which economic operators may obtain information on duties that follow from legal regulations governing the protection of employees and working conditions, environmental protection, taxes, fees or other similar pecuniary performances that are applicable at the place where the services or works are to be provided and that are related to these services or works; the economic operator shall take such information into account when drafting its tender and shall state this fact in the tender.

(5) Unless justified by the subject-matter of the public contract, the contracting authority shall not favour or disadvantage any economic operators or products by setting the technical specifications by means of a direct or indirect reference to

- a) the economic operators or products, or
- b) patents for inventions, utility models, industrial designs, trademarks or designations of origin.

(6) The contracting authority may use a reference pursuant to paragraphs a) or b) of subsection (5) where a sufficiently precise and intelligible specification of technical specifications under subsection (1) is not possible. For each such reference the contracting authority shall indicate an option to offer an equivalent solution.

Section 90

Standards and technical documents

(1) Where the contracting authority sets the technical specifications by reference to standards and technical documents, it shall apply them in the following order:

- a) Czech technical standards²⁸⁾ transposing European standards adopted by European standardisation bodies and made available to the general public,
- b) European technical assessment²⁹⁾,

c) common technical specifications in the field of information and communications technology pursuant to Articles 13 and 14 of Regulation (EU) No. 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council,

d) international standards adopted by international standardisation bodies and made available to the general public,

e) technical documents produced by European standardisation bodies, other than European standards, according to procedures adapted to the development of market needs.

(2) Where it is not possible to refer to the standards and technical documents under subsection (1), the contracting authority may refer to

a) Czech technical standards,

b) construction technology certificates³⁰⁾, or

c) national technical specifications relating to design, assessment and execution of works and construction works, and use of products.

(3) For each reference to standards or technical documents under subsections (1) or (2), the contracting authority shall indicate an option to offer an equivalent solution.

(4) The contracting authority may also use the reference to standards or technical documents under subsections (1) or (2) as a means of verifying the fulfilment of the contracting authority's requirements pursuant to Section 89 (1) a). The contracting authority may also define the technical specifications by combination of the requirements specified in Section 89 (1) a) and by reference to the standards or technical documents under subsections (1) or (2).

Section 91

(1) Where the contracting authority sets the technical specifications by reference to the standards or technical documents pursuant to Section 90 (1) or (2), it shall not reject a tender on the grounds that the proposed supplies, services or works do not comply with the technical specifications to which it has referred, once the economic operator proves, that the proposed supplies, services or works satisfy in an equivalent manner the requirements defined by the technical specifications. The economic operator shall prove this fact in its tender by appropriate means, in particular by a technical dossier of the manufacturer or a document pursuant to Section 95.

(2) Where the contracting authority sets the technical specifications in the form of performance or functional requirements, it shall not reject the proposed supplies, services or works that comply with the standards or technical documents stipulated in Section 90 (1) or (2) provided that these documents contain the performance or functional requirements requested by the contracting authority. The economic operator shall prove this fact in its tender by appropriate means, in particular by a technical dossier of the manufacturer or a document pursuant to Section 95.

Section 92

Technical specifications of a public works contract

(1) It is presumed that the technical specifications are laid down in details necessary for the participation of economic operators in a procurement procedure if the procurement documents of public works contracts contain

a) documentation to the extent determined by a regulation of the Ministry of Regional Development and

b) an inventory of works, supplies and services together with a statement of measurements to the extent determined by a regulation of the Ministry of Regional Development.

(2) The documents under subsection (1) may be replaced partially or completely by other performance or functional requirements.

Section 93

Accessibility criteria

(1) Where the subject-matter of the public contract is intended for use by natural persons, the contracting authority shall take account of the accessibility of the subject-matter of the public contract to people with disabilities when setting the technical specifications, unless it is made impossible by objective circumstances.

(2) Where binding requirements for accessibility to people with disabilities are governed by a regulation of the European Union, the contracting authority shall lay down the respective technical specifications by reference to such regulation.

Section 94

Labels

(1) If the contracting authority requires the supplies, services or works to have specific environmental or social characteristics, it may request, in the procurement documentation, the submission of a specific certificate attesting that the

relevant works, services or supplies meet the required characteristics provided that

- a) the label requirements only concern criteria which are linked to the subject-matter of the contract,
- b) the labels are appropriate to define characteristics of the works, supplies or services that are covered by the subject-matter of the contract,
- c) the label requirements are based on objectively verifiable and non-discriminatory criteria,
- d) the labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate,
- e) the labels are accessible to all interested parties, and
- f) the label requirements are set by a person over which the economic operator applying for the label cannot exercise a decisive influence.

(2) The contracting authority shall accept another appropriate label that confirms that the supplies, services or works meet equivalent label requirements.

(3) Where an economic operator had demonstrably no possibility of obtaining and submitting the requested or equivalent label, the contracting authority shall accept other appropriate means of proof attesting that the supplies, services or works meet the label requirements or specific requirements specified in the procurement documents, such as a technical dossier from the manufacturer.

(4) The contracting authority may require that only some of the characteristics confirmed by the label are met.

(5) Where the label also attests to characteristics that are not linked to the subject-matter of the public contract, the contracting authority shall not require the label but may request a proof of technical characteristics by reference to individual specifications of that label that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

Section 95

Test reports, certification and other means of proof

As means of proof of conformity with the requirements or criteria defined in the procurement documents, the contracting authority may require the submission of test reports or certificates issued by a body that performs conformity assessment activities, including calibration, testing, certification and inspection and that fulfils the requirements set out in a directly applicable regulation of the European Union³¹.

Chapter 3

Common provisions governing award criteria for the above-threshold regime

Section 96

Availability of procurement documents

(1) The contracting authority shall publish the procurement documents, with the exception of forms pursuant to Section 212 and invitations specified in Annex No. 6 to this Act, on the contracting authority profile from the date of publication of the contract notice or from the sending of the invitation to submit requests to participate pursuant to Section 58 (5) at least until the expiry of the time limit for the submission of tenders; this does not apply to negotiated procedure without prior publication.

(2) Where some part of the procurement documents cannot be made available pursuant to subsection (1), on grounds defined in Section 211 (8) a), b), c) and d) or in the case of procedure pursuant to Section 36 (8), the contracting authority may make the relevant part of the procurement documents available by other appropriate means. In that case, the contracting authority shall send or transmit the relevant part of the procurement documents not later than three working days from the receipt of the economic operator's request for its provision. The provision of the relevant part of procurement documents may only be conditioned by reimbursement of costs pursuant to subsection (4) or, in the case of procedure pursuant to Section 36 (8), by an adoption of appropriate measures to protect the confidential nature of information.

(3) In the contract notice or invitation specified in Annex No. 6 to this Act, the contracting authority shall indicate the internet address of the contracting authority profile on which the procurement documents are available. Where any part of the procurement documents is provided under subsection (2), the contract notice or the invitation specified in Annex No. 6 to this Act shall include information on the means and conditions of providing the relevant part of procurement documents.

(4) A reimbursement of the costs of provision of the relevant part of the procurement documents may only be required up to the amount of usual costs of its reproduction and postage and packaging charges.

Section 97

Visit to the site of performance

Where the contracting authority enables a visit to the site of performance, it shall determine in the procurement documents

- a) the time of the visit to the site of performance so that it could take place not later than 10 working days from the expiry of the time limit for the submission of tenders,
- b) the time limit for the submission of tenders so that it is always longer than the minimum time limit set out for the respective type of procurement procedure.

Section 98

Explanation of procurement documents

(1) The contracting authority may explain the procurement documents provided that it publishes such explanation or, where applicable, related documents on the contracting authority profile

a) not less than five working days before the expiry of the time limit for the submission of requests to participate, indicative tenders or tenders, or

b) not less than four working days before the expiry of the time limit for the submission of requests to participate, indicative tenders or tenders in cases where the time limit for the submission of tenders is shortened pursuant to Section 57 (2) b) or Section 59 (5) .

(2) Where the explanation of the procurement documents concerns such parts of procurement documents that are not made public pursuant to Section 96 (2), the contracting authority shall send or transmit them to all economic operators who have submitted requests for explanation of the respective parts of the procurement documents; subsection (1) does not apply.

(3) If an explanation of the procurement documents is requested in writing by the economic operator, the contracting authority shall publish, send or transmit the explanation including the accurate wording of the request without identifying the respective economic operator. The contracting authority is not obliged to provide an explanation if the request for explanation is not delivered in time, which means not less than three working days before the expiry of the time limits defined in subsection (1). If the contracting authority provides an explanation upon a request that has not been delivered in time, it is not obliged to observe the time limits under subsection (1).

(4) If the request for explanation of the procurement documents is delivered in time and the contracting authority fails to publish, send or transmit the explanation within three working days, it shall extend the time limit for the submission of tenders by at least as many working days as a number of days by which the period between the receipt of the request for explanation and the publication, sending or transmission of the explanation exceeded three working days.

(5) In the event that the contracting authority makes a change in the award criteria along with the explanation of the procurement documents, it shall proceed pursuant to Section 99.

Section 99

Alteration or supplementation of the procurement documents

(1) The contracting authority may alter or supplement the award criteria contained in the procurement documents before the expiry of the time limit for the submission of requests to participate, indicative tenders or tenders. An alteration or supplementation of the procurement documents shall be published or announced to economic operators by the same means as the award criterion that has been altered or supplemented.

(2) Where the nature of the supplementation or alteration of the procurement documents requires so, the contracting authority shall reasonably extend the time limit for the submission of requests to participate, indicative tenders or tenders. In cases where the scope of possible participants may be extended by the alteration or supplementation of the procurement documents, the contracting authority shall extend the time limit to be at least as long from the moment of sending the alteration or supplementation as the original time limit.

Section 100

Reserved changes in obligation

(1) The contracting authority may reserve, in the procurement documents, a change in the obligation arising from the public contract or framework agreement provided that conditions for such a change and its content are defined clearly and that the change will not alter the overall character of the public contract. Such a change may concern the scope of supplies, services or works, the price and other business conditions or technical specifications.

(2) The contracting authority may reserve, in the procurement documents, a change of the economic operator in the course of performance of the public contract provided that conditions for such a change and the manner of determining a new economic operator are defined clearly.

(3) The contracting authority may reserve, in the procurement documents, the possibility of applying a negotiated procedure without prior publication for the provision of new services or new works by a selected economic operator provided that

a) the conditions for the new services or new works are in accordance with the conditions for the application of a negotiated procedure without prior publication pursuant to Section 66,

b) the estimated value of the new services or new works does not exceed 30 % of the estimated value of the public contract, and

c) it indicates in the procurement documents the estimated length and scope of the new services or new works.

Section 101

Division of public contracts into lots

(1) Where the contracting authority, in the procurement documents, subdivides a public contract into lots, it shall proceed separately for each lot when selecting the economic operator, unless otherwise provided below.

(2) The contracting authority shall indicate, in the contract notice or in the invitation to submit requests to participate pursuant to Section 58 (5), whether the economic operator may submit tenders for one lot, for several lots or for all of the lots.

(3) Where tenders may be submitted for several lots, the contracting authority may limit, in the contract notice or the invitation to submit requests to participate, the number of lots to be awarded to one participant. In that case, the contracting authority shall define the criteria for the selection of lots that may be awarded to the participant, to which would otherwise under the rules for evaluation be awarded several lots.

(4) Where several lots may be awarded to one participant, the contracting authority may set rules, in the contract notice or in the invitation to submit requests to participate, to determine which lots it reserves to be potentially awarded to one participant.

Section 102

Variants

(1) Where the subject-matter of the public contract allows so, the contracting authority may authorise or require variants of tenders, indicative tenders or solutions to be submitted; otherwise, variants are not allowed.

(2) The contracting authority may authorise or require only such variants that are directly linked to the subject-matter of the public contract.

(3) Contracting authorities authorising or requiring variants shall state in the procurement documents the minimum technical specification to be met by the variants as well as unambiguous requirements for their submission.

(4) Where variants are authorised, the contracting authority shall define evaluation criteria by means of which it is possible to evaluate both tenders with variants and tenders that contain no variants.

(5) A tender variant shall not be denied for not meeting the award criteria in the procurement procedure on the grounds that a public supply contract would change into a public service contract or that a public service contract would change into a public supply contract.

Section 103

Conditions for drawing up and submission of tenders

(1) If tenders are to be evaluated then, in the procurement documents, the contracting authority

a) shall request the submission of data, documents, samples or models that the contracting authority needs in order to evaluate the tenders pursuant to Section 114,

b) shall request the submission of data, documents, samples or models that the contracting authority needs in order to assess the fulfilment of the conditions for participation in the procurement procedure,

c) shall define the form and means of the submission of tenders; in the case of electronic tenders, they shall determine the electronic tool by means of which the tenders shall be submitted,

d) may request that data on the ownership structure of the participant or its subcontractor be submitted,

e) in the case of a public services contract, a public works contract or a public supply contract that involves a siting or installation, may request economic operators to indicate in their tenders the name or names, the surname or surnames and the professional qualification of the staff who will be responsible for the performance of the public contract,

f) may request that the economic operators participating jointly demonstrate in their tender how their liability for the performance of the public contract will be divided; the contracting authority may request that all the economic operators submitting a joint tender bear joint and several liability.

(2) The contracting authority may indicate a recommended method of drawing up a tender.

(3) In the case of public works contracts, designing or design contests, the contracting authority may include, in the procurement documents, a binding requirement to use specific electronic formats, including building information modelling tools, as well as requirements for the data content, structure or format. Where such formats are not generally available, the contracting authority shall ensure access of economic operators to these formats.

(4) Subsections (1) to (3) apply with the necessary modifications to setting of conditions for other actions that influence the participation of an economic operator in the procurement procedure.

Section 104

Further conditions for the conclusion of a contract

(1) In the procurement documents, the contracting authority may request the selected economic operator to meet the following further conditions for the conclusion of the contract:

- a) a submission of documents or samples relating to the subject-matter of the public contract or to the economic operator's qualification,
- b) a successful result of tests of samples,
- c) a submission of a document attesting to the economic operator's capability to secure protection of classified information⁵⁾ where necessary for the performance of the public contract,
- d) adoption of a certain form of collaboration pursuant to Section 37 (4), or
- e) more detailed conditions of cooperation before the conclusion of the contract.

(2) Where the selected economic operator is a legal person, the contracting authority is obliged to request in the procurement documents that the selected economic operator submits the following as a condition for the conclusion of the contract:

- a) identification data of all persons that are its real owners pursuant to the Act on Selected Measures against Legitimation of Proceeds of Crime and Financing of Terrorism,
- b) documents that demonstrate the relation of all persons under paragraph a) to the economic operator; such documents include, but are not limited to,
 - 1. a copy of an entry in the Commercial Register or other similar records,
 - 2. a list of shareholders,
 - 3. a decision made by the governing body regarding payment of a share in profit,
 - 4. a memorandum of association, a letter of formation or articles of association.

Section 105

Subcontracting

(1) In the procurement documents, the contracting authority may request that the participant in its tender

- a) indicates any share of the contract that it intends to subcontract, or
- b) includes a list of subcontractors, where they are known to the participant, and indicates which share of the public contract will be subcontracted to each of these subcontractors.

(2) In the case of a public service contract, a public works contract or a public supply contract involving a siting or installation, the contracting authority may request in the procurement documents that significant activities within the public contract, as determined by the contracting authority, be performed directly by the selected economic operator.

(3) With regard to public works contracts and public service contracts to be provided at a facility under the direct oversight of the contracting authority, the selected economic operator is obliged to provide the contracting authority with identification data of the subcontractors involved in such works or services, where they are known to it, not later than within 10 working days from the receipt of the notice of the selection of the economic operator. Subcontractors who have not been identified under the first sentence and who will become involved in the performance of the public contract later, shall be identified before they commence the performance of the public contract.

(4) In the procurement documents, the contracting authorities may also lay down the obligation pursuant to subsection (3) with regard to

- a) public supply contracts or public services contracts that are not referred to in subsection (3), or
- b) subcontractors at further levels of the supply chain.

(5) The duty under subsection (3) or subsection (4) shall be considered to be fulfilled where these data are recorded in the construction daily log pursuant to another legal regulation³²⁾.

Section 106

Payments to subcontractors

In the procurement documents, the contracting authority may set conditions upon the public contract that when fulfilled shall transfer due payments directly to the subcontractor upon the subcontractor's request; without prejudice to other legal regulations.

TITLE IX

PROCEDURE FOR SUBMISSION OF TENDERS IN THE ABOVE-THRESHOLD REGIME

Section 107

Tenders

(1) Tenders shall be submitted in writing, either in electronic form by means of an electronic tool defined by the contracting authority (hereinafter referred to as the 'tender in electronic form') or in paper form.

(2) A tender in paper form shall be delivered in a properly sealed envelope denoted with the title of the public contract.

(3) The economic operator may submit in the procurement procedure only one tender. A tender containing variants pursuant to Section 102 shall be considered to be one tender.

(4) The economic operator which has submitted a tender in the procurement procedure shall not be at the same time a person through which another economic operator proves qualification in the same procurement procedure.

(5) The contracting authority shall exclude a participant which has submitted several tenders either separately or together with other economic operators or a participant which has submitted a tender and is at the same time a person through which another economic operator proves qualification in the same procurement procedure.

(6) Subsections (1) and (3) to (5) apply to indicative tenders by analogy.

Section 108

Opening of tenders

(1) The contracting authority shall open the tenders submitted by the participants.

(2) The contracting authority shall not open any tender before the expiry of the time limit for the submission of tenders.

Section 109

Opening of tenders in electronic form

(1) Opening a tender in electronic form shall be understood as granting access to the content of the tender to the contracting authority. The contracting authority shall open tenders in electronic form after the expiry of the time limit for the submission of tenders.

(2) When opening tenders in electronic form, the contracting authority shall check whether the tenders were submitted within the prescribed time limit, whether they are authentic and whether the data message containing the tender has not been tampered with before the opening.

Section 110

Opening of tenders in paper form

(1) Opening of tenders in paper form means opening of envelopes containing tenders in which the participants as well as other persons defined by the contracting authority are entitled to take part. The contracting authority shall launch the opening of envelopes without undue delay after the expiry of the time limit for the submission of tenders. Where an electronic auction is to be held within the procurement procedure, the opening of envelopes shall take place in the absence of participants.

(2) When opening the envelopes, the contracting authority shall check whether the tenders have been delivered within the prescribed time limit and in accordance with Section 107 (2).

(3) The contracting authority shall provide the persons present with the identification data of the participants in the procurement procedure as well as with such data in their tenders that correspond to those evaluation criteria that can be expressed in numbers. This does not apply to information on the tender price or costs in the event that the contracting authority has reserved in the procurement documents that such information shall be provided in a separate envelope that shall be opened by the contracting authority after the evaluation of the quality criteria; in that case, the rules for the opening of envelopes apply to the opening of envelopes containing tender prices or costs by analogy.

(4) Where both envelopes with tenders in paper form and tenders in electronic form are delivered to the contracting authority within the time limit for the submission of tenders, the contracting authority shall, at the start of opening envelopes, provide the persons present with the information pursuant to subsection (3) in respect of the tenders in the electronic form, after which it shall continue to open envelopes with tenders in paper form.

(5) The contracting authority shall draw up a written report on the opening of the envelopes with tenders, which shall contain a list of the tenders that have been opened along with the data pursuant to subsection (3).

Section 111

Reduction of the number of participants

(1) The contracting authority may reduce the number of participants in the public procurement where it stipulates so in the contract notice or in the invitation specified in Annex 6 and at the same time determines the minimum number of participants whom it will invite to tender as well as criteria for the reduction of the number of participants.

(2) The minimum number of participants determined pursuant to subsection (1) shall ensure sufficient competition and shall be not lower than three.

(3) The contracting authority shall apply the technical qualification criteria as criteria for reducing the number of participants.

(4) The contracting authority shall reduce the number of participants according to the degree of fulfilment of the criteria for such reduction so that the number of invited participants corresponds to the number or the method of its determination indicated by the contracting authority in the contract notice or in the invitation to submit requests to participate. In the case that the number of participants is lower than or equal to the minimum number, the number of participants shall not be reduced and the contracting authority may continue the procurement procedure.

(5) Unless otherwise provided below, the contracting authority is not entitled to reduce the number of participants in an open or restricted procedure.

Section 112

Reduction of the number of tenders and solutions

(1) The contracting authority may reduce the number of indicative tenders in a negotiated procedure with prior publication or the number of solutions in a competitive dialogue procedure provided that it stipulates so in the procurement documents along with specifying the criteria for such reduction.

(2) The contracting authority shall apply the quality criteria set for procurement procedure as criteria for reducing the number of indicative tenders or solutions.

(3) The minimum number of tenders or solutions after reduction shall ensure sufficient competition and shall amount to at least three indicative tenders or solutions provided that enough indicative tenders or solutions are available.

(4) After reducing the number of indicative tenders or solutions, the contracting authority shall exclude those participants whose indicative tenders or solutions have not been selected pursuant to subsection (3).

Section 113

Abnormally low tender price

(1) The contracting authority shall assess whether the tender price is abnormally low before sending the notice of the selection of an economic operator.

(2) In the procurement documents, the contracting authority may determine

- a) the price or costs that it will consider to be an abnormally low tender price,
- b) the method of determining an abnormally low tender price.

(3) The case under subsection (2) does not preclude the contracting authority from assessing the tender price or costs as an abnormally low price even in cases other than those stipulated in paragraph a) or paragraph b) of subsection (2).

(4) The contracting authority shall request the participant to explain its method of setting the abnormally low tender price in writing. The request for explanation of the abnormally low price shall be considered a request pursuant to Section 46, and it may be supplemented and made repeatedly. In the request for explanation of an abnormally low price, the contracting authority shall request the participant to confirm that

- a) when performing the public contract it will ensure the compliance with duties arising from legal regulations related to the subject-matter of the public contract as well as from labour legislation and collective agreements in respect of the employees that will take part in the performance of the public contract, and
- b) it has not obtained unjustified state aid.

(5) In the explanation of the abnormally low price, the participant shall confirm the facts under subsection (4). The participant may also justify the abnormally low price mainly by referring to

- a) the economics of the manufacturing process, of the services provided or of the construction method,
- b) the technical solutions used or any exceptionally favourable conditions available to the participant for the performance of the public contract, or
- c) the originality of the work, supplies or services.

(6) The contracting authority shall assess the explanation of the abnormally low price. The contracting authority shall exclude the participant if the explanation of the abnormally low price shows that

- a) the tender price is abnormally low because of a breach of the duties stipulated in paragraph a) of subsection (4),
- b) the tender price is abnormally low because of state aid and the participant is unable to prove, upon a request by the contracting authority, that the state aid has been provided in compliance with EU legislation³³; where the participant is excluded for this reason, the contracting authority shall inform the European Commission of this fact, or
- c) it does not contain confirmation of the facts stipulated in subsection (4).

TITLE X

EVALUATION OF TENDERS IN ABOVE-THRESHOLD REGIME

Chapter 1

Economic advantageousness of tenders

Section 114

(1) The contracting authority shall stipulate in the procurement documents that tenders will be evaluated on the basis of their economic advantageousness.

(2) The economic advantageousness of tenders shall be evaluated on the basis of the most advantageous price-quality ratio, including the ratio between life-cycle costing and quality. The contracting authority may also evaluate the economic advantageousness of tenders on the basis of the lowest tender price or the lowest life-cycle costing.

(3) The contracting authority shall not establish the economic advantageousness solely on the basis of the lowest tender price

- a) in a competitive dialogue procedure or an innovation partnership procedure, or
- b) in the case of a public service contract listed in
 1. division 71 of the main vocabulary of the single classification system, or
 2. category 1 or 5 according to Annex No. 4 to this Act.

Section 115

Rules for evaluation of tenders

(1) In the procurement documents, the contracting authority shall lay down rules for the evaluation of tenders that shall include

- a) evaluation criteria,
- b) the method of evaluation of tenders under the individual criteria and
- c) weighting or another mathematical relation among the criteria.

(2) Where the contracting authority is not objectively able to establish the weighting or another mathematical relation among the individual evaluation criteria, it shall indicate them in a decreasing order of the importance attributed to them.

(3) Unless the contracting authority stipulates otherwise, the decisive element for evaluation of tenders shall be

- a) a price exclusive of value added tax where the contracting authority is a value added tax payer,
- b) a price inclusive of value added tax where the contracting authority is not a value added tax payer.

Section 116

Quality criteria

(1) In order to evaluate the economic advantageousness of a tender on the basis of quality, the contracting authority shall define criteria that express qualitative, environmental or social aspects linked to the subject-matter of the public contract.

(2) The quality criteria may include, but are not limited to,

- a) technical merit,
- b) aesthetic and functional characteristics,
- c) user accessibility,

- d) social, environmental and innovative characteristics,
- e) organisation, qualification or experience of persons assigned to performing the public contract where the quality of the persons assigned can have a significant impact on the quality of the performance of the contract,
- f) after-sales services including technical assistance, or
- g) delivery conditions and delivery period or period of completion.

(3) The quality criteria shall be defined so that tenders can be compared on their basis and so that the fulfilment of the criteria can be verified. Contractual terms aimed at corroboration of obligations of an economic operator or payment conditions shall not be set as quality criteria.

(4) The contracting authority may also set a fixed price and evaluate solely the quality of the proposed performance.

(5) The quality criteria are presumed to be linked to the subject-matter of the public contract if they are related to any stage of the life cycle of the subject-matter of the public contract.

Section 117

Life-cycle costing

Life-cycle costing shall cover the tender price and may cover

- a) costs, borne by the contracting authority or other users in the course of the life cycle of the subject-matter of the public contract, which may cover, including, but not limited to,
 - 1. other costs relating to acquisition ,
 - 2. costs relating to use of the subject-matter of the public contract,
 - 3. maintenance costs, or
 - 4. end of life costs, or
- b) costs imputed to environmental externalities linked to the subject-matter of the public contract at any time during its life cycle, provided their monetary value can be determined; such costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

Section 118

Method used for the assessment of life-cycle costs

(1) Where the contracting authority assesses tenders using a life-cycle costing approach, it shall indicate in the procurement documents the data to be provided by the participants and the method which the contracting authority will use to determine the life-cycle costing on the basis of those data.

(2) To calculate the costs pursuant to Section 117 b), the contracting authority shall use a method that is

- a) based on objectively verifiable and non-discriminatory criteria,
- b) accessible to all economic operators, and
- c) based on data that can be provided by the economic operators with reasonable effort.

(3) The government may issue a decree setting common methods used for the assessment of the life-cycle costs and the scope of their use.

Chapter 2

Procedure for evaluation of tenders

Section 119

(1) The contracting authority shall evaluate the tenders on the basis of the tender evaluation rules defined in the procurement documents.

(2) The contracting authority shall draw up a written report on the evaluation of tenders in which it shall record

- a) the identification of the procurement procedure,
- b) the natural persons that took part in the evaluation; such persons shall be considered to include in particular the persons who carried out the evaluation of tenders, including committee members where a committee was formed by the contracting authority for the purpose of evaluation, or invited experts where their conclusions were taken into account in the evaluation process,
- c) the list of the evaluated tenders, and
- d) a description of the evaluation which shall clearly show
 - 1. the evaluated tender data that correspond to the evaluation criteria,

2. a description of the evaluation of the tender data under individual evaluation criteria,
3. a comparison of values obtained from the evaluation of the individual evaluation criteria, and
4. the result of the evaluation of tenders.

Section 120

Conditions for application of electronic auction

(1) The contracting authority may reserve, in the contract notice or in the invitation to submit requests to participate pursuant to Section 58 (5), the right to carry out an electronic auction after the evaluation of the tenders. In that case, the contracting authority shall proceed during the procurement procedure in such a way that the participants in the electronic auction cannot identify one another until the auction is completed.

(2) The contracting authority shall not apply an electronic auction in cases stipulated in Section 114 (3).

(3) The contracting authority may also apply an electronic auction where public contracts are awarded under a dynamic purchasing system or on the basis of a framework agreement.

(4) When applying an electronic auction, the contracting authority shall indicate in the procurement documents at least

- a) the evaluation criteria that can be expressed in numbers and whose values will be the subject of the electronic auction,
- b) a potential restriction of the tender values corresponding to the evaluation criteria under paragraph a) which will be submitted by participants during conducting of the electronic auction (hereinafter referred to as 'the auction value'),
- c) the information that will be provided to participants during conducting of the electronic auction or, where applicable, specification as to when such information will be provided to them,
- d) information concerning the conduct of the electronic auction, including the method of its termination pursuant to Section 121 (8),
- e) the conditions under which participants will be entitled to submit new auction values in the electronic auction, in particular the minimum differences for individual submissions of auction values, where suitable with regard to their nature, and
- f) information concerning the electronic tool used and further technical information necessary for electronic communication.

Section 121

Conduct of an electronic auction

(1) Before starting an electronic auction, the contracting authority shall

- a) assess whether the tenders correspond to the award criteria,
- b) exclude all participants in respect of whom it finds out that there are grounds for exclusion pursuant to Section 48 (2) or in respect of whom it may prove that there are grounds for unsuitability pursuant to Section 48 (5) a) to c).
- c) evaluate the tenders.

(2) After the evaluation of tenders, the contracting authority shall set the outcome as a default setting of the electronic auction and shall invite all participants to submit new auction values in the electronic auction. The invitation shall be sent to the participants in electronic form.

(3) The invitation by the contracting authority pursuant to subsection (2) shall contain all information necessary for individual connection to the electronic tools used in the electronic auction as well as the date and time of the commencement of the electronic auction. Where the information pursuant to the first sentence has already been provided in the procurement documents, it shall suffice if the invitation refers to the procurement documents.

(4) With the exception of cases where the lowest tender price is the sole evaluation criterion, the invitation pursuant to subsection (2) shall also contain

- a) the outcome of the evaluation of a tender submitted by a relevant participant in the electronic auction, and
- b) the mathematical formula that shall be used in the electronic auction to determine the automatic re-rankings on the basis of the new values submitted and that shall incorporate all the evaluation criteria.

(5) The electronic auction shall not be commenced sooner than two working days after the date on which the invitation pursuant to subsection 2 is sent out.

(6) The electronic auction may consist of individual phases. The contracting authority shall inform the participants of the length and other details concerning the individual phases of the auction in the invitation pursuant to subsection (2). Paragraphs a) and b) of subsection (8) apply to the closing of individual phases in the auction by analogy.

(7) Throughout the electronic auction the contracting authority shall grant all participants access to information on their current rankings. The contracting authority may also provide information on auction values or on the number of participants in an auction provided that it has reserved the right to do so in the procurement documents and has established the means by

which such information will be provided. The contracting authority may inform the participants of the number of participants in an auction at any time during the electronic auction.

(8) The electronic auction shall be closed

a) upon the expiry of the previously indicated period,

b) when the contracting authority receives, for a previously indicated period of time, no more new auction values that would change rankings, or

c) where the previously indicated number of phases in the auction has been completed.

TITLE XI

SELECTION OF THE ECONOMIC OPERATOR

Section 122

Selection of the economic operator

(1) In order to conclude a contract, the contracting authority is obliged to select the participant whose tender has been evaluated as the most economically advantageous on the basis of evaluation of tenders or electronic auction, where applied.

(2) Where there is only one participant in the procurement procedure, it may be selected by the contracting authority without evaluation.

(3) The contracting authority shall send the selected economic operator a notice to submit

a) the originals or certified copies of documents attesting to its qualification where they have not already been made available to it,

b) documents or samples the submission of which is a condition for the conclusion of the contract where the contracting authority has reserved the right to do so under Section 104 (1), and

c) information and documents pursuant to Section 104 (2) a) and b), where the selected economic operator is a legal person; in that case, the procedure pursuant to Section 46 (1) applies by analogy.

(4) With regard to the notice specified in subsection (3), the procedure pursuant to Section 46 (1) applies by analogy.

(5) The contracting authority shall exclude a participant which has failed to submit data, documents or samples pursuant to subsection (3) or if the outcome of sample tests does not correspond to the award criteria.

Section 123

Notice of the selection of the economic operator

The contracting authority shall send a notice of the selection of the economic operator to all participants without undue delay after making the decision on the selection of the economic operator. With the exception of a negotiated procedure with prior publication and a procurement procedure in which only one participant is taking part, such notice shall include

a) a report on the evaluation of tenders where tenders have been evaluated,

b) the outcome of the assessment of fulfilment of the conditions for participation in respect of the selected economic operator, which shall include

1. a list of documents that the selected economic operator used to prove its qualification, and

2. the data decisive to prove the fulfilment of respective qualification criteria with regard to the requested professional qualification under Section 77 (2), economic qualification and technical qualification,

3. a list of documents or samples the submission of which is a condition for the conclusion of the contract where the contracting authority has reserved the right to do so pursuant to Section 104 (1) a),

4. the outcome of tests of the samples provided that the contracting authority has reserved the right to do so pursuant to Section 104 (1) b).

TITLE XII

CONCLUSION OF A PUBLIC CONTRACT

Section 124

(1) After the expiry of a prohibition to conclude a contract pursuant to Section 246, the contracting authority and the selected economic operator shall conclude a contract without undue delay.

(2) The contracting authority may exclude the selected economic operator from the procurement procedure where the economic operator fails to fulfil its duty pursuant to subsection (1).

(3) The contracting authority shall exclude the selected economic operator where it finds out, on the basis of the

documents submitted pursuant to Section 122 (3) c), that the economic operator had a conflict of interest pursuant to Section 44 (2) and (3).

(4) The contracting authority shall conclude the contract in accordance with the tender submitted by the selected economic operator or, where applicable, with a tender modified in compliance with Section 69 (8).

Section 125

Procedure after the exclusion of the selected economic operator

(1) Where the selected economic operator is excluded, the contracting authority may invite another participant to conclude the contract, doing so in accordance with the ranking that follows from the outcome of the original evaluation of tenders or electronic auction or from the outcome of a new evaluation. The contracting authority shall conduct a new evaluation where the exclusion of the selected economic operator would substantially influence the original ranking of tenders. The participant invited to conclude the contract shall be considered to be the selected economic operator.

(2) The contracting authority may apply the procedure set out in subsection (1) repeatedly until the contract is concluded. Provisions of Section 122 (3) and (5), Section 123 and Section 124 apply by analogy; the notice of the selection of the economic operator need not include a report on the evaluation of tenders where a new evaluation of tenders has not taken place.

Section 126

Contract award notice

The contracting authority shall send a contract award notice for publication in the manner described in Section 212 within 30 days from the conclusion of a contract or framework agreement or from setting up a dynamic purchasing system.

TITLE XIII

CANCELLATION OF A PROCUREMENT PROCEDURE

Section 127

Grounds for cancellation of a procurement procedure

(1) In the event that there is no participant after the expiry of the time limit for the submission of requests to participate, indicative tenders or tenders, the contracting authority shall cancel the procurement procedure.

(2) The contracting authority may cancel the procurement procedure where

a) the number of participants who may be invited to submit tenders in a restricted procedure, indicative tenders in a negotiated procedure with prior publication or solutions in a competitive dialogue procedure is lower than the minimum number established in the procurement documents, or where tenders, indicative tenders or solutions are submitted by a lower number of participants than the established minimum number,

b) the participation of the selected economic operator in the procurement procedure terminates after its exclusion,

c) the grounds for continuation of the procurement procedure have ceased to exist as a consequence of a substantial change in circumstances that has arisen after the commencement of the procurement procedure and has been neither foreseeable by nor attributable to a diligent contracting authority,

d) the grounds which merit particular consideration, including economic ones, have occurred during the procurement procedure and on the basis of that grounds the contracting authority cannot be reasonably required to continue the procurement procedure, notwithstanding whether the contracting authority has caused such grounds or not,

e) the contracting authority has not obtained a subsidy which was to cover, either entirely or partly, the public contract,

f) during the procurement procedure involving a design contest the selected economic operator has submitted a tender that is economically unacceptable for the contracting authority,

g) it concerns the procurement procedure which was commenced by the contracting authority even though it was not obliged to do so, or

h) there is only one participant in the procurement procedure; the contracting authority may apply this ground for cancellation only until it sends a notice of the selection of the economic operator.

(3) The contracting authority may cancel a negotiated procedure without prior publication provided that it informs the participants of the grounds for such cancellation.

Section 128

Notification and notice of cancellation of a procurement procedure

1) The contracting authority shall send a written notification of cancellation of the procurement procedure to all

participants within three working days from making the decision to cancel the procedure.

(2) The contracting authority shall send a notice of cancellation of the procurement procedure for publication in the manner described in Section 212 within 30 days from the cancellation of the procurement procedure.

(3) The duty referred to in subsections (1) and (2) does not apply to a negotiated procedure without prior publication.

(4) Where the procurement procedure is cancelled by the Office for the Protection of Competition (hereinafter referred to as 'the Office'), subsections (1) to (3) apply by analogy. The time limits start running from the date on which the contracting authority learns that a decision made by the Office has come into force.

BOOK FIVE

LIGHT REGIME

Section 129

(1) The contracting authority shall apply the light regime to public contracts, including concession contracts under Section 174, for social and other specific services listed in Annex No. 4 to this Act. This applies even to the cases where the public contract provides for services not listed in this Annex provided that their estimated value is lower than the estimated value of the services listed in Annex No. 4 to this Act.

(2) During the public procurement process under the light regime, the contracting authority shall proceed pursuant to this Book and shall also apply books one, two and ten to thirteen.

(3) The contracting authority may commence a procurement procedure under the light regime by sending

a) a prior information notice for publication in the manner specified in Section 212 where, by such notice, it invites economic operators to express their preliminary interest, or

b) a contract notice for publication in the manner specified in Section 212 provided that the procedure is not a concession procedure.

(4) Economic operators shall express their preliminary interest in writing.

(5) Provisions of sections 96 to 99 apply to the procurement documents and award criteria by analogy. In the procurement documents, the contracting authority may set out individual rules that govern above-threshold procurement procedure.

(6) Under the light regime, the contracting authority may also define other criteria for the qualification of economic operators than those specified in Book Four; provisions of sections 76 and 81 to 88 apply by analogy.

(7) The contracting authority shall determine the conduct of the procurement procedure with regard to the specific characteristics of the services being awarded. The contracting authority may hold negotiations with the participants. The contracting authority may alter the award criteria during the procurement procedure provided that this does not violate the principles defined in Section 6. However, the altered award criteria shall still meet the conditions for the light regime.

(8) When selecting the economic operator, the contracting authority may take into account quality criteria such as the need to ensure quality, continuity, accessibility and comprehensiveness of services, the innovativeness of solutions, the contribution for users or sustainability criteria for social services.

(9) The contracting authority shall inform all participants of the selection of the economic operator along with a justification of this selection.

(10) The contracting authority shall send the contract award notice for publication in the manner described in Section 212 within 30 days or, in the case of a concession procedure, within 48 days

a) from the conclusion of the contract, or

b) from the end of each quarter where the contracting authority sends grouped notices.

BOOK SIX
SPECIFIC PROCEDURES

TITLE I

GENERAL PROVISION

Section 130

Sections 42 to 44 apply to the procedure under this Book by analogy.

TITLE II

FRAMEWORK AGREEMENT

Section 131

General provisions governing framework agreements

(1) A framework agreement means an agreement in which one or more contracting authorities and one or more economic operators set out framework terms concerning, in particular, the price and other conditions of the public contract which shall be binding throughout the term of the framework agreement.

(2) The contracting authority may conclude a framework agreement solely on the basis of such procurement procedure that it would be entitled to apply to a public contract having a similar subject-matter and similar estimated value.

(3) The duration of the relation arising from a framework agreement shall not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

(4) A tender for a public contract that is to be awarded on the basis of a framework agreement may only be submitted by such a party to the framework agreement who has been invited to submit a tender.

(5) Unless otherwise stipulated below, the contracting authority shall not allow a substantial modification to the terms and conditions laid down in the framework agreement throughout its term without conducting a new procurement procedure under this Act; Section 222 applies with the necessary modifications. The contracting authority shall not allow a substantial modification to the terms and conditions laid down in the framework agreement even when awarding public contracts on the basis of the framework agreement.

Section 132

Procurement procedure for the framework agreement

(1) A procurement procedure aimed at concluding a framework agreement is governed by the provisions for the below-threshold or above-threshold regime, unless stipulated in this Book otherwise.

(2) The procurement documents shall define unequivocally the contracting authority or a group of contracting authorities that are to become parties to the framework agreement. Throughout the term of the framework agreement, the group of contracting authorities or group of economic operators who are parties to the framework agreement shall not be extended. The contracting authority shall determine in the procurement documents whether the framework agreement will be concluded with one or more participants.

(3) The contracting authority shall determine in the procurement documents whether the public contract based on a framework agreement concluded with several economic operators will be awarded using a procedure

- a) with reopening of competition among the parties to the framework agreement,
- b) without reopening of competition among the parties to the framework agreement, or
- c) involving a combination of the procedures set out under paragraphs a) and b).

(4) A public contract may be awarded by a procedure not involving a reopening of competition among the parties to the framework agreement provided that

- a) all terms and conditions of the public contract are contained in the framework agreement, and
- b) the procurement documents for the framework agreement indicate clearly which party to the framework agreement will be awarded the public contract based on the framework agreement.

(5) A public contract may be awarded using the procedure under paragraph c) of subsection (3) where the procurement documents for the framework agreement indicate the method of determining which public contracts based on the framework agreement will be awarded by a procedure without reopening of competition among the parties to the framework agreement and which will be awarded by a procedure with reopening of competition among the parties to the framework

agreement. In that case, the contracting authority may invite the parties to the framework agreement to submit tenders even for those public contracts being awarded on the basis of a framework agreement where the contracting authority stated in procurement documents for the framework agreement that these contracts will be awarded without reopening of competition.

(6) The contracting authority shall not request participants to provide a security.

(7) The contracting authority shall send the contract award notice for publication in the manner described in Section 212 within 30 days from concluding the framework agreement or from the cancellation of the procurement procedure.

Section 133

Selection of parties to the framework agreement

(1) Where concluding a framework agreement with several economic operators, the contracting authority shall proceed pursuant to the rules for the selection of an economic operator and shall conclude a framework agreement with at least the minimum number of the economic operators listed in the procurement documents.

(2) In the event that the contracting authority is unable to select the number of economic operators indicated in the procurement documents on the grounds that tenders have been submitted in an insufficient number or that these tenders have not met statutory requirements or the requirements set by the contracting authority, the contracting authority may conclude a framework agreement with only those participants which have met such requirements or it may cancel the procurement procedure.

(3) Where the contracting authority has indicated in the procurement documents that it intends to conclude a framework agreement with reopening of competition, it shall not conclude a framework agreement with only one economic operator.

(4) Where any of the selected economic operators is excluded, Section 125 applies in relation to all the selected economic operators by analogy.

Section 134

Procedure without reopening of competition among parties to the framework agreement

(1) When awarding a public contract on the basis of a framework agreement by the procedure without reopening of competition among the parties to the framework agreement, the contracting authority shall proceed pursuant to the terms and conditions stipulated in the framework agreement.

(2) When proceeding pursuant to subsection (1), the contracting authority may request a party to the framework agreement to supplement its tender where necessary for the performance of the public contract.

Section 135

Procedure with reopening of competition among parties to the framework agreement

(1) When awarding a public contract on the basis of a framework agreement by the procedure with reopening of competition among the parties to the framework agreement, the contracting authority shall

a) invite the parties to the framework agreement in writing to submit tenders on the basis of the conditions set out in the procurement documents for the framework agreement; where necessary for the performance of the public contract, these conditions may be formulated more precisely,

b) set a reasonable time limit for the submission of tenders,

c) apply provisions of sections 107 to 110 to the submission and opening of tenders by analogy,

d) inform all parties to the framework agreement who have submitted tenders of the selection of the economic operator along with a justification of this selection,

e) award the public contract based on the framework agreement to the party to the framework agreement that has been selected on the basis of the criteria laid down in the procurement documents for the framework agreement.

(2) A tender shall be considered as not to have been submitted where

a) a party to the framework agreement offered in its tender less advantageous conditions than those in the procurement procedure for the framework agreement, or

b) the parties to the framework agreement have submitted a joint tender.

(3) The contracting authority may conclude the contract even before the expiry of the time limit for filing objections against the selection of the economic operator.

Section 136

Verification of qualification of the parties to the framework agreement

(1) If the term of the framework agreement exceeds one year, the contracting authority may request the economic operators who are parties to the framework agreement to submit documents attesting to their qualification after the end of each year of the term of the framework agreement. In that case, the contracting authority shall set a time limit for the submission of such documents by economic operators to at least the same extent to which this time limit was set in the original procurement procedure.

(2) The contracting authority may also prove that there are grounds for unsuitability of any party to the framework agreement pursuant to Section 48 (5) or (6) at any time during the term of the framework agreement.

(3) The contracting authority shall not invite an economic operator to submit a tender where the respective economic operator fails to submit documents pursuant to subsection (1) or in respect of which the contracting authority proves that there are grounds for unsuitability pursuant to subsection (2). In the event that the economic operator submits documents pursuant to subsection (1) later than within the time limit set by the contracting authority or if it proves a renewal of its suitability pursuant to Section 76 by analogy, the contracting authority shall invite it to submit a tender again as of this moment.

Section 137

Contract award notice

The contracting authority shall send the contract award notice concerning a contract based on a framework agreement for publication in the manner described in Section 212 within 30 days from

- a) the conclusion of the contract, or
- b) the end of each quarter where the contracting authority sends grouped notices.

TITLE III

DYNAMIC PURCHASING SYSTEM

Section 138

General provisions

(1) The contracting authority may set up a dynamic purchasing system, which for the purposes of this Act means a completely electronic and open system for the award of public contracts having as their subject-matter the acquisition of common and generally available products, services or works. The contracting authority shall set up a dynamic purchasing system during the procurement procedure during which it shall follow, with the necessary modifications, the rules of the restricted procedure. The contracting authority may divide the dynamic purchasing system into categories that are objectively defined on the basis of the subject-matter of the public contracts or on the basis of their territorial scope.

(2) Economic operators shall not be required to pay for using the dynamic purchasing system.

Section 139

Setting up of a dynamic purchasing system

(1) In the contract notice, the contracting authority shall specify the period of validity of a dynamic purchasing system and shall indicate that a dynamic purchasing system is being set up.

(2) The time limit for the receipt of requests to participate shall not be shorter than 30 days from the commencement of the procurement procedure by which a dynamic purchasing system is set up.

(3) The contracting authority shall provide economic operators with unlimited remote access to the procurement documents, starting from the publication of the contract notice for setting up of the dynamic purchasing system until the termination of the dynamic purchasing system.

(4) In the procurement documents, the contracting authority shall define the elements of a restricted procedure as well as

- a) the type, subject-matter and estimated value of the public contracts to be awarded under the dynamic purchasing system,
- b) information on division into categories pursuant to Section 138 (1) and selection criteria for each category, where the dynamic purchasing system is divided into categories, and
- c) information concerning the electronic tool used and further technical information necessary for electronic communication.

(5) The contracting authority is not entitled to request the participants to provide a security.

(6) The contracting authority shall assess the conformity of the requests to participate it has received within the time limit for their submission with the award criteria. The contracting authority shall exclude from the procurement procedure those

participants whose requests to participate do not meet the award criteria and shall admit the remaining participants to the dynamic purchasing system. The contracting authority shall inform the participant admitted to the dynamic purchasing system of its admission without undue delay.

(7) The dynamic purchasing system shall be considered to be set up at the moment when

a) the time limit in which all participants could file objections against exclusion from the procurement procedure expires, where such objections have not been filed,

b) in the event that the objections have been filed, the time limit for submitting a petition under Section 251 (2) or (3) expires, provided that the petition has not been submitted, or

c) in the event that the participant submits a petition under Section 251 (1), a decision on a discontinuance of administrative proceedings or a rejection of the tender comes into effect.

(8) The contracting authority shall send the contract award notice for publication in the manner described in Section 212 within 30 days from setting up the dynamic purchasing system.

(9) The contracting authority shall send a notice of a change for publication in the manner described in Section 212 where

a) the period of validity of the dynamic purchasing system specified in the contract notice for setting up of the dynamic purchasing system has changed, or

b) the dynamic purchasing system has been terminated.

Section 140

Admission to the dynamic purchasing system

(1) The contracting authority shall give any economic operator, throughout the entire period of validity of the dynamic purchasing system, the possibility to submit the request to participate in the system. Requests to participate submitted after the dynamic purchasing system was set up shall be assessed by the contracting authority within 10 working days from their receipt. In justified cases, the contracting authority may prolong this time limit to 15 working days.

(2) The contracting authority shall send an economic operator a notice of its admission to the dynamic purchasing system or of its rejection within the time limit pursuant to subsection (1). The contracting authority shall justify a rejection of the request of the economic operator to be admitted to the dynamic purchasing system.

(3) The contracting authority may, at any time during the period of validity of the dynamic purchasing system, request the economic operators admitted to the dynamic purchasing system to submit an updated European Single Procurement Document. In that case, the economic operator is obliged to submit the updated European Single Procurement Document to the contracting authority within five working days from the date of receipt of the contracting authority's request. The rules for the submission of documents defined in Section 45 and for proving qualification pursuant to sections 81 to 88 apply with the necessary modifications throughout the entire period of validity of the dynamic purchasing system. The contracting authority may prove that there are grounds for unsuitability pursuant to Section 48 (5) in respect of an economic operator admitted to the dynamic purchasing system at any time during the period of validity of the dynamic purchasing system.

(4) The contracting authority shall not invite an economic operator to submit a tender where the respective economic operator fails to submit documents pursuant to subsection (3) or in respect of which the contracting authority proves that there are grounds for unsuitability. In the event that the economic operator submits documents pursuant to subsection (3) later than within the time limit set by the contracting authority or if it proves a renewal of its suitability pursuant to Section 76 by analogy, the contracting authority shall invite it to submit a tender again as of this moment.

Section 141

Award of a public contract under a dynamic purchasing system

(1) Before the award of a public contract under the dynamic purchasing system, the contracting authority shall send an invitation to tender to all economic operators admitted to the dynamic purchasing system. Where the dynamic purchasing system has been divided into categories, the contracting authority shall invite all economic operators having been admitted to the category corresponding to the specific public procurement concerned to submit a tender. The invitation to tender shall contain the elements defined in Annex No. 6 to this Act. The invitation to tender may not be sent before the dynamic purchasing system is set up.

(2) The time limit for the submission of tenders shall not be less than 10 days from the date, on which the invitation to tender was sent. The contracting authority defined in Section 4 (1) c) to e) may shorten this time limit on the basis of a written consent of all economic operators admitted to the dynamic purchasing system or to its relevant category.

(3) The contracting authority shall inform all economic operators admitted to the dynamic purchasing system who have submitted tenders of the selection of the economic operator along with a justification of this selection. The contracting authority shall award the public contract under the dynamic purchasing system to the economic operator which has been selected on the basis of the criteria indicated in the invitation to tender.

(4) The contracting authority may conclude the contract even before the expiry of the time limit for filing objections against the selection of the economic operator.

Section 142

Contract award notice

The contracting authority shall send the contract award notice concerning a contract concluded under the dynamic purchasing system for publication in the manner described in Section 212 within 30 days from

- a) the conclusion of the contract, or
- b) the end of each quarter where the contracting authority sends grouped notices.

TITLE IV

DESIGN CONTEST

Section 143

(1) A design contest means a procedure which enables the contracting authority to acquire a design, which is mainly a plan or a project in the fields of town and country planning or architecture, construction, technical and inspection services. Section 107 applies to the submission of designs by analogy.

(2) The contracting authority shall apply a design contest where it intends to award a public service contract in a following negotiated procedure without prior publication pursuant to Section 65; the contracting authority shall indicate such intention in the contest notice.

(3) The contracting authority shall also apply a design contest where

- a) the design contest is part of a procurement procedure for a public service contract, or
- b) the estimated aggregate value of prizes, remunerations and other payments connected with participation in the design contest exceeds CZK 2,000,000; this does not apply to cases specified in sections 29, 30, 158, 177 to 178 and 191.

Section 144

Design contest conditions

(1) In the design contest conditions, the contracting authority shall determine whether it will apply an open design contest or a restricted design contest.

(2) The design contest conditions shall be made public on the contracting authority profile for the entire duration of the time limit for the submission of designs. Provisions of Section 96 (2) to (4) and Section 99 apply to the design contest conditions by analogy. The contracting authority shall publish an explanation of the design contest conditions on the contracting authority profile not later than 14 days before the expiry of the time limit for the submission of designs.

(3) Design contest conditions relating to a design contest having as its subject-matter services listed in division 71 of the main vocabulary of the single classification system shall contain at least

- a) the name, or names, and surname or names and surnames of the jury members,
- b) the method of designation of the designs and their annexes in order to ensure their anonymity,
- c) the amount of prizes, remunerations and other payments where they are provided,
- d) conditions for treatment of intellectual property rights where the design enjoys such protection,
- e) the estimated amount of investment costs where a public service contract is to be awarded, and
- f) the means of publication of the designs.

(4) The communication between the contracting authority and economic operators shall be governed by Section 211 by analogy.

Section 145

Open design contest

(1) The contracting authority shall commence an open design contest by sending a contest notice for publication in the manner specified in Section 212, by means of which it invites an unlimited number of economic operators to submit designs.

(2) The time limit for the submission of designs shall not be shorter than 35 days, or 45 days in respect of a design contest having as its subject-matter services listed in division 71 of the main vocabulary of the single classification system, from the date on which the design contest notice was sent.

Section 146

Restricted design contest

(1) The contracting authority shall commence a restricted design contest by sending a design contest notice for publication in the manner specified in Section 212, by means of which it invites an unlimited number of economic operators to submit requests to participate. Provisions of Section 58 apply by analogy.

(2) The time limit for the submission of requests to participate shall not be less than 20 days from the date on which the design contest notice was sent. The time limit for the submission of designs shall not be shorter than 30 days, or 45 days in respect of a design contest for services listed in division 71 of the main vocabulary of the single classification system, from the date on which the invitation to submit designs was sent.

(3) In the design contest notice, the contracting authority may specify which economic operators it will invite to submit designs, provided that it specifies at least three such economic operators.

(4) The contracting authority shall assess the conformity of the requests to participate with the design contest conditions and reduce the number of design contest participants pursuant to Section 111 (1) to (4) by analogy provided that it has reserved the right to do so in the contest notice. In the event that the contracting authority proceeds simultaneously pursuant to subsection (3), the number of design contest participants to be invited to submit designs as specified in the contest conditions shall not be lower than twice the number of economic operators indicated in the contest notice pursuant to subsection (3). The contracting authority shall exclude from the design contest those participants whose requests to participate do not meet the design contest conditions or that have not been selected when the number of design contest participants was being reduced. The contracting authority shall invite the non-excluded participants to submit designs.

Section 147

Reduction of the number of designs

The contracting authority may reserve, in the design contest conditions, that the contest will take place in several phases and that the number of designs may be reduced in its course; provisions of Section 112 apply by analogy.

Section 148

Jury

(1) In order to evaluate the designs, the contracting authority shall form a jury composed of natural persons. The jury members shall not have a conflict of interest pursuant to Section 44. A majority of the jury members shall be independent in relation to the contracting authority. Jury members shall be understood as being independent if they have no long-term business, employment or similar relationship with the contracting authority. The contracting authority shall request all jury members to submit affirmations attesting that they have no conflict of interest, and in the case of a design contest having as its subject-matter services listed in division 71 of the main vocabulary of the single classification system it shall request the jury members to express a consent to the design contest conditions.

(2) Where the contracting authority applies requirements for professional qualification of economic operators pursuant to Section 77 (2) b) and c) as a condition for participation in the design contest, at least one half of the jury members shall have the requested or equivalent qualification.

(3) In the event that the composition of the jury changes in the course of the design contest, the contracting authority shall ensure that the conditions laid down in subsections (1) and (2) are met. In the case of a design contest having as its subject-matter services listed in division 71 of the main vocabulary of the single classification system, the contracting authority shall inform all design contest participants of the names of the newly appointed jury members.

(4) The contracting authority shall ensure that the jury evaluates the designs anonymously. Anonymity of designs shall be observed until the jury has reached its opinion.

(5) The jury shall draw up a report, signed by its members, on the evaluation of the designs, in which it shall record the ranking of the designs made on the basis of the criteria indicated in the contest notice.

(6) The design contest participants may be invited by the jury, where necessary, to respond to additional questions, which the jury shall record in the report on the evaluation of designs. The jury shall draw up detailed minutes of the dialogue between the jury and the design contest participants.

(7) When selecting a design, the contracting authority shall be bound by the jury's opinion. The contracting authority shall decide to conduct a new evaluation of designs where it finds out that during the evaluation of designs the jury breached the procedure stipulated by this Act or by the design contest conditions. The new evaluation of designs shall be conducted by the original jury or the contracting authority shall appoint a new jury; the requirement of anonymity of designs shall always be observed. The contracting authority shall include the reasons for a new evaluation of designs in the original report on the evaluation of designs.

Section 149

Notice of the selection of the design

(1) The contracting authority shall send a notice of the selection of the design to all design contest participants.

(2) If the participant who submitted the selected design is excluded from the design contest, the contracting authority may decide to select another design in accordance with the ranking determined in the report on the evaluation of designs.

(3) The design contest shall be considered to be terminated at the moment when

a) the time limit in which all participants could file objections against the selection of a design expires, where such objections have not been filed,

b) in the event that the objections have been filed, the time limit for submitting a petition under Section 251 (2) or (3) expires, provided that the petition has not been submitted, or

c) in the event that the participant submits a petition under Section 251 (1), a decision on a discontinuance of administrative proceedings or a rejection of the tender comes into effect.

(4) The contracting authority may reserve, in the design contest conditions, the possibility to cancel the design contest before the jury makes a decision only if it simultaneously lays down conditions for compensation of the design contest participants.

Section 150

Notice of a design contest termination

(1) The contracting authority shall send a notice of the result of the design contest for publication in the manner described in Section 212 within 30 days from cancelling or terminating the design contest.

(2) In the case of a design contest having as its subject-matter the services listed in division 71 of the main vocabulary of the single classification system, the contracting authority shall send the design contest documents, including the jury's opinion and all designs, in electronic form to the Czech Chamber of Architects³⁴.

BOOK SEVEN

UTILITIES PUBLIC CONTRACTS PROCEDURE

TITLE I

GENERAL PROVISIONS

Section 151

Utilities public contract

(1) Utilities public contract means a public contract which the contracting authority awards during the pursuit of the relevant activity.

(2) Utilities public contract also means a public contract which is awarded by another person during the performance of the relevant activity where

a) it performs the relevant activity on the grounds of a special or exclusive right pursuant to Section 152, or

b) the contracting authority may exercise, directly or indirectly, its dominant influence over such person.

(3) For the purposes of this Act, dominant influence means the case, where one person, directly or indirectly,

a) holds the majority of another person's subscribed registered capital,

b) controls the majority of the votes attaching to shares issued by another person, or

c) may appoint more than half of the another person's governing or supervisory body.

(4) The contracting authority shall act during the award of a utilities public contract, which is not a concession, in accordance with Book Four, Book Five or Book Six and shall also apply Book One, Book Two and books ten to thirteen, unless provided in this book otherwise. During the award of a utilities public contract, which is a concession, the contracting authority shall act in accordance with Book Eight.

Section 152

Special or exclusive rights

(1) Special or exclusive rights means rights granted by a competent public authority on the grounds of a legal regulation containing the effect of which is to limit the exercise of relevant activities defined in Section 153 to one or more persons, and which substantially affects the ability of other persons to carry out such activity.

(2) 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 shall not constitute special or exclusive rights. Such

procedures shall include, but are not limited to,

- a) the procurement procedure enabling participation of an unlimited number of economic operators, or
- b) the procedure pursuant to other legal regulations listed in Annex No. 5 to this Act.

Section 153

Relevant activity

(1) For the purposes of this Act, relevant activity means,

- a) in the gas sector,
 - 1. provision or operation of the gas transportation or distribution system, gas recovery lines pursuant to another legal regulation³⁵⁾ relating to production, transportation or distribution of gas, or
 - 2. gas supply into the gas or distribution system, gas recovery line,
- b) in the heat sector,
 - 1. provision or operation of the heat supply system pursuant to another legal regulation³⁵⁾ relating to production and transportation of heat, or
 - 2. heat supply in the heat supply system,
- c) in the electricity sector,
 - 1. provision or operation of transmission or distribution system pursuant to another legal regulation³⁵⁾ relating to generation, transmission or distribution of electricity, or
 - 2. electricity supply into transmission or distribution system,
- d) in the water sector,
 - 1. provision or operation of water pipeline pursuant to another legal regulation³⁶⁾, or
 - 2. the supply of drinking water to the water pipeline,
- e) activity of the contracting authority performing the relevant activity pursuant to paragraph d) of subsection 1, where such activity relates to
 - 1. hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations; or
 - 2. the disposal of sewage by the sewage system or purification and treatment of sewage,
- f) activity relating to the provision or operation of networks providing services to the public in the field of transport by railway, tramway, trolley bus, public bus or cable (hereinafter referred to as 'transport network'); a transport network shall be considered to exist where the service pursuant to this paragraph is provided under conditions laid down by a competent administrative body,
- g) activity relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterways,
- h) activities relating to the provision of
 - 1. postal services consisting of the posting, sorting, routing and delivery of postal items regardless of whether they are basic services³⁷⁾ or not; postal item means an item marked with an address irrespective of its weight or value, or
 - 2. other services than postal services, where they are provided by the person who provides any of the postal services; for the purposes of this provision other services than postal services mean services directly relating to postal services including services preceding the posting, as well as services subsequent to dispatch of the postal item, including but not limited to services of administration of the sender's or recipient's mailroom or services relating to items which are not listed in subparagraph 1, in particular direct mail bearing no address, or
- i) activity relating to the exploitation of a geographical area for the purposes of
 - 1. extracting oil or gas, or
 - 2. exploring for, or extracting, coal or other solid fuels.

(2) For the purposes of subsection (1), supply means generation or another form of production and resale.

(3) Unless the contracting authority is concerned, for the purposes of this Act, the following shall not be concerned the relevant activity:

- a) the activity pursuant to paragraphs a) or b) of subsection (1), where
 - 1. it is carried out on the grounds of economic exploitation of heat or gas produced as the consequence of the activity different from the activity specified in subsection (1), and
 - 2. income generated from this activity does not reach more than 20 % of the average turnover of the contracting authority during the preceding three years including the present year,
- b) the activity pursuant to paragraphs c) or d) of subsection (1), where
 - 1. the contracting authority produces electricity or drinking water for the purposes of an activity different from the activity referred to in subsection (1) and
 - 2. the contracting authority's own consumption is at least 70 % of the average production of electricity or drinking water during the preceding three years including the present year.

Section 154

Competition relating to the pursuit of the relevant activity

(1) The activity, which is directly exposed to competition on the market to which access is not restricted, shall not be considered the relevant activity within the meaning of Section 153, where the European Commission has decided so pursuant to the legal regulation of the European Union³⁸⁾.

(2) Where it is reasonably foreseeable that conditions for exemption of any relevant activity within the meaning of subsection (1) are met, the ministry having in rem jurisdiction may submit an application for a decision in this matter through the Ministry of Regional Development to the European Commission, or the contracting authority performing the relevant activity may submit an application for a decision in this matter to the European Commission. When submitting an application to the European Commission the ministry having in rem jurisdiction or the competent contracting authority shall act in accordance with legislation of the European Union³⁹⁾.

(3) In the case of a request submitted by the contracting authority carrying out the relevant activity, the ministry having in rem jurisdiction shall assess whether, with regard to this activity, it is reasonably foreseeable that the conditions specified in subsection (1) will be met.

(4) Where the contracting authority submits an application it shall send a copy thereof to the Ministry of Regional Development and to the ministry having in rem jurisdiction.

(5) For the purposes of subsection (1), it is presumed that the European Commission has decided to exempt the relevant activity when the time limit for issuance of such decision defined in the legal regulation of the European Union³⁸⁾ has expired.

Section 155

Contracts awarded to affiliated persons

(1) Affiliated person means any person which is obliged to have the annual accounts consolidated⁴⁰⁾ by the contracting authority or another person which, directly or indirectly,

- a) may be subject to a dominant influence by the contracting authority,
- b) may exercise a dominant influence over the contracting authority, or
- c) is subject to a dominant influence of the same person as the contracting authority.

(2) The public contract awarded by the contracting authority to the affiliated person or awarded jointly by several contracting authorities in order to pursue the relevant activity to the person affiliated to any of those contracting authorities, shall not be considered a utilities public contract where concerning

- a) services provided that at least 80 % of the average total turnover of the affiliated person over the preceding three years, taking into account all services provided by that undertaking, derives from the provision of services to the contracting authority or other persons with which it is affiliated,
- b) supplies provided that at least 80 % of the average total turnover of the affiliated person over the preceding three years, taking into account all supplies provided by that undertaking, derives from the provision of supplies to the contracting authority or other persons with which it is affiliated, or
- c) works provided that at least 80 % of the average total turnover of the affiliated person over the preceding three years, taking into account all works provided by that undertaking, derives from the provision of works to the contracting authority or other persons with which it is affiliated,

(3) Where, because of the date on which an affiliated person was created or an affiliated person demonstrably commenced its activities later, the average turnover for the preceding three years may not be determined, it shall be sufficient for that person to show that meeting conditions pursuant to subsection (2) is credible, in particular by means of business projections.

(4) Where more than one person affiliated with the contracting authority with which they form an economic group provides the same or similar services, supplies or works, the percentages specified in subsection (2) shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated persons.

Section 156

Contracts awarded to affiliated undertakings

The public contract awarded by the contracting authority to the person which it founded exclusively with other contracting authorities for the purpose of pursuit of relevant activities over a period of at least three years and where it is stipulated in writing in the forming juridical act that exclusive participation of founding contracting authorities in this person will last for at least three years from its formation, shall not be considered a utilities public contract. This applies by analogy also in the case where such person awards the public contract to contracting authorities by which it was found.

Section 157

Notifications to the European Commission

When proceeding pursuant to Section 155 and Section 156, the contracting authority shall notify the European Commission, if so requested, of

- a) the name of all persons participating in the award of a public contract,
- b) the subject-matter and price of relevant utilities public contracts, and
- c) the facts, which the European Commission considers necessary for proving that conditions pursuant to Section 155 and Section 156 have been met.

TITLE II

SPECIFIC RULES GOVERNING THE AWARD OF UTILITIES PUBLIC CONTRACTS

Section 158

Specific provisions governing exclusions for utilities public contracts

(1) The contracting authority is not obliged to use the procurement procedure to award a utilities public contract having an estimated value below the threshold determined by the secondary legal regulation pursuant to Section 25.

(2) In addition to cases specified in Section 29, the contracting authority is not obliged to use the procurement procedure to award a utilities public contract where

a) a central purchasing body conducting central purchasing activities is not concerned and a public contract is awarded for the purposes of resale or lease to third parties, whereas the contracting authority does not enjoy any specific or exclusive right to sell or lease the subject-matter of such utilities public contract and other persons are free to sell or lease the subject-matter of the utilities public contract under the same conditions as the contracting authority; the contracting authority shall notify the European Commission, if so requested, to which categories of things or activities they regard such exclusion to apply,

b) the public contract is awarded

- 1. for purposes other than the pursuit of the relevant activity, or
- 2. for the pursuit of the relevant activity in countries outside the territory of the European Union under conditions not involving the physical use of networks or geographical areas within the European Union;

the contracting authority awarding a utilities public contract shall notify the European Commission, if so requested, of any activities to which they regard such exclusion to apply, or

c) the contract is a utilities public service contract being awarded to a person which is a contracting authority or an association of contracting authorities on a basis of an exclusive right which it enjoys pursuant to other legal regulations which are compatible with European Union law.

(3) Provisions of sections 29 d), 29 i) 1., 29 l) 2., 29 p) and 29 s) do not apply.

Section 159

Exclusions for supplies of water, fuels or energy

The contracting authority is not obliged to use the procurement procedure to award a utilities public contract for the pursuit of

a) the relevant activity pursuant to Section 153 (1) d) where the purchase of water is concerned, or

b) the relevant activity pursuant to Section 153 a) b) c) or i) where

- 1. the supply of fuels for the production of energy is concerned, or
- 2. the supply of energy, including supplies of supporting services, pursuant to another legal regulation³⁵⁾.

Section 160

Exclusion for contracting authority providing postal services

The contracting authority performing the relevant activity pursuant to Section 153 (1) h) 1. is not obliged to use the procurement procedure to award a public contract where concerning

a) services linked to and provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail);

b) financial services, the subject of which are banking activities, investment services, insurance, supplementary pension insurance and security instruments,

c) philatelic services, or

d) logistics services combining physical delivery or warehousing with other non-postal functions pursuant to Section 153 (1) (h) (2).

Section 161

Specific provision governing the choice of procurement procedure

During the award of a utilities public contract the contracting authority may use a negotiated procedure with prior publication in any case.

Section 162

Specific provisions governing negotiated procedure without prior publication

(1) The contracting authority may use a negotiated procedure without prior publication under conditions specified in Section 63 (1) regardless of the type of a previous procurement procedure which has been cancelled.

(2) The contracting authority may also use a negotiated procedure without prior publication for a utilities public supply contract for bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices.

(3) The contracting authority may use a negotiated procedure without prior publication where a utilities public contract is purely for the purpose of research, experiment, study or development and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts; provisions of Section 64 a) do not apply.

(4) The contracting authority may also use a negotiated procedure without prior publication under conditions specified in Section 64 d) where a public service contract is concerned.

(5) Time limits for commencement of a negotiated procedure without prior publication set forth in Section 64 b) and Section 66 d) do not apply in the case of utilities public contracts.

Section 163

Specific provisions governing restricted procedure and negotiated procedure with prior publication

(1) During the award of a utilities public contract in a restricted procedure prior to the sending of the invitation to tender, the contracting authority may reduce the number of participants pursuant to Section 111. In such case the contracting authority shall exclude from the procurement procedure the participants that were not selected when the number of participants was being reduced.

(2) On the basis of a mutual agreement with participants and under the condition that the time limit is the same for all participants, the contracting authority awarding a utilities public contract may determine the time limit for submission of

a) tenders in a restricted procedure, or

b) indicative tenders in a negotiated procedure with prior publication.

(3) Unless the contracting authority agrees with participants as referred to in subsection (2), the time limit for the submission of tenders or indicative tenders shall not be less than 10 days from the date on which the invitation to tender was sent.

(4) The contracting authority may make an invitation to submit requests to participate in a restricted procedure or in a negotiated procedure with prior publication by means of the qualification system. In such case the contracting authority shall

a) send the invitation to all economic operators engaged in the qualification system, or

b) invite economic operators to submit requests to participate by means of a notice on the existence of a qualification system, where it proceeds pursuant to Section 165.

Section 164

Specific provisions governing commencement of procurement procedures

(1) During the award of a utilities public contract in a restricted procedure or a negotiated procedure with prior publication the contracting authority may also commence the procurement procedure by sending

a) a prior information notice for publication in the manner specified in Section 212 where, by such notice, it invites economic operators to express their preliminary interest, or

b) a notice on the existence of a qualification system for publication in the manner specified in Section 212, where, by such notice, it invites economic operators to submit their requests to participate in the procurement procedure.

In this case, by sending a prior information notice or notice on the existence of a qualification system the contracting authority fulfils the duties for which this Act otherwise requires sending a contract notice.

(2) Where the procurement procedure is commenced pursuant to subsection (1) the contracting authority shall publish the procurement documents with the exception of forms referred to in Section 212 and notices referred to in Annex No. 6 to this

Act on the contracting authority profile from the date of publication of the prior information notice or the notice on the existence of a qualification system until the expiry of the time limit for the submission of tenders.

Section 165

Qualification system

(1) For the purposes of the award of utilities public contracts, the contracting authority may establish a qualification system, into which the contracting authority admits qualified economic operators. The contracting authority may divide the qualification system into categories that are objectively defined on the basis of the subject-matter of public contracts or on the basis of their territorial scope. The contracting authority shall keep a list of economic operators admitted to the qualification system.

(2) The contracting authority shall send a notice on the existence of a qualification system for publication pursuant to Section 212. In the notice on the existence of a qualification system, the contracting authority shall indicate its purpose, how to have access to the rules concerning its operation and the period of validity of this system. Where the period of validity of the qualification system is changed or the system is terminated the contracting authority shall send a notification in the manner specified in Section 212.

(3) Contracting authority which establishes or operates a qualification system shall ensure that economic operators are at all times able to request qualification.

(4) The qualification system may involve different qualification stages.

(5) The contracting authority is entitled to use another contracting authority's qualification system, with its consent.

(6) The contracting authority is entitled to send an invitation to tender in a restricted procedure or indicative tenders in a negotiated procedure with prior publication to all economic operators admitted to the qualification system by means of the qualification system.

Section 166

Operation of the qualification system

(1) Contracting authorities shall establish objective rules for the operation of the qualification system and objective rules and grounds for the exclusion and selection of economic operators requesting qualification. The contracting authority shall provide economic operators with such rules on their request; Section 36 (8) applies by analogy.

(2) Rules for the operation of the qualification system shall enable to prove qualification through other persons. Provisions of Section 83 and Section 85 (2) apply by analogy.

(3) The contracting authority may make requests for qualification subject to payment by an economic operator, the payment shall be proportionate to the generated costs.

(4) Where the contracting authority also determines rules regarding technical specifications, the contracting authority may update such technical specifications. Updated rules shall be communicated to all economic operators being admitted to the qualification system.

(5) The contracting authority shall decide on the economic operator's request for qualification within four months from its submission. This time limit may be prolonged within two months from the submission of the request along with a justification and information on the date of decision. The contracting authority shall decide on the economic operator's request within six months from its submission, in any case.

(6) The contracting authority shall inform economic operators whose qualification is refused of the refusal decision and the reasons for that decision within 15 days from the date of the refusal decision.

(7) Qualification of an economic operator may be brought to an end only if the economic operator is notified of the reasoning justifying its excluding at least 15 days before the date on which the qualification is due to end.

Section 167

Specific provisions governing award criteria

During the award of a utilities public contract, the contracting authority may also define other criteria for the qualification of economic operators than those specified in Book Four; provisions of sections 76 and 81 to 88 apply by analogy. However, the contracting authority shall not, in particular,

a) define criteria applicable to some of the economic operators that are not applicable to the other economic operators, or

b) request repeatedly documents, tests or other data without a serious reason.

(2) With regard to the contracting authority referred to in Section 151 (2) provisions of Section 73 (1) and 73 (2) b) do not apply.

(3) In the case of procurement procedures commenced by the prior information notice, the contracting authority shall provide an economic operator, upon its request, with technical specifications usually requested with regard to utilities public

contracts being awarded by the contracting authority or with technical specifications which it intends to use or, where applicable, with reference to documents which have already been made available to the economic operator.

(4) During the award of utilities public contracts, provisions of Section 97 a) do not apply.

Section 168

Tenders comprising supplies originating in third countries

(1) In the case of a utilities public supply contract the contracting authority may exclude any participant where the proportion of the supplies, including software used in telecommunications network equipment, originating in countries with which the European Union has not concluded an agreement ensuring comparable and effective access for European Union economic operators to the markets of those countries, as determined in accordance with the directly applicable regulation of the European Union⁴¹⁾, exceeds 50 % of the total value of the proposed supplies. This does not apply where a promulgated international agreement concluded by the Czech Republic provides otherwise.

(2) Where two or more tenders are equivalent in the light of the evaluation criteria, preference shall be given to the tender which may not be rejected pursuant to paragraph (1) of this Section. The tender price of such tender shall be considered equivalent for the purposes of this provision, if the price difference does not exceed 3 %.

(3) The contracting authority is not obliged to use subsection (2) where as a result thereof it would oblige the contracting authority to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, or technical difficulties in operation and maintenance, or disproportionate costs.

(4) Supplies originating in countries to which the benefit of the Directive 2014/25/EU of the European Parliament and the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC has been extended, shall not be taken into account for determining the proportion specified in subsection (1).

Section 169

Specific provisions governing framework agreements

(1) In the case of utilities public contracts, the term of a framework agreement shall not exceed eight years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

(2) When selecting economic operators, in the case of utilities public contracts being awarded on the grounds of a framework agreement, the contracting authority shall proceed in accordance with conditions and criteria defined in the framework agreement. Provisions of sections 131 (3), 133 (1) to (3), 134, 135, 136 do not apply.

Section 170

Specific provisions governing cancellation of a procurement procedure

The contracting authority awarding a utilities public contract may cancel the procurement procedure even if there are not any grounds for cancellation pursuant to Section 127, provided that it has reserved the right to do so in the procurement documents. In such case the contracting authority shall indicate justification of such conduct in the notice of cancellation of the procurement procedure.

Section 171

Specific provisions governing documentation of the procurement procedure

The contracting authority shall send main elements of documentation of the procurement procedure to the European Commission, if requested.

Section 172

Specific provisions governing a written report of the contracting authority

Provisions of Section 217 (2) f) g) j) l) m) and n) do not apply to a written report of the contracting authority on the utilities public contract.

Section 173

Specific provisions governing supplements to contract

Provisions of Section 222 (5) c) and Section 222 (6) c) do not apply to supplements to a utilities public contract.

BOOK EIGHT

CONCESSIONS AWARD PROCEDURE

TITLE I

GENERAL PROVISIONS

Section 174

Concession

(1) The contracting authority shall proceed in accordance with this Book in case of public contracts which are works or service concessions. The contracting authority shall also apply Book One, Book Two, Title I of Book Seven and books ten to thirteen, unless otherwise provided below.

(2) The award of a works concession shall be deemed conclusion of a contract for pecuniary interest, by which the contracting authority

- a) awards the provision of the activity pursuant to Section 14 (3) a) b) or c) to an economic operator, the consideration for which consists either solely in the right to exploit the work that is the subject of the contract or in that right together with payment, and
- b) transfers an operating risk in exploiting those works to the economic operator.

(3) The award of a services concession shall be deemed conclusion of a contract for pecuniary interest, by which the contracting authority

- a) awards the provision of other activities pursuant to Section 14 (3) a) to c) to an economic operator, the consideration of which consists either solely in the right to exploit the services that are the subject of the contract or in that right together with payment and
- b) transfers an operating risk in exploiting those services to the economic operator.

The operating risk is presumed to be transferred to the economic operator pursuant to subsections (2) and (3) where, under normal market conditions, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are covered by the subject-matter of the concession. It may concern demand risk or supply risk or both. It may also concern the partial transfer of operating risk, if the part of the risk transferred to the economic operator involves real exposure to the vagaries of the market, such that any potential estimated loss incurred by the economic operator are not merely negligible.

Section 175

Methods for calculating the estimated value of the concession

(1) The estimated value of the concession shall be the total turnover of the economic operator, net of value-added tax, generated over the duration of the concession contract arising from consideration for the works and services being covered by the subject-matter of the concession, as well as for the supplies incidental to such works and services.

(2) The contracting authority shall determine an estimated value of the concession at the moment at which the procurement procedure is commenced.

(3) The estimated value of the concession shall be calculated on the grounds of objective facts using a method specified in the procurement documents. When calculating the estimated value of the concession, the contracting authority shall take into account in particular

- a) the value of any form of possible options including any extension of the duration of the concession,
- b) revenue from the payments made by the users of the subject-matter of the concession,
- c) payments or any financial advantage in any form whatsoever made by the contracting authority or any other public authority to the economic operator, including compensation for compliance with a public service obligation and public investment subsidies,
- d) payments or any other financial advantages, in any form, from third parties for the performance of the concession,
- e) revenue from sales of any assets which are connected to the subject-matter of the concession;
- f) the value of all the supplies, services and works that are made available to the economic operator by the contracting authority for the performance of the concession, or
- g) any prizes or payments to the participants.

(4) When calculating the estimated value, the provisions of sections 16, 18 (3) and 19 to 23 do not apply.

TITLE II

RULES GOVERNING THE AWARD OF CONCESSIONS

Section 176

Choice of procurement procedures

(1) The contracting authority shall award concessions in a concession award procedure unless it applies a different type of procurement procedure pursuant to Section 55. The contracting authority may apply a negotiated procedure without prior publication only if the conditions specified in Section 63 (1) or (2) are met.

(2) Concessions for social and other specific services listed in Annex No. 4 to this Act shall be awarded under a light regime pursuant to Section 129.

(3) Utilities concession means a concession which the contracting authority awards during the pursuit of the relevant activity.

(4) The contracting authority shall proceed in accordance with this Book during the award of a public contract in the fields of defence and security, which is a concession.

Section 177

Specific exclusions for concessions

(1) The contracting authority is not obliged to use the procurement procedure to award a concession concerning

a) services concession being awarded to an economic operator on the basis of the exclusive right which was granted pursuant to another legal regulation transposing one of the legal regulations of the European Union listed in Annex No. 5 to this Act; in such case the contracting authority shall send a concession award notice for publication in the manner specified in Section 212 unless the European Commission is informed on the grounds of another legal regulation. The contracting authority shall inform the European Commission of the granting of an exclusive right to pursue any of the relevant activities,

b) services concession for air transport services based on the granting of an operating licence within the meaning of directly applicable legal regulation of the European Union⁴²⁾,

c) concession for public passenger transport services within the meaning of directly applicable legal regulation of the European Union⁴³⁾,

d) service concession for lottery services, which are covered by CPV code 92351100-7, awarded by a Member State to an economic operator on the basis of an exclusive right; the grant of such an exclusive right shall be subject to publication in the Official Journal of the European Union,

e) concession awarded by the contracting authority for the pursuit of its activities in a country outside the territory of the European Union under conditions not involving the physical use of a system, network or geographical area of the European Union, or

f) concession in the fields of defence and security, provided that the conditions laid down in Section 191 (2) a) to c), f) and g) are met.

(2) During the award of the concession the contracting authority is not entitled to apply the exclusion pursuant to

a) Section 29 b), c) or t) where the concession in the field of defence and security is not concerned, or

b) Section 29 a), e) to g) or r) where the concession in the field of defence and security is concerned.

Section 178

Small-scale concession

The contracting authority is not obliged to use the procurement procedure to award the small-scale public concession estimated value of which is equal to or lower than CZK 20.000.000; sections 27 and 31 do not apply.

Section 179

Duration of the concession

(1) The contracting authority shall set the duration of the concession, whereas the concession contract may only be concluded for a fixed term.

(2) For concessions lasting more than five years, the contracting authority shall set the duration of the concession so that the maximum duration of the concession does not exceed the time that an economic operator could reasonably be expected to take to recoup the investments made to achieve the specific contractual objectives. The investments shall include both initial investments and investments during the life of the contract.

(3) For concessions lasting more than five years, the contracting authority shall justify the duration of the contract in writing in the procurement documents.

TITLE III

CONCESSION AWARD PROCEDURE

Section 180

Conduct of the concession award procedure

(1) The contracting authority shall commence the concession award procedure by sending a concession notice for publication in the manner specified in Section 212 by means of which it invites an unlimited number of economic operators to submit requests to participate, indicative tenders or tenders.

(2) The contracting authority shall commence the concession award procedure by sending an invitation to negotiate or by commencement of negotiations with the economic operator where an invitation to negotiate was not sent in advance, provided that the conditions for application of a negotiated procedure without prior publication pursuant to Section 63 (1) and (2) are met.

(3) The contracting authority shall lay down detailed conditions for the conduct of the concession award procedure. The concession award procedure may take place in a number of stages. Where tenders or indicative tenders are not required by the contracting authority in the contract notice, the contracting authority may invite participants to their submission by means of a notice. The contracting authority may reserve, in the procurement documents, the right to reduce the number of participants or the number of indicative tenders; in such case provisions of sections 111 and 112 apply by analogy and the contracting authority shall exclude from the procurement procedure the participants that have not been selected when reducing the number of participants or the number of indicative tenders.

(4) The contracting authority is entitled to hold negotiations with the participants.

(5) Sections 96 to 99 apply to the procurement documents and award criteria by analogy. In the procurement documents, the contracting authority may set out individual rules that govern above-threshold procurement procedure.

(6) The contracting authority may also define other criteria for the qualification than those specified in Part Four; provisions of sections 76 and 81 to 88 apply by analogy. In the concession award procedure, the contracting authority shall request a proof of the basic qualification pursuant to Section 74.

(7) The contracting authority shall indicate in the procurement documents both which requirements for the performance of the concession contract constitute the minimum technical specifications that shall be met by the performance offered and the planned conduct of the procedure.

(8) With regard to participation of subcontractors Section 105 applies by analogy.

(9) During the negotiations, the contracting authority may alter or supplement the award criteria with the exception of the evaluation criteria and the minimum technical specifications. The altered award criteria shall still meet conditions for the procedure pursuant to this Book and the subject-matter of the concession shall not be altered in such a way so that participation of other economic operators would be enabled.

(10) During the concession award procedure, the contracting authority shall not provide participants with information in a discriminatory manner. The contracting authority is entitled to disclose confidential information defined in Section 218 (1) to other participants only on the basis of a written consent granted by the participant in question in relation to the information in question.

Section 181

Time limits

(1) The time limit for the submission of tenders, indicative tenders or requests to participate, where they are requested in the contract notice, shall not be less than 25 days from the commencement of the concession award procedure.

(2) Where the contracting authority invites to submit indicative tenders later than in the contract notice the time limit for the submission of indicative tenders shall not be less than 22 days from the date when the invitation to submit indicative tenders was sent.

(3) The time limit referred to in subsection (1) shall be extended by five days in the event that the contracting authority does not allow tenders to be submitted by electronic means pursuant to Section 213.

Section 182

Technical specifications

(1) Technical specifications mean requirements for characteristics of the subject-matter of works concessions or services concessions which the contracting authority shall determine by means of

a) setting parameters expressing performance or functional requirements and describing the purpose or needs that are to be

fulfilled,

b) reference to standards or technical documents, or

c) reference to labels.

(2) Technical specifications may also refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance provided that they are linked to the subject-matter of the concession contract and proportionate to its value and its objectives.

The technical specifications may include characteristics with regard to the effect on the environment, quality levels, design for all requirements including accessibility for disabled persons and conformity assessment, performance, safety or dimensions, terminology, symbols, testing and test methods, marking and labelling, or user instructions.

(4) Unless justified by the subject-matter of the concession, technical specifications shall not, directly or indirectly, refer to specific economic operators or products with the effect of favouring or eliminating certain economic operators or certain products. Such a reference shall be permitted, where a sufficiently precise and intelligible description of technical specifications pursuant to subsection (1) is not possible. Such reference shall be accompanied by the words 'or equivalent'.

(5) Where a contracting authority uses the option of referring to the standards or technical specifications, it shall not reject a tender on the grounds that the proposed works or services do not comply with the technical specifications to which it has referred, once the economic operator proves, that the proposed works or services satisfy in an equivalent manner the requirements defined by the technical specifications.

Section 183

Evaluation of tenders in the concession award procedure

(1) The contracting authority shall indicate evaluation criteria in a contract notice or in an invitation to tender. Provisions of sections 114 to 118 apply by analogy. The contracting authority may proceed pursuant to Section 115 (2) in any case. The contracting authority may also set other criteria than those stipulated in Section 116 as criteria of quality, provided that they are based on objective facts relating to the person of economic operator or subject-matter of the concession. With regard to the procedure for evaluation of tenders Section 119 applies by analogy.

(2) Where the contracting authority receives a tender which proposes an exceptional innovative solution which could not have been foreseen by a diligent contracting authority, the contracting authority may modify the ranking order of the evaluation criteria to take into account that innovative solution.

In the case of modification pursuant to subsection (2), the contracting authority shall inform all participants about the modification of the ranking of the evaluation criteria and shall send

a) a new contract notice where the evaluation criteria were laid down in the contract notice, or

b) a new invitation to tender where the evaluation criteria were laid down in the invitation to tender; in such cases the time limits pursuant to Section 181 shall be respected.

Section 184

Selection of an economic operator and termination of the concession award procedure

(1) The selection of an economic operator and termination of the concession award procedure is governed by sections 122 to 127 by analogy.

(2) The contracting authority shall cancel a concession award procedure where according to the tender of the selected economic operator the value of the concession

a) exceeds the threshold laid down in the government decree and simultaneously it exceeds the estimated value of concession determined prior to the commencement of the concession award procedure by more than 20 % and

b) the contracting authority did not publish the contract notice in the Official Journal of the European Union.

Section 185

Concession award notices

The contracting authority shall send the concession award notice for publication in the manner described in Section 212 within 48 days from the conclusion of the contract.

TITLE IV

SPECIFIC PROCEDURE GOVERNING CONCLUSION OF AND SUPPLEMENTS TO THE CONTRACT

Section 186

Opinion of the Ministry of Finance

(1) In the case of concessions, the contracting authority referred to in Section 4 (1) d) or e) shall apply for a prior opinion of the Ministry of Finance to conclude a contract with the legal person where a territorial self-government unit founded or established such legal person or the legal person is funded mainly thereby or the self-government unit exercises decisive influence over the legal person, appoints or elects more than half of the members of its governing or controlling body, or to supplement any of those contracts. Where suggested supplements involve the amount of applicant's financial obligations, it shall be applied for an opinion on supplements to the contract.

(2) Application for the opinion referred to in subsection (1) shall contain general elements of a filing pursuant to the Code of Administrative Procedure, selected data from the contract or their modification, justification pursuant to Section 179 (3), economic analysis of impacts of conclusion of the contract or supplement to the contract on the economic standing of the contracting authority, including data on the state of indebtedness of the contracting authority, which are necessary to assess its ability to perform obligations arising from the contract; elements of an application's content shall be laid down by the regulation of the Ministry of Finance. When assessing the application, the Ministry of Finance shall not consider any other facts than those which are pursuant to subsection (5) decisive factors for assessment of the application.

(3) The application for opinion on conclusion of the contract or its supplement shall be filed by a territorial self-government unit on behalf of both itself and other contracting authorities referred to in subsection (1).

(4) Where the application is not complete the Ministry of Finance shall request its completion and shall set a reasonable time limit for such completion.

(5) The Ministry of Finance shall assess the application with regard to possible impacts of acceptance of obligations arising from the contract and their influence on the economic standing of the contracting authority referred to in subsection (1) or on international obligations of the Czech Republic.

(6) Where the Ministry of Finance does not give its opinion within two months from the receipt of the complete application, it shall be conclusively presumed, that it does not have any objections against conclusion of the contract or supplement to the contract.

BOOK NINE

PUBLIC PROCUREMENT PROCEDURE INVOLVING DEFENCE AND SECURITY ASPECTS

TITLE I

GENERAL PROVISIONS

Section 187

Public contract in the fields of defence or security

(1) Public contract in the fields of defence and security means a public contract which is awarded by a contracting authority having as its subject-matter

- a) supplies of military material and parts thereof, spare parts or components,
- b) supplies of sensitive material and parts thereof, spare parts or components,
- c) works, supplies or services directly relating to the supplies specified in paragraphs a) or b) for all stages of their life cycles,
- d) works or services intended specifically for military purposes, or
- e) sensitive works or sensitive services.

(2) For the purposes of this Act, sensitive material, sensitive works and sensitive services mean material, works or services which are related to classified information or classified information is requested for their provision or is included in them.

(3) During the award of a public contract in the fields of defence and security, which is not a concession, the contracting authority shall proceed pursuant to Book Three, Book Four or Title II of Book Six and shall apply Book One, Book Two, books ten to thirteen, unless otherwise provided in this book. The contracting authority shall not proceed in accordance with this Book during the award of a public contract in the fields of defence and security, which is a concession.

(4) In the fields of defence and security, the contracting authority shall not use an open procedure and innovation partnership procedure, design contest pursuant to Title IV of Book Six and is not entitled to set up a dynamic purchasing system.

Section 188

Specific provisions governing the central purchasing body

In the case of public contracts in the fields of defence and security, a European public entity may also be the central purchasing body.

Section 189

Specific provisions governing vertical cooperation

(1) For the purposes of this Book, a contract concluded between the contracting authority and another person shall not be considered an award of a public contract where

a) the contracting authority itself or in joint cooperation with other contracting authorities exercises over such legal person a control which is similar to that which it exercises over its own departments; with regard to the state the organisational unit of the state which founded or established the controlled person shall be considered the controlling person,

b) there is no direct capital participation in the controlled person with the exception of the controlling contracting authority or contracting authorities, and

c) a substantial part of the activities of the controlled legal person in the past three years are carried out in the performance of tasks entrusted to it by the controlling contracting authority or controlling contracting authorities or by other legal persons controlled by that controlling contracting authority or controlling contracting authorities.

(2) The contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person.

(3) The contracting authorities exercise joint control over the legal person referred to in subsection (1) where

a) the decision-making bodies of the controlled legal person exercising influence over the controlled legal person are composed of representatives of all participating contracting authorities; individual representatives may represent more controlling contracting authorities,

b) controlling contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person, and

c) the controlled legal person does not pursue any interests which are contrary to those of the controlling contracting authorities.

(4) Provisions of Section 11 do not apply.

Section 190

Specific provisions governing horizontal cooperation

(1) For the purposes of this Book, a contract concluded exclusively between contracting authorities shall not be considered an award of a public contract where

a) the contract establishes or implements cooperation between the contracting authorities with the aim of achieving their joint objectives in ensuring the meeting of needs in the general interest that such contracting authorities are established to ensure,

b) the cooperation referred to in paragraph a) is governed solely by considerations relating to the public interest, and

c) those contracting authorities do not carry out a substantial part of their activities concerning the cooperation under paragraph a) on the market.

(2) Provisions of Section 12 do not apply.

TITLE II

SPECIFIC RULES GOVERNING PUBLIC PROCUREMENT INVOLVING DEFENCE AND SECURITY ASPECTS

Section 191

Specific provisions governing exclusions for public contracts in the fields of defence and security

(1) During the award of public contracts in the fields of defence and security, the contracting authority shall not apply the exclusion specified in provisions of Section 29 a), c), d), g), i) and k) to r).

(2) The contracting authority is not obliged to use the procurement procedure to award public contracts in the fields of

defence and security where

- a) they are awarded within cooperation programmes in the fields of research and development⁴⁴⁾ conducted jointly by the Czech Republic and at least one Member State with regard to the development of a new product, and, where applicable, also in the later stages of the entire life cycle of this product or a part thereof; when concluding agreements on those cooperation programmes between the Czech Republic and other Member States, the Czech Republic shall notify the European Commission of proportion of costs of research and development to the total costs of such programme, of sharing the costs, as well as of potential intended proportion of acquisitions by individual Member States,
- b) they are awarded at the time of deployment of armed units of the Czech Republic outside the territory of the European Union and for the purposes of operational needs it is required for them to be awarded to the contracting authorities situated in territories of that operations,
- c) they are awarded by the contracting authority defined in Section 4 (1) a) to the government or local government of another state and where they have as their subject-matter
 - 1. supplies of military or sensitive material,
 - 2. works or services directly relating to the supplies referred to in subparagraph 1,
 - 3. works or services intended specifically for military purposes, or
 - 4. sensitive works or sensitive services,
- d) they have as their subject-matter financial services with the exception of insurance services,
- e) they are awarded for the purposes of intelligence activities of intelligence services,
- f) they are awarded pursuant to specific rules defined in an international agreement concluded between the Czech Republic and a non-Member State, or
- g) specific rules of an international organisation purchasing for its own purposes apply to the award of them or where they shall be awarded by Member States in accordance with those rules.

Section 192

Security of classified information

In the case of a public contract in the fields of defence and security in respect of which

- a) classified information is accessed, or
- b) it is requested to enter independently security area or meeting area, the contracting authority may define, in the procurement documents, measures, which are necessary to protect this information in accordance with the respective type of securing the protection of the classified information⁹⁾. Where it is necessary for protection of such information, subcontractors shall also comply with defined measures for securing the protection of classified information.

Section 193

Securing supplies

(1) With regard to the nature and subject-matter of a public contract the contracting authority may define requirements for securing supplies in the procurement documents of the public contract in the fields of defence and security. For this purpose, in the procurement documents, the contracting authority may require a participant to submit in its tender

- a) documents or statements issued by authorities of the Czech Republic or the relevant state demonstrating that, in respect of the public contract, the participant will be able to honour its obligations regarding the import, export, transfer and transit of the products which are covered by the subject-matter of the public contract⁴⁵⁾, or
- b) notification of any restriction on the contracting authority resulting from export, import control or security measures.

(2) With regard to the nature and subject-matter of a public contract the contracting authority may define requirements for securing supplies in the procurement documents of a public contract in the fields of defence and security, in particular a participant may be obliged to

- a) secure that the organisation of the participant and location of subcontractors will enable the participant to meet requirements of the contracting authority in the field of securing supplies specified in the procurement documents or that potential changes in its subcontractors, which will occur during performance of the public contract, would not adversely affect compliance with these requirements,
- b) secure maintenance, modernisation or adaptation of supplies covered by the subject-matter of the public contract,
- c) timely inform the contracting authority of all changes in its organisation, its contractors or production strategy which may affect obligations of the participant towards the contracting authority, or
- d) provide the contracting authority with all specific tools, which are necessary for production of spare parts, parts, components or special testing equipment, including technical drawings, licences and instruction manuals in case that it is not able to carry out supplies in question.

Section 194

Specific provisions governing professional qualification

In the case of a public contract in the fields of defence and security in respect of which

- a) classified information is accessed, or
- b) it is requested to enter independently security area or meeting area, the contracting authority may require, in addition to requirements specified in Section 77, a document proving economic operator's ability to secure the protection of the classified information in accordance with the respective type of securing the protection of the classified information⁵⁾. Compliance with this condition may not be proven through another person.

Section 195

Specific provisions governing suitability of a participant

(1) The contracting authority may exclude a participant from the procurement procedure on grounds of unsuitability provided that

- a) it was convicted by final judgement of a crime merits of the case of which relate to professional integrity, in particular, where it concerns a breach of other legal regulation in the field of supplies of military or sensitive material,
- b) it proves that the participant committed a grave professional misconduct, in particular a breach of duties in the field of classified information or security of supplies with regard to a previous supply, or
- c) it was not found, on the basis of any evidence including classified information, reliable enough to eliminate risks for security of the Czech Republic.

(2) Provisions of grounds of unsuitability pursuant to Section 48 (5) d), f) and renewal of suitability pursuant to Section 76 do not apply.

Section 196

Specific provisions governing technical qualification criteria

(1) When defining requirements for proving technical qualification criteria the contracting authority shall proceed pursuant to Section 79 (2) c) to l). Furthermore, the contracting authority may request

- a) a list of the works executed over the past five years before the commencement of the procurement procedure, including certificates provided by the client proving due execution and completion of the most important of these works,
- b) a list of significant supplies or significant services provided over the past five years before the commencement of the procurement procedure, including prices and dates of their provision and the identification of clients and certificates provided by the clients; the contracting authority may determine that evidence of provided supplies and services for more than five years before the commencement of the procurement procedure shall also be taken into account where necessary in order to ensure an adequate level of economic competition.

(2) The certificate provided by the client specified in paragraph a) of subsection (1) may be substituted by an affirmation of the economic operator where issuance of the certificate is not possible or the client has refused to issue the certificate.

Section 197

Specific provisions governing standards and technical documents

(1) Where, in the fields of defence and security, the contracting authority defines technical specifications by reference to standards or technical documents, it shall not proceed pursuant to Section 90. The contracting authority shall apply standards and technical documents in the following order:

- a) Czech technical standards²⁸⁾ transposing European standards adopted by European standardisation bodies and made available to the general public,
- b) European Technical Assessment²⁹⁾,
- c) common technical specifications adopted by a procedure recognised by Member States and published in the Official Journal of the European Union,
- d) Czech technical standards transposing international standards,
- e) international standards adopted by international standardisation bodies and made available to the general public,
- f) technical documents issued by European standardisation bodies,
- g) Czech technical standards,

h) construction technology certificates³⁰⁾,

i) national technical specifications relating to design, assessment and execution of works and construction works, and use of the products,

j) technical specifications approved by a body specialized in drawing up technical specifications for repeated or continuous application in the field of defence.

(2) For each reference to standards or technical documents pursuant to subsection (1), the contracting authority shall indicate an option to offer an equivalent solution.

(3) The contracting authority may also use the reference to standards or technical documents pursuant to subsection (1) as a means of verifying the fulfilment of the contracting authority's requirements pursuant to Section 89 (1) a). The contracting authority may also define the technical specifications by combination of the requirements specified in Section 89 (1) a) and by reference to the standards or technical documents under subsections (1) or (2).

Section 198

Specific provisions governing negotiated procedure without prior publication

(1) In the case of a public contract in the fields of defence and security, the contracting authority may apply a negotiated procedure without prior publication pursuant to Section 63 (1) even if no requests to participate were submitted in a previous competitive dialogue procedure.

(2) The contracting authority may award a public contract in the fields of defence and security in a negotiated procedure without prior publication even where

a) a public contract may not be awarded in a different type of procurement procedure for reasons of time as a consequence of a crisis; crisis means an exceptional situation including armed conflicts and war in the Czech Republic or another country which has already occurred or the occurrence thereof is deemed to be impending and which substantially endangers or restricts the life, health of people or property or requires the adoption of measures in order to supply the population with necessities,

b) the subject-matter of the public contract consists in research and development services which are not governed by Section 191 (2) a), or

c) the subject-matter of the public contract consists in the provision of air and maritime transport services for armed units of the Czech Republic deployed or to be deployed abroad, if it is impossible for the economic operators to guarantee the validity of their tenders for a period of time long enough to allow for the contract to be awarded by another type of the procurement procedure.

(3) The contracting authority may apply a negotiated procedure without prior publication pursuant to Section 64 b) in respect of the public contract in the fields of defence and security where the entire term of an original contract, including the term of the contract for additional supplies does not exceed five years unless it is justified by special circumstances determined with regard to expected useful life of supplies, including their installation or systems and technical difficulties which may be caused by the change of the economic operator.

(4) The contracting authority may apply a negotiated procedure without prior publication pursuant to Section 66 in respect of the public contract in the fields of defence and security even where the conditions specified in Section 66 d) and e) are not met. In such case, the contracting authority may commence a negotiated procedure without prior publication only within five years from the date when the original public contract was concluded; a negotiated procedure without prior publication may even be commenced later if it is justified by the grounds which merit particular consideration.

(5) The contracting authority may award a public works contract or public service contract in a negotiated procedure without prior publication even where it concerns additional works or additional services which were not included in the original procurement documents, the need of which has arisen from unforeseeable circumstances and these additional works or additional services are necessary for provision of the original works or provision of the original services provided that

a) the additional works or additional services are awarded to the same economic operator,

b) additional works or additional services may not be technically or economically separated from the original public contract without causing serious harm to the contracting authority or although technically or economically separable, such additional works or additional services are essential for the completion of the subject-matter of the original public contract, and

c) the aggregate value of such additional works or additional services does not exceed 50 % of the price of the original public contract with regard to the contracting authority, .

(6) In respect of a public contract in the fields of defence and security, the contracting authority shall justify the award of the contract in a negotiated procedure without prior publication in the contract award notice pursuant to Section 126.

Section 199

Specific provisions governing negotiated procedure with prior publication

(1) The contracting authority may award a public contract in the fields of defence and security in a negotiated procedure with prior publication even where conditions stipulated in Section 60 are not met.

(2) The contracting authority may proceed pursuant to Section 61 (3) even where a previous procurement procedure was a competitive dialogue procedure.

Section 200

Specific provisions governing restricted procedure

In a restricted procedure, the contracting authority may reserve, in the contract notice, the right to reduce the number of participants pursuant to Section 111. In such case it shall proceed pursuant to Section 66 (5) by analogy.

Section 201

Specific provisions governing time limits for above-threshold public contracts

(1) In the case of an above-threshold public contract in the fields of defence and security awarded in a restricted procedure, negotiated procedure with prior publication or competitive dialogue procedure, the contracting authority shall set the time limit for the submission of a request to participate for not less than 37 days from the commencement of the procurement procedure.

(2) In a restricted procedure concerning an above-threshold public contract in the fields of defence and security the contracting authority shall set the time limit for submission of tenders for not less than 40 days from the sending of the invitation to tender. This time limit may be shortened by five days where the contracting authority publishes the full procurement documents on the contracting authority profile already from the date of publication of the notice of the restricted procedure.

(3) The time limit for the submission of tenders may be shortened to not less than 22 days in the event that the contracting authority has published a prior information notice which was not used as a means of commencing procurement procedure and which was sent for publication between 52 days and 12 months before the date on which the contract notice was sent.

(4) The time limit specified in the first sentence of subsection (2) may be shortened by seven days where the contracting authority sends forms for publication pursuant to Section 212 by electronic means.

(5) Shortenings of time periods pursuant to subsections (2) and (4) may be added up provided that the conditions specified therein are met.

(6) Where setting a time limit under subsection (1) is not possible due to extreme urgency the contracting authority may set

a) the time limit for the submission of requests to participate in a restricted procedure or a negotiated procedure with prior publication for not less than 15 days or respectively 10 days from the commencement of the procurement procedure where the contracting authority sent a form for publication pursuant to Section 212 by electronic means, or

b) the time limit for the submission of tenders for not be less than 10 days from the date, on which the invitation to tender was sent.

The contracting authority shall justify the urgency in the procurement documents.

Section 202

Specific provisions governing time limits for above-threshold public contracts

(1) In case of below-threshold public contracts in the fields of defence and security awarded in a restricted procedure, negotiated procedure with prior publication or competitive dialogue procedure, the contracting authority shall set the time limit for the submission of requests to participate for not less than 15 working days from the commencement of the procurement procedure.

(2) In the restricted procedure, the contracting authority shall set the time limit for the submission of tenders for not less than 25 working days from the sending of the invitation to tender.

Section 203

Specific provisions governing the ban on conclusion of the contract

Public contracts in the fields of defence and security being awarded on the basis of the framework agreement are not governed by Section 246 (1) a).

Section 204

Specific provisions governing framework agreements

The term of the framework agreement in the fields of defence and security shall not exceed seven years, with the exception of cases, where expected useful life of the goods supplied and technical difficulties which may be caused by the change of the economic operator are taken into account; the contracting authority shall duly justify these objective reasons and shall indicate them in the contract award notice published in the manner specified in Section 212.

Section 205

Specific provisions governing a written report of the contracting authority

In the case of a public contract or framework agreement in the fields of defence and security, a written report of the contracting authority shall contain requirements defined in Section 217 (2) as well as justification of

- a) exceeding of the entire period pursuant to Section 64 b), where this period is exceeded,
- b) failure to keep the time limit pursuant to Section 198 (3), where this time limit is not kept, and
- c) conclusion of a framework agreement for the period longer than seven year, where such framework agreement is concluded.

TITLE III

SPECIFIC PROVISIONS GOVERNING SUBCONTRACTING

Section 206

(1) In the case of a public contract in the fields of defence and security, the contracting authority may require, in the procurement documents, a tender to contain the commitment of the participant to inform the contracting authority of all changes in subcontractors during the performance of the public contract. In the case of the above-threshold public contract in the fields of defence and security, the contracting authority may also require, in the procurement documents, the selected economic operator to

- a) proceed pursuant to the provisions of this Title with respect to all or any shares of the public contract which it intends to subcontract, or
- b) subcontract shares of the public contract specified in its tender in the minimal financial volume determined by the contracting authority to one or more subcontractors and to act in compliance with provisions of this Title when selecting a subcontractor; the contracting authority shall set the financial volume in the form of range of values, comprising a minimum and maximum percentage, whereas the maximum percentage shall be proportionate in respect of a public contract and shall not exceed 30 % of the estimated value of the public contract.

(2) In the case of a public contract in the fields of defence or security, the contracting authority shall indicate requirements pursuant to subsection (1) in the contract notice or invitation to commence a procurement procedure.

(3) Provisions of Section 105 (3) do not apply.

Section 207

Procedure for selection of subcontractor

(1) The selected economic operator where it is not a contracting authority specified in Section 4 shall proceed in accordance with this provision when conducting a procedure for selection of the subcontractor in respect of a public contract in the fields of defence and security, provided that the contracting authority stipulates so in the procurement documents pursuant to Section 206 (1).

(2) For the purposes of subsection (1), the person in relation to which the selected economic operator is a controlling or controlled person pursuant to another legal regulation⁴⁶⁾, or the person which is jointly with the selected economic operator a person controlled by another person pursuant to another legal regulation⁴⁶⁾, shall not be considered a subcontractor; in such case, the economic operator shall indicate a complete list of those persons in its tender and shall update it without undue delay after each change of relations between those persons.

(6) When selecting a subcontractor, the selected operator shall comply with the principles specified in Section 6.

Section 208

Subcontract notice

(1) In case that the estimated value of a share of a public contract to be performed by a subcontractor is equal to or greater than the financial threshold set by an implementing legal regulation pursuant to Section 25 for public contracts in the fields of defence and security, the selected economic operator shall send the subcontract notice for publication in the manner specified in Section 212. The provisions of sections 16 to 23 regulating the calculation of the estimated value of a lot of the public contract apply by analogy.

(2) Where the contracting authority defines, in the procurement documents of the public contract, the requirements in respect of qualifications of a subcontractor, the selected economic operator shall indicate them in the subcontract notice. The selected economic operator is entitled to indicate in the subcontract notice any other criteria allowing for an objective assessment of subcontractor's qualifications. Such qualifications criteria shall be objective, non-discriminatory, in compliance with qualification criteria required by the contracting authority during the award of the public contract and shall relate immediately and reasonably to the subject-matter of the performance provided by the subcontractor.

(3) Where conditions for application of a negotiated procedure without prior publication are met in respect of the share of the public contract to be performed by the subcontractor, the selected economic operator is not obliged to publish the

subcontract notice.

(4) The selected economic operator is not obliged to select subcontractors by the procedure stipulated in this Title where it proves to the contracting authority that any of subcontractors participating in the procedure or any of their tenders do not meet requirements specified in the subcontract notice and therefore such procedure would prevent it from performance of the public contract.

TITLE IV

SPECIFIC PROVISIONS GOVERNING MODIFICATION OF OBLIGATIONS ARISING FROM PUBLIC CONTRACTS

Section 209

In the case of public contracts in the field of defence and security, provisions of Section 222 (4) to (8) do not apply.

BOOK TEN

COMMON PROVISIONS

Section 210

Concurrence of activities

For the purposes of this Act, concurrence of activities means a situation where the subject-matter of the public contract covers parts which shall be awarded in accordance with different books of this Act. Where the different parts of the subject-matter of the contract are objectively separable, the contracting authority may award them separably or may choose to award them as a single contract to award of which the rules specified in subsections (2) and (3) apply. Choice of procurement used for one public contract shall not be aimed at circumventing this Act.

(2) In the case of the public contract only a part of which constitutes a utilities public contract or a concession and such parts are objectively not separable the contracting authority shall act in accordance with the rules for procurement relating to the activity to which the public contract mainly relates.

(3) Where the parts of a public contract are objectively separable or are objectively not separable and it is not possible to determine to which activity the public contract mainly relates to, the contracting authority shall not act in accordance with the rules for procurement of

a) concessions, in the case of public contracts which are concessions only partly, or

b) utilities public contracts, in the case of public contracts which are utilities public contracts only partly; this does not apply to public contracts which are partly a utilities public contract and partly a concession in which case the contracting authority shall act in accordance with the rules for procurement of utilities public contracts.

(4) In the case of a public contract only a part of which forms a public contract in the fields of defence or security the contracting authority may act in accordance with the rules for procurement of public contracts in the fields of defence or security only where the parts of the public contract are objectively not separable. Where the parts of a public contract are objectively separable the contracting authority may choose to award particular parts of the public contract independently or to award a single public contract which is awarded according to the rules applicable to the remaining part of the public contract.

Section 211

Communication between contracting authority and economic operator

(1) Contracting authority and economic operator shall communicate in writing during the procurement procedure and when applying specific procedures pursuant to Book Six; unless provided in this Act otherwise, oral communication may also be used, provided that its content is sufficiently documented, in particular by records, audio recordings or summaries of principal elements of communication.

(2) In the course of communication between a contracting authority and economic operators, confidentiality of tenders and requests to participate and integrity of data contained therein shall not be breached. The contracting authority shall not be enabled to access the content of tenders and requests to participate prior to the expiry of the time limit set for their submission.

(3) Written communication between a contracting authority and an economic operator shall be carried out by electronic means with the exception of cases when

a) with regard to a specific nature of a public contract, using electronic means of communication requires specific tools, equipment or file formats which are not generally accessible or are not supported by generally accessible applications; applications used for description of the subject-matter which use file formats that cannot be processed by means of any other application having an open source code or by means of a generally available application, or they are covered by commercially provided licences and the contracting authority cannot access them to download them or use them by remote access, shall not be considered as generally accessible,

b) using electronic means of communication requires special office equipment which is not generally available to contracting

authorities,

c) the award criteria require the submission of samples or models which cannot be submitted using electronic means of communication, or

d) using other than electronic means of communication is necessary because of the breach of security of the electronic communication or because of protection of especially sensitive nature of information and simultaneously the required level of security may not be duly provided by generally available electronic tools or the tools referred to in Section 103 (3).

(4) When using electronic communication in the conduct of the procurement procedure, design contest and during the award of public contracts on the basis of a framework agreement or under the dynamic purchasing system, the contracting authority shall make available to the economic operators all information of technical nature, including coding and encryption, which are necessary for electronic communication, in particular, for electronic submission of tenders and requests to participate.

(5) Unless the communication is carried out by an electronic tool or by a data box⁴⁷⁾, the data message⁴⁸⁾ shall be accompanied by a certified electronic signature⁴⁸⁾, where it contains

- a) a notice designated for the participants,
- b) a notice of the selection of the economic operator,
- c) a decision on the most suitable design in respect of the design contest,
- d) an exclusion of the participant.

(6) When communicating by means of a data box, the document shall be delivered at the moment when it is delivered to the recipient's data box.

Section 212

Publication of forms

(1) In order to send a publication pursuant to this Act, the contracting authority is obliged to use a form pursuant to the directly applicable regulation of the European Union or a form pursuant to the implementing legal regulation (hereinafter referred to as the 'form'). The contracting authority shall fill in the form in the manner laid down in the implementing regulation.

(2) Where, in the case of the above-threshold public contract, the contracting authority did not send a contract notice, it may send a voluntary notice on the intention to conclude a contract by means of the form pursuant to the directly applicable regulation of the European Union.

(3) The contracting authority shall send the form electronically to

- a) the Tenders Electronic Daily where a below-threshold public contract is concerned,
- b) the Tenders Electronic Daily and the Official Journal of the European Union where an above-threshold public contract is concerned; the contracting authority may send the form to the Official Journal of the European Union through the operator of the Tenders Electronic Daily.

The form shall not be considered as sent where the operator of the Tenders Electronic Daily or the Official Journal of the European Union does not accept it for publication on the grounds of failure to fill in obligatory data or failure to keep given formats. The contracting authority shall be able to prove the date of the sending the form for publication in the Tenders Electronic Daily, or in the Official Journal of the European Union.

(4) In the case of modification of information stated in the form the contracting authority shall send a correcting form.

(5) The contracting authority may publish forms in the Official Journal of the European Union even where the Act does not prescribe an obligation of their publication.

(6) Where the contracting authority does not send a form to the Official Journal of the European Union through the operator of the Tenders Electronic Daily, it shall send the form for publication in the Tenders Electronic Daily along with the copy of the announcement of the form's publication in the Official Journal of the European Union, without undue delay, after it received the confirmation of publication in the Official Journal of the European Union. Where the announcement of publication of the form in the Official Journal of the European Union is not delivered to the contracting authority within 48 hours from the delivery of the confirmation of the receipt of the announcement for publication in the Official Journal of the European Union, the contracting authority shall send the form for publication in the Tenders Electronic Daily along with the confirmation of the receipt of the announcement for publication in the Official Journal of the European Union.

(7) With regard to the above-threshold public contracts, the form shall not be published in the Tenders Electronic Daily or on the contracting authority profile before its publication in the Official Journal of the European Union. This does not apply where announcement of publication of the form in the Official Journal of the European Union was not delivered to the contracting authority or to the operator of the Tenders Electronic Daily within 48 hours from the delivery of confirmation of the receipt of the announcement for publication in the Official Journal of the European Union.

(8) Any data that are different from the data included in the forms sent for publication in the Official Journal of the European Union or published on the contracting authority profile, shall not be published in the Tenders Electronic Daily. Information on the commencement of the procurement procedure shall not be published on the contracting authority profile before the publication of the form in the Tenders Electronic Daily.

(9) Ministry of Regional Development shall specify, by its regulation,

- a) the forms serving for publication of information pursuant to this Act where the form is not determined by a directly applicable regulation of the European Union,
- b) the manner of filling in the forms, including determining obligatory data to be filled in,
- c) the conditions for receipt of forms for publication,
- d) the procedure for modification of data contained in forms,
- e) the access to the published forms,
- f) the manner of delivery of forms, and
- g) the procedure for correction of errors in the published forms and defects of performance caused by the operator of the Tenders Electronic Daily.

Section 213

Electronic tools

(1) The contracting authority may use electronic tools only where the use of such electronic tools does not breach prohibition of discrimination and such electronic tools are, with regard to the subject-matter of the public contract, generally available and compatible with information and communication technologies in general use. The contracting authority shall use an electronic tool free of charge.

(2) With regard to electronic tools, by means of which tenders, indicative tenders, requests to participate, requests to be admitted to the qualification system, or, where applicable, requests to participate or designs in design contests are received, the contracting authority shall secure that

- a) the date and time of the performance of an electronic action pursuant to this Act can be exactly determined,
- b) nobody accesses their content prior to the fixed time limits,
- c) only authorised persons may set and modify data for access to the delivered data,
- d) in the course of conducting the procurement procedure or design contest all handed over data or its part is accessible only on the grounds of a prior decision of authorised persons,
- e) decision of authorised persons pursuant to paragraph d) can enable access to information or documents handed over after the previously determined date,
- f) information or documents, which were handed over and made accessible, are accessible only to persons, who are authorised to get acquainted therewith and that they are protected against an unauthorised access of third persons,
- g) in the case of a breach of conditions or an attempt to breach conditions pursuant to Section 213 (2) b) to f), it is secured that the breach or the attempt to breach are clearly detectable, and
- h) technical support and service is secured for electronic tools, in the case of a breakdown.

(3) Ministry of Regional Development shall specify, by its regulation,

- a) conditions for provision of documents and information by means of an electronic tool and access thereto,
- b) conditions for delivery by means of an electronic tool,
- c) conditions for submission, receipt and opening of tenders, requests to participate and designs in design contests by means of an electronic tool,
- d) requirements for carrying out electronic actions when awarding public contracts,
- e) requirements for making records on electronic actions,
- f) conditions for issuance of the certificate of conformity,
- g) elements and validity of the certificate of conformity,
- h) requirements for functional characteristics of an electronic tool and environment, in which the electronic tool shall be operated in relation to the certification of the electronic tool, and
- l) technical characteristics of the contracting authority profile.

(4) The contracting authority shall secure that the electronic tools by means of which the actions are carried out during public procurement, demonstrably satisfy the requirements stipulated by this Act and implementing legal regulations. The

satisfaction of requirements regarding electronic tools may always be proved by the certificate of conformity, issued by the conformity assessment body accredited by the national accreditation body on the basis of another legal regulation⁴⁹⁾.

Section 214

Contracting authority profile

(1) The contracting authority shall send the internet address of its contracting authority profile for publication in the Tenders Electronic Daily using the procedure specified in Section 212. The information published on the contracting authority profile shall be considered published pursuant to this Act no sooner than from the moment of the publication of the internet address of the contracting authority profile in the Tenders Electronic Daily.

(2) The contracting authority is not entitled to publish information regarding its procurements using several of its profiles that are marked as active in the Tenders Electronic Daily at the same time. This is without prejudice to the contracting authority's right to use simultaneously an electronic tool administered by the Ministry of Regional Development as its contracting authority profile; in that case, the contracting authority shall proceed pursuant to subsection (1) by analogy.

(3) Where an operational unit of the contracting authority is concerned as specified in Section 17 (2), such operational unit may use the contracting authority profile to publish information on its procurements. Subsections (1) and (2) apply by analogy.

(4) Ministry of Regional Development shall specify, by its regulation,

- a) the access to the information published,
- b) the structure of the data published on the contracting authority profile, and
- c) the procedure used to modify the contracting authority profile.

Section 215

Electronic catalogues

(1) The contracting authority may request or admit that a tender be presented in the form of an electronic catalogue or that an electronic catalogue be part of a tender. For the purposes of this Act, an electronic catalogue means a set of information containing prices corresponding to individual items of the subject-matter of the public contract as well as a description of such items, and, where applicable, further related information. The electronic catalogue shall meet all requirements laid down for electronic tools used for electronic communication.

(2) Where the contracting authority requests or admits that a tender be presented in the form of an electronic catalogue, it shall indicate so in the contract notice, in the invitation to submit requests to participate pursuant to Section 58 (5), in the invitation to tender or in the invitation to negotiate. The contracting authority shall specify, in the procurement documents, all information necessary for the submission of an electronic catalogue, including, without limitation, the prescribed format of the electronic catalogue and the technical means used. Tenders presented in the form of an electronic catalogue may be accompanied by other documents.

(3) Where an electronic catalogue is used in the process of awarding a public contract on the basis of a framework agreement concluded with several parties or under a dynamic purchasing system, the contracting authority

- a) shall invite, in writing, all parties to the framework agreement to submit again the electronic catalogue, which shall be adjusted to the award criteria of the public contract that is being awarded on the basis of the framework agreement, or
- b) shall announce to the parties to the framework agreement that the public contract based on the framework agreement shall be awarded by means of selection from the electronic catalogues submitted when concluding the framework agreement. The announcement shall contain the date and time at which the contracting authority will select the data for awarding the public contract on the basis of the framework agreement. The announcement shall be sent electronically not later than five working days before the selection of such data. A party to the framework agreement may update the data in the electronic catalogue that has been submitted. Where a party to the framework agreement disagrees with the use of the data provided in the submitted electronic catalogue for awarding a public contract on the basis of the framework agreement, it shall notify the contracting authority of this fact before the date and time of the selection of data; such data shall then be disregarded.

Before awarding the public contract based on the framework agreement, the contracting authority shall submit the selected data from the electronic catalogue to the selected economic operator to check the facts.

(4) Where the contracting authority uses an electronic catalogue in the case of a dynamic purchasing system, it shall proceed in accordance with subsection (3) by analogy.

Section 216

Storage of procurement procedure documentation

(1) The contracting authority shall store the procurement procedure documentation, which comprise all documents in paper or electronic form and outcomes of oral communication which shall be acquired pursuant to this Act in the course of conducting the procurement procedure, or, where applicable, after the termination thereof, including the complete wording of the originals of the tenders submitted by all economic operators, for a period of 10 years from the date of termination of the procurement procedure or from the modification of the obligation arising from the public contract, unless another legal regulation⁵⁰⁾ sets out a longer period.

(2) The contracting authority shall acquire the procurement procedure documentation in such manner so as to be able to submit documents regarding the current stage of the procurement process when necessary.

(3) The provisions regarding the storage of procurement procedure documentation apply to the award of public contracts on the basis of framework agreements or under dynamic purchasing systems or to design contests by analogy.

Section 217

Written report of the contracting authority

(1) The contracting authority shall draw up a written report with regard to each procurement procedure.

(2) The written report shall contain at least

a) the identification of the contracting authority, the subject-matter of the public contract and the price agreed in the public contract, where it has been concluded,

b) the type of procurement procedure used,

c) the identification of the participants,

d) the identification of all participants excluded from the procurement procedure including a statement of grounds for their exclusion,

e) the identification of the economic operators with which a contract or a framework agreement was concluded or the identification of the economic operators who were admitted to the dynamic purchasing system, including a statement of reasons for their selection,

f) the identification of subcontractors of the economic operators specified in paragraph e), where they are known to the contracting authority,

g) justification of the use of a negotiated procedure with prior publication or a competitive dialogue procedure, where such procedures was used,

h) justification of the use of a negotiated procedure without prior publication, where such procedure was used,

i) justification of the use of a light regime, where such regime was used,

j) justification of the cancellation of the procurement procedure or of not setting up a dynamic purchasing system where such cases occurred,

k) justification of the use of means of communication other than electronic means for the submission of tenders, where such other means were used,

l) a list of persons who were found to have a conflict of interest and a list of subsequently adopted measures, where a conflict of interest was detected,

m) where the contracting authority does not divide an above-threshold public contract into lots, it shall indicate the justification of such procedure, unless it has already indicated it in the procurement documents, and

n) justification of laying down the requirement of turnover when proceeding pursuant to Section 78 (3), where it has not already indicated it in the procurement documents.

(3) In the written report, the contracting authority may refer to the contract award notice provided that the published notice contains the information specified in subsection (2).

(4) The contracting authority shall send the written report to the European Commission upon request.

(5) The contracting authority shall publish the written report on the contracting authority profile within 30 working days from the termination of the procurement procedure.

Section 218

Confidentiality

(1) The information or communications that the economic operator has provided to the contracting authority during the procurement procedure, designating them as confidential, shall be considered confidential.

(2) Pursuant to the Act on Free Access to Information, the contracting authority shall not disclose

a) any information related to the content of tenders and to the persons taking part in the conduct of the procurement procedure until the termination of the procurement procedure,

b) the confidential information specified in subsection (1); this does not apply to the information that the contracting authority is obliged to provide, pursuant to this Act, in the evaluation report, in the notice of the selection of an economic operator, in the

result of assessment of the conditions for participation of the selected economic operator or in the written report of the contracting authority.

(3) The contracting authority is not obliged to publish information pursuant to this Act where its publication would infringe another legal regulation or would be contrary to the public interest, or where it could infringe the right of the economic operator to the protection of trade secret or where it could influence competition.

Section 219

Publication of the public contract and of the actually paid price

(1) The contracting authority shall publish, on the contracting authority profile, the public contract including all supplements and amendments thereto within 15 days from their conclusion or from the end of each quarter with regard to public contracts awarded on the basis of a framework agreement or under a dynamic purchasing system. This does not apply to

- a) a public contract whose price does not exceed CZK 500,000 net of value-added tax,
- b) a public contract during the award of which the contracting authority proceeded pursuant to Section 29 a) to c) and l) 2., Section 30 d), or Section 191 (2) e),
- c) a contracting authority that is an intelligence service pursuant to another legal regulation, or
- d) a contract published pursuant to another legal regulation.

(2) The contracting authority shall publish a framework agreement on the contracting authority profile within 15 days from its conclusion.

(3) The contracting authority shall publish, on the contracting authority profile, not later than within three months from the completion of the contract, the actually paid price for the performance of the contract, which is subject to the duty of publication as specified in subsection (1). With respect to a contract whose term exceeds one year, the contracting authority shall publish the price for its performance in the previous calendar year not later than on 31 March of the following calendar year.

(4) The structure of the data for the publication of the actually paid price for the performance of the public contract as well as the details of the publication of the public contract shall be set out in a regulation of the Ministry of Regional Development.

Section 220

Sensitive activity

(1) Where the contracting authority specified in Section 4 (1) a) or c) awards a public contract whose estimated value exceeds CZK 300,000,000, the activity that consists in

- a) the approval of the procurement documents, or
- b) the award of the public contract shall be considered, for the purposes of this Act, a sensitive activity as specified in the Act on the Protection of Classified Information and Security Capacity.

(2) The natural person that carries out a sensitive activity specified in subsection (1) shall meet the requirements set out in the Act on the Protection of Classified Information and Security Capacity.

Section 221

Invoicing the performance of public contracts

The contracting authority shall not reject an electronic invoice issued by an economic operator for the performance of a public contract on the grounds of its format where it has been issued in a format compatible with the European standard for e-invoicing.

Section 222

Modification of obligation arising from a public contract

(1) Unless otherwise stipulated below, the contracting authority shall not allow a substantial modification of the obligation arising from a public contract throughout its duration without conducting a new procurement procedure in accordance with this Act.

(2) The application of reserved modifications of the obligation stipulated in the public contract on the basis of award criteria pursuant to Section 100 (1) shall not be considered a substantial modification.

(3) A substantial modification of the obligation arising from a public contract shall be such a change in contractual terms that would

- a) allow the participation of other economic operators, or could influence the selection of the economic operator during the original procurement procedure, where the award criteria of the original procurement procedure would correspond to such

modification,

- b) change the economic balance of the contractual obligation in favour of the selected economic operator, or
- c) lead to a substantial extension of the scope of performance of the public contract.

(4) A modification of the obligation arising from a public contract shall not be considered substantial where it does not alter the overall nature of the public contract and whose value is

- a) lower than the financial limit for an above-threshold public contract, and
- b) lower than
 1. 10% of the original value of the contract, or
 2. 15% of the original value of the obligation arising from a public works contract that is not a concession.

Where more modifications are carried out, the sum of values of all such modifications shall be decisive.

(5) Additional works, services or supplies executed, provided and supplied by the economic operator selected in the original procurement which were not included in the original public contract shall not be considered a substantial modification of the obligation arising from the public contract provided that such works, services or supplies are necessary and that a change in the person of the economic operator

a) cannot be made for economic or technical reasons such as requirements of compatibility or interoperability with the existing equipment, services or installations procured by the contracting authority under the original procurement procedure,

b) would cause significant inconvenience or substantial duplication of costs for the contracting authority and

c) the value of the additional works, services or supplies does not exceed 50% of the original value of the contract; where, however, more modifications are made, the sum of values of all modifications specified in this subsection shall be decisive.

(6) A modification of the obligation arising from a public contract shall not be considered substantial where

a) the need of which has arisen from circumstances which a diligent contracting authority could not foresee,

b) it does not alter the overall nature of the contract, and

c) the value of the modification does not exceed 50% of the original value of the contract; where, however, more modifications are made, the sum of values of all modifications specified in this subsection shall be decisive.

(7) With regard to a public works contract, a substitution of one or more items in the inventory of works by one or more items shall not be considered a substantial modification of the contractual obligation as specified in subsection (3), provided that

a) new items in the inventory of works constitute a comparable kind of material or works in relation to the items being substituted,

b) the price of the material or works under the new items in the inventory of works is equal to or lower than the items being substituted,

c) the material or works under the new items in the inventory of works are of the same or higher quality in relation to the items being substituted,

d) the contracting authority draws up an overview with respect of each individual substitution containing the new items of the inventory of works and defining the items in the original inventory of works that are being substituted, along with a detailed and comprehensible reasoning of the comparability of the material or works as specified in paragraph a) and the same or higher quality as specified in paragraph c).

(8) When proceeding pursuant to subsection (5) or (6), the contracting authority shall send a notice of the contract modification for publication in the manner described in Section 212 within 30 days from the modification of the obligation.

(9) For the purposes of calculation of the value of the modification or the price increase, the original value of the contractual obligation means the price stipulated in the public contract, set out in compliance with provisions regarding a price change, where the public contract contains such provisions. The total price increase connected with the modifications pursuant to subsections (5) and (6), after deduction of the price for works, services or supplies that have not been materialised with regard to such modifications, shall not exceed 30 % of the original value of the contract.

(10) A replacement of the economic operator by another economic operator shall also constitute a substantial modification of the obligation arising from a public contract. It shall, however, be possible to replace the economic operator by another economic operator

a) in the case of application of reserved modifications of the obligation stipulated in the public contract on the basis of award criteria pursuant to Section 100 (2), or

b) where a change in the person of the economic operator is a consequence of legal succession related to a transformation of the economic operator, a death of the economic operator or a transfer of the economic operator's enterprise, or, where applicable, part of the enterprise, and the new economic operator meets the qualification criteria set out in the procurement documents of the original procurement procedure.

Section 223

Termination of the obligation arising from a public contract

(1) The contracting authority may terminate the obligation arising from a public contract or withdraw from the contract provided that its performance cannot be continued without violating the provisions of Section 222.

(2) The contracting authority may terminate the obligation arising from a public contract or withdraw from the contract, without undue delay, after it finds out that the contract should not have been concluded because

a) the selected economic operator should have been excluded from the procurement procedure,

b) the selected economic operator submitted, before the award of the public contract, such data, documents, samples or models that did not correspond to reality and affected or could have affected the selection of the economic operator, or

c) the selection of the economic operator is connected with a serious infringement of the duty of the Member State within the meaning of Article 258 of the Treaty on the Functioning of the European Union, as decided by the Court of Justice of the European Union.

(3) The right of the contracting authority to terminate the obligation arising from the public contract pursuant to other legal regulations shall not be prejudiced by this provision.

(4) Covenants diverting from subsections (1) to (3) are disregarded.

BOOK ELEVEN

INFORMATION SYSTEM ON PUBLIC CONTRACTS

Section 224

Information System on Public Contracts

(1) The Information System on Public Contracts means a public administration information system administered by the Ministry of Regional Development. The Information System on Public Contracts contains

a) the Tenders Electronic Daily,

b) the List of Approved Economic Operators, and

c) further information necessary for electronic communication during the public procurement.

(2) Individual parts of the Information System on Public Contracts are operated by the Ministry of Regional Development or a legal person authorised by the Ministry. Where authorising another person, the Ministry of Regional Development shall approve the rules of operation issued by an operator for individual parts of the Information System on Public Contracts. The Ministry of Regional Development shall publish the decision on authorising the operator in the form of communication in the Collection of Laws.

TITLE I

TENDERS ELECTRONIC DAILY

Section 225

Operation of the Tenders Electronic Daily

For the purposes of this Act, the Tenders Electronic Daily means a part of the Information System on Public Contracts used for publication of information on procurement procedures and public contracts at the national level.

TITLE II

LIST OF APPROVED ECONOMIC OPERATORS

Section 226

Maintenance of the List of Approved Economic Operators

(1) For the purposes of this Act, the List of Approved Economic Operators means a part of the Information System on Public Contracts used by economic operators to prove the basic qualification pursuant to Section 74 and the professional qualification pursuant to Section 77.

(2) The List of Approved Economic Operators shall be accessible through unlimited remote access.

Section 227

Data recorded in the list

The following data shall be recorded in the List of Approved Economic Operators:

- a) the name and registered office of the economic operator, where a legal person is concerned,
- b) the branch of the economic operator and its registered office,
- c) the name, or names, and surname, or, where applicable, the corporate name and registered office, where a natural person is concerned,
- d) the legal form of the legal person,
- e) the identification number, where it has been assigned,
- f) the name, or names, and surnames of the persons referred to in Section 74 and their position, office or another relation to the economic operator,
- g) the scope of business or another activity that is subject to entry into the List of Approved Economic Operators,
- h) the list of documents which the economic operator has used to prove its basic qualification and professional qualification,
- i) the date of entry into the List of Approved Economic Operators,
- j) the date of the latest update of the data recorded in the List of Approved Economic Operators, and
- k) the data specified in Section 231 (4), where applicable.

Section 228

Extract from the List of Approved Economic Operators

(1) Where the economic operator submits to the contracting authority an extract from the List of Approved Economic Operators, such extract shall replace the document attesting to

- a) the professional qualification pursuant to Section 77 to the extent to which the data contained in the extract prove the fulfilment of the professional qualification criteria, and
- b) the basic qualification pursuant to Section 74.

(2) The contracting authority shall accept an extract from the List of Approved Economic Operators provided that on the last day on which the basic qualification or professional qualification is to be proved, the extract is not older than three months. The contracting authority is not obliged to accept an extract from the List of Approved Economic Operators in which the commencement of proceedings pursuant to Section 231 (4) is recorded.

(3) In the same manner as using an extract from the List of Approved Economic Operators, the economic operator may prove its qualification by submitting a certificate issued in another Member State, in which the economic operator has its registered office, and which is an equivalent of the extract from the List of Approved Economic Operators.

Section 229

Issuance of an extract from the List of Approved Economic Operators

(1) The extract from the List of Approved Economic Operators shall be issued by the Ministry of Regional Development or by means of the public administration information system²⁰⁾ in paper form or in electronic form signed by a recognised electronic signature or designated by a recognised electronic mark. The extract from the List of Approved Economic Operators shall be issued to the person who has applied for it. The extract from the List of Approved Economic Operators shall be issued in the Czech language.

(2) The Ministry of Regional Development shall issue the extract from the List of Approved Economic Operators within five working days from the date on which it receives the application.

Section 230

Registration into the List of Approved Economic Operators

(1) The registration into the List of Approved Economic Operators shall be made on the basis of an application submitted by an economic operator. The application shall contain the originals or certified copies of the documents proving the basic qualification pursuant to Section 74 and the professional qualification pursuant to Section 77. The documents being submitted shall prove the fulfilment of the qualification criteria not later than three months before the date on which the application is submitted.

(2) The documents referred to in subsection (1) may be replaced by a reference to information kept in a public administration information system²⁰⁾ that enables unlimited remote access. Such a reference shall contain the internet address

and credentials necessary for logging in and for the lookup of the requested information. The economic operator may also authorise the Ministry of Regional Development to submit an application for an extract or acknowledgement from a public administration information system that does not enable remote access provided that

- a) it provides the data necessary for their obtaining, and
- b) such extracts or acknowledgements are provided free of charge.

(3) Where the documents referred to in subsection (1) are issued in a language other than the Czech language, Section 45 (3) and (4) applies by analogy.

Section 231

Changes in the List of Approved Economic Operators

(1) An economic operator registered in the List of Approved Economic Operators shall deliver, before 31 March of the year following its registration, to the Ministry of Regional Development

- a) a written declaration stating that the entered data has not changed, and
- b) documents proving basic qualification pursuant to Section 74 (1) b) to d).

(2) The economic operator registered in the List of Approved Economic Operators is entitled to submit an application for registration of the change in the data recorded in the List of Approved Economic Operators. In that case, the procedure applicable to the submission of application for registration applies by analogy.

(3) Where a change occurs in an economic operator's data recorded in the List of Approved Economic Operators, the respective economic operator shall submit an application for registration of the change within 15 working days from the date on which the change occurs.

(4) In the List of Approved Economic Operators, the Ministry of Regional Development shall record the commencement of proceedings concerning a change of data or an exclusion of an economic operator from the List of Approved Economic Operators pursuant to Section 232.

Section 232

Exclusion from the List of Approved Economic Operators

The Ministry of Regional Development shall decide to exclude an economic operator from the List of Approved Economic Operators where

- a) it finds out that the economic operator fails to meet the conditions for registration into the list,
- b) it finds out that the economic operator has used documents or information that have proven to be incorrect or incomplete as supporting documents for the registration,
- c) the economic operator has applied for its exclusion, or
- d) the economic operator has failed to fulfil the duty set out in Section 231 (1) or (3).

BOOK TWELVE

SYSTEM OF CERTIFIED ECONOMIC OPERATORS

Section 233

System of Certified Economic Operators

Under the System of Certified Economic Operators, certificates which may be used as a proof of qualification or part thereof are issued.

Section 234

Proving qualification by a certificate

(1) A valid certificate, issued within an approved System of Certified Economic Operators, may be used to prove qualification during the procurement procedure. The economic operator is presumed to be qualified to the extent recorded in the certificate.

(2) The contracting authority shall not question the data recorded in the certificate without specific reasons. Prior to concluding a contract, the economic operator who has proven its qualification by a certificate may be requested to submit the documents referred to in Section 74 (1) b) to d).

(3) In the same manner as using a certificate, the economic operator may prove its qualification by submitting a

certificate issued in another Member State, in which the economic operator has its registered office, and which is an equivalent to the certificate issued within a System of Certified Economic Operators.

Section 235

Approval of the System of Certified Economic Operators

(1) The System of Certified Economic Operators shall be approved by the Ministry of Regional Development upon an application submitted by the legal person that intends to administer the System of Certified Economic Operators.

(2) The application shall include a description of the System of Certified Economic Operators as well as the rules for its use.

(3) The rules for the use of the System of Certified Economic Operators shall contain at least

- a) the name of the System of Certified Economic Operators,
- b) the identification data of the system administrator,
- c) the organisational structure of the System of Certified Economic Operators,
- d) the procedure used for the issuance of certificates,
- e) determination of the type and, where appropriate, categories of the public contracts to which the System of Certified Economic Operators applies,
- f) determination of professional qualifications, economic qualifications and technical qualifications whose fulfilment is to be assessed in the system of certified economic operators,
- g) determination of documents that will be required to prove the qualification pursuant to paragraph f) as well as the basic qualification,
- h) the procedure used in the qualification assessment,
- i) the rules governing the issuance, modification and withdrawal of the certificate, and
- j) the internet address at which the system administrator will fulfil its publication duties pursuant to this Act.

(4) The certificate shall be issued upon a request submitted by the economic operator. The system administrator shall inform the economic operator of the decision made with regard to its application without undue delay.

(5) The documents that will be required to prove the qualification pursuant to paragraph g) of subsection (3) shall not exceed the scope that may be required by the contracting authority. An economic operator having its registered office in another Member State shall not be required to submit more documents than a person having its registered office in the Czech Republic.

(6) The procedures used for proving qualification pursuant to paragraph g) of subsection (3) shall enable, after the submission of a commitment specified in Section 83 (1) d), to prove qualification through other persons pursuant to Section 82 or Section 83 by analogy.

(7) The Ministry of Regional Development shall approve the System of Certified Economic Operators provided that the system complies with the conditions laid down by this Act.

Section 236

Modification and cancellation of the System of Certified Economic Operators

(1) A modification of the System of Certified Economic Operators shall be made upon an application submitted by the system administrator and shall follow the procedure set out in Section 235 by analogy.

(2) Where the Ministry of Regional Development finds out that the System of Certified Economic Operators has failed to meet the statutory requirements or that the conditions under which it was approved have changed, it shall invite the system administrator to remove the detected deficiencies and to produce evidence of this fact to the Ministry. Where the system administrator fails to remove the deficiencies within the prescribed time limit, the Ministry of Regional Development shall take a decision on cancelling this system.

(3) The system administrator may also cancel the System of Certified Economic Operators by notifying the Ministry of Regional Development in writing. The System of Certified Economic Operators shall be cancelled as of the date of delivery of such notification to the Ministry of Regional Development or, where applicable, as of the date indicated in such notification.

(4) The certificates issued within the System of Certified Economic Operators prior to its cancellation shall not lose validity as a consequence of the cancellation of the system.

Section 237

Duties of the system administrator

(1) The system administrator shall ensure that the System of Certified Economic Operators continuously complies with the requirements laid down by this Act.

(2) The system administrator shall maintain records of certificate issuers, the certificates issued and the economic operators to which certificates have been issued.

(3) The system administrator shall offer unlimited remote access to such records as well as to the rules governing the use of the System of Certified Economic Operators.

Section 238

Certificate issuers

The certificates shall be issued by an accredited conformity assessment body pursuant to the law regulating technical requirements for products.

Section 239

Certificate

(1) The certificate shall contain at least

- a) the identification data of the certificate issuer,
- b) the name of the system of certified economic operators,
- c) the identification data of the administrator of the system of certified economic operators,
- d) the identification data of the economic operator,
- e) the purpose or branch of business or another activity, for which the certificate is being issued,
- f) the type and, where appropriate, the category of the public contracts for which the certificate is being issued,
- g) the list of documents used by the economic operator to prove its qualification,
- h) the potential scope of the commitment pursuant to Section 83 (1) d) and the identification data of the person having duties thereunder,
- i) the extent to which the qualification has been proven,
- j) the date of issuance of the certificate,
- k) the period of validity of the certificate.

(2) The certificate shall be issued in the Czech language in paper or electronic form.

(3) The longest admissible validity of the certificate shall be one year from the date of its issuance.

Section 240

Changes to the economic operator's qualification and withdrawal of the certificate

(1) The economic operator shall notify the certificate issuer without delay of any changes that may result in the economic operator no longer being qualified to the extent indicated in the certificate.

(2) The certificate issuer shall assess the changes, and where it finds out that they influence the correctness of the data recorded in the certificate, it shall withdraw the certificate or issue a new one.

(3) The certificate issuer shall also withdraw the certificate where the economic operator fails to meet the conditions for the issuance of the certificate or where it finds out that the supporting documents on the grounds of which the certificate was issued do not correspond to reality.

BOOK THIRTEEN

PROTECTION AGAINST IRREGULAR PRACTICES OF CONTRACTING AUTHORITY

TITLE I

OBJECTIONS

Section 241

Filing of objections

(1) Objections may be filed by the economic operator who has been harmed or is at risk of being harmed by the practices of the contracting authority connected to the awarding of below-threshold or above-threshold public contracts including concession contracts, with the exception of small-scale concessions pursuant to Section 178, or to specific procedures defined in Book Six (hereinafter referred to as the 'complainant').

(2) The objections referred to in subsection (1) shall be filed in writing and may be filed against

- a) all actions or omissions made by the contracting authority during the procurement procedure as well as against a specific procedure under Book Six, including the setting of the award criteria,
- b) the selection of the type of the procurement procedure or the regime of the public contract,
- c) the practices of the contracting authority aimed at the award of a public contract outside the procurement procedure contrary to this Act.

(3) Objections concerning the contracting authority's actions or omissions other than the setting of the award criteria, the selection of the type of the procurement procedure, the regime of the public contract and the practices aimed at awarding the public contract outside procurement procedure may only be filed by a participant.

Section 242

Time limits for the filing of objections

(1) Unless otherwise stipulated below, objections shall be delivered to the contracting authority within 15 days from the date on which the complainant learned of the alleged infringement of this Act by the contracting authority; the objections shall not be submitted after the conclusion of a contract or after a design contest is considered to be terminated following the selection of a design.

(2) Objections against actions notified in the documents that the contracting authority is obliged to publish or send to the complainant pursuant to this Act shall be delivered to the contracting authority within 15 days from their publication or delivery to the complainant.

(3) Where a time limit for the submission of requests to participate has been laid down during the procurement procedure, objections against requirements for the qualification of the economic operator shall be delivered to the contracting authority not later than before the expiry of such time limit.

(4) Where a time limit for the submission of tenders has been laid down during the procurement procedure, objections against the procurement documents shall be delivered to the contracting authority not later than before the expiry of such time limit; in the case of a negotiated procedure with prior publication, the objections against the procurement documents shall be delivered to the contracting authority not later than before the expiry of the time limit for the submission of indicative tenders.

(5) Objections against a voluntary notice expressing intention to conclude a contract pursuant to Section 212 (2) shall be delivered to the contracting authority within 30 days from the publication of such notice.

Section 243

Waiver of the right to file objections

A participant may waive in writing its right to file objections to the contracting authority only after such right has been created. The time limit for filing objections is conclusively presumed to expire for this participant upon the delivery of the waiver of the right to file objections to the contracting authority.

Section 244

Elements of objections

(1) The objections shall indicate who is filing them, what action of the contracting authority is considered to be an infringement of this Act and what the complainant seeks. Where the participant files objections against its exclusion on the grounds that it has renewed its qualification pursuant to Section 76, it shall not state in the objections what action is considered to be an infringement of this Act; it shall, however, include a description of the corrective measures it has taken in order to renew its qualification.

(2) In the case of objections other than those to which the time limits specified in Section 242 (2) to (5) apply, the complainant shall also state when it learned of the alleged infringement of the Act.

(3) In the case of objections against the award criteria, against the selection of the type of procurement procedure or the public contract regime, against practices aimed at awarding a public contract outside the procurement procedure or against a voluntary notice expressing the intention to conclude a contract pursuant to Section 212 (2), the complainant shall also indicate what harm it has suffered or what harm it is facing.

Section 245

Settling of objections

(1) The contracting authority shall send its decision regarding the objections to the complainant within 15 days from the delivery of the objections. In its decision, the contracting authority shall state whether it accepts or rejects the objections; the decision shall include a reasoning in which the contracting authority shall express, in a detailed and comprehensible manner, its opinion on all the facts stated by the complainant in the objections. Where the contracting authority accepts the objections, it shall indicate what corrective measures it will adopt.

(2) Where the contracting authority finds no grounds for accepting the objections, it shall reject them by its decision. A partial acceptance of the objections or an implementation of a corrective measure other than that sought by the complainant in its objections shall also be considered a rejection. Where the contracting authority takes a corrective measure other than that sought by the complainant, the complainant is entitled to file new objections against such corrective measure.

(3) The contracting authority shall also reject objections that

- a) have not been filed by a competent person specified in Section 241,
- b) have been filed with delay, or
- c) fail to meet the elements specified in Section 244.

(4) Where the contracting authority rejects the objections, it shall advise the complainant, in the decision on the objections, of the possibility to file, within the time limit specified in Section 251 (2), a petition with the Office to launch proceedings to review the actions of the contracting authority as well as of the duty to submit a duplicate of the petition to the contracting authority.

(5) Where the contracting authority fails to decide on the objections within the time limit specified in subsection (1), it is conclusively presumed, for the purposes of filing a petition in accordance with Section 250 (1), that it has rejected the objections.

Section 246

Ban on conclusion of a contract

(1) The contracting authority shall not conclude a contract with an economic operator

- a) prior to the expiry of the time limit for filing objections against a decision to exclude a participant, against a decision on the selection of an economic operator or against a voluntary notice expressing the intention to conclude a contract,
- b) prior to the delivery of the decision on the objections to the complainant, where such objections have been filed,
- c) prior to the expiry of the time limit for filing a petition to launch proceedings to review the contracting authority's actions, where the contracting authority has rejected the filed objections,
- d) within a period of 60 days from the date of commencement of the proceedings to review the actions of the contracting authority, where a petition to launch such proceedings has been filed in time; the contracting authority may nevertheless conclude a contract even within this time limit provided that the Office has dismissed the petition or that the administrative proceedings concerning the petition has been discontinued and such decision has come into force.

(2) The contracting authority shall not conclude a contract with the economic operator within 60 days from the date of commencement of the proceedings to review the actions of the contracting authority, where the Office launches such proceedings by virtue of office; the contracting authority may nevertheless conclude a contract even within this time limit provided that the administrative proceedings has been discontinued and such decision has come into force.

Section 247

Objections against setting up of innovation partnership

(1) After an innovation partnership has been set up, objections in writing may be filed by the partner with whom the innovation partnership has been terminated as a consequence of the contracting authority's procedure pursuant to Section 71 (2) b), by which the contracting authority reduced the number of partners after completing one phase of the innovation partnership.

(2) Section 242 (1) and (2), Section 243, Section 244 (1) and (2) and Section 245 (1) to (5) apply to the objections referred in subsection 1 by analogy.

TITLE II

SUPERVISION OVER COMPLIANCE WITH THE ACT

Chapter 1

Supervision over the award of public contracts and over specific procedures

Section 248

Exercise of supervision over the award of public contracts and over specific procedures

(1) The Office shall exercise supervision over compliance with the rules laid down by this Act and by the award criteria for below-threshold and above-threshold public contracts, including concession contracts, with the exception of the small-scale concessions specified in Section 178, and for the specific procedures specified in Book Six, during which it shall

- a) decide on whether the contracting authority proceeded in compliance with this Act when awarding a public contract or when conducting a specific procedure,
- b) decide on whether the contracting authority's practices aimed at awarding a public contract outside the procurement procedure is in compliance with this Act,
- c) impose corrective measures,
- d) decide on the petition specified in Section 267,
- e) check, in accordance with the Inspection Code, the compliance of the contracting authority's actions during the award of public contracts with this Act.

(2) Where the contracting authority has commenced a procurement procedure to award a small-scale public contract pursuant to Section 4 (4), the public contract being awarded shall be considered a below-threshold public contract for the purposes of supervision over the compliance with the rules laid down by this Act.

(3) The Office shall hear administrative delicts in accordance with this Act and impose sanctions for their commission.

Chapter 2

Proceedings to review the actions of the contracting authority

Section 249

Commencement of the proceedings

The proceedings to review the actions of the contracting authority shall be initiated upon a written petition filed by the complainant (hereinafter referred to as the 'petitioner') or by virtue of office.

Petition

Section 250

(1) The petition may be filed against all actions as well as omissions of the contracting authority that are not in compliance with this Act and as a consequence of which the petitioner's rights have been breached, or are under threat of being breached, in particular against

- a) the award criteria,
- b) the voluntary notice,
- c) the exclusion of a participant from the procurement procedure,
- d) the decision on the selection of the economic operator,
- e) the choice of the type of procurement procedure, or
- f) the practices of the contracting authority aimed at awarding a public contract outside procurement procedure.

(2) After the conclusion of a public contract or a framework agreement, it shall be possible to file only a petition to impose a ban on the performance of the contract specified in Section 254, even without a prior filing of objections.

Section 251

(1) In addition to general elements laid down for filings in the Code of Administrative Procedure, the petition shall identify the contracting authority and state what action is considered to be an infringement of the law, as a consequence of which the rights of the petitioner have been breached or are under threat of being breached, what evidence is proposed to be produced, and what the petitioner seeks. The petitioner shall add the written evidence, whose production it has proposed, to

the petition in electronic form, where such evidence is not part of the procurement procedure documentation. The petition shall also include an evidence of payment of the deposit pursuant to Section 255 (1) or (2), and, in the case of a petition sent to the Office prior to the conclusion of a public contract, an evidence of the delivery of objections to the contracting authority.

(2) Unless stipulated otherwise, the petition shall be delivered to the Office and in duplicate to the contracting authority within 10 days from the date on which the complainant received the decision under which the contracting authority rejected the objections.

(3) Where the contracting authority has not decided on the objections within the time limit specified in Section 245 (1), the petition specified in Section 250 (1) shall be delivered to the Office and to the contracting authority not later than within 25 days from the date on which the objections were sent by the complainant.

(4) The elements of the petition specified in the first and second sentences of subsection (1) shall not be additionally altered or supplemented, with the exception of a removal of deficiencies in the petition within the time limit set by the Office; the Office shall not take account of such alterations and supplementations. The Office shall take account of new facts included in the petition instead of the facts contained in the objections filed with the contracting authority only where the new facts are of such nature that the petitioner was unable to claim them yet against the contracting authority; the petitioner shall prove that it had been unable to claim such new facts yet against the contracting authority.

(5) In proceedings initiated upon a petition, the parties to the proceedings may propose evidence, allege facts and make other proposals not later than within 15 days from the date on which the notice of the commencement of the proceedings was delivered, provided that restrictions specified in subsection (4) do not apply to such cases; the Office shall not take account of facts, proposals for evidence and other proposals submitted later, with the exception of facts, proposals for evidence and other proposals that are aimed at questioning the credibility of the supporting documents on the grounds of which a decision is to be made. The parties to the proceedings, with the exception of the petitioner, shall be advised, in the notice of the commencement of the proceedings, of the conditions under which they may apply proposals for evidence, new facts and other proposals specified in the first sentence.

Section 252

(1) The contracting authority shall send its opinion on the petition to the Office within 10 days from its delivery. Along with this opinion, the contracting authority shall send to the Office the relevant procurement procedure or design contest documentation.

(2) The time limit for the issuance of a decision by the Office shall start running from the moment of the delivery of the contracting authority's opinion and the procurement procedure or design contest documentation and, where applicable, a copy of the public contract. The time limit for the issuance of a decision shall not, however, start running until the general elements of the petition are supplemented and until the petition identifies the contracting authority and specifies what the petitioner seeks.

(3) The contracting authority shall send its opinion on the received petition as well as other filings and the procurement documents, with the exception of non-textual parts of the procurement documents or design contest documents, to the Office exclusively by means of a data box or as a data message signed by a recognised electronic signature. The petitioner shall send the petition and other filings to the Office exclusively by means of a data box or as a data message signed by a recognised electronic signature. Other parties to the proceedings shall send their filings to the Office exclusively by means of data boxes or as data messages signed by recognised electronic signatures.

(4) The contracting authority shall send parts of the procurement procedure or design contest documentation not listed in subsection (3) and the non-textual part of the procurement documents or design contest documents to the Office in paper form, by means of a data box, or as a data message signed by a recognised electronic signature.

Section 253

Specific provisions governing a petition against practices of the contracting authority aimed at awarding a public contract outside the procurement procedure

The petition against the contracting authority's practices aimed at awarding a public contract outside the procurement procedure shall specify what performance the contracting authority intends to acquire by the award of a contract outside the procurement procedure as well as what procedure the contracting authority intends to use to acquire the relevant performance.

Section 254

Specific provisions governing a petition to impose a ban on the performance of a public contract

(1) The petition to impose a ban on the performance of a public contract may be filed by the petitioner who claims that the contracting authority has concluded a contract

a) without prior publication of a contract notice, a prior information notice or an invitation to submit tenders in a simplified below-threshold procedure, although it was obliged to do so, unless it has published a voluntary notice expressing the intention to conclude a contract pursuant to Section 212 (2),

b) despite a ban on the conclusion of the contract stipulated by this Act or by a preliminary measure,

c) by conduct outside a procurement procedure, although it has been banned to continue conducting of such procedure by a decision made pursuant to Section 263 (7), or

d) by procedure specified in Section 135 (3) or Section 141 (4), during which it has breached the rules for the award of a public

contract on the basis of a framework agreement or under a dynamic purchasing system and thus has influenced or could have influenced the selection of the economic operator.

(2) The petition shall indicate when the petitioner learned that the contracting authority concluded the contract by the procedure referred to in subsection (1).

(3) The petitioner shall deliver the petition to the Office and in duplicate to the contracting authority within one month from the date on which the contracting authority published the contract award notice in the manner specified in Section 212 (2) accompanied with a statement of the reason for the award of the public contract without publication of a contract notice, a prior information notice or an invitation to submit tenders in a simplified below-threshold procedure, however not later than within six months from the conclusion of such contract.

4) The petitioner shall deliver the petition specified in paragraph d) of subsection (1) to the Office and in duplicate to the contracting authority within one month from the date on which the contracting authority published a contract award notice regarding a contract awarded on the basis of a framework agreement pursuant to Section 137 or a contract award notice regarding a contract under a dynamic purchasing system pursuant to Section 142, however, not later than within six months from the conclusion of such contract.

(5) Within 10 days from the delivery of the petition, the contracting authority shall deliver to the Office all documents containing the award criteria and the procurement procedure documentation. Where the contracting authority does not conduct a procurement procedure or conducts a procurement procedure that does not require the publication of a notice or an invitation in order to be commenced, it shall state the grounds for such procedure to the Office within the same time limit.

(6) The contracting authority shall also deliver its opinion on the petition to the Office within the time limit set out in subsection (5). Where the contracting authority intends to prove the existence of the grounds which merit particular consideration pursuant to Section 264 (3) or (4), the opinion shall also include allegations and proposals for evidence to prove such grounds; such allegations and proposals for evidence shall not be altered or extended after the expiry of the time limit specified in subsection (5).

(7) A preliminary measure shall not be issued in proceedings regarding the petition specified in subsection (1).

Section 255

Deposit

(1) Except for the cases referred to in subsection (2), the petitioner shall pay, within the time limit for the submission of a petition, to the bank account of the Office a deposit amounting to 1% of the petitioner's tender price for the entire period of performance of the public contract, or for the period of the first four years of performance with regard to contracts concluded for an indefinite period, however not less than CZK 50,000 and not more than CZK 10,000,000. Where the petitioner is unable to set the total tender price, it shall pay a deposit amounting to CZK 100,000. In the case of a petition to impose a ban on the performance of a contract, the petitioner shall pay a deposit amounting to CZK 200,000.

(2) With regard to the proceedings to review a concession award procedure, the petitioner shall pay, within the time limit for the submission of a petition, to the bank account of the Office a deposit amounting to 1% of the estimated value of the concession published in the Tenders Electronic Daily or on the contracting authority profile, however, not less than CZK 50,000 and not more than CZK 10,000,000. Where the contracting authority fails to publish the estimated value of the concession in the Tenders Electronic Daily or on the contracting authority profile, the petitioner shall pay a deposit amounting to CZK 100,000. In the case of a petition to impose a ban on the performance of a concession contract, the petitioner shall pay a deposit amounting to CZK 200,000.

(3) The deposit shall devolve on the state where the Office

a) rejects the petition by final decision pursuant to Section 265 a), or

b) makes a final decision to discontinue the proceedings where the petitioner has withdrawn its petition after a non-final decision on rejecting the petition was made pursuant to Section 265 a) during the same proceedings.

(4) Where the petitioner has withdrawn its petition prior to a decision on the merits is issued, 35 % of the deposit shall devolve on the state, however not less than CZK 30,000; the Office shall return the remaining part of the deposit to the petitioner.

(5) The deposit that has devolved on the state shall constitute state budget revenue.

(6) Where the Office makes a decision other than those referred to in subsection (3), or where it discontinues the proceedings for a reason other than that referred to in subsection (3), it shall return the deposit or part thereof to the petitioner within one month from the date on which the decision came into force.

Section 256

Parties to the proceedings

The contracting authority shall be a party to the proceedings, and where the proceedings is initiated upon a petition, the petitioner shall be a party as well; where the subject of the proceedings consists in a review of the selection of an economic operator or the selection of a design in a design contest, the selected economic operator or the selected participant in the design contest shall be a party to the proceedings as well. In proceedings regarding the commission of an administrative delict, the person suspected of its commission shall be a party to the proceedings. In proceedings on imposing a ban on the

performance of a contract, the petitioner and the contracting parties shall be parties to the proceedings.

Section 257

Discontinuance of the proceedings

The Office shall discontinue the initiated proceedings by a resolution where

- a) the petition lacks general elements for filings laid down in the Code of Administrative Procedure or the identification of the contracting authority or fails to state what the petitioner claims, or a document attesting to the payment of the deposit in the amount specified in Section 255 (1) or (2) is not attached to the petition, and the petitioner has failed to remove such deficiencies in the petition within the time limit set by the Office,
- b) the petition does not state what action is considered to constitute an infringement of the law, as a consequence of which the rights of the petitioner have been breached or are under threat of being breached,
- c) the deposit specified in Section 255 has not been paid,
- d) a document attesting to the delivery of objections to the contracting authority is not attached to the petition sent to the Office prior to the conclusion of a public contract,
- e) the petition has not been delivered to the Office and to the contracting authority within the time limits set out in Section 251 (2) or (3) or in Section 254 (3),
- f) in proceedings initiated by virtue of office, no grounds for imposing a corrective measure pursuant to Section 263 or for imposing a sanction pursuant to Section 268 or Section 269 have been found,
- g) the contracting authority has cancelled the procurement procedure,
- h) no objections filed in due and timely manner preceded the petition; this does not apply to petitions specified in Section 254,
- i) the contracting authority has cancelled the actions being reviewed or has adopted the requested corrective measure,
- j) the contracting authority concluded a contract to perform the subject-matter of the public contract being reviewed when conducting administrative proceedings,
- k) the petition was filed after the conclusion of the contract, with the exception of a petition to impose a ban on the performance of the contract,
- l) a petition to impose a ban on the performance of the contract has been filed and the Office finds out that the obligation arising from this contract has been fulfilled, or
- m) in proceedings initiated by virtue of office, the contracting authority has cancelled the actions being reviewed or adopted corrective measures.

Section 258

Special provisions governing conduct prior to the commencement of the proceedings

(1) The contracting authority shall, within 10 days from the delivery of a notice to the Office, send the procurement procedure documentation by means of a data box or as a data message signed by a recognised electronic signature, with the exception of documents referred to in Section 252 (4), which it shall send to the Office, within the same time limit, in paper form, by means of a data box or as a data message signed by a recognised electronic signature.

(2) A motion to commence proceedings by virtue of office filed by a complainant that has not used the possibility to file objections in the same matter shall not be taken into account.

Section 259

(1) The Office shall collect a fee amounting to CZK 10,000 for the filing of a motion to commence administrative proceedings by virtue of office from the person that has filed such motion for each public contract in relation to the award of which the motion states misconduct.

(2) Where a motion has been filed jointly by more persons, the fee specified in subsection (1) shall be collected only once.

(3) The fee shall be payable to the bank account of the Office along with the filing of the motion.

(4) Where the fee fails to be paid along with the filing of the motion within the time limit specified in subsection (3), the motion shall not be taken into account.

(5) The fee shall not be returned.

(6) Exemption from the fee or extension of the time limit for the payment of the fee shall not be admissible.

(7) The Act on Administrative Fees does not apply.

Section 260

Special provisions governing confidentiality

Throughout the period of exercising supervision pursuant to this Book, the Office shall not disclose the information contained in the procurement procedure documentation, with the exception of the part of information which is used as the grounds on which the issuance of the decision is based. The period of exercising supervision under the first sentence means the period from the delivery of the procurement procedure documentation to the Office pursuant to Section 252 (1), Section 254 (5) or Section 258 (1) to their sending back to the contracting authority.

Section 261

Special provisions governing the conduct of the proceedings

(1) The following shall be sent to the Office exclusively by means of a data box or as a data message signed by a recognised electronic signature:

- a) filings submitted by the parties during the proceedings to review the contracting authority's actions initiated by virtue of office,
- b) a remonstrance and other filings submitted by parties during remonstrance proceedings.

(2) The Office may suspend the proceedings while exercising supervision pursuant to Section 248 in order to obtain a specialist opinion or a sworn expert opinion. The time limit for the issuance of a decision shall not be running from the issuance of the resolution to suspend the proceedings to the delivery of the specialist opinion or sworn expert opinion to the Office.

(3) Prior to issuing a decision on the merits, the Office shall set a time limit for the parties to the proceedings to express their opinions on the supporting documents for the decision. This time limit shall not be shorter than seven days. The Office shall not take account of opinions expressed later. The first sentence after semicolon of Section 251 (5) applies by analogy.

Section 262

Special provisions governing remonstrance proceedings

Filing remonstrance shall not be admissible where filed against a resolution which

- a) regulates the conduct of the administrative proceedings,
- b) has set the time limit for performing an action, or
- c) has corrected obvious incorrectness, unless such correction concerns the statement contained in the decision.

Corrective measures and invalidity of contracts or invalidity of framework agreements

Section 263

(1) The Office shall not be bound by the petition with regard to the corrective measure being imposed.

(2) Where the contracting authority fails to comply with the rules for the procurement procedure or for the specific procedure specified in Book Six, whereby it influences or can influence the selection of an economic operator or the selection of a design, and a contract has not been concluded yet, the Office shall cancel the procurement procedure or the design contest or only an individual action of the contracting authority.

(3) Where the contracting authority sets out the award criteria contrary to this Act, the Office shall impose a corrective measure consisting in the cancellation of the procurement procedure.

(4) Where the contracting authority, during proceedings to review the contracting authority's actions prior to the conclusion of a contract, fails to deliver the procurement procedure documentation to the Office pursuant to Section 252 (1) or Section 254 (5) within the prescribed time limits, or in an additional five-day period set by the Office, the Office shall impose a corrective measure consisting in the cancellation of the procurement procedure or of the action being reviewed, as specified in the notice of the commencement of the proceedings.

(5) Where the reasoning of the decision to reject objections is unreviewable due to incomprehensibility or a lack of grounds, the Office may impose a corrective measure consisting solely in cancelling the decision regarding the objections; in that case, it is conclusively presumed that new objections with an identical content are filed at the moment when the Office's decision imposing such corrective measure comes into force. The contracting authority shall not reject such new objections as being delayed.

(6) Where the Office finds out, during conducting proceedings regarding a petition, that the contracting authority has failed to decide, within the meaning of Section 245 (5), on the objections that preceded the petition within the time limit specified in Section 245 (1), it shall impose a corrective measure consisting, depending on the nature of the case, either in cancelling the action against which the objections were aimed as well as all subsequent actions made by the contracting authority during the procurement procedure, or in cancelling the entire procurement procedure.

(7) The Office shall ban the contracting authority from continuing the conduct that has been challenged by the petition,

provided that it finds out, during proceedings regarding a petition against the contracting authority's conduct aimed at awarding a public contract outside the procurement procedure, that the contracting authority's conduct is contrary to or circumventing this Act.

(8) Where the Office imposes a corrective measure, with the exception of a ban on the performance of a contract, it shall simultaneously ban the contracting authority from concluding a contract during the procurement procedure until the decision by which the proceedings is concluded comes into force; a remonstrance against such statement shall not have a suspensory effect.

Section 264

(1) During proceedings initiated upon the petition specified in Section 254, the Office shall impose a ban on the performance of a contract on the contracting authority provided that the public contract or framework agreement has been concluded in the manner described in Section 254 (1). The contract in respect of which the Office has imposed the ban on performance, where not proceeding pursuant to subsection (3), shall be conclusively presumed to be void ab initio.

(2) A public contract shall become invalid on the grounds of infringement of this Act solely in cases where the Office imposes a ban on its performance pursuant to subsection (1). This is without prejudice to invalidity based on other grounds.

(3) Where the contracting authority proves that grounds which merit particular consideration in relation to public interest require continuation of the performance of the contract, the Office shall issue a decision setting a time limit, not longer than 12 months, after the expiry of which the performance of the contract shall be banned; this time limit starts running from the moment when the decision comes into force. Economic interest in the performance of the contract may be considered such a ground only under exceptional circumstances where a suspension of the performance of the contract would lead to disproportionate consequences. Economic interests directly linked to the public contract concerned, including, but not limited to, the costs resulting from a delay during the performance of the public contract, the costs of commencement of a new procurement procedure, the costs resulting from the change of the person performing the public contract and the costs of the legal obligations resulting from the ban on the performance of the contract, shall not constitute the grounds which merit particular consideration requiring the performance of the contract to continue.

(4) The Office shall not impose a ban on the performance of the contract pursuant to subsection (1) where the contracting authority proves, apart from the facts specified in subsection (3), that the conduct pursuant to the first sentence of subsection (3) is not sufficient to protect the public interest concerned.

(5) The Office shall also not impose a ban on the performance of the contract pursuant to subsection (1) where a public contract in the fields of defence or security is concerned and where, simultaneously, the consequences of such ban would seriously endanger the existence of a broader defence or security programme that is of fundamental importance for the security interests of the Czech Republic.

Section 265

The Office shall dismiss the petition where

- a) no grounds for imposing a corrective measure have been found,
- b) the petition has not been filed by a competent person, or
- c) the petition is not aimed against the procedure that the contracting authority is obliged to observe pursuant to this Act.

Section 266

Costs of proceedings

(1) The Office's decision imposing a corrective measure or a ban on the performance of the contract shall include a decision concerning the duty of the contracting authority to pay the costs of the administrative proceedings. The costs of the proceedings shall be paid out by a lump sum set out by a regulation of the Ministry of Regional Development.

(2) On grounds which merit particular consideration, the duty to pay the costs of the proceedings pursuant to subsection (1) may be waived in full or in part upon a request of a party to the proceedings.

Section 267

Petition filed after the completion of a stage of innovation partnership

(1) Where the contracting authority has reduced the number of partners by procedure specified in Section 71 (2) b), the partner with whom the innovation partnership has been terminated on such grounds is entitled to submit a petition to the Office.

(2) Where the contracting authority fails to comply with the rules for the reduction of the number of partners, the Office shall, in its decision, declare such conduct unlawful and, depending on the nature of the case, shall order the contracting authority to remedy the situation within 15 days from the moment when such decision comes into force.

(3) The petitioner shall pay a deposit amounting to CZK 200,000 along with filing the petition pursuant to subsection (1).

(4) Where the contracting authority fails to submit procurement procedure documentation during proceedings

regarding the petition submitted pursuant to subsection (1) within the time limit set out in Section 252 (1), or where the Office finds out that the contracting authority has failed to decide, within the meaning of Section 245 (5), on the objections that preceded the petition within the time limit specified in Section 245 (1), it shall impose a corrective measure pursuant to subsection (2).

(5) The contracting authority and the petitioner shall be parties to the proceedings regarding the petition filed pursuant to subsection (1).

(6) Provisions of sections 251, 252, 255 (3) to (6), 257, 260, 261, 262, 263 (5) and 265 apply to the proceedings regarding the petition filed pursuant to subsection (1) by analogy.

(7) A preliminary measure shall not be issued in proceedings regarding the petition specified in subsection (1).

Chapter 3

Administrative delicts

Section 268

Administrative delicts committed by the contracting authority

(1) The contracting authority commits an administrative delict where it

a) fails to comply with the rules laid down by this Act for the award of a public contract or for the specific procedures specified in Book Six, whereby it has influenced or can influence the selection of an economic operator or the selection of a design in a design contest, and awards a public contract, concludes a framework agreement, or the design contest is considered terminated after a selection of a design,

b) lays down the award criteria contrary to the law and awards a public contract, concludes a framework agreement, or the design contest is considered terminated after a selection of a design,

c) fails to acquire or keep procurement procedure documentation pursuant to Section 216 (1) or (2),

d) proceeds contrary to Section 245 (1), (2), (3) or (4) when settling objections, or

e) fails to fulfil any of the duties set out in Section 252 (1), (3) or (4), Section 254 (5) or (6) or Section 258 (1).

(2) Unless the procedure specified in subsection (3) is applied, the following fine shall be imposed for the commission of an administrative delict:

a) 10 % of the public contract price, or equal to or less than CZK 20,000,000 where the total public contract price cannot be established, with regard to the administrative delict specified in paragraphs a) to c) of subsection (1),

b) CZK 20,000,000, with regard to the administrative delict specified in paragraph d) of subsection (1),

c) CZK 1,000,000, with regard to the administrative delict specified paragraph e) of subsection (1).

(3) Where the procedure for the award of concessions is breached, the following fine shall be imposed for the commission of the administrative delict specified in subsection (1):

a) 5 % of the estimated value of the concession contract, or equal to or less than CZK 20,000,000, where the estimated value of the concession contract cannot be established, with regard to the administrative delict specified in paragraphs a), b) or c) or subsection (1),

b) CZK 20,000,000, with regard to the administrative delict specified in paragraph d) of subsection (1),

c) CZK 1,000,000, with regard to the administrative delict specified paragraph e) of subsection (1).

Section 269

Administrative delicts committed in the process of publication

(1) The contracting authority commits an administrative delict in the process of publication pursuant to this Act by

a) not sending a contract award notice or a notice of the conclusion of a framework agreement for publication in accordance with this Act,

b) not sending a notice of cancellation of the procurement procedure for publication in accordance with this Act,

c) not sending a notice of a change to a public contract for publication in accordance with this Act,

d) not sending a notice of a change of the period of validity of a dynamic purchasing system for public contracts for publication in accordance with this Act,

e) not publishing a written report of the contracting authority in accordance with Section 217 (5).

(2) The contracting authority commits an administrative delict in the process of publication pursuant to this Act by not publishing the concluded public contract in accordance with Section 219 (1).

(3) The fine imposed for an administrative delict shall amount to

a) CZK 1,000,000, with regard to the administrative delict specified in subsection (2),

b) CZK 200,000, with regard to the administrative delict specified in subsection (1).

Section 270

Common provisions regulating administrative delicts committed by contracting authorities

(1) The contracting authority shall not be liable for an administrative delict where it proves that it has deployed all efforts that could be reasonably required to avert a breach of a legal duty.

(2) In establishing the extent of the fine to be imposed on the contracting authority, the gravity of the administrative delict shall be taken into account, in particular, the manner of its commission and consequences thereof and the circumstances under which it was committed. Where a ban on the performance of a contract has been imposed, the extent to which such a contract has been performed so far shall also be taken into account.

(3) The liability of the contracting authority for an administrative delict shall expire where the Office fails to commence the relevant proceedings within three years from the date on which it learned of such delict, however not later than within five years from the date of its commission.

(4) The administrative delicts under this Act shall be heard in the first instance by the Office.

Chapter 4

Common provisions regarding the exercise of supervision

Section 271

Duty of confidentiality and protection of trade secret

(1) The staff of the Office as well as those who have been entrusted with performing tasks pertaining to the competence thereof shall maintain confidentiality of all facts that they have learned while fulfilling their occupational duties. The duty of confidentiality shall not apply where the persons concerned give testimony of such facts to investigative, prosecuting and adjudicating bodies or during proceedings before a court or, where appropriate, where they are invited by such authorities or the court to submit a written representation. The duty of confidentiality on the part of the staff of the Office shall be without prejudice to the disclosure of data and information by the Office under another legal regulation⁵¹.

(2) Where the Office learns of a fact that constitutes the subject of a trade secret, it shall take measures to avoid a breach of such trade secret.

Section 272

Publication of final decisions made by the Office

The Office shall continuously publish its final decisions under this Act on its Internet address.

BOOK FOURTEEN

TRANSITIONAL AND FINAL PROVISIONS

Section 273

Transitional provisions governing the public procurement

(1) The public procurement, the award of framework agreements, design contests, proceedings to review the actions made by the contracting authority or proceedings regarding administrative delicts before the Office for the Protection of Competition pursuant to Act No. 137//2006 Coll., in the wording effective by the date of the entry of this Act into effect, initiated before the effective date of this Act shall be completed under Act No. 137//2006 Coll., in the wording effective by the date of the entry of this Act into effect.

(2) The concession award procedure pursuant to Act No. 139/2006 Coll., in the wording effective by the date of the entry of this Act into effect, initiated before the effective date of this Act, shall be completed under Act No. 139/2006 Coll., in the wording effective by the date of the entry of this Act into effect.

(3) For the purposes of sections 60 (2) and 63 (1), the procurement procedures pursuant to Act No. 137/2006 Coll., in

the wording effective by the date of the entry of this Act into effect, shall be deemed the procurement procedures pursuant to this Act.

(4) Procurements regarding public contracts being awarded on the basis of framework agreements concluded pursuant to Act No. 137/2006, in the wording effective by the date of the entry of this Act into effect, which

a) were initiated before the effective date of this Act, or

b) will be initiated after the effective date of this Act, shall be completed under Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect.

(5) Dynamic purchasing system set up pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, shall be considered the dynamic purchasing system pursuant to this Act from the entry of this Act into effect. Public contracts awarded under the dynamic purchasing system which were commenced before the effective date of this Act shall be completed pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect

(6) Modifications of obligations arising from the public contracts or concession contracts concluded pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, or pursuant to Act No. 139/2006 Coll., in the wording effective by the date of the entry of this Act into effect, shall be governed by this Act from the effective date of this Act. The sum of values of all modifications of the contractual obligation pursuant to Section 222 (5) c) and 222 (6) c) shall also include modifications of obligations arising from the public contracts or concession contracts made before the effective date of this Act.

(7) Prior information notices or regular prior information notices of a utilities contracting authority pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, published before the entry of this Act into effect, shall be considered prior information notices pursuant to this Act.

(8) Voluntary notice on the intention to conclude a contract pursuant to Section 146 (2) of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, shall be considered a voluntary notice on the intention to conclude a contract pursuant to Section 212 (2) of this Act.

Section 274

Transitional provisions governing supervision over compliance with the Act

(1) It shall be proceeded pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, or pursuant to Act No. 139/2006 Coll., in the wording effective by the date of the entry of this Act into effect, in respect of proceedings to review the actions made by the contracting authority or proceedings regarding administrative delicts initiated by the Office for the Protection of Competition after the effective date of this Act, provided that they concern

a) the award of public contracts or framework agreements pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect,

b) the award of public contracts on the basis of the framework agreement pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect,

c) the concession award procedure and the award of concession contracts pursuant to Act No. 139/2006 Coll., in the wording effective by the date of the entry of this Act into effect,

a) design contests pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect.

(2) The ban on performance of public contracts imposed pursuant to Section 120a) of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, and the ban on performance of a concession contract pursuant to Section 27a of Act No. 139/2006 Coll., in the wording effective by the date of the entry of this Act into effect, shall not apply to public contracts pursuant to this Act.

Section 275

Transitional provisions governing information system and publication

(1) The information system regarding public procurement pursuant to Section 157 of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, shall be considered the information system pursuant to this Act. Information contained in the information regarding public procurement pursuant to Section 157 of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, shall form the content of the information system pursuant to this Act.

(2) Publication of data and information regarding public contracts pursuant to sections 146 to 147a of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, which concern the procurement procedure, the concession award procedure or design contests initiated pursuant to of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, shall be conducted pursuant to this Act.

Section 276

Transitional provisions governing the List of Approved Economic Operators

(1) The List of Approved Economic Operators pursuant to Section 125 of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, shall be considered the List of Approved Economic Operators pursuant to this Act. Proceedings regarding registration, changes and exclusion from the List of Approved Economic Operators initiated before the effective date of this Act, shall be completed pursuant to this Act.

(2) An economic operator registered in the List of Approved Economic Operators pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, is obliged to submit missing qualifications, including the relevant documents, by the procedure pursuant to Section 230 of this Act before the submission of application for issuance of the extract from the List of Approved Economic Operators pursuant to Section 229 of this Act; the extract from the List of Approved Economic Operators shall be issued to the economic operator after the registration is changed pursuant to Section 231 of this Act.

(3) The economic operator registered in the List of Approved Economic Operators pursuant to Section 125 of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, is obliged to submit missing qualifications, including the relevant documents, by the procedure pursuant to Section 230 of this Act within three months from the effective date of this Act, otherwise, it is conclusively presumed that it is not registered in the list from the first day of the fourth month from the effective date of this Act.

(4) The economic operator may replace the proof of the basic qualification in its entirety and the professional qualification to the extent of the extract stated in the extract from the List of Approved Economic Operators issued pursuant to Section 128 of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, within three months from the effective date of this Act, unless the facts on the basis of which the extract was issued have not changed.

Section 277

Transitional provisions governing Systems of Certified Economic Operators

(1) The System of Certified Economic Operators pursuant to Section 125 of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, shall be considered the System of Certified Economic Operators pursuant to this Act. Proceedings regarding approval, modification and cancellation of the System of Certified Economic Operators initiated before the effective date of this Act, shall be completed pursuant to this Act.

(2) Where the System of Certified Economic Operators which was approved pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, is not in compliance with this Act, the administrator of the System of Certified Economic Operators shall file an application for change of the System of Certified Economic Operators within three months from the effective date of this Act. Until a decision regarding this application is made, certificates shall not be issued within this system.

(3) The economic operator may prove its qualification by the certificate which was issued under the System of Certified Economic Operators before the effective date of this Act, only within three months from the effective date of this Act.

Section 278

Repealing provisions

The following shall be repealed:

1. Act No. 137/2006 Coll., on Public Contracts.
2. Act No. 139/2006 Coll., on Concession Award Procedure and Concession Contract (the Concession Act).
3. Book Thirteen of Act No. 110/2007 Coll., on Certain Measures within the Network of Central Government Authorities Relating to the Cancellation of the Ministry of Information Technologies and Amendment to Certain Other Acts.
4. Book One Hundred and One of Act No. 296/2007 Coll., amending Act No. 182/2006 Coll. on Bankruptcy and Settlement (the Insolvency Act), as amended, and certain acts in connection with its adoption.
5. Act No. 30/2008 Coll., amending Act No. 139/2006 Coll., on Concession Award Procedure and Concession Contract (the Concession Act).
6. Act No. 76/2008 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended by Act No. 110/2007 Coll.
7. Books Four and Five of Act No. 110/2009 Coll., amending Act No. 130/2002 Coll., on Support for Research, Experimental Development and Innovations from Public Resources and Amendment to Certain Related Acts (Act on Support for Research and Development), as amended and other related acts.
8. Book Twenty-Eight of Act No. 41/2009 Coll., on Amendment to Certain Other Acts Connected to the Adoption of Criminal Code.
9. Act No. 417/2009 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended, and Certain Other Acts.
10. Act No. 179/2010 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended, and Certain Other Acts.

11. Books One Hundred and Seventy-Six and One Hundred and Seventy-Seven of Act No. 227/2009 Coll, amending Certain Other Acts in Connection with Adoption of Basic Registries Act.
12. Act No. 423/2010 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended.
13. Book Twenty-Eight of Act No. 73/2011 Coll., on Labour Office of the Czech Republic and on Amendment to Certain Related Acts.
14. Act No. 258/2011 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended.
15. Book Six of Act No. 367/2011 Coll., amending Act No. 435/2004 Coll., on Employment, as amended, and Certain Related Acts.
16. Book Forty of Act No. 420/2011 Coll., on Amendment to Certain Acts in Connection with adoption of Act on Criminal Liability of Legal Persons and their Prosecution.
17. Book Three of Act No. 1/2012 Coll., amending Act No. 435/2004 Coll., on Employment, as amended, and Certain Related Acts.
18. Act No. 55/2012 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended.
19. Book Twenty-Nine of Act No. 167/2012 Coll., amending Act No. 499/2004 Coll., on Archiving and Filing Service and Amendments to Certain Other Acts, as amended, Act No. 227/2000 Coll., on Electronic Signatures and on the Amendment to Certain Other Acts (Electronic Signatures Act), as amended, and other related acts.
20. Books Sixty-Four and Sixty-Five of Act No. 303/2013 Coll., amending Act No. 499/2004 Coll., on Archiving and Filing Service and Amendments to Certain Other Acts, as amended, Act No. 227/2000 Coll., on Electronic Signatures and on the Amendment to Certain Other Acts (Electronic Signatures Act), as amended, and other related acts.
21. Statutory measures of the Senate No. 341/2013 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended, and Act No. 55/2012 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended.
22. Act No. 40/2015 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended.
23. Regulation No. 217/2006 Coll., implementing concession act.
24. Regulation No. 238/2006 Coll., laying down essentials of the application for prior opinion on conclusion of a concession contract or a contract under concession act and on amendment to the concluded concession contract or contract under concession act.
25. Regulation No. 274/2006 Coll., laying down the list of products in the field of defence for purposes of the act on public contracts.
26. Regulation No. 328/2006 Coll., laying down the lump sum of the costs of proceedings for the review of practices of contracting authority for the purposes of the act on public contracts.
27. Regulation No. 392/2010 Coll., on determination of elements of the application for a prior opinion of the Ministry of Finance in the field of public contracts.
28. Regulation No. 9/2011 Coll., laying down detailed conditions relating to electronic tools and acts taken electronically in awarding public contracts and particulars concerning certificate of conformity.
29. Regulation No. 162/2011 Coll., on the manner of laying down separate technical conditions for the purposes of the act on public contracts.
30. Regulation No. 133/2012 Coll., on publication for purposes of the act on public contracts and on elements of contracting authority profile.
31. Regulation No. 230/2012 Coll., laying down details of determination of the subject-matter of public works contract and the scope of the inventory of works, supplies and services together with a statement of measurements
32. Regulation No. 231/2012 Coll., laying down terms and conditions for public works contracts.
33. Regulation No. 232/2012 Coll., on details of the scope of justification of purposefulness of public contract and statement of reasons for public contract.
34. Government Decree No. 77/2008 Coll., laying down the financial limits for the purposes of the Act on Public Contracts, defining goods procured by the Czech Republic - the Ministry of Defence, to which the specific financial limit applies, and on conversion of amounts set out in the Act on Public Contracts from Euro to the Czech currency.
35. Government Decree No. 78/2008 Coll., laying down financial limits for the purposes of the Concession Act.
36. Government Decree No. 474/2009 Coll. amending government decree No. 77/2008 Coll., laying down the financial limits for the purposes of the Act on Public Contracts, defining goods procured by the Czech Republic - the Ministry of Defence, to which the specific financial limit applies, and on conversion of amounts set out in the Act on Public Contracts from Euro to the Czech

currency and Government Decree No. 78/2008 Coll., laying down financial limits for the purposes of the Concession Act.

37. Government Decree No. 276/2011 Coll. amending government decree No. 77/2008 Coll., laying down the financial limits for the purposes of the Act on Public Contracts, defining goods procured by the Czech Republic - the Ministry of Defence, to which the specific financial limit applies, and on conversion of amounts set out in the Act on Public Contracts from Euro to the Czech currency, as amended by Government Decree 474/2009 Coll.

38. Government Decree No. 447/2011 Coll. amending government decree No. 77/2008 Coll., laying down the financial limits for the purposes of the Act on Public Contracts, defining goods procured by the Czech Republic - the Ministry of Defence, to which the specific financial limit applies, and on conversion of amounts set out in the Act on Public Contracts from Euro to the Czech currency, as amended and Government Decree No. 78/2008 Coll., laying down financial limits for the purposes of the Concession Act, as amended by the Government Decree No. 474/2009 Coll.

39. Government Decree No. 386/2012 Coll. amending government decree No. 77/2008 Coll., laying down the financial limits for the purposes of the Act on Public Contracts, defining goods procured by the Czech Republic - the Ministry of Defence, to which the specific financial limit applies, and on conversion of amounts set out in the Act on Public Contracts from Euro to the Czech currency, as amended.

BOOK FIFTEEN

EFFECT

Section 279

(1) This Act comes into effect on the first day of the sixth month of the calendar year following the year when it was promulgated.

(2) Provisions of Section 211 (3) come into effect in respect of the contracting authorities referred to in Section 4 (1) a), the Czech National Bank and the central purchasing bodies on 18 April 2017 and in the case of other contracting authorities on 18 October 2018.

(3) Postponing of the effect pursuant to subsection (2) shall not apply to

- a) the dynamic purchasing system,
- b) the electronic auction,
- c) the electronic catalogues,
- d) the sending of forms to the Tenders Electronic Daily and to the Official Journal of the European Union, and
- e) the publication of procurement documents pursuant to Section 96.

(4) Provisions of Section 86 (1) come into effect on 18 October 2018.

(5) Provisions of Section 221 come into effect,

a) in the case of the contracting authorities referred to in Section 4 (1) a) and the Czech National Bank, on the first day of the eighteenth month,

b) in the case of contracting authorities not referred to in paragraph a), on the first day of the thirteenth month, after publication of the reference to the European legislation containing the European standard in the Official Journal of the European Union.

Hamáček, manu propria

Zeman, manu propria

Sobotka, manu propria

I bodies, which was designed, made for or adapted to carry out I
I the tasks of ensuring the defence or national security, I
I-----I-----I

I 11. I aviation equipment and the materials for ensuring the defence I
I or national security: I
I 1. specially designed or modified aircraft, helicopters and I
I unmanned aerial vehicles, I
I 2. aircraft engines, I
I 3. specially constructed equipment of aircraft or helicopters, I
I 4. weapons and other systems for aircraft referred to in I
I paragraph 1, I
I 5. ground equipment for facilities referred to in paragraph 1, I
I-----I-----I

I 12. I electronic material designed for the defence or national I
I security: I
I 1. electronic communications networks and electronic I
I communication devices, I
I 2. electronic warfare systems - jammers, receivers, systems I
I for protection against interference, sights signal sources, I
I including special types of command and control systems for the I
I jammer, I
I 3. safety equipment for the processing and protection of data, I
I transmission and signal lines, I
I 4. identification, authentication, reading, filling equipment, I
I and other data processing equipment, I
I 5. active and passive radar systems and related data I
I processing systems, I
I 6. transponders and beacons, I
I 7. detecting seismic, acoustic, magnetic and electromagnetic I
I sensors presence personnels and technology I
I 8. satellite technology (search, navigation, communication and I
I data transfer), I
I 9. technology to detect sound (acoustic station) and I
I topographic connections I
I-----I-----I

I 13. I weapons systems utilizing directed energy or kinetic energy: I
I 1. specially designed laser systems causing destruction or I
I missing the target, systems that create particle beams and I
I radio frequency systems, radio high performance frequency I
I systems capable of destruction or missing the target, I
I 2. specially designed components, equipment specially designed I
I for the detection and identification systems referred to I
I category 1, I
I 3. weapons systems designed for destruction or causing missing I
I the target, test and evaluation operations including I
I instrumentation, I
I 4. subsystems designed for using in the above-mentioned I
I systems, I
I 5. measuring and diagnostic technology for the development I
I of the above-mentioned weapons systems, I
I 6. non-lethal and cold weapons, I
I-----I-----I

I 14. I photographic, optoelectronic and other display devices and I
I specially designed devices: I
I 1. cameras for aerial reconnaissance, film processing machines, I
I other cameras, and other optoelectronic display devices I
I operating in different areas of the frequency spectrum, I
I including radar display sensors, either recording or I
I transmitted via a data connection, I
I 2. specialized equipment for cameras and optoelectronic I
I display device, I
I-----I-----I

I 15. I special equipment to simulate and evaluate the military I
I situation: I
I 1. military types and systems of simulators and trainers I
I including weapons and displaying systems, I
I 2. special hardware and software equipment for simulators, I
I trainers, evaluation and transmission devices, development, I
I manufacture and use of products I
I-----I-----I

I 16. I additional facilities, equipment, technology and materials, I
I as well as specially designed components: I
I 1. parachutes and parachute material, I
I 2. specially produced material for overcoming obstacles I
I 3. electrically and mechanically powered headlights, I
I 4. means of protection against the effects of military items I
I listed in (referred to) the category 3rd, 4th, 8th, 9th, 12th I

I and 13th,

I 5. special equipment,

I I. Parts of military uniforms, clothing and machinery equipped I
I with camouflage pattern, providing protection against resources I
I exploration in the visible and invisible part of the spectrum, I
I meeting the requirements set by Czech defence standards: I
I - components of field and summer uniforms with camouflage I
I pattern, ECWCS clothing, camouflage costumes and clothing with I
I winter camouflage pattern I
I - modular components and other combat support systems, I
I including carriers and rucksacks, combat and tactical vests I
I and jackets for specialists. I
I II. Parts established into service for specialists of the I
I armed forces based on the specific requirements arising from I
I their activities: I
I - equipment for paratroopers, scouts, snipers and members of I
I special forces I
I - equipment for crews of tanks and combat vehicles, I
I - equipment for the flight crew, helicopter crew and I
I members of the engineering and aviation services, I
I - equipment for fireworks, I
I - equipment for members of the military rescue units, I
I - riot and combat gear for the military police. I

I-----I

I 17. I specific parts of the material referred to in categories I
I 1 to 15 if these are necessary for ensuring defence or I
I national security. I

I-----I

I 18. I machinery, equipment and resources that are devoted I
I exclusively to the study, manufacture, testing and control I
I of arms, ammunition and equipment exclusively for military use I
I specified in this list. I

I-----I

Annex 2

List of services which the contracting authority is not obliged, in accordance with Section 29 n), to award pursuant to the Act

Category	Description	CPV code
1.	Fire-brigade and rescue services	75250000-3
2.	Fire-brigade services	75251000-0
3.	Firefighting services	75251100-1
4.	Fire-prevention services	75251110-4
5.	Forest-firefightening services	75251120-7
6.	Rescue services	75252000-7
7.	Civil defence services	75222000-8
8.	Nuclear safety services	98113100-9
9.	Ambulance services	85143000-3

Category No. 9 does not include patient ambulance transport services.

List of services which the contracting authority is obliged, upon fulfilment of conditions specified in Section 29 r), to award pursuant to the Act

Category	Description	CPV code
1.	Research and development services and related consultancy services	73000000-2
2.	Research and experimental	

I	I	I development services	I 73100000-3	I
I	I	I-----I-----	I-----I-----	I
I	3.	I Research services	I 73110000-6	I
I	I	I-----I-----	I-----I-----	I
I	4.	I Research laboratory services	I 73111000-3	I
I	I	I-----I-----	I-----I-----	I
I	5.	I Marine research services	I 73111000-0	I
I	I	I-----I-----	I-----I-----	I
I	6.	I Experimental development services	I 73120000-9	I
I	I	I-----I-----	I-----I-----	I
I	7.	I Design and execution of research and development	I 73300000-5	I
I	I	I-----I-----	I-----I-----	I
I	8.	I Pre-feasibility study and technological demonstration	I 73420000-2	I
I	I	I-----I-----	I-----I-----	I
I	9.	I Test and evaluation	I 73430000-5	I
I	I	I-----I-----	I-----I-----	I

Annex No. 3

Criminal offences for the purposes of proving basic qualification pursuant to Section 74 (1) a)

For the purposes of proving basic qualification pursuant to Section 74 (1) a), criminal offence mean

- a) a criminal offence committed in favour of an organised criminal group or a criminal offence of participation in an organised criminal group,
- b) criminal offence of human trafficking,
- c) these criminal offences against property
 1. fraud,
 2. credit Fraud,
 3. subvention Fraud,
 4. participation,
 5. negligent Participation,
 6. money Laundering,
 7. money Laundering out of Negligence,
- d) these economic criminal offences
 1. abuse of Information and Status in Business Relations,
 2. negotiating advantages during public procurement, public competition and public auction,
 3. machinations during public procurement and public competition,
 4. machinations in Public Auction,
 5. harming Financial Interests of European Communities,
- e) generally dangerous criminal acts,
- f) Criminal Offences against the Czech Republic, foreign states and International Organisations,
- g) these criminal offences against order in public matters
 1. criminal offences against the execution of powers of public authority and public official,,
 2. Abuse of Competence of Public Official,
 3. Corruption,
 4. Other Interference with Activity of Public Authority.

Annex No. 4

List of services being awarded under light regime pursuant to Section 129

I	I	I	I	I
I Category	I	I Description	I CPV code	I
I	I	I-----I-----	I-----I-----	I
I	1.	I Health, social and related services	I 75200000-8	I
I	I	I-----I-----	I-----I-----	I
I	I	I	I 75231200-6	I
I	I	I-----I-----	I-----I-----	I
I	I	I	I 75231240-8	I
I	I	I-----I-----	I-----I-----	I
I	I	I	I 79611000-0	I
I	I	I-----I-----	I-----I-----	I
I	I	I	I 79622000-0	I

I		I	I-----I
I		I	I 79624000-4 I
I		I	I-----I
I		I	I 79625000-1 I
I		I	I-----I
I		I	I from 85000000-9 to 85323000-9I
I		I	I-----I
I		I	I 98133100-5 I
I		I	I-----I
I		I	I 98133000-4 I
I		I	I-----I
I		I	I 98200000-5 I
I		I	I-----I
I		I	I 98500000-8 I
I		I	I-----I
I		I	I 98513000-2 to 98514000-9 I
I		I	I-----I
I	2.	I Administrative, social and	I 85321000-5 I
I		I education services, healthcare	I-----I
I		I and cultural services	I 85322000-2 I
I		I	I-----I
I		I	I 75000000-6 I
I		I	I-----I
I		I	I 75121000-0 I
I		I	I-----I
I		I	I 75122000-7 I
I		I	I-----I
I		I	I 75124000-1 I
I		I	I-----I
I		I	I from 79995000-5 to 79995200-7I
I		I	I-----I
I		I	I from 80000000-4 to 80660000-8I
I		I	I-----I
I		I	I from 92000000-1 to 92700000-8I
I		I	I-----I
I		I	I 79950000-8 I
I		I	I-----I
I		I	I 79951000-5 I
I		I	I-----I
I		I	I 79952000-2 I
I		I	I-----I
I		I	I 79952100-3 I
I		I	I-----I
I		I	I 79953000-9 I
I		I	I-----I
I		I	I 79954000-6 I
I		I	I-----I
I		I	I 79955000-3 I
I		I	I-----I
I		I	I 79956000-0 I
I		I	I-----I
I	3.	I Compulsory social security	I 75300000-9 I
I		I services	I I
I		I	I-----I
I	4.	I Benefit services	I 75310000-2 I
I		I	I-----I
I		I	I 75311000-9 I
I		I	I-----I
I		I	I 75312000-6 I
I		I	I-----I
I		I	I 75313000-3 I
I		I	I-----I
I		I	I 75313100-4 I
I		I	I-----I
I		I	I 75314000-0 I
I		I	I-----I
I		I	I 75320000-5 I
I		I	I-----I
I		I	I 75330000-8 I
I		I	I-----I
I		I	I 75340000-1 I
I		I	I-----I
I	5.	I Other community, social and	I 98000000-3 I
I		I personal services including	I-----I
I		I services furnished by trade	I 98120000-0 I
I		I unions, political organisations,	I-----I
I		I youth associations and other	I 98132000-7 I

I	I membership organizations	I-----I
I	I services	I 98133110-8 I
I	I	I-----I
I	I	I 98130000-3 I
I-----I	I-----I	I-----I
I	I 6. I Religious services	I 98131000-0 I
I-----I	I-----I	I-----I
I	I 7. I Hotel and restaurant services	I from 55100000-1 to 55410000-7I
I	I	I-----I
I	I	I from 55521000-8 to 55521200-0I
I	I	I-----I
I	I	I 55510000-8 I
I	I	I-----I
I	I	I 55511000-5 I
I	I	I-----I
I	I	I 55512000-2 I
I	I	I-----I
I	I	I 55523100-3 I
I	I	I-----I
I	I	I 55520000-1 I
I	I	I-----I
I	I	I 55522000-5 I
I	I	I-----I
I	I	I 55523000-2 I
I	I	I-----I
I	I	I 55524000-9 I
I-----I	I-----I	I-----I
I	I 8. I Legal services, to the extent	I 79100000-5 to 79140000-7 I
I	I not excluded pursuant to	I-----I
I	I Section 29 k)	I 75231100-5 I
I-----I	I-----I	I-----I
I	I 9. I Other administrative services	I 75100000-7 to 75120000-3 I
I	I and government services	I-----I
I	I	I 75123000-4 I
I	I	I-----I
I	I	I 75125000-8 to 75131000-3 I
I-----I	I-----I	I-----I
I	I 10. I Provision of services to	I 75200000-8 to 75231000-4 I
I	I the community	I I
I-----I	I-----I	I-----I
I	I 11. I Prison related services,	I 75231210-9 to 75231230-5 I
I	I public security and rescue	I-----I
I	I services, to the extent not	I 75240000-0 to 75252000-7 I
I	I excluded pursuant to	I-----I
I	I Section 29 n)	I 794300000-7 I
I	I	I-----I
I	I	I 98113100-9 I
I-----I	I-----I	I-----I
I	I 12. I Investigation and security	I 79700000-1 to 79721000-4 I
I	I services	I-----I
I	I	I 79722000-1 I
I	I	I-----I
I	I	I 79723000-8 I
I-----I	I-----I	I-----I
I	I 13. I International services	I 98900000-2 I
I	I	I-----I
I	I	I 98910000-5 I
I-----I	I-----I	I-----I
I	I 14. I Postal services	I 64000000-6 I
I	I	I-----I
I	I	I 64100000-7 I
I	I	I-----I
I	I	I 64110000-0 I
I	I	I-----I
I	I	I 64111000-7 I
I	I	I-----I
I	I	I 64112000-4 I
I	I	I-----I
I	I	I 64113000-1 I
I	I	I-----I
I	I	I 64114000-8 I
I	I	I-----I
I	I	I 64115000-5 I
I	I	I-----I
I	I	I 64116000-2 I
I	I	I-----I
I	I	I 64122000-7 I

I-----I-----I-----I-----I	I-----I-----I-----I-----I
I 15. I Miscellaneous services	I 50116510-9 I
I I	I-----I-----I-----I-----I
I I	I 71550000-8 I
I-----I-----I-----I-----I	I-----I-----I-----I-----I

Annex. 5
List of legal regulations pursuant to Section 152 (2) b)

I-----I-----I-----I-----I	I-----I-----I-----I-----I
I EU legal regulation	I Implemented national legal regulation I
I-----I-----I-----I-----I	I-----I-----I-----I-----I
I 1. granting of authorization to operate	I 1. Section 3 (3) of Act No. 458/2000 I
I natural gas facilities in compliance with the	I Coll., on Business Conditions and I
I procedures set out in Article 4 of Directive	I Public Administration in the Energy I
I 2009/73/EC of the European Parliament and of	I Sector and on Amendment to Certain I
I the Council of 13 July 2009 concerning common	I Other Acts (the Energy Act), as I
I rules for internal market in natural gas and	I amended I
I repealing Directive 2003/55/EC	I I
I-----I-----I-----I-----I	I-----I-----I-----I-----I
I 2. authorisation or invitation to tender for	I 2. Section 3 (3) of Act No. 458/2000 I
I the construction of new electricity production	I Coll., on Business Condition and I
I facilities in compliance with Directive	I Public Administration in the Energy I
I 2009/72/EC of the European Parliament and of	I Sector and on Amendment to Certain I
I the Council of 13 July 2009 concerning common	I Other Acts (the Energy Act), as I
I rules for internal market in electricity	I amended I
I and repealing Directive 2003/54/EC	I I
I-----I-----I-----I-----I	I-----I-----I-----I-----I
I 3. Granting of authorisation in compliance	I 3. Section 22 of Act No. 29/2000 I
I with the procedures specified in Article	I Coll., on Postal Services and on I
I 9 of Directive 97/67/EC of the European	I Amendment to Certain Other Acts (the I
I Parliament and of the Council of 13 July	I Postal Services Act) I
I 2009 on common rules for the development on	I I
I of the internal market of Community postal	I I
I services and the improvement of quality of the	I I
I service connected to the postal services which	I I
I are not or shall not be reserved	I I
I-----I-----I-----I-----I	I-----I-----I-----I-----I
I 4. the procedure for granting authorisation to	I 4. Section 28 of Act No. 44/1988 Coll., I
I conduct activities involving the extraction of	I on the Protection and Use of Mineral I
I hydrocarbons in compliance with Directive	I Resources (the Mining Act), as amended I
I 94/22/EC of the European Parliament and of the	I I
I Council of 30 May 1994 on the conditions for	I I
I granting and using authorizations for the	I I
I prospection, exploration and production of	I I
I hydrocarbons	I I
I-----I-----I-----I-----I	I-----I-----I-----I-----I
I 5. public service contracts within the meaning	I 5. Section 9 of Act No. 194/2010 Coll., I
I of Regulation (EC) No. 1370/2007 of the	I on Public Services in Public Passenger I
I European Parliament and of the Council of	I Transport and on Amendments to Certain I
I 23 October 2007 on public passenger transport	I Other Acts, as amended I
I services by rail and by road and repealing	I I
I Council Regulations (EEC) Nos 1191/69 and	I I
I 1107/70 in the field of public passenger	I I
I transport services by bus, tram, metro or	I I
I train, which were concluded on the basis of	I I
I a tendering procedure in compliance with	I I
I Article 5 (3), of the Regulation stated above,	I I
I provided that their term is in compliance with	I I
I Article 4, (3) or (4) of the Regulation stated	I I
I above	I I

Annex No. 6
Elements of notices referred to in sections 53 (1), 58 (3) and (5), 61 (5) and (11), 68 (4), 69 (6), 72 (4), 141 (1)

A. Invitation to tender in simplified below-threshold procedure pursuant to Section 53 (1) shall contain at least the

following:

1. the identification data of the contracting authority,
2. the data regarding the access to the procurement documents,
3. the time limit for the submission of tenders,
4. the means of submission of tenders including information on the language in which they may be submitted,
5. the requirements for proving qualification including requested documents,
6. the evaluation criteria pursuant to Section 115,

B. Invitation to tender in restricted procedure pursuant to Section 58 (3), in negotiated procedure with prior publication pursuant to Section 61 (11), in competitive dialogue pursuant to Section 69 (6) shall contain at least the following:

1. the identification data of the contracting authority,
2. reference to the published contract notice,
3. the data regarding the access to the procurement documents,
4. the time limit for the submission of tenders,
5. the means of submission of tenders including information on the language in which they may be submitted,
6. the evaluation criteria pursuant to Section 115.

C. Invitation to submit requests to participate in restricted procedure pursuant to Section 58 (5) or in negotiated procedure with prior publication pursuant to Section 61 (2) shall contain at least the following:

1. the type of the procurement procedure,
2. the identification data of the contracting authority,
3. the description of the subject-matter of the public contract and the manner of its performance (e.g. purchase, leasing, execution of the work), including its estimated scope and period of performance,
4. the scope of performance of reserved changes of obligation, provided that the contracting authority has reserved them pursuant to Section 100, including the estimated period and scope of provision of new services or new works,
5. where applicable, the estimated time-frame for the relating performance, including the estimated commencement of the relating procurement procedure,
6. the estimated time of invitation to tender,
7. the data regarding the access to the procurement documents,
8. time limit for submission of requests to participate,
9. the means of submission of requests to participate including information on the language in which they may be submitted,
10. the requirements for proving qualification including requested documents,
11. the evaluation criteria including their weighting or another mathematical relation among them, and, where applicable, the ranking of the evaluation criteria, where the contracting authority is not objectively able to establish the weighting or another mathematical relation among the individual evaluation criteria.

D. Invitation to submit indicative tenders in negotiated procedure with prior publication pursuant to Section 61 (5), in innovation partnership pursuant to Section 72 (4) shall contain at least the following:

1. the identification data of the contracting authority,
2. reference to the published contract notice,
3. the data regarding the access to the procurement documents,
4. the time limit for the submission of indicative tenders,
5. the means of submission of indicative tenders including information on the language in which they may be submitted,
6. the evaluation criteria including their weighting or another mathematical relation among them, and, where applicable, the ranking of the evaluation criteria, where the contracting authority is not objectively able to establish the weighting or another mathematical relation among the individual evaluation criteria.

E. The invitation to participate in a competitive dialogue pursuant to Section 68 (4) shall contain at least the following:

1. the identification data of the contracting authority,
2. reference to the published contract notice,
3. the data regarding the access to the procurement documents,
4. The data regarding the conduct of the dialogue, including the data on commencement of the dialogue and the language, in which the dialogue will be conducted,
5. the evaluation criteria including their weighting or another mathematical relation among them, and, where applicable, the ranking of the evaluation criteria, where the contracting authority is not objectively able to establish the weighting or another mathematical relation among the individual evaluation criteria.

F. Invitation to tender in dynamic purchasing system pursuant to Section 53 (1) shall contain at least the following:

1. the identification data of the contracting authority,
2. the data regarding the access to the procurement documents,
3. the time limit for the submission of tenders,
4. the means of submission of tenders including information on the language in which they may be submitted,
5. the evaluation criteria pursuant to Section 115.

1) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.

Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

Directive 2009/81/EU of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC.

Council Directive of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (89/665/EEC).

Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

Directive 2007/66/EU of the European Parliament and of the Council of 11 December 2007 on amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts.

Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement.

2) Act No. 219/2000 Coll., on the Property of the Czech Republic and the Representation of the Czech Republic in Legal Relation.

3) Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) as amended.

4) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.

Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

Directive 2009/81/EU of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC.

5) Act No. 412/2005 Coll. on the Protection of Classified Information and Security Capacity, as amended.

6) E.g. Act No. 239/2000 Coll., on Integrated Rescue System and Amendments to Certain Other Acts, as amended, 240/2000 Coll. on Crisis Management and on Amendment to Certain Other Acts (the Crisis Act), as amended, Act No. 241/2000 Coll., on the Economic Measures for States of Crisis and on the Amendment to Certain Related Acts, as amended.

7) Act No. 127/2005 Coll., on Electronic Communications and on Amendment to Certain Related Acts (the Electronic Communications Act), as amended.

8) Act No. 231/2001 Coll., on Providing of Radio and Television Broadcasting and on the Amendment to Other Acts, as amended.

9) Act No. 132/2010, on On-demand Audiovisual Media Services, and Amendment to Certain Acts (the On-demand Audiovisual Media Services Act), as amended.

10) Act No. 358/1992 Coll., on Notaries and Their Activities (Notarial Code), as amended.

11) E.g. Act No. 120/2001 Coll. on Licensed Executors and Execution (Enforcement Procedure Code) and on the Amendment to Other Acts, as amended, Act No. 358/1992 Coll., on Notaries and Their Activities (Notarial Code), as amended.

12) Act No. 256/2004 Coll., on Business Activities on the Capital Market, as amended.

- 13) E.g. Act No. 6/1993 Coll., on the Czech National Bank, as amended.
- 14) Act No. 266/1994 Coll., on Rail Systems, as amended.
- 15) Government Decree No. 463/2000 Coll., on setting the rules for participation in international rescue operations, granting and receiving humanitarian aid and reimbursement of expenses incurred by legal persons and natural persons pursuing business activities for protection of inhabitants, as amended.
- 16) Act no. 122/2000 Coll., on Protection of Museum Collections and Amendments to Certain Other Acts, as amended.
- 17) Act No. 20/1987 Coll., on State Monument Care, as amended.
- 18) Act No. 71/1994 Coll., on the Sale and Export of Objects of Cultural Value, as amended.
- 19) Act No. 36/1967 Coll. on Certified Experts, Translators and Interpreters, as amended.
Regulation No. 37/1967 Coll. to execute the Act on Certified Experts, Translators and Interpreters, as amended.
- 20) Act No. 365/2000 Coll. on Public Administration Information Systems and Amendments to Certain Other Acts, as amended.
- 21) E.g. Act No. 85/1996 Coll. on the Legal Profession, as amended, Act No. 360/1992 Coll., on the Practice of the Profession of Chartered Architects and on the Practice of the Profession of Chartered Engineers and Technicians Active in Construction, as amended.
- 22) Act No. 143/2001 Coll., on the Protection of Competition and on Amendment to Certain Other Acts (Act on the Protection of Competition), as amended.
- 23) Act No. 229/1992 Coll. on Commodity Exchanges, as amended.
- 24) Section 187 of Civil Code.
- 25) Section 136 of Act No. 182/2006 Coll. on Bankruptcy and Settlement (the Insolvency Act).
- 26) E.g. Act No. 21/1992 Coll., on Banks, as amended, Act No. 87/1995 Coll., on Savings and Loan Associations and Certain Related Measures and on the Amendment of Czech National Council Act No. 586/1992 Coll., on Income Tax, as amended, Act No. 363/1999 Coll., on Insurance and on Amendment to Certain Related Acts.
- 27) Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC.
- 28) Section 4 of Act No. 22/1997 Coll. on Technical Requirements for Products and on Amendment and Supplement to Certain Other Acts, as amended.
- 29) Article 26 of Regulation (EC) No. 305/2011 of the European Parliament and of the Council of 9 March 2011 on laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC.
- 30) Section 3 of Government Decree No. 163/2002 Coll. of 6 March 2002 that lays down technical requirements for selected construction products, as amended.
- 31) Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93.
- 32) Section 157 of Act No. 183/2006 Coll., on town and country planning and building code (Building Act), as amended.
- 33) Article 107 of Treaty on the Functioning of the European Union.
- 34) Act No. 360/1992 Coll., on the Practice of the Profession of Chartered Architects and on the Practice of the Profession of Chartered Engineers and Technicians Active in Construction, as amended.
- 35) Act No. 458/2000 Coll., on Business Conditions and Public Administration in the Energy Sectors and on Amendment to Certain Other Acts (the Energy Act), as amended.
- 36) Act No. 274/2001 Coll., on Water Supply and Sewerage Systems for Public Use and on Amendment to Certain Other Acts (Act on Water Supply and Sewerage), as amended.
- 37) Section 3 of Act No. 29/2000 Coll., on Postal Services and on Amendment to Certain Other Acts (the Postal Services Act), as amended.
- 38) Articles 34 and 35 of Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.
- 39) Commission decision of 7 January 2005 on the detailed rules for the application of the procedure provided for in Article 30 of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sector.
- 40) Section 22 of Act No. 563/1991 Coll., On Accounting, as amended.
- 41) Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.
- 42) Regulation (EC) No. 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast).
- 43) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70.
- 44) Act No. 130/2002 Coll. on Support for Research, Experimental Development and Innovations from Public Resources and Amendment to Certain Related Acts (Act on Support for Research and Development), as amended.

45) E.g. Act No. 38/1994 Coll., on Foreign Trade with Military Material and Amendment to Act No. 455/1991 Coll. on Trade Business Activities (the Trade Licensing Act), as amended, Act No. 140/1961 Coll., the Penal Code, as amended, Act No. 310/2006 Coll. on Handling Certain Materials Usable for Defence and Security Purposes in the Czech Republic and on Amendments to Certain Other Acts (the Act on Handling Security Material), as amended.

46) Section 74 et seq. of Act No. 90/2012 Coll. on Commercial Companies and Cooperatives (Business Corporations Act).

47) Section 2 of Act No. 300/2008 Coll., on the Electronic Acts and Authorized Document Conversion.

48) Act No. 227/2000 Coll., on Electronic Signatures and on the Amendment to Certain Other Acts (Electronic Signatures Act), as amended.

49) Section 16 of Act No. 22/1997 Coll. on Technical Requirements for Products and on Amendment and Supplement to Certain Other Acts, as amended.

50) Act No. 499/2004 Coll., on Archiving and Filing Service and Amendments to Certain Other Acts, as amended.

51) E.g. Act No. 280/2009 Coll., Tax Procedure Code, as amended, or Act No. 106/1999 Coll., on Free Access to Information, as amended

LAW

ON PUBLIC PROCUREMENT

("Off. Herald of RS", Nos. 124/2012, 14/2015 and 68/2015)

I. BASIC PROVISIONS

1. *Scope of the Law and Definitions*

Scope of the Law

Article 1

This Law governs the planning of public procurement, conditions, manner and procedure of public procurement; it governs the centralization of public procurement; it governs the public procurement in the areas of water management, energy, traffic and postal services and in the area of dense and security; it establishes the manner of recording data in public procurement; it determines the tasks, manner of operation and organizational form of the Public Procurement Office and the Republic Commission for the Protection of Rights in Public Procurement Procedures; it determines the manner of protecting the rights in public procurement procedures and in other cases in accordance with the law; it also governs other issues of relevance for public procurement.

Appendices 1 through 3 are integral parts of this Law.

Contracting Authority

Article 2

Contracting authority in terms of this Law means:

- 1) Government body, body of the autonomous province and local government body;
- 2) Legal person established with the aim of satisfying the needs of the public interest, which do not have an industrial or trade character, if any of the following conditions is met:
 - (1) That over 50% is financed from the contracting authority's funds;
 - (2) That the contracting authority monitors the operation of that legal person;
 - (3) That more than a half of members of such legal person's monitoring body or managing body are appointed by the contracting authority.
- 3) (*Deleted*)

Upon proposal of the ministry in charge of finance and the Public Procurement Office, the Government determines the list of contracting authorities referred to in paragraph 1, item 1) of this Law.

The list of contracting authorities is published in the "Official Herald of the Republic of Serbia" and on the Public Procurement Portal.

Persons not on the list referred to in paragraph 2 of this Article, which meet the conditions under paragraph 1 of this Article, shall apply this Law.

Meaning of Terms

Article 3

Specific terms used in this Law have the following meanings:

- 1) **Public procurement** is a procurement of goods, services or works by the contracting authority, in the manner and under the conditions prescribed by this Law;
- 2) **Public procurement contract** is a binding contract concluded in written or electronic form between one or several bidders and one or several contracting authorities, whose subject is procurement of goods, provision of services or execution of works;
- 3) **Bidder** is a person who in public procurement procedure offers goods, provision of services or to execution of works;
- 4) **Applicant** is a person who has submitted an application during the first phase of the restrictive procedure, in competitive dialogue, or in qualifying procedure;
- 5) **Interested person** is every person who has the interest to conclude a specific public procurement contract or framework agreement;
- 6) **Candidate** is a person whose qualification was acknowledged in the first phase of the restrictive or qualifying procedure, or in competitive dialogue;
- 7) **Supplier** is a bidder with whom the framework agreement or public procurement contract was concluded;
- 8) **Public procurement tasks** are public procurement planning; conducting of the public procurement procedure, including but not limiting to participation in the public procurement commission; drafting of the tender documents; drafting documents in public procurement procedure; drafting public procurement contracts; monitoring the implementation of public procurement; any other tasks related to public procurement procedure;
- 9) **Person engaged in public procurement tasks** is a person operating in the tasks of planning, conducting, and implementing public procurements, fully employed or contracted in terms of the law governing employment relations;
- 10) **Representative of contracting authority** is a member of the managing or supervisory board of contracting authority, contracting authority's manager entrusted with public procurement tasks, responsible person of contracting authority and person engaged in public procurement tasks;
- 11) **Related persons** are spouses, extramarital partners, lineal kin, collateral kin up to the third degree of consanguinity, in-laws up to the second degree of kinship, adopter and adoptee, transferor and transferee of management rights, and persons related pursuant to the law that governs profit tax of legal persons;

lt. 12) - 14) (*Deleted*)

15) **Open procedure** is a procedure in which all interested persons may submit bids;

16) **Restrictive procedure** is a procedure that is conducted in two phases and in whose second phase the bid may be submitted only by the candidates;

17) **Qualifying procedure** is a procedure that is conducted in two phases so that all interested persons may apply during the whole period of validity of the candidates' list, and the contracting authority, pursuant to the conditions contained in the tender documentation, acknowledges their qualification every six months and invites them to submit bid in the second phase of the procedure;

18) **Negotiating procedure** is a procedure in which the contracting authority directly negotiates elements of public procurement contract with one or several bidders;

19) **Competitive dialogue** is a procedure where all interested persons may apply, and the ones who were acknowledged with qualification (candidates) the contracting authority conducts dialogue in order to find solution that shall satisfy its needs, while inviting the candidates to submit bids based on the adopted solution(s);

20) **Framework agreement** is an agreement between one or multiple contracting authorities and one or multiple suppliers, purpose of which is to establish the terms of contract to be awarded during a specified period, which relate to prices and, where appropriate, to quantities;

21) **Dynamic procurement system** is a procedure of electronic procurement of standardized goods and services that are generally available on the market and satisfy contracting authority's needs, which is open to all interested parties who file an initial bid that meets the technical specifications, and which is limited to a specific period of time;

22) **Design contest** is a procedure that the contracting authority applies to acquire design or project most often in the areas of urban planning, architecture and construction, engineering, or data processing, whilst the selection of designs is carried out by a previously appointed jury, following the conducted contest;

23) **Low-value public procurement** is a procurement estimated value of which is not higher than the value set by this Law, whilst the total estimated value of procurements of the same type at the annual level is not higher than the value set by this Law;

24) **Exclusive right** is a right pursuant to which only a specific person may perform certain activity within a specified geographical area, and which was granted or derives from law, separate regulation, or individual decision, or a contract or agreement, which was adopted or concluded by the Republic of Serbia, territorial autonomy or local government;

25) **Special right** is a right pursuant to which specific persons may perform specific activity in a specific geographical area, and which was granted or derives from law, separate regulation, or individual decision, or a contract or agreement, which was adopted or concluded by the Republic of Serbia, territorial autonomy or local government;

26) **Network** is a set of immovable objects mutually connected, designated for the transfer of matter, electronic signals and energy for the purpose of their distribution to and from

consumers, as well as a set of objects designated for the movement of means of transportation in order to provide services to consumers;

27) **Offered price** is a price set by bidder in the bid, expressed in dinars, covering all expenses that are related with the subject of public procurement and determined as such in tender documentation;

28) **Comparable market price** is a price in the relevant market taking into consideration the subject-matter of public procurement, development of the market, requirements under tender documentation such as the mode of payment, quantities, delivery deadlines, period of validity of contract, collateral, warranty period, etc.;

29) **Criterion** is a measure used for evaluating, comparing and assessing bids;

30) **Application** is a request of interested person to participate in the first phase of the restrictive procedure, qualification procedure, or competitive dialogue;

31) **Timely bid** is a bid received by the contracting authority within deadline specified in the invitation to submit bids;

32) **Adequate bid** is a bid which is timely and determined to fully comply with all technical specifications;

33) **Acceptable bid** is a bid which is timely, one that contracting authority did not reject due to essential deficiencies, which is adequate, one that does not restrict or condition either the rights of contracting authority or the obligations of bidder, and which does not exceed the amount of estimated value of the public procurement;

34) **Discount on the bidding price** is a method of determining the price that bidder may offer in its bid only when public procurement subject is subdivided into several lots, and the contracting authority is not in the position to foresee such a method in the tender documentation as the element of the criterion;

35) **Public procurement by lots** is a procurement whose subject is subdivided into several separate units of the same kind, and which is designated as such in the invitation to submit bids and in tender documentation;

36) **Electronic bid** is a bid or part of the bid submitted by bidder to the contracting authority in electronic form and, as such, has to be foreseen by tender documentation, to meet the principles of electronic operation according to special regulations, and to constitute an unambiguous entirety with other parts of the same bidder's bid;

37) **Electronic auction** is a contest between bidders in public procurement procedure, by way of electronically offering new, more advantageous bids, which the contracting authority ranks by an automatic evaluation method;

38) **Common Procurement Vocabulary** is a reference classification system for subjects of public procurement, applicable to public procurement contracts, which simultaneously ensures conformity with other existing classifications.

2. Subject Matter of Public Procurement Contract

Procurement of Goods

Article 4

The subject matter of public procurement contract may be:

- 1) Purchase of goods;
- 2) Renting of goods;
- 3) Leasing of goods (with or without option to buy).

Public procurement contract may also comprise provision of services, where such services are necessarily linked to public procurement of goods (assembling, transport, insurance, or other services defined by the contracting authority).

The subject matter of contract on public procurement of goods is also the procurement of goods under paragraph 1 of this Article that contracting authority finances in the amount exceeding 50%.

In case under paragraph 3 of this Article, the party responsible for application of provisions of this Law is the contracting authority which finances the procurement of goods.

Procurement of Works

Article 5

The subject matter of contract on public procurement is:

- 1) Execution of works, or designing and execution of works, described in the Regulation on Classification of Activities, Sector F - Construction ("Official Herald of RS", No. 54/10).
- 2) Execution of works in construction of a construction facility taken as an entirety, which meets all the economic and technical requirements of the contracting authority;

The subject matter of public procurement of works is also the performance of works described in the Regulation on Classification of Activities, Sector F - Construction ("Official Herald of RS", No. 54/10), which are directly or indirectly financed by the contracting authority in the amount exceeding 50% of procurement value.

In case under paragraph 2 of this Article, the party responsible for application of provisions of this Law is the contracting authority that finances the procurement of works.

Procurement of Services

Article 6

The subject matter of contract on public procurement of services is the services listed in Appendix 1.

It is deemed that the contract on public procurement of services is also the public procurement contract whose subject matter includes:

- 1) Services and goods, provided that the estimated value of services exceeds the estimated value of goods encompassed by this contract;

2) Services and supporting works under Article 5 of this Law necessary for implementation of the contract.

The provisions of this Law also apply to procurement of services that are directly or indirectly financed by the contracting authority in the amount which exceeds 50% of procurement value.

In case under paragraph 3 of this Article, the party responsible for application of provisions of this Law is the contracting authority that finances the procurement of services.

Mixed Procurements

Article 6a

If the subject matter of public procurement contract consists of several subject matters in terms of Art. 4-6 of this Law, the subject matter is determined according to the basic subject matter of the contract. If the subject matter of the contract comprises goods and services, i.e. services referred to in Appendix 1 and other services, the basic subject matter of the contract is the one that constitutes the greater part of the estimated value of public procurement.

If for procurement of a part of the subject matter of procurement the application of the provisions of this Law is mandatory, and to the other part the provisions of this Law do not apply:

1) If the subject matter of procurement is objectively divisible - contracting authority may conduct separate procurement procedures or award one contract in the public procurement procedure, except in the case of procurements referred to in Article 128 of this Law;

2) If the subject of procurement is objectively indivisible - contracting authority shall award one contract in the public procurement procedure, except in the case of procurements referred to in Article 128 of this Law.

If the procurements referred to in Art. 127 and 128 of this Law are also contained in the subject matter of procurement:

1) If the subject matter of procurement is objectively divisible - the contracting authority may conduct separate procurement procedures or award one contract:

(1) Without application of this Law, if the subject matter of procurement also comprises procurements referred to in Article 128 of this Law and if awarding one contract is particularly justifiable by objective reasons and is not adopted with a view to avoid application of the provisions of this Law;

(2) In the course of public procurement procedure in the field of defense and security, if the subject matter of procurement also comprises procurements referred to in Article 127 of this Law and if awarding one contract is particularly justifiable by objective reasons and is not adopted with a view to avoid application of the basic provisions of this Law;

2) If the subject matter of procurement is objectively indivisible - the contracting authority shall award the contract without application of this Law, if the subject matter of procurement also comprises procurements referred to in Article 128 of this Law, i.e. in the course of public

procurement procedure in the field of defense and security, if the subject of procurement also comprises procurements referred to in Article 127 of this Law.

Procurements Exempt from the Law

Article 7

The provisions of this law are not applied by the contracting authorities to:

1) Procurements from persons or organizations which are, in terms of this Law, deemed as contracting authority and which are holders of exclusive right to conduct the activities that are the subject matter of public procurement;

2) Procurements, i.e. design contests that contracting authorities are obliged to carry out in accordance with procurement procedures established:

(1) By an international treaty or other document on the basis of which an international obligation has arisen, and which is concluded with one or multiple states and/or narrower political-territorial units and which pertains to works, goods or services intended for joint application or joint utilization by the signatories;

(2) By act of donation, if such procurement is financed from donation funds;

(3) By international organizations;

2a) Procurements and design contests carried out in accordance with the rules established by international organizations or international financial institutions, if such procurements, i.e. design contests are fully financed by such organizations, i.e. institutions. In the case of procurements and design contests financed, for the most part, by an international organization or an international financial institution, the parties shall agree on procurement procedures to be applied;

3) For the purpose of ensuring the basic living conditions in cases of natural disasters or technical and technological accidents whose consequences imperil lives or health of people or the environment, in compliance with legislation governing protection from such disasters;

4) Procurements whose exclusive and direct purpose is the performing of activities in electronic communications and the selling of electronic communication services in terms of the law governing electronic communication, on the condition that other economic operators are providing those services in the relevant market;

5) Procurements of goods procured, with prior approval from the Government, from the Republic Commodity Reserves Directorate;

6) Procurements of goods and services that contracting authority purchases for resale, for processing and sale, as well as for providing services or performing works in the market, under the condition that the contracting authority does not have exclusive or special rights of resale or rent of such goods, i.e. providing services or performing works for which those goods and services shall serve;

7) Procurements of goods and services related to safety colors for the production of banknotes, identity documents and excise stamps, to procurements of security paper for the production of banknotes and identity documents, of OVD security elements for the

production of banknotes, identity documents and chips for producing identity documents, and procurements of services of money transport, as well as security for transports of money, cash and effective foreign currencies deliveries;

8) Procurements of notary services;

9) Procurements of services of the central bank and procurements of financial services related to the sale, purchase or transfer of securities or other financial instruments, in individual transactions of the contracting authority with the aim of raising funds or capital;

10) Purchase, development, production or co-production of radio and television program or broadcasting time; however, this Law applies to the procurement of goods, services or works necessary for production, co-production or broadcasting of such programs;

11) Procurements of services of arbitration and amicable dispute resolution;

12) Entering into employment relationship and working outside the scope of employment in terms of the law governing the rights, duties and liabilities arising from employment, i.e. arising from work, except for service contract. In the case of conclusion of service contract subject matter of which is independent execution of certain intellectual task in the field of science or education or carrying out some artistic or other activity in the field of culture, in accordance with law, and individual value of which does not exceed 12,000,000 dinars, including taxes and contributions, on an annual basis, i.e. for the contract validity period if the contract validity period exceeds one year, the provisions of this Law do not apply;

13) Loan services regardless of whether they are in connection with sale, purchase or transfer of securities or other financial instruments;

14) Legal services, and in particular:

(1) Attorney's representation services:

- In the process of arbitration or amicable dispute resolution, in the country and abroad, as well as before international arbitration or international body for amicable dispute resolution;
- In the proceedings before courts or other public authorities in the country and abroad or before international courts, tribunals or institutions;

(2) Legal advice services provided by the attorney in preparation of procedures referred to in sub item (1) of this item, or when there is a clear indication and a strong probability that such procedure will take place;

(3) Legal services provided by legal representatives or guardians or other legal services executors of which have been chosen by the court or have been designated to perform certain tasks under the court supervision;

(4) Legal services connected with the exercise of official authority;

15) Obtainment or lease of land, existing buildings or other immovable property and rights associated therewith;

16) Procurements of goods and services value of which is estimated to be lower than 15,000,000 dinars, for the needs of diplomatic and consular missions, international missions and performance of other activities of the Republic of Serbia abroad, as well as to procurements of works for such needs value of which is estimated to be lower than 30,000,000 dinars;

17) Financing of performance of certain activity particularly through grants which is connected with the obligation of compensation of the funds received if they have not been used for intended purposes, if the funds are awarded to interested parties in a transparent manner under equal terms.

In the case of procurements under paragraph 1 of this Article, the contracting authority shall act in line with the principles set forth in this Law.

Article 7a

The provisions of this Law do not apply to contracts concluded by the contracting authority with another legal person if all of the following conditions are met:

- 1) Contracting authority performs supervision over such legal person similar to supervision it performs over its organizational units in terms of paragraph 2 of this Article;
- 2) Legal person subject to supervision by the contracting authority, conducts more than 80% of its activities in the Republic of Serbia with a view to performing tasks entrusted to it by the contracting authority or entrusted to it by other legal persons supervised by that contracting authority;
- 3) In the supervised legal entity there is no participation of private capital that has a decisive influence on decision-making, i.e. on prevention of decision-making, in accordance with the applicable regulations.

It is considered that the contracting authority performs supervision over a legal person similar to supervision it performs over its organizational units in terms of paragraph 1, item 1) of this Article, if it has a decisive influence on strategic objectives and on significant decisions of that legal entity. Such supervision may also be performed by another legal person over whom the contracting authority performs supervision in the same manner.

Paragraph 1 of this Article also applies in the case where a supervised legal person that is a contracting authority, concludes a contract with a contracting authority that performs supervision over it or with another legal person supervised by the same contracting authority, provided that in that legal person therewith the contract is concluded there is no participation of private capital that has a decisive influence.

The provisions of this Law do not apply to contracts concluded by the contracting authority with another legal person that is not supervised by the contracting authority in accordance with paragraph 1 of this Article, if all of the following conditions are met:

- 1) Contracting authority along with other contracting authorities performs supervision over that legal entity similar to the one they perform over their organizational units in terms of paragraph 5 of this Article;

2) \Legal person that is supervised by those contracting authorities, conducts more than 80% of its activities in executing tasks entrusted to it by those contracting authorities or entrusted to it by other legal persons supervised by those contracting authorities;

3) In the supervised legal person there is no participation of private capital that has a decisive influence on decision-making, i.e. on prevention of decision-making, in accordance with the applicable regulations.

It is considered that contracting authorities jointly perform supervision over the legal person in terms of paragraph 4, item 1) of this Article if all of the following conditions are met:

1) Bodies of the supervised legal person competent for decision-making are composed of representatives of all contracting authorities performing supervision over that legal person. Individual representatives may represent several or all contracting authorities;

2) These contracting authorities may jointly exercise a decisive influence on strategic objectives and on significant decisions of that legal person;

3) Supervised legal entity does not have interests different from the interests of contracting authorities performing supervision over it.

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

1) Contract establishes or determines cooperation between contracting authorities in order to carry out public services which they are obliged to carry out, and with a view to realize their common interests;

2) Establishment of such cooperation is conducted solely for the purposes in the public interest;

3) Contracting authorities realize in the open market less than 20% of the activities to which the cooperation relates.

For determining percentage amount referred to in paragraph 1, item 2), paragraph 4, item 2) and paragraph 6, item 3) of this Article the average of the total sales revenues is taken into account for the period of the preceding three years or for a shorter period if due to the date of establishment, commencement of activities, due to reorganization of their activities or other justifiable reasons no data are available for the preceding three years and if the business projections of that person result in fulfillment of prescribed condition.

Reserved Public Procurements

Article 8

Contracting authority may conduct public procurement procedure in which only institutions, organizations, associations or economic operators dealing with vocational training, professional rehabilitation and employment of disabled persons may participate, on the condition that these persons make no less than 30% of employees, where all participants in joint offer and all subcontractors must come from the stated group.

In case of procurement under paragraph 1 of this Article, contracting authority shall state in the invitation to place bids that the reserved public procurement is carried out.

3. Public Procurement Principles

Principle of Efficiency and Cost-Effectiveness

Article 9

Contracting authority shall ensure that goods, services or works procured in public procurement procedure are of appropriate quality having in mind the purpose, intended use and value of public procurement.

Contracting authority shall ensure that public procurement procedure is conducted and awarding of contracts is made within time limits and in the manner prescribed by this Law, with minimum costs related to the procedure and carrying out of public procurement.

Principle of Ensuring Competition

Article 10

Contracting authority shall facilitate as much competition as possible in a public procurement procedure.

Contracting authority may not limit competition, and in particular, it may not prevent any bidder from participating in public procurement by unjustified use of the negotiating procedure or by using discriminatory conditions, technical specifications, or criteria.

Principle of Transparency in Public Procurement Procedure

Article 11

Contracting authority shall ensure publicity and transparency in public procurement procedure, observing but not limiting itself only to the obligations arising from this Law.

Principle of Equality of Bidders

Article 12

Contracting authority shall ensure equal position of all bidders in all phases of public procurement procedure.

Contracting authority may not impose conditions that would constitute national, territorial, subject-matter or personal discrimination among bidders, or discrimination arising from the classification of the business activity performed by the bidder.

Principle of Environmental Protection and Ensuring Energy Efficiency

Article 13

Contracting authority shall procure non-polluting goods, services and works, or those having minimal influence on the environment, or those that ensure adequate decrease in energy consumption - energy efficiency, and, when justifiable, to define environmental advantages of the subject matter of public procurement, energy efficiency, and total costs of procurement subject-matter's service life, as elements of the criterion for the most advantageous bid.

4. Data Protection, Documentation and Keeping Records of the Procedure

Data Protection

Article 14

Contracting authority shall:

- 1) Keep confidential all data on bidders contained in a bid that the bidder designated as such in the bid in compliance with the law;
- 2) Refuse to disclose information that would amount to breach of confidentiality of data received in a bid;
- 3) Keep as a business secret the names of interested parties, bidders and applicants, as well as information on submitted bids, or applications, until the opening of bids or applications.

Evidence on fulfillment of mandatory requirements, price and other information from the bid relevant for applying elements of the criterion and for the ranking of bids shall not be deemed confidential.

Determination of Confidentiality

Article 15

Contracting authority may require in tender documents the protection of confidentiality of information it places at the disposal of bidders including their subcontractors.

Contracting authority may condition the release of tender documents by signing of declaration or agreement to retain confidentiality of data, where such data represent business secrets in terms of the law which governs trade secret protection, or where they represent secret data in terms of the law which governs data confidentiality.

Person who has received data designated as confidential shall safeguard and protect them irrespective of the degree of this confidentiality.

Documentation and Keeping Records of the Procedure

Article 16

Contracting authority shall:

- 1) Keep records of all actions and documents during planning, conducting the procedure and implementing public procurement;
- 2) Safeguard all the documentation pertaining to public procurement in line with regulations governing documentation and archives, for at least ten years from the expiry of the contracted deadline for implementation of an individual public procurement contracts, or five years from the moment the decision to suspend the procedure was made;
- 3) Keep records on all concluded public procurement contracts and the records of suppliers.

5. Language in Public Procurement Procedure

Article 17

Contracting authority prepares tender documents and conducts the procedure in Serbian language.

Contracting authority may prepare tender documents in a one foreign language regularly used in international trade in the field that is the subject matter of public procurement.

Bidder submits the bid in the language of tender documents, or in the language specified by the contracting authority in the tender documents.

Article 18

Contracting authority may also allow submission of bids, in entirety or in part, in a foreign language, especially in the part pertaining to technical characteristics, quality and technical documentation.

In case under paragraph 1 of this Article, contracting authority shall specify the part of bid which may be submitted in a foreign language and specify this foreign language.

Where contracting authority finds, in the course of the review and evaluation of bids, that a part of bid should be translated into Serbian language, it shall set an adequate deadline to the bidder for translating that part of the bid.

In the case of dispute, the Serbian version of tender documents and bid prevails.

6. Currency

Article 19

The values in public procurement procedure are stated in dinars.

Contracting authority may allow the bidder to state the price in the bid value in one foreign currency, in which case it shall state in the tender documents that values shall be converted into dinars using the corresponding middle exchange rate of the National Bank of Serbia valid on the day when the opening of bids was initiated.

Where bidder was allowed to state the price in the bid in a foreign currency, contracting authority shall specify in tender documents the currency which can be used to state the prices in the bid.

Where the stated price includes import custom duties and other taxes, bidder shall cite that part separately in dinars.

7. Communication

Article 20

Communication in public procurement procedure and in relation with execution of public procurement tasks is carried out in writing, i.e. by means of mail, e-mail or fax, as well as by means of publishing by the contracting authority on the Public Procurement Portal.

Chosen means of communication has to be widely available, so not to limit possibility for participation of interested parties in public procurement procedure.

Communication shall be made so as to observe all deadlines set by this Law and, to this end, when it is possible, by using electronic means.

Communication shall be carried out in a manner which enables protection of confidential data and information about interested parties, information on bids and bidders until opening of bids, keeping records of actions taken in the procedure and keeping records of documents in accordance with the regulations that govern the field of documentation and archives.

Tools used in means of electronic communication and their technical characteristics shall be widely available and interoperable, so that they use information technology products in general usage.

Where a document in public procurement procedure was delivered by contracting authority or bidder by e-mail or fax, the party that carried out the delivery shall require the other party to confirm the receipt of that document in the same way and that other party shall do so when it is needed as proof of executed delivery.

II. PREVENTION OF CORRUPTION AND CONFLICT OF INTEREST

1. Prevention of corruption

Common Measures for Prevention of Corruption

Article 21

Contracting authority shall take all necessary measure to prevent corruption in the course of public procurement planning, public procurement procedure, or implementation of public procurement contract, in order to timely reveal corruption, to remedy or mitigate adverse consequences of the corruption, and to sanction the actors of corruption in compliance with the law.

Where under the circumstances of a specific case it is not worthwhile to effect communication as set forth under Article 20, paragraph 1 of this Law, person employed in tasks of public procurement or other persons shall draft the minutes or in other manner record the undertaken actions.

Contracting authority's manager and the responsible person shall provide all instructions and guidelines to employees engaged in public procurement tasks, either in writing or via electronic mail.

Employee engaged in public procurement tasks shall refuse to act pursuant to an instruction of the responsible person where such guideline or instruction is contrary to regulations.

In case that the person referred to in paragraph 4 of this Article refuses to act pursuant to instruction, he may not be transferred to other tasks or get his employment contract rescinded within the period of twelve months from the day of refusal of the instruction, provided that he performs the tasks in compliance with the law.

The Public Procurement Office shall draft a model of internal plan for preventing corruption in public procurement.

Contracting authority whose total estimated annual value of public procurement exceeds one billion dinars shall adopt an internal plan for preventing corruption in public procurement.

Internal Bylaw and Procurement Control

Article 22

Contracting authority shall adopt a bylaw to regulate the internal process of public procurement procedure in detail, and in particular the manner of planning procurement (criteria, rules, and the way for determining the subject matter of public procurement and estimated values, method of market analysis and research), responsibility for planning, public procurement procedure targets, the manner of executing obligations in the procedure, the manner of ensuring competition, conducting and controlling public procurements, the mode for monitoring implementation of public procurement contract.

The Public Procurement Office determines in detail the contents of the bylaw under paragraph 1 of this Article.

Where the Public Procurement Office, after the adoption of internal bylaw, identifies inconsistencies between that bylaw and the provisions of this Law, it shall notify thereon the relevant contracting authority, together with the proposal on how to comply and the deadline.

Where contracting authority fails to act in the manner and within the deadline under paragraph 3 of this Article, the Office shall notify thereon the body in charge of supervising the operation of the contracting authority and the State Audit Institution, and initiate the proceedings before the Constitutional Court.

Contracting authorities shall publish the internal bylaw on their web page.

Protection of Integrity of the Procedure

Article 23

Person, who has participated in planning of the public procurement, in preparing the tender documents or separate parts thereof, and the person related to him, may neither act as a bidder or as a bidder's subcontractor, nor cooperate with bidders or subcontractors in the course of bid preparation. In that case, the contracting authority shall reject the bid and notify the competent government bodies without delay.

If a bidder, i.e. an applicant, directly or indirectly gave, offered or promised a benefit or tried to find out confidential information or to influence in any way the contracting authority's actions in the course of public procurement procedure, the contracting authority shall urgently notify the competent government bodies.

Duty to Report Corruption

Article 24

Person engaged in public procurement or any other person employed by contracting authority, as well as any interested person who possesses information on existence of

corruption in public procurement, shall immediately notify thereon the Public Procurement Office, the government body authorized for combating corruption, and the competent prosecutor's office.

Person under paragraph 1 of this Article can neither get employment or other type of employment engagement contract rescinded, nor can he be transferred to another work position just because he, acting conscientiously and in good faith, has reported corruption in public procurement, whereas the contracting authority shall grant full protection to that person.

Person under paragraph 1 of this Article may also address the public if:

- 1) He has reported corruption to the authorized person of contracting authority or the competent body, but no follow-up activity in response to the report has been done within an appropriate period of time;
- 2) Government body authorized to fight corruption or competent prosecutor's office failed to undertake any kind of activity within a month from the day of the submission of the report;
- 3) He filed the complaint to civil supervisor, and the civil supervisor failed to provide feedback on the measures taken.

Person under paragraph 1 of this Article may also address the public even though the conditions under paragraph 3 of this Article were not fulfilled, if the estimated value of public procurement is larger than the amount under Article 57 of this Law, or if the subject matter of the public procurement is particularly important for operation of the contracting authority or for the interests of the Republic of Serbia.

In case of violation of labor or other fundamental rights of the person under paragraph 1 of this Article due to reporting corruption, that person is entitled to indemnification by the contracting authority.

Contracting authority shall, within its internal plan under Article 21 of this Law, separately regulate the manner of reporting corruption in the public procurement procedure and separately regulate the protection of rights of the person referred to in paragraph 1 of this Article.

Prohibition of Working Engagement with Supplier

Article 25

Representative of the contracting authority who has in any way participated in public procurement procedures or persons related to him, where total value of contracts awarded to a specific supplier within the last year prior to termination of office or employment of the representative of the contracting authority exceeds 5% of total value of all contracts that this contracting authority has concluded over that period, within the next two years after termination of office or employment with this contracting authority, may not:

- 1) Conclude employment contract, service contract, or in any other way be professionally engaged with that supplier or with persons related to that supplier;
- 2) Receive from this supplier or persons related to him, directly or indirectly, any pecuniary remuneration or any other benefit;

3) Acquire a share or stocks of supplier or persons related to that supplier.

In case of breach of prohibition under paragraph 1 of this Article, the contracting authority shall notify thereon the government body authorized to fight corruption and the competent prosecutor's office.

Declaration of Independent Bid

Article 26

Contracting authority shall foresee a declaration of an independent bid as a part of tender documents.

In declaration of an independent bid, the bidder confirms under full financial and criminal responsibility that the bid was submitted independently, without any agreement with other bidders or interested parties.

Declaration under paragraph 2 of this Article is delivered in each individual public procurement procedure.

Duty to Report Competition Breach

Article 27

In case of existence of reasonable doubt in veracity of declaration of independent bid, the contracting authority shall immediately notify the organization competent for protection of competition.

Each interested person or person employed or in any other way work engaged by the interested person, shall notify the organization competent for protection of competition, if possessing any information on violation of competition in the public procurement procedure.

Person under paragraph 2 of this Article may neither get employment or other type of work engagement contract rescinded, nor may he be transferred to another work position because he, acting conscientiously and in good faith, has reported violation of competition in the procedure of public procurement.

In the case referred to in paragraphs 1 and 2 of this Article, the contracting authority may continue the public procurement procedure, whereas the contract, if concluded with the bidder for whom there is a suspicion of violation of competition, shall be terminated by operation of law if the organization competent for protection of competition determines the existence of violation of competition.

Civil Supervisor

Article 28

Where contracting authority conducts public procurement procedure whose estimated value exceeds RSD 1 billion, the procedure is monitored by civil supervisor.

Persons eligible to be appointed for a civil supervisor are prominent experts in the domain of public procurement or in the field related to subject matter of public procurement.

Also eligible for a civil supervisor is an association dealing with public procurements, prevention of corruption, or prevention of conflict of interest.

Person not eligible to be appointed for civil supervisors is the one employed or otherwise commissioned to work for the contracting authority, or for the person related to the contracting authority, or the one who is a member of a political organization

Requirements and criteria for appointment and the mode of operation of civil supervisor are regulated in detail by the Public Procurement Office.

Civil supervisor is appointed by the Public Procurement Office, not later than the day set in the annual public procurement plan as the tentative day to initiate public procurement procedure, i.e. within not later than 30 days from the day the public procurement plan was received.

Contracting authority may not initiate public procurement procedure before the appointment of civil supervisor.

Civil supervisor shall supervise the public procurement procedure and, to this end, shall have permanent insight into procedure, documents and communication between contracting authority and interested parties, i.e., bidders.

Civil supervisor shall file report on conducted public procurement procedure to the committee of the National Assembly in charge of finance or to the assembly of autonomous province or local government, and to the Public Procurement Office, within the term of 20 days from the day the contract was concluded or the decision on suspending the procedure was adopted.

Where civil supervisor has reasonable doubt in the legality of public procurement procedure, he shall notify thereon the competent government bodies and the public.

Civil supervisor is not entitled to remuneration for his work.

2. Prevention of Conflict of Interest

Conflict of Interest

Article 29

Conflict of interests for the purpose of this Law exists when relation between the representative of the contracting authority and the bidder may impact impartiality of the contracting authority in making decision in the public procurement procedure, namely:

- 1) If contracting authority's representative or to him related person is involved in bidders' management;
- 2) If contracting authority's representative or to him related person holds more than 1% of bidder's share or stocks;
- 3) If contracting authority's representative or to him related person is employed or work engaged by the bidder or has business relationship with the bidder.

Prohibition on Concluding Contract

Article 30

Contracting authority may not conclude public procurement contract with the bidder in case of existence of conflict of interest, if existence of conflict of interest has influenced or could have influenced the decision-making in the course of public procurement procedure.

Person involved in conflict of interest may neither be a subcontractor for the bidder to whom the contract was awarded, nor a member of the group of bidders to whom the contract was awarded.

The Republic Commission for the Protection of Rights in Public Procurement Procedures shall, at the request of the contracting authority, approve the concluding of contract under paragraph 1 of this Article, provided that contracting authority proves that prohibition to conclude contract would cause great difficulties in work or operation of the contracting authority which are disproportionate to the value of public procurement, or that it would substantially endanger the interests of the Republic of Serbia, that it has taken all measures to prevent adverse consequences, that other bidders do not meet requirements of the procedure, or that, after the ranking of their bids, the difference in prices is 10% higher or that the number of weighted points is higher by ten in favor of the selected bidder.

Decision under paragraph 3 of this Article is published on the web page of the contracting authority, the Republic Commission for the Protection of Rights in Public Procurement Procedures, and on the Public Procurement Portal.

III. CONDITIONS AND MANNER OF CONDUCTING PUBLIC PROCUREMENT PROCEDURE

1. Public Procurement Procedure

Types of Procedures

Article 31

Public procurement procedures are as follows:

- 1) Open procedure;
- 2) Restrictive procedure;
- 3) Qualifying procedure;
- 4) Negotiating procedure with publishing an invitation to place bids;
- 5) Negotiating procedure without publishing an invitation to place bids;
- 6) Competitive dialogue;
- 7) Design contest;
- 8) Low-value public procurement procedure.

Contract is awarded in open or restrictive procedure.

Contract may also be awarded in other public procurement procedures, provided that the requirements prescribed for that by this Law are met.

Open Procedure

Article 32

Open procedure is a procedure wherein all interested persons may submit bids.

Restrictive Procedure

Article 33

Restrictive procedure is a procedure conducted in two phases and wherein all interested persons may submit bids.

In the first phase, the contracting authority invites all interested parties to submit applications and recognizes qualification to applicants whom it finds to meet previously set requirements for qualification.

After having recognizing qualification, the contracting authority publishes notice from Appendix 3F of this Law.

In the second phase of restrictive procedure, the contracting authority invites all applicants to whom it has recognized qualification (candidates) to submit bids.

Contracting authority may initiate second phase of restrictive procedure if it has at least three candidates.

Contracting authority initiates the second phase of restrictive procedure within a term not longer than six months of the moment the decision on recognizing qualification became final in administrative procedure.

Qualification Procedure

Article 34

Contracting authority may conduct qualification procedure when it is not possible to plan in advance the public procurement from the aspect of volume, quantities and time, and the subjects matter of such procurement are occasional services or consumables, or occasional repairs or works on regular maintenance, that are provided, delivered or performed according to the standard, usual specifications, rather than according to specific demands of the contracting authority.

In qualification procedure, the contracting authority invites all interested persons to submit a bid and recognizes qualification of applicants whom it finds to meet previously set requirements for qualification.

Within the deadline set in invitation to apply, the contracting authority makes a decision to recognize qualification that contains a list of at least 5 candidates and a period of validity of recognized qualifications, which may last up to 3 years, and within the reasoning of the decision it shall state the reasons for rejection of other applications.

The decision referred to in paragraph 3 of this Article the contracting authority publishes on the Public Procurement Portal and on its web page within a term of three days from the day of rendering.

Contracting authority shall update the list of candidates every six months by recognizing qualification of each applicant who fulfils requirements and who has in the meantime submitted application for qualification recognition.

The invitation to file applications in qualifying procedure which includes requirements for recognition of qualification and tender documents, the contracting authority shall publish on the Public Procurement Portal and on its web page, so that they are available to all interested parties during the entire period of validity of the list of candidates.

Contracting authority shall exclude a candidate from the list of candidates if he ceases to meet the requirement for qualification recognition, whereof it shall adopt a decision that contains in its reasoning the reasons for exclusion of the candidate and which it delivers to all candidates within three days from the day of its adoption and publishes it on the Public Procurement Portal and on its web page.

During the period of validity of the list of candidates, the contracting authority invites all candidates from the list to submit a bid and at the same time publishes the invitation on the Public Procurement Portal and on its web page.

At the moment of sending invitation to submit bids, the list of candidates shall contain at least five candidates.

Negotiating Procedure with Publication of the Invitation to Submit Bids

Article 35

Contracting authority may conduct negotiating procedure with publication of the invitation to bid:

1) Where in open, restrictive or qualifying procedure or in competitive dialogue, all bids it received were unacceptable, provided that the originally defined requirements for participation in the procedure, technical specifications and criteria for awarding contract, i.e. framework agreement are not altered. If the contracting authority decides to only invite to the negotiating procedure all the bidders that participated in the open, restrictive or qualification procedure, or in competitive dialogue, to supplement their bids, so as to make them acceptable, it does not have to publish invitation to submit bids. The price offered in this negotiating procedure may not be higher than the price offered in the open, restrictive or qualifying procedure, i.e. in the competitive dialogue;

2) In exceptional cases where, due to the nature of goods, services or works, as well as the related risks, it is not possible to estimate the public procurement value in advance;

3) In the case of public procurement of services, if the nature of these services is such that their specifications may not be sufficiently precisely determined so as to facilitate conducting of open or restrictive procedure and there are no conditions to conduct competitive dialogue;

In the case referred to in paragraph 1, item 2) of this Article the provisions of this Law relating to estimated value do not apply.

Contracting authority may conduct negotiating procedure in multiple phases, so as to reduce the number of bids which require negotiating by means of applying requirements, specifications and criteria determined in the invitation to submit bids and in tender documents.

Contracting authority shall in its tender documents define the contractual elements to be negotiated on, the manner of negotiation, and keep the minutes on negotiation.

Contracting authority shall ensure in the course of negotiating procedure that the contracted price does not exceed the comparable market price, and check the quality of public procurement subject matter with due diligence.

Negotiating Procedure without Publication of the Invitation to Submit Bids

Article 36

Contracting authority may conduct negotiating procedure without publication of the invitation to submit bids:

1) If it did not receive any bid or application in open or restrictive procedure, or if all bids were inadequate, provided that the originally defined subject of public procurement and conditions for participation in the procedure, technical specifications and criteria for awarding the contract, i.e. framework agreement are not altered;

2) If, due to technical or artistic reasons of the subject matter of the public procurement, or due to reasons related to the protection of exclusive rights, the procurement may be executed only by a particular bidder;

3) If, for reasons of extreme urgency brought about by extraordinary circumstances or unforeseen events, whose appearance in no case depends on the will of the contracting authority, the contracting authority was not able to act within the time limits laid down for open or restrictive procedure. The circumstances which justify such urgency may not be in any relation to the contracting authority;

4) For additional deliveries of goods by the original supplier intended as a partial replacement of products, materials or installations, or as an extension of volume of the existing products, materials or installations, where a change of supplier or provider of services would oblige the contracting authority to procure material having different technical characteristics which, in turn, would result in disproportionate technical difficulties in operation and maintenance, where total value of all additional deliveries may not exceed 15% of total value of the contract originally concluded and that there elapsed no more than three years since the conclusion of the original contract;

5) In case of additional services or works not included in the original project or in the original public procurement contract, which, due to unforeseeable circumstances, have become necessary for implementation of the public procurement contract, on condition that the contract is concluded with the original service provider, that the total value of all additional services or works (unforeseen works) does not exceed 15% of total value of the contract originally concluded, that there elapsed no more than three years since the conclusion of the original contract, and that:

(1) Such additional services or works may not be separated, in technical or economical sense, from the original public procurement contract without causing

disproportionate technical difficulties or disproportionately high costs to the contracting authority, or

(2) Such services or works, which contracting authority could procure separately from the implementation of the original contract, are necessary in order to implement the original public procurement contract;

6) In case of procurements of goods under particularly advantageous conditions from a supplier going through bankruptcy or liquidation, apart from involuntary liquidation, in accordance with regulations governing company liquidation and bankruptcy;

7) In case of public procurement of goods offered and purchased in commodity exchange;

8) In case of public procurement of services that are part of the continuation of a design contest organized in accordance with this Law, if the contract was concluded with the awarded participant or participant in the contest, and if the contracting authority includes each of them in negotiating procedure;

Prior to initiating negotiating procedure under paragraph 1, items 2) through 6), the contracting authority shall request opinion of the Public Procurement Office on the justifiability of applying the negotiated procedure.

The Public Procurement Office shall prescribe the form and the contents of the request under paragraph 2 of this Article.

Within a term of ten days from the day of receipt of complete request under paragraph 2 of this Article, the Public Procurement Office shall scrutinize the existence of basis for applying negotiating procedure and, in the course of scrutiny, it may demand from the contracting authority additional information and data necessary for establishing facts relevant for making the opinion.

The Public Procurement Office shall publish the opinion referred to in paragraph 4 of this Article on the Public Procurement Portal.

Scrutinizing the existence of basis for applying negotiating procedure suspends further activities of the contracting authority in the procedure, except in case of negotiating procedure under paragraph 1, item 3) of this Article even where opinion is not delivered or published within the deadline under paragraph 4 of this Article.

Upon adopting decision on initiation of negotiating procedure, the contracting authority shall, simultaneously with sending invitations to submit bids, publish tender documents and a notice of initiation of the procedure containing information set out in Annex 3G.

Contracting authority shall, whenever it is possible, ensure competition by inviting multiple persons to participate in the procedure, and ensure that the contracted price does not exceed the comparable market price, as well as to check the quality of public procurement subject matter with due diligence.

Contracting authority shall define in tender documents the contractual elements to be negotiated and the manner of negotiation, and to keep minutes on the negotiation.

The Public Procurement Office drafts the instruction on types and manner of negotiation.

Competitive Dialogue

Article 37

Contracting authority may conduct competitive dialogue in the case when public procurement subject matter is particularly complex, so that public procurement contract may not be concluded by applying the open or restrictive procedure.

Subject matter of public procurement is deemed to be particularly complex if the contracting authority is objectively not able to determine:

- 1) Technical specifications of the public procurement subject matter;
- 2) Legal or economic structure of the public procurement.

In the case that contracting authority objectively is not able to determine economic structure of public procurement in terms of paragraph 2, item 2) of this Article, the provisions of this Law relating to estimated value do not apply.

Contracting authority invites all interested parties to submit applications and recognizes qualification to applicants based on previously set requirements.

The decision on recognizing qualification contains reasons which elaborate why reason other applications were rejected, and the contracting authority publishes it on the Public Procurement Portal and on its web page.

In order to preserve competition, the contracting authority may decide to keep data on candidates as business secret, and in that case, instead of decision referred to in paragraph 5 of this Article, it delivers an individual notification.

Contracting authority conducts dialogue with all applicants with recognized qualification (candidates) in order to find the solution which would satisfy its needs.

During the course of entire procedure, and especially in the dialogue phase, the contracting authority shall ensure equal treatment of bidders, in particular by making sure not to offer some information to some bidders which could result in disadvantage of other bidders.

Contracting authority conducts dialogue until it identifies the solution, i.e. solutions capable of satisfying its needs.

Contracting authority conducts dialogue with a candidate only about the solution offered by that candidate.

Contracting authority may not disclose to candidates solutions or other information concerning a solution offered by some of the candidates.

Contracting authorities may stipulate in the invitation to submit bids and in the tender documents that the procedure is conducted in multiple phases in order to decrease the number of solutions to be discussed through dialogues.

In the case referred to in paragraph 12 of this Article, the number of candidates in the dialogue phase may not be less than three, unless a lower number of interested parties apply.

Contracting authority shall deliver a reasoned decision to the candidate who was excluded from dialogue.

After the contracting authority identifies the solution, i.e. solutions capable of satisfying its needs, it invites all candidates who were not excluded from dialogue to submit their final bids based on one or more adopted solutions presented during the dialogue.

Decision on awarding contract in competitive dialogue is adopted by applying the criterion of the economically most advantageous bid.

Elements of the criterion are determined in tender documents before the dialogue phase.

Design Contest

Article 38

Contracting authority conducts design contest in the fields of urban planning, architecture, construction, engineering, and data processing.

Contracting authority conducts design contest by applying the rules for open or restrictive procedure, unless otherwise provided for by this Article.

Contracting authority publishes call for competition in design contest, in the manner prescribed for publishing contract notice and in accordance with Appendix 3E.

The right to participate in tender may not be limited:

- 1) To a specific geographic area or a part of that area;
- 2) On the grounds of requirement that participants may exclusively be legal or natural persons.

Design contest may be organized:

- 1) As a procedure that precedes the awarding of public procurement contract;
- 2) As a procedure to disburse remuneration to participants.

In the case under paragraph 5, item 1) of this Article, the estimated value of public procurement is based on the estimated value of public procurement of services including possible remunerations or compensations to participants.

In the case under paragraph 5, item 2) of this Article, the estimated value of public procurement is based on the aggregate value of remunerations or compensations to participants including the estimated value of contracts on public procurement of services that could be subsequently awarded in negotiating procedure under Article 36, paragraph 1, item 8) of this Law, where contracting authority in its call for participation in the contest did not exclude this option.

Design, plan or project is selected by an independent jury.

Members of this jury may only be natural persons who are not in conflict of interest in terms of Article 29 of this Law.

Where contracting authority requests participants in the contest to possess particular professional qualifications or experience, at least a third of members of the jury must have at least equal qualifications or experience.

The jury is autonomous in deciding, and considers anonymous designs, plans, or projects solely according to the criteria set in the call for participation and in tender documents.

The jury compiles a report on evaluation of design, plan or project, which is signed by all members of the jury. Notes and parts of design, plan, i.e. project that need to be clarified are entered into the report.

Anonymity must be observed until the jury makes its decision, or until the report is compiled.

After the report is compiled, participants may be invited to clarify some parts of design, plan or project. In that case, minutes are kept on the conversation between the members of the jury and participants.

After having conducted the procedure, the contracting authority publishes a report on the outcome of the contest in compliance with Annex 3K.

Low-Value Public Procurement Procedure

Article 39

Low-value public procurement, in terms of this Law, is a procurement whose estimated value does not exceed 5,000,000 dinars, whereby even the total estimated value of procurements of the same type on the annual basis does not exceed 5,000,000 dinars.

Contracting authorities are not under obligation to apply the provisions of this Law to procurements whose estimated value does not exceed 500,000 dinars, if the total estimated value of procurements of the same type on the annual basis does not exceed 500,000 dinars.

When conducting procurement under paragraph 2 of this Article, contracting authority shall prevent existence of any conflict of interest, ensure competition, and make sure that the contracted price does not exceed the comparable market price.

Public procurement procedure is conducted by public procurement officer, or person employed on tasks of public procurement, unless the complexity of the subject matter of public procurement demands involvement of other competent persons.

Contracting authority in a low-value public procurement procedure may invite the minimum of three persons, who, according to information obtained by the contracting authority, are capable of performing procurement, submitting bids and simultaneously publishes invitation to submit bids on the Public Procurement Portal and on its own web page.

In individual low-value public procurement procedure whose value does not exceed the amount referred to in paragraph 2 of this Article, instead of concluding public procurement contract, the contracting authority may issue to the most advantageous bidder a purchase order if it contains essential elements of the contract.

Article 39a

To procurement of services referred to in Appendix 2, the provisions of this Law governing low-value public procurement may apply, regardless of the estimated value of public procurement.

2. Special Forms of Public Procurement Procedure

Framework Agreement

Article 40

Contracting authority may conclude a framework agreement after having conducted public procurement procedure referred to in Article 31 of this Law.

Framework agreement is concluded with one or multiple bidders, and the contracting authority shall state in the invitation to submit bids, i.e. applications with how many bidders the framework agreement is being concluded.

If the contracting authority does not receive a predetermined number of acceptable bids, the contracting authority may conclude the framework agreement with a lower number of bidders, i.e. even with one.

Framework agreement may not last more than three years, and if it is concluded with one bidder it may not last longer than two years.

Framework agreement may be used only by contracting authorities that are precisely specified in the framework agreement, or by those which may be clearly deducted from the content of the framework agreement.

Public procurement contracts concluded on the basis of a framework agreement shall be awarded before the end of the duration of the framework agreement, with the proviso that the duration of certain contracts concluded on the basis of the framework agreement does not need to coincide with the duration of such framework agreement, but if needed may last shorter or longer.

Framework agreement may not be used in a way that would prevent, restrict or distort competition and equality of bidders.

When concluding public procurement contract on the basis of framework agreement, the parties may not alter essential terms of the framework agreement.

A purchase order may be issued on the basis of the framework agreement, instead of the public procurement contract, if it contains the essential elements of the contract.

The Public Procurement Office shall draft models and instruction on the manner of concluding framework agreements.

Conclusion of Public Procurement Contract on the Basis of Framework Agreement

Article 40a

If a framework agreement is concluded with one supplier, the contract is concluded on the basis of the terms foreseen in the framework agreement and the bid submitted in public procurement procedure for the conclusion of the framework agreement.

If the framework agreement is concluded with several suppliers, the public procurement contract on the basis of the framework agreement may be concluded in one of the following ways:

1) According to the terms the contract was awarded as determined in the framework agreement, on the basis of already submitted suppliers' bids, without reopening competition among suppliers;

2) By means of reopening competition among suppliers, if by means of framework agreement all the terms for awarding a contract have not been determined.

In the case referred to in paragraph 2, item 2) of this Article, the contracting authority shall:

(1) Send an invitation to all the suppliers with which it concluded a framework agreement to submit a bid;

(2) Foresee appropriate time limit for submission of bids;

(3) Ensure that bids are not opened before the expiry of the time limit for submission of bids;

(4) Adopt a decision on awarding the contract to a supplier who has submitted the most favorable bid on the basis of the criteria stated in tender documents for a framework agreement.

In the case referred to in paragraph 3 of this Article the contracting authority shall publish the decision on awarding the contract on the Public Procurement Portal and on its web page.

Contracting authority in the case referred to in paragraph 3, item 2) of this Article may also use the electronic auction.

Dynamic Procurement System

Article 41

Contracting authority shall establish a dynamic procurement system using exclusively electronic means, by application of the rules of open procedure, unless specified otherwise by this Article.

Electronic means and information system, i.e. information technology used to establish and run a dynamic procurement system, shall be widely accessible to interested parties and shall not lead to limitation of competition.

The contracting authority publishes invitation to submit bids, thereby inviting all interested parties to submit their initial bids.

Technical specifications of public procurement subject matter shall be precisely specified, so that bidders are able to submit adequate bids.

Invitation to submit initial bids is valid for the entire duration of the dynamic procurement system and an interested party may, at any moment, submit the initial bid thus requesting to be admitted into the system.

If the bidders' bid is evaluated as acceptable, the bidder shall be admitted into the dynamic procurement system.

Contracting authority shall, within 15 days from the day of receipt of the initial bid, evaluate it and decide whether to admit the bidder into the dynamic procurement system.

In the duration of the dynamic procurement system, the bidders admitted into the system may improve or amend their initial bid, provided that they observe all technical specifications set by the contracting authority.

Prior to conclusion of each individual public procurement contract, the contracting authority publishes, on the Public Procurement Portal and on its web page, a notice of dynamic procurement system's existence, thereby concurrently inviting all interested parties to submit initial bid and take part in the dynamic procurement system.

If, after the publication of the notice under paragraph 9 of this Article, the contracting authority receives an initial bid, it shall evaluate the initial bid before inviting members of the dynamic procurement system to submit final bids.

The most advantageous bid is chosen by applying criteria set in the public invitation referred to in paragraph 3 of this Article, but these shall be such to enable automatic evaluation of the bids and ranking of the bids with the aid of electronic means.

Dynamic procurement system may not last longer than four years, and in the duration of this system the contracting authority may not change terms for admission into the system.

Contracting authority may not condition the submission of initial bids or the admission into the dynamic procurement system by paying a fee, a deposit, etc.

3. Electronic Auction

Requirements for Application of Electronic Auction

Article 42

Contracting authority shall apply electronic auction where a public procurement subject matter may be clearly and objectively described.

Electronic means and information system, i.e. technology used to apply electronic auction, shall be widely accessible to interested parties and shall not result in restriction of competition.

Contracting authority may conduct electronic auction in open, restrictive or negotiating procedure referred to in Article 35, paragraph 1, item 1) of this Law.

Contracting authority may conduct electronic auction at the occasion of submission of bids for public procurement contract based on the concluded framework agreement.

Electronic auction may only be conducted concerning the criteria or the elements of the criteria which may be quantified in a clear and comprehensible manner, so that it is possible to present them in numbers or percentages, i.e. that they are suitable for automatic evaluation with the aid of electronic means, without any type of intervention of the contracting authority.

Manner of Application of Electronic Auction

Article 43

Contracting authority explicitly states in its invitation to submit bids that electronic auction shall be conducted.

Contracting authority shall specify in tender documents:

- 1) Criterion or elements of the criterion which are the subject matter of the electronic auction;
- 2) Limits within which the values of bids concerning the criterion or elements of the criterion may or must be altered;
- 3) Conditions under which bidders may alter bids;
- 4) Data available to bidders during electronic auction, or the time when they shall be available;
- 5) Manner of conducting electronic auction;
- 6) Equipment used to conduct electronic auction and technical specifications necessary for the connection with the information system of the contracting authority.

Before the start of electronic auction, the contracting authority performs expert evaluation of bids, by applying the criterion and all elements of the criterion specified in the invitation to submit bids and the tender documentation.

The evidence of fulfilling requirements for participation in the procedure that cannot be sent electronically, contracting authority shall deliver in paper copy before the expiry of deadline for the submission of bids.

Invitation to submit bids shall be delivered electronically simultaneously to all bidders which, based on the previous expert evaluation of bids, were determined to have submitted acceptable bids.

Invitation to submit bids contains:

- 1) Relevant data for using the information system of the contracting authority;
- 2) Date and hour of the beginning of electronic auction;
- 3) Results of the previous expert evaluation of bids;
- 4) Mathematical formula to be applied in electronic auction, which enables automatic setting of changes in ranking of bids according to newly offered prices, i.e. other elements of the criterion for awarding the contract (hereinafter: mathematical formula).

Mathematical formula shall contain weighting points for all elements of the criterion set by the contracting authority in the invitation to submit bids and in the tender documents, adjusted for evaluation of altered values of parts of a bid.

Where bid variants are allowed, a special mathematical formula is made for each variant.

Electronic auction may be conducted in multiple consecutive phases and may start not earlier than two days from the day the invitation under paragraph 5 of this Article was delivered.

Electronic Auction in Case of Submission of Electronic Bid

Article 44

If bids in public procurement procedure are submitted in electronic format, the contracting authority may conduct electronic auction without a special invitation to bidders, immediately after the bids were opened and automatically ranked, on condition that each of the bidders is enabled to access information on the current ranking and the offered values of other bidders' bids.

In its invitation to submit bids, the contracting authority declares the intention to conduct electronic auction in the manner set forth in paragraph 1 of this Article.

Transparency of Electronic Auction

Article 45

While carrying out the electronic auction, the contracting authority shall enable the bidders to inspect the data on the basis of which they can, in every moment, determine the order of submitted bids and number of bidders, but in such way so not to reveal the identity of the bidder.

End of Electronic Auction

Article 46

Contracting authority ends the electronic auction in one or more of the following ways:

- 1) By determining the exact date and hour of the end of the electronic auction;
- 2) By ceasing to receive new prices or elements of the criterion that satisfies requirements regarding minimal differences. Contracting authority clearly states in the invitation to submit bids the time allowed to lapse after the receipt of the last bid amendment and before the end of electronic auction;
- 3) At the end of the number of electronic auction phases set in the invitation to submit bids.

After the end of the electronic auction, the contracting authority makes a decision to award the contract based on the results of the automatic bid ranking.

Article 47

(Deleted)

4. Centralized Public Procurements

Centralized Public Procurement Body

Article 48

The Centralized Public Procurement Body is a contracting authority that concludes framework agreements or awards contracts for goods, services or works intended for contracting authorities, or directly purchases goods i.e. services for the needs of contracting authorities.

The Centralized Public Procurement Body shall shape the public procurement procedure in lots, whenever possible, so as to facilitate participation of small and medium-sized companies.

The Centralized Public Procurement Body may be established at the national, provincial or local government level.

Multiple local governments may establish a joint body for centralized public procurements.

The Centralized Public Procurement Body may be established by multiple contracting authorities.

The establishment and manner of operation of bodies under paragraphs 3-5 of this Article is regulated by law, government regulation, decision of contracting authority, or agreement between contracting authorities.

Administration for Joint Services

Article 49

The Administration for Joint Services of the Republic Bodies (hereinafter: the Administration for Joint Services) is a body for centralized public procurements for the needs of government bodies and organizations, including judicial authorities.

Subject matter of the public procurement under paragraph 1 of this Article, terms, way of planning of centralized public procurements and conducting public procurement procedure by the Administration for Joint Services is more closely regulated by the Government.

The Administration for Joint Services, as the body for centralized procurements, shall shape the public procurements in lots whenever possible.

The Administration for Joint Services monitors implementation of contracts and framework agreements and keeps united electronic records of suppliers.

The Administration for Joint Services may propose measures for improvement of the public procurement system.

If the contracting authority which procures goods and services pursuant to paragraph 1 of this Article has objections to the concluded contract or framework agreement, it shall notify thereon the State Audit Institution.

Based on the proposal from the ministry in charge of finance and the Public Procurement Office, the Government makes the list of contracting authorities referred to in paragraph 1 of this Article.

The list of contracting authorities under paragraph 1 of this Article is published in the "Official Herald of the Republic of Serbia" and on the Public Procurement Portal.

Conducting Public Procurement Procedure by Multiple Contracting Authorities

Article 50

Contracting authorities may jointly conduct a specific public procurement procedure or one contracting authority may authorize another contracting authority to conduct public procurement procedure or undertake certain actions in such procedure, in its name and on its behalf.

In the case referred to in paragraph 1 of this Article contracting authorities adopt a separate decision.

The contents of decision under paragraph 2 of this Article are determined by the Public Procurement Office.

Contracting authorities conducting public procurement are jointly and severally liable for the legality and correctness of that procedure.

5. Procurement Plan

Article 51

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

- 1) Ordinal number of public procurement;
- 2) Subject matter of public procurement;
- 3) Estimated value of public procurement;
- 4) Type of public procurement procedure;
- 5) Tentative date for initiating procedure;
- 6) Tentative date for concluding contract;
- 7) Tentative duration of contract.

Contracting authority states in the public procurement plan referred to in paragraph 1 of this Article if it conducts procurement through the body for centralized procurements.

Public procurement plan, amendments and additions to the plan shall be published by the contracting authority on the Public Procurement Portal within a term of ten days from the day of adoption.

Amendment regarding the increase in the estimated value of public procurement for more than 10%, amendment to the subject matter of public procurement, or planning of a new public procurement is considered to be amendments and additions to the public procurement plan.

If some data from the public procurement plan constitute a business secret in terms of the law governing protection of the trade secret, or constitute secret data in terms of the law governing data secrecy, such data from the plan shall not be published.

In the case referred to in paragraph 5 of this Article the public procurement plan shall be delivered in the original form to the Public Procurement Office and the State Audit Institution.

The form of the public procurement plan, as well as the manner of publication on the Public Procurement Portal, is regulated in more detail by the Public Procurement Office.

6. Initiation of a Procedure

Conditions to Initiate a Procedure

Article 52

Contracting authority may initiate a public procurement procedure if the procurement is envisaged by the annual public procurement plan.

In exceptional cases, where it is not possible to plan public procurement in advance or for reasons of urgency, contracting authority may initiate a public procurement procedure even if the procurement is not envisaged by the public procurement plan.

Obligations that the contracting authority assumes by the public procurement contract shall be stipulated in accordance with the regulations governing the budget system, i.e. disposal of funds.

Decision to Initiate a Procedure

Article 53

Contracting authority initiates the public procurement procedure by adopting a decision, in written form, to initiate the procedure, which contains:

- 1) Name and address of the contracting authority, or business name;
- 2) Ordinal number of the public procurement for the current year;
- 3) Subject matter of the public procurement, name and designation from the common procurement vocabulary;
- 4) Type of public procurement procedure;
- 5) Estimated value of the public procurement in total, and also, for each lot separately, whenever possible;
- 6) Tentative dates for conducting individual phases of public procurement procedure;

7) Data on budget appropriation or financial plan.

In case of applying negotiating procedure or competitive dialogue, the decision contains the reasons for applying such procedure.

In case of applying negotiating procedure without invitation to submit bids, the decision also contains basic particulars of persons who shall be invited to submit a bid by the contracting authority, and the reasons for sending an invitation to those persons.

The decision may also contain other elements, if the contracting authority assesses that they are necessary for conducting public procurement procedure.

Public Procurement Committee

Article 54

Public procurement procedure is conducted by public procurement committee (hereinafter: the Committee) established by the contracting authority's decision.

The decision to establish the Committee (hereinafter: the decision) is made by the contracting authority's body competent for rendering decisions on initiation of public procurement procedure.

The decision contains:

- 1) Name and address of the contracting authority, i.e. business name;
- 2) Legal basis for making the decision;
- 3) Name of the body making the decision;
- 4) Name of the decision;
- 5) Statements on establishing the Committee, subject matter of public procurement, number of the public procurement, appointment of members of the Committee, competences and duties of the Committee, tasks of the Committee and deadlines for their execution.

A decision is adopted to appoint the deputy members of the Committee.

The Committee has at least three members, out of whom one is a public procurement officer or person with law faculty degree, the second degree college studies (master academic studies, specialized academic studies, specialized professional studies), or the basic college studies in duration of at least four years.

In public procurement procedures whose estimated value is higher than the three times amount referred to in Article 39, paragraph 1 of this Law, the public procurement officer shall serve as a member of Committee.

Persons with adequate professional education in the area involving the subject matter of the public procurement are appointed as members of the Committee.

Where the contracting authority does not have an employee with adequate professional education in the field of the subject matter of public procurement, a person not employed by the contracting authority may be appointed as the member of the Committee.

Persons that may be involved in conflict of interests for the specific subject matter of public procurement may not be appointed to the Committee.

After making the decision, members of the Committee sign a statement confirming that they are not involved in any conflict of interest in the given public procurement. If they consider that they may be involved in a conflict of interest or if in the course of the public procurement procedure they find out that they may get into a conflict of interest, the members of the Committee notify the body that made the decision thereof without delay, which takes the necessary measures in order to avoid the occurrence of adverse consequences in the further course of the public procurement procedure.

The Committee shall conduct public procurement procedure set in the decision on initiation of the procedure and is responsible for the legality of the procedure.

The Committee:

- 1) Prepares tender documents, contract notices, amendments and additions to tender documents, additional information or clarifications related to the preparation of bids or applications;
- 2) Opens, reviews, evaluates, and ranks bids or applications;
- 3) Conducts negotiating procedure;
- 4) Drafts written report on expert evaluation of bids;
- 5) Prepares decision proposal on awarding a contract, decision proposal on concluding a framework agreement, decision proposal on cancelling the public procurement procedure, as well as decision proposal on recognizing qualification;
- 6) Decide concerning a submitted request for the protection of rights;
- 7) Undertakes other actions in the procedure, depending on the type of procedure and the subject matter of procurement.

Communication with the interested persons and bidders is done exclusively by members of the Committee.

7. Public Procurement Notices

Types of Notices

Article 55

Public procurement notices are as follows:

- 1) Prior notice;
- 2) Invitation to submit bids and applications;

- 3) Notice on dynamic procurement system;
- 4) Invitation to participate in design contest;
- 5) Notice on recognizing qualification;
- 6) Notice on concluded framework agreement;
- 7) Notice on initiation of negotiating procedure without publication of the invitation to submit bids;
- 8) Notice on concluded contract;
- 9) Notice on the results of tender;
- 10) Notice on cancelling of public procurement procedure;
- 11) Notice on extension of deadline for submission of bids, i.e. applications;
- 12) Decision on amendment to public procurement contract;
- 13) Notice on submitted request for the protection of rights;
- 14) Notice on annulment of public procurement procedure.

Contents of notices on public procurement are determined in Appendix 3.

The Public Procurement Office shall determine standard forms for public procurement notices in accordance with the Appendix 3 of this Law.

Common Procurement Vocabulary

Article 56

Contracting authority shall use names and designations contained in the common procurement vocabulary when defining public procurement subject matter in public procurement notices.

The Government issues a decree to determine the common procurement vocabulary in accordance with the corresponding vocabulary of the European Union - the CPV (the Common Procurement Vocabulary).

Method of Publishing Notices

Article 57

Public procurement notices are published on the Public Procurement Portal and on the contracting authority's web page.

Public procurement notices estimated value of which is higher than the one of the low-value public procurement referred to in Article 39 of this Law, is also published on the Portal of Official Gazettes of the Republic of Serbia and Legislation Databases.

The Government gives consent to the amount of the fee for publishing public procurement notices on the Portal of Official Gazettes of the Republic of Serbia and Legislation Databases.

Where the estimated value of public procurement exceeds 250,000.000 dinars for goods and services, or 500,000.000 dinars for works, the contracting authority shall publish public procurement notice referred to in Article 55, paragraph 1, items 2) through 4) of this Law also in a foreign language commonly used in international trade in the field of the subject matter of public procurement.

Contracting authority which has no web page is not under the obligation to create a web page for the sake of publishing public procurement notices.

Article 58

Contracting authority may also publish invitation to submit bids or applications in some specialized journal according to the subject matter of the specific public procurement.

When deciding on publishing the notice in the manner stated in paragraph 1 of this Article, the contracting authority especially takes care about the estimated value of public procurement, costs of publishing, type, complexity and specifics of public procurement subject matter, development of domestic market and number of domestic bidders capable of executing the procurement.

Prior Notice

Article 59

Contracting authority may publish a prior notice on intention to conduct public procurement procedure.

The content of prior notice is stipulated in Appendix 3A.

Publishing Invitation to Submit Bid and Invitation to Submit Applications

Article 60

Contracting authority shall publish invitation to submit bid in:

- 1) Open procedure;
- 2) Low-value public procurement procedure;
- 3) Negotiating procedure with publication of the invitation to submit bids;

Contracting authority shall publish an invitation to submit applications in:

- 1) Restricted procedure;
- 2) Qualifying procedure;
- 3) Competitive dialogue.

The content of invitation to submit bids is determined in Appendix 3B, and the content of invitation to submit applications in Appendix 3C.

8. Tender Documentation

Preparation and Contents of Tender Documentation

Article 61

Contracting authority shall prepare tender documentation so that bidders can prepare acceptable bids pursuant to it.

Contracting authority is not under the obligation to publish estimated value of public procurement.

Data contained in the tender documentation shall be identical with data contained in the invitation to submit bids

Tender documentation, according to the type of procedure and the nature of the subject matter of public procurement, contains:

- 1) Instruction to bidders how to prepare a bid;
- 2) Bid template;
- 3) Requirements and instruction how to prove fulfillment of requirements;
- 4) A model contract;
- 5) Type, technical characteristics (specifications), quality, quantity and description of goods, works or services, manner of conducting control and ensuring quality assurance, execution time limit, place of execution or delivery of goods, possible additional services, etc.;
- 6) Technical documentation and plans;
- 7) Template of the structure of the offered price, with instruction how to fill it out;
- 8) Template for expenses incurred in preparation of bid;
- 9) Declaration of independent bid;

Contracting authority may specify in tender documents the type of financial security instruments by which the bidders secure the fulfillment of their obligations in the public procurement procedure, as well as fulfillment of their contractual obligations, i.e. the refund of advance payment (various forms of pledging securities or other movable property, mortgages, promissory notes, guarantees given by other legal person possessing adequate creditworthiness, bank guarantees, insurance policies, etc.).

Contracting authority shall request collateral to secure refund of the advance payment, where tender documents stipulate advance payment, irrespective to the percent or the amount of the advance payment.

In case of conducting public procurement procedure of estimated value exceeding the amount referred to in Article 57 of this Law, the contracting authority shall request collateral to ensure fulfillment of contractual obligations.

Tender documents may also contain other elements that, in regard to the subject matter of public procurement and the type of procedure, are necessary for preparation of a bid.

Contracting authority shall mark with an ordinal number each page of tender documents and state the total number of pages of tender documents.

The Public Procurement Office shall govern in more detail the mandatory elements of tender documents and determine the framework models of tender documents.

Publication and Delivery of Tender Documents

Article 62

Simultaneously with publishing the invitation to bid, contracting authority shall publish tender documents on the Public Procurement Portal and on its web page.

In case where a part of tender documents is confidential, the contracting authority shall in the part of tender documents it has published indicate how and under which conditions the interested parties may take over the confidential parts of the tender documents.

Amendments and Additions to Tender Documents

Article 63

Where contracting authority amends or supplements tender documents within the time period for submission of bids, it shall publish such amendments or additions without delay on the Public Procurement Portal and on its web page.

Interested person may request from the contracting authority, in written form, additional information or clarifications concerning the preparation of the bid, whereby he may also indicate to the contracting authority the possible deficiencies and irregularities identified in the tender documents, no later than five days before the expiry of the time limit for bid submission.

In the case referred to in paragraph 2 of this Article, the contracting authority shall, within a term of three days from the day of receipt of the request, publish the reply on the Public Procurement Portal and on its web page.

Communication concerning additional information, clarifications and answers is done as set forth by Article 20 of this Law.

If the contracting authority amends or supplements the tender documents eight days or less before the expiry of the time period for submission of bids, the contracting authority shall extend the deadline for submission of bids and publish a notice on extension of the time period for submission of bids.

After the expiry of time limit envisaged for submission of bids, the contracting authority may not amend or supplement the tender documents.

9. Estimated Value of Public Procurement

Manner of Determining the Estimated Value of Public Procurement

Article 64

The estimated value of public procurement is expressed in dinars, without value added tax.

The estimated value of public procurement covers the entire amount payable to the bidder.

The estimated value of public procurement shall be based on completed examination, research of the market of the public procurement subject matter which includes check of the price, quality, guarantee period, maintenance and similar, and must be valid at the time of the initiation of procedure.

Contracting authority may neither determine the estimated value of public procurement, nor can it divide the same type of public procurement into several procurements with the intention of avoiding application of this Law or the rules determining the type of procedure in relation to the estimated value of public procurement. Public procurement of the same type is procurement that has the same or a similar purpose, whereby the same bidders with regard to the nature of the activity they carry out are able to furnish it.

Determining Estimated Value of Public Procurement of Goods

Article 65

The basis for calculating the estimated public procurement value is determined in the following manner:

- 1) In case when the subject matter of the contract is sale, rental or leasing and where the duration for which the contract is concluded is 12 months or less, the total estimated contract value for its full duration is taken into account, whereas where the duration is longer than 12 months, the total contract value includes the estimated value for the first 12 months and the estimated value for the residual period until the expiry of the contract;
- 2) In case when the contract referred to in item 1) of this paragraph is concluded for an indefinite period, as well as in the case when there is uncertainty regarding the time period for which the contract is concluded, the monthly estimated value of the contract multiplied by 48 is used.

In the case of periodic contracts, as well as the contracts which need to be extended after the lapse of a certain time period, the estimated value of the public procurement is determined:

- 1) Based on the value of similar periodic contracts concluded during the previous budget year or during the previous 12 months, adjusted with the expected changes in terms of quantity or value of goods whose procurement is the subject matter of the contract in the period of 12 months, as of the day of conclusion of the original contract;
- 2) Based on the total estimated value of similar periodic contracts during 12 months after the first delivery or during the duration of the contract, if the duration of the contract is longer than 12 months.

Determining the Estimated Value of the Public Procurement of Services

Article 66

When calculating the estimated value of public procurement of services, the contracting authority shall include all expenses concerning such service that the bidder shall incur.

For certain services, the contracting authority takes into account the following amounts:

- 1) For insurance services - the premium amount and other types of payments charged in connection with the service;
- 2) For banking and other financial services - fees, commissions, and other types of payments charged in connection with the service;
- 3) *(Deleted)*
- 4) For design, architectural services, spatial planning and the like - the fee or commission.

Where contracting authority cannot determine the estimated value of service due to duration of the contract, the value of service is determined in the following manner:

- 1) Where the period of duration for which the contract is concluded is definite, and if that duration is 36 months or less, the total value of contract for the entire duration;
- 2) Where the period of duration for which the contract is concluded is indefinite, the monthly estimated value multiplied by 48.

Determining the Estimated Value of Public Procurement of Works

Article 67

The estimated value of public procurement of works is determined by taking the total works value as the basis for calculating the value of public procurement of works.

When determining the estimated value of public procurement of works, the contracting authority includes in the value of works also the value of all goods and services necessary for execution of the contract on public procurement of works.

Besides the estimated value, in the decision on initiating the procedure, the contracting authority shall separately state the value of material, goods and services that it supplies itself.

Determining the Estimated Value of Public Procurement in Lots

Article 68

Where the subject of public procurement is shaped in lots, the contracting authority determines the estimated value of each lot.

The estimated value of public procurement shaped in lots includes the estimated value of all lots over the contract period.

Contracting authorities may not apply the low-value public procurement procedure, i.e. avoid the application of this Law, for one separate lot, if the sum of values of all lots is higher than the amount under Article 39, paragraph 1 of this Law.

Determining the Estimated Value in Individual Procedures

Article 69

In case of qualifying procedure, framework agreement, and dynamic procurement system, the estimated public procurement value is determined as the value of all contracts foreseen during the validity of the list of candidates, framework agreement, or the dynamic procurement system.

10. Technical Specifications

General Rules on Technical Specifications

Article 70

Technical specifications and design documents, for the purpose of this Law, represent technical requirements which are mandatory and integral part of tender documents which determines the described characteristics of goods, services or works. They must ensure that the goods, services or works which are being procured, are described in a manner that is objective and meets the needs of contracting authority.

In case of procurement of goods and services, technical specifications determine characteristics of goods or services such as the dimensions, level of quality, including methods for quality assurance, safety, level of environmental impact, energy consumption, consumption of other vital resources while using the product, accessibility for all users (including accessibility for disabled persons) and compliance assessment, use of product, as well as other characteristics concerning the product such as the name under which the product is sold, terminology, designation, testing and methods of testing, packaging, marking and labeling, production process and the procedure of compliance assessment.

In case of procurement of works, besides characteristics determined in paragraph 2 of this Article, technical specifications may also contain regulations on designs and calculation of expenses, testing, inspection and conditions for takeover, as well as the techniques and method of construction.

Contracting authority shall state technical specifications in the tender documentation that relates to each of the public procurements.

Determining Technical Specifications

Article 71

Contracting authority defines technical specifications in one of the following ways:

1) With reference to technical specifications under Article 70 of this Law and Serbian, European, international or other standards and related documents, so that each reference shall be accompanied by the words "or equivalent";

2) In the form of characteristics or functional requirements, which may include environmental characteristics and requirements concerning energy efficiency and which shall be sufficiently precise and clear so that the bidders could prepare adequate bids and the contracting authorities could procure goods, services or works adequate to their objective needs;

3) In the form of characteristics or functional requirements, as described under item 2) of this paragraph, with reference to specifications and standards or related documents under item 1) of this paragraph which are considered as rebuttable presumption of fulfillment of such characteristics or functional requirements;

4) With reference to specifications and standards or related documents under item 1) of this paragraph for certain characteristics, and with reference to characteristics or functional requirements under item 2) of this paragraph.

When defining technical specifications in tender documents, the contracting authority shall prescribe mandatory compliance with technical standards for accessibility of disabled persons, i.e. that the technical solution is accessible to all users.

In the case of defining technical specification as defined in paragraph 1, item 1) of this Article, the contracting authority may not reject the bid because the offered goods, services or works do not fulfill the set requirements regarding the defined specification and the required standard, if the bidder offers adequate evidence that the goods, services or works he offers fulfill the requirements from specification and the required standard in the substantially equal way.

In the case of defining technical specification as defined in paragraph 1, item 2) of this Article, the contracting authority may not reject the bid, if the bidder offers adequate evidence that the offered goods, services or works meet the Serbian, European, international or other standards or related documents, and if he proves that these standards fulfill the required characteristics or functional requirements.

A certificate, manufacturer's technical dossier, or testing report issued by authorized organization may serve as adequate evidence referred to in paragraphs 3 and 4 of this Article.

Notwithstanding the provisions of paragraph 1, item 1) of this Article, if the technical regulation refers to the Serbian standard, such standard is mandatory and applicable as the technical regulation, without mentioning the words "or equivalent".

The competent ministry shall establish whether the technical regulations and standards referred to in paragraph 6 of this Article exist.

In the case referred to in paragraph 6 of this Article, the contracting authority shall also accept another standard which fulfills the requirements of the Serbian standard, as well as the evidence substantiating this.

Using Technical Specifications

Article 72

Contracting authority may neither use, nor refer to technical specifications or standards which designate goods, services or works of a specific make, source, or construction.

Contracting authority may not indicate in tender documents any particular trade mark, patent, or type, or a specific origin or production.

Contracting authority may not include in tender documents any provision that would result in favoring or eliminating certain bidders, in the manner referred to in paragraphs 1 or 2 of this Article, unless the contracting authority is unable to describe the subject matter of the contract in a way that would make specifications clear enough to bidders.

Stating of elements such as a trademark, patent, type or manufacturer shall be accompanied by the words "or equivalent".

Use of Marks

Article 73

If the contracting authority intends to procure goods, services or works with specific environmental, social or other characteristics, it may request in the technical specifications, contract award criteria or contract implementation requirements, specific marks as proof that goods, services or works correspond to the required characteristics provided that all of the following conditions are met:

- 1) That a request for marking solely concerns the criteria that are in connection with the subject matter of public procurement and that it is appropriate for defining the characteristics of the subject matter of public procurement;
- 2) That a request for marking is determined on the basis of objectively verifiable and non-discriminatory criteria;
- 3) That marks are determined in an open and transparent procedure with participation of all interest groups, such as government bodies, service users, social partners, consumers, producers, distributors, non-governmental organizations etc.;
- 4) That the marks are available to all interested persons;
- 5) That the requests for marking are determined by a third party over which an interested person, i.e. supplier who has applied for obtaining the mark may not exercise decisive influence.

If the contracting authority requests precisely determined mark, it shall accept all marks confirming that goods, services or works meet the requirements of appropriate marking.

In a situation where an interested person was clearly not able to obtain certain mark requested by the contracting authority in the tender documents or an appropriate mark, the contracting authority shall accept another appropriate way of proving that may also include manufacturer's technical documentation provided that the interested person proves that goods, services or works he offers meet the requirements of a certain mark or certain requirements envisaged by the contracting authority.

Statement of Essential Requirements and Fees for using Patents

Article 74

Essential requirements not included in the applicable technical norms and standards, and relating to environmental protection, safety, and other factors of common interest, shall be applied and expressly stated in tender documents.

Contracting authority shall state in the tender documents that the patent usage fee, as well as the liability for breach of protected intellectual property rights of third persons, is borne by the bidder.

11. Requirements for Participation in Public Procurement Procedure

Mandatory Requirements

Article 75

Bidder in public procurement procedure shall prove that:

- 1) He is registered with the competent body, or entered in the appropriate register;
- 2) He or his legal representative have not been convicted of any criminal act as members of an organized criminal group; that he has not been convicted for commercial criminal offence, criminal offence against environment, criminal offence of receiving or offering bribe, criminal offence of fraud;
- 3) *(Deleted)*
- 4) He has paid due taxes, health and pension insurance and other public charges in accordance with laws of the Republic of Serbia or a foreign country if having a registered seat in its territory;
- 5) He has valid permit issued by competent body to carry out the activity which is the subject matter of public procurement, if such permit is stipulated by special regulation;

Contracting authority shall require from the bidders or candidates to explicitly state when preparing their bids that they obeyed the obligations arising from applicable legislation on safety at work, employment and working conditions, environmental protection, as well as that they do not have a ban on carrying out the activity which is in force at the time of submission of bid.

Additional Requirements

Article 76

Contracting authority sets the additional requirements in tender documents for participation in public procurement procedure.

Contracting authority sets the additional requirements in tender documents for participation in public procurement procedure concerning financial, operational, technical and personnel capabilities whenever it is necessary having in mind the subject matter of public procurement.

Contracting authority may provide in tender documents that bidder has to prove that it is not undergoing liquidation or bankruptcy procedure, or preliminary liquidation procedure.

Contracting authority may also define other additional requirements for participation in public procurement procedure, especially if they relate to social and environmental issues.

Contracting authority may set additional requirements concerning the fulfillment of bidder's obligations towards its subcontractors or suppliers.

Contracting authority sets requirements for participation in the procedure in such way that these requirements do not discriminate bidders and that are in logically related to the subject matter of public procurement.

When a commercial bank acts as bidder in public procurement procedure, it shall provide data in accordance with its obligation to guarantee confidentiality of information about its clients, pursuant to the law governing the activities of banks.

Proof of Fulfillment of Requirements

Article 77

Bidder proves the fulfillment of requirements referred to in Article 75, paragraph 1 of this Law by supplying the following evidence:

- 1) Excerpt from register of the competent authority;
- 2) Certificate of the competent court, i.e. competent police administration;
- 3) *(Deleted)*
- 4) Certificate of the competent tax authority and organization for compulsory social insurance, or certificate of the competent authority that the bidder is in the privatization process;
- 5) Valid licenses for the performance of relevant activity, issued by the competent authority.

Bidder may prove fulfillment of requirements referred to in Article 76, paragraph 2 of this Law by supplying the following evidence with the bid:

- 1) Report on solvency or scoring issued by the competent body; balance sheet with opinion of the authorized auditor, or excerpt from such balance sheet; statement of bidder's overall income from sale and earnings from products, works or services to which the public procurement contract relates - for no longer than the previous three financial years; opinion or statement of banks or other specialized institutions. Minimum annual income required from bidders shall not be higher than the double estimated value of public procurement, except in extraordinary cases where this is necessary due to special risks related to the subject matter of public procurement. Contracting authority shall specify in tender documents which proof referred to in this item it has chosen and/or which other proofs evidencing the financial and economic capacity the bidder has to submit;
- 2) One or more proofs appropriate to the subject matter of contract, the quantity and the intended purpose, such as:

- (1) List of most important works performed, goods delivered or services provided, over a period not longer than eight years for works, or five years for goods and

services, together with the amounts, dates and lists of purchasers or contracting authorities;

(2) Professional references accompanying the list of most important works performed, goods delivered or services provided;

(3) Description of bidder's technical equipment and devices, quality assurance measures, and research and development capacities;

(4) Statement on key technical staff and other experts, who shall be responsible for contract implementation, as well as on persons responsible for quality control;

(5) Sample, description or photograph of the product, and description of works or services that bidder shall perform or provide. In case of doubt, the contracting authority may demand proof of authenticity of samples, descriptions or photographs;

(6) Compliance declaration, certificate, accreditation and other results of compliance assessment according to standards and related documents for compliance assessment, or any other appropriate instrument by which bidder proves the compliance of bid with technical specifications or standards requested in tender documents.

The proof referred to in paragraph 1, items 2) to 4) shall not be older than two months prior to opening of bids, or, in the case of qualifying procedure, prior to updating the list.

Contracting authority may determine in tender documents that fulfillment of all or of some requirements, other than requirements referred to in Article 75, paragraph 1, item 5) of this Law, is to be proved by submitting a statement, whereby the bidder under full material and criminal responsibility confirms that he fulfils requirements.

In case where the procedure referred to in Article 36, paragraph 1, items 4) through 7) of this Law is carried out, the contracting authority determines the manner of proving fulfillment of requirements referred to in Article 75, paragraph 1 of this Law, which shall be adequate to the circumstances of given procurement, except for the requirements referred to in Article 75, paragraph 1, item 5) of this Law.

Contracting authority shall duly observe lawful interests of bidders, by protecting their technical and business secrets in terms of the law governing protection of business secrets.

Bidder, candidate, or supplier, shall inform contracting authority, in writing and without delay, of any change concerning fulfillment of requirements referred to in the public procurement procedure, which occurs before the decision is rendered or the contract is concluded, during the list of candidates validity period, i.e. during the public procurement contract validity period, and document it in the prescribed manner.

When determining evidence which prove fulfillment of requirements, the contracting authority pays attention to the costs of obtaining such evidence, i.e. makes sure that the costs of obtaining evidence are not disproportional to the evaluated value of public procurement.

Provisions of this Article shall apply mutatis mutandis to natural persons acting as bidders, and to applicants.

The Public Procurement Office regulates in detail the manner of proving fulfillment of requirements.

Register of Bidders

Article 78

Organization competent for registration of economic operators keeps public register of bidders - entrepreneurs and legal persons (hereinafter: register of bidders) who fulfill mandatory requirements referred to in Article 75, paragraph 1, items 1) through 4) of this Law.

Register of bidders is available on a web page.

Every person registered with the organization competent for registration may submit a request to be inscribed into the register of bidders, by submitting documents which prove fulfillment of mandatory requirements.

Organization authorized to issue proofs referred to in Article 77, paragraph 1 of this Law, or body authorized to pronounce sanctions and measures that prevent participation of persons in public procurement procedure, shall notify organization competent for registration of economic operators, immediately after having detected changes or pronouncing a sanction or measure against a person registered in register of bidders,

Person registered in register of bidders is not under the obligation to prove fulfillment of mandatory requirements when submitting a bid or an application.

The following data on bidders and changes of data on bidders are registered in the register of bidders:

- 1) Identification/ registration number;
- 2) Tax identification number;
- 3) Business name and address of the seat;
- 4) Personal name and personal citizen's number, or number of passport and the issuing state, bidder's legal representative, if this legal representative is a natural person, and business name and identification number of bidder's legal representative, if this legal representative is a legal person.

Bidder's registration date, i.e. date of change of any data on bidder that are the subject of registration are also registered in the register of bidders.

Bidder is deleted from the register of bidders pursuant to bidder's request to be deleted, or *ex officio* if it ceases to fulfill any of legally prescribed requirements.

Appeal addressed to the minister in charge of economy may be filed against the decision of registrar in charge of the register of bidders.

Minister in charge of economy prescribes the contents of the register of bidders and the documentation filed with the application to register a bidder.

Manner of Submitting Evidence

Article 79

Evidence of fulfillment of requirements may be submitted as uncertified copies, and contracting authority may, before rendering a decision on awarding a contract, demand from the bidder, whose bid was evaluated as the most advantageous on the grounds of the report of public procurement committee, to present the original or certified copy of all or some of the evidence.

Where bidder has submitted the statement referred to in Article 77, paragraph 4 of this Law, the contracting authority shall, prior to rendering a decision on awarding the contract, request from the bidder whose bid was evaluated as most advantageous to submit a copy of the requested proofs of fulfillment of requirements, and may also request to inspect the original or certified copy of all or of some of proofs. Contracting authority may also request proofs from other bidders. Contracting authority is not under the obligation to request from bidder to submit all or some of evidence if it possesses appropriate proofs for the same bidder from other public procurement procedures at that contracting authority.

Contracting authority is not under the obligation to act in the manner specified in paragraph 2 of this Article in case of low-value public procurement and negotiating procedure referred to in Article 36, paragraph 1, items 2) and 3) of this Law estimated value of which is lower than the amount referred to in Article 39, paragraph 1 of this Law.

If the bidder, within the given, adequate deadline, which may not be shorter than five days, fails to submit evidence referred to in paragraphs 1 and 2 of this Article, the contracting authority shall refuse its bid as unacceptable.

Contracting authority shall state in tender documents that the bidder is not obliged to supply evidence that is publicly available at web pages of competent bodies, and to specify such evidence.

Contracting authority may not refuse a bid as unacceptable just because it does not contain evidence defined by this Law or by tender documents, if the bidder has stated in its bid the web page which contains requested data and which is publicly available.

Where evidence of fulfillment of requirements is electronic document, the bidder submits a carbon copy of electronic document, in accordance with the law governing electronic document, unless the electronic bid is submitted where evidence is delivered in original electronic format.

Where bidder has registered seat in another state, the contracting authority may verify whether documents by which the bidder proves fulfillment of requested requirements were issued by the competent authorities of that state.

Where bidder could not obtain the requested documents within the deadline for submission of the bid, because, according to the regulations of its state of registration, the documents could not have been issued before the moment of bid submission, and if the bidder provides appropriate evidence thereon together with the bid, the contracting authority shall allow the bidder to deliver the required documents later, within an appropriate time period.

If the evidence referred to in Article 77 of this Law is not issued in the state wherein the bidder has its seat, instead of evidence the bidder may submit its written statement, given

under criminal and material liability and certified by the court or administrative body, public notary, or another competent body of that state.

12. Bid with Subcontractor and Joint Bid

Bid with Subcontractor

Article 80

The contracting authority shall, in tender documents, request from the bidder to state in the bid whether it shall partly entrust the execution of public procurement to a subcontractor, and to state in its bid the percentage of total procurement value that it shall entrust to the subcontractor, which cannot be larger than 50%, as well as a part of the procurement subject matter it shall execute through a subcontractor.

Where contracting authority conducts public procurement procedure aiming to conclude a framework agreement or individual public procurement, whose estimated value exceeds the amount under Article 59 of this Law, it may require from the bidder to execute a certain part of public procurement, according to its value or subject matter, through a subcontractor who is a sole trader or a small legal person within the meaning of regulations governing accounting and auditing.

Where bidder states in a bid that it shall entrust the subcontractor with partial execution of procurement, it shall state the name of the subcontractor, and if contracting authority and bidder conclude the contract, that subcontractor shall be named in the contract.

The bidder shall provide the contracting authority, at its request, access to the subcontractor's premises in order to inspect the fulfillment of requirements.

Bidder shall, on behalf of the subcontractors, provide evidence on fulfillment of mandatory requirements under Article 75, paragraph 1, items 1) through 4) of this Law, and evidence on fulfillment of requirements under Article 75, paragraph 1, item 5) of this Law for the part of procurement it shall execute through a subcontractor.

Where implementation of a part of public procurement whose value does not exceed 10% of total value of public procurement requires fulfillment of a mandatory requirement referred to in Article 75 paragraph 1, item 5) of this Law, the bidder may prove fulfillment of that requirement through a subcontractor to whom it has entrusted the execution of that segment of procurement.

In addition to mandatory requirements, contracting authority in tender documents defines what other requirements the subcontractor has to fulfill and in what manner to prove it, while those requirements may not be such to limit the submission of a bid containing a subcontractor.

Bidder or supplier is fully responsible to the contracting authority for execution of obligations under public procurement procedure, i.e. for performance of contractual obligations, irrespective of the number of subcontractors.

Contracting authority may, at the request of subcontractor and where the nature of the subject of procurement allows this, transfer due claims directly to subcontractor for share of procurement that is implemented by that subcontractor.

In the case under paragraph 9 of this Article, the contracting authority shall enable the supplier to object if the claim has not become due.

Contracting authority stipulates in tender documents the rules of procedure relating to paragraphs 9 and 10 of this Article, which do not influence the responsibility of supplier.

Supplier may not hire as subcontractor any person not named in the bid, otherwise the contracting authority shall realize the collateral and terminate the contract, unless where termination of the contract could cause significant damage to contracting authority.

In the case under paragraph 12 of this Article, the contracting authority shall notify the organization authorized for the protection of competition.

Supplier may hire as subcontractor a person not named in the bid, where subcontractor after submission of the bid sustained an enduring insolvency, provided that such person fulfils all requirements set for subcontractor and provided that it obtains prior consent from the contracting authority.

The provisions of this Article shall apply *mutatis mutandis* to applicants in restrictive procedure, qualifying procedure, and in competitive dialogue.

Joint Bid

Article 81

Bid may be submitted by a group of bidders.

Each bidder from the group of bidders shall individually fulfill mandatory requirements under Article 75, paragraph 1, items 1) through 4) of this Law, whereas additional requirements are fulfilled jointly, unless, due to justified reasons, the contracting authority decides otherwise.

Requirement under Article 75, paragraph 1, item 5) of this Law shall be fulfilled by the bidder from the group of bidders entrusted with the part of procurement which requires fulfillment of that requirement.

Integral part of a joint bid is an agreement whereby bidders from the group mutually, and towards the contracting authority, undertake to execute public procurement. Such agreement contains:

- 1) Information on a member of the group who is to be main contractor, i.e. who shall submit the bid and represent the group of bidders before the contracting authority and
- 2) Description of tasks of each bidder from the group of bidders in contract implementation.

Agreement under paragraph 4 of this Article also governs other matters that the contracting authority determines in tender documents.

Contracting authority may not demand from the group of bidders to associate into some specific legal form in order to submit a joint bid.

Bidders submitting joint bid have unlimited joint and several liability towards the contracting authority.

A cooperative may submit a bid independently, in its own name but on behalf of members of the cooperative, or a joint bid in the name of the cooperative members.

Where a cooperative submits bid in its own name, for obligations stemming from public procurement procedure and public procurement contract, both the cooperative and its members are liable, in accordance with the law.

Where a cooperative submits a joint bid in the name of its members, for obligations from public procurement procedure and public procurement contract, members of the cooperative have unlimited joint and several liability.

Contracting authority may request the members of group of bidders to state in bids the names and adequate professional qualifications of persons who shall be responsible for implementation of the contract.

The provisions of this Article shall apply *mutatis mutandis* to applicants in restrictive procedure, qualifying procedure and in competitive dialogue.

13. Negative References

Article 82

Contracting authority may reject a bid if it possesses evidence that, over the previous three years, prior to the moment the invitation to submit bids was published, the bidder has, in a public procurement procedure:

- 1) Acted contrary to prohibition under Articles 23 and 25 of this Law;
- 2) Violated competition;
- 3) Supplied false data in a bid, or unjustifiably refused to sign a public procurement contract after it had been awarded to it;
- 4) Refused to supply evidence and collateral to which it has committed in the bid.

Contracting authority may reject a bid where it possesses evidence confirming that the bidder failed to fulfill its obligations under the previously concluded public procurement contracts that related to the same subject of procurement, over a period of previous three years prior to the moment the invitation to submit bids was published.

The evidence referred to in paragraphs 1 and 2 of this Article may be:

- 1) A final court decision or a final decision of another competent body;
- 2) A legal instrument on realized collateral for securing the fulfillment of obligations in public procurement procedure or in fulfillment of contractual obligations;
- 3) A legal instrument on paid contractual penalty;
- 4) A complaint from a consumer, i.e. user, where these were not rectified within the contracted deadline;

- 5) A report by the supervisory body on works that were not executed in accordance with the project or contract;
- 6) A statement on termination of the contract due to failure to fulfill the essential elements of the contract, given in the manner and under conditions prescribed by the law governing contracts and torts;
- 7) Evidence that persons not named in the bid were hired as subcontractors or members of the group of bidders in implementation of the public procurement contract;
- 8) Other appropriate evidence relevant to the subject of public procurement, which refers to fulfillment of obligations in earlier public procurement procedures or relating to previously awarded public procurement contracts.

Contracting authority may reject a bid if it possesses evidence under paragraph 3, item 1) of this Article which refers to procedure executed or contract awarded by another contracting authority, if the subject matter of the public procurement was of the same type.

Article 83

(Deleted)

14. Criteria for Awarding Contract

Determining the Criterion

Article 84

Contracting authority shall publish in invitation to submit bids and in tender documents the same criterion and elements of the criterion for awarding contract.

Elements of the criterion on the basis of which the contracting authority shall award the contract shall be described and evaluated, shall not be discriminatory, and shall be logically related to the subject of public procurement.

Contracting authority states, describes and evaluates, in tender documents, the criterion and all elements of the criterion it intends to apply, and in particular it states the methodology for allocation of weighting points for each element of the criterion, which shall enable subsequent objective verification of bid evaluation.

Contracting authority shall define in tender documents the elements of the criterion, i.e. the manner based on which it shall award the contract in the situation when there are two or more bids having equal number of weighted points, or the same offered price.

When evaluating bids, the contracting authority shall apply only the criterion and elements of the criterion contained in tender documents, in the way they were described and evaluated.

Types of Criteria

Article 85

Criteria for evaluating bids are:

- 1) Economically most advantageous bid, or
- 2) Lowest price offered.

Criterion of economically most advantageous bid is based on various elements of the criterion, depending on the subject matter of public procurement, such as:

- 1) Offered price;
- 2) Discount to the prices from the pricelist of contracting authority;
- 3) Deadline for delivery or performance of service or works within the minimum acceptable deadline that does not compromise the quality, and the maximum acceptable deadline;
- 4) Current costs;
- 5) Cost effectiveness;
- 6) Quality;
- 7) Technical and technological advantages;
- 8) Environmental advantages and environment protection;
- 9) Energy efficiency;
- 10) After-sale servicing and technical assistance;
- 11) Warranty period and type of warranties;
- 12) Obligations concerning spare parts;
- 13) Post-warranty maintenance;
- 14) Number and quality of engaged staff;
- 15) Functional characteristics;
- 16) Social criteria;
- 17) Service life costs etc.

The elements of the criterion of the economically most advantageous bid may be divided into sub-criteria.

Requirements for participation referred to in Articles 75 and 76 of this Law may not be defined as elements of the criterion.

Contracting authority shall assign in tender documents the relative significance (weight) to each element of the criterion, i.e. sub-criterion; in such way that total sum of weighted points amounts to 100.

Contracting authority chooses among the submitted bids using the criterion of the economically most advantageous bid, by ranking them on the basis of weighted points determined for the elements of the criterion.

Advantage for Domestic Bidders and Domestic Goods

Article 86

Where applying the criterion of economically most advantageous bid, and in a situation with bids submitted by a domestic and a foreign bidder which provide services or perform works, the contracting authority shall select the bid of most advantageous domestic bidder, provided that the difference in the final sum of weighted points between most advantageous bid of the foreign bidder and most advantageous bid of the domestic bidder is not higher than 5 in favor of the bid of foreign bidder.

Where applying the criterion of economically most advantageous bid, and in situation with bids of bidders offering goods of domestic origin, and bids of bidders offering goods of foreign origin, the contracting authority shall choose as the most advantageous bid the bid of bidder offering goods of domestic origin, provided that the difference in the final sum of weighted points between most advantageous bid of the bidder offering goods of foreign origin and most advantageous bid of the bidder offering goods of domestic origin is not higher than 5 in favor of the bid of the bidder offering goods of foreign origin.

Where applying the criterion of lowest offered price, and in situation with bids of domestic and foreign bidders that provide services or perform works, the contracting authority shall select the bid of domestic bidder, provided that its offered price is not higher than 5% in comparison to the lowest price offered by the foreign bidder.

Where applying the criterion the of lowest offered price, and in a situation with bids of bidders providing goods of domestic origin and bids of bidders providing goods of foreign origin, the contracting authority shall select the bid of the bidder which offers goods of domestic origin, provided than its price offered is not more than 5% higher compared to the lowest price offered by bidder who offers goods of foreign origin.

Customs duties are calculated into the foreign bidder's price.

Domestic bidder is a resident legal person, in terms of the law governing profit taxes of legal persons, or a resident natural person, in terms of the law governing citizens' income tax.

In case of joint bid, a group of bidders is considered to be a domestic bidder if each member of the group of bidders is the person referred to in paragraph 6 of this Article.

In case of a bid that includes a subcontractor, the bidder is considered to be a domestic bidder, if the bidder and its subcontractor are persons referred to in paragraph 6 of this Article.

Where bidder supplies evidence that it offers goods of domestic origin, the contracting authority shall, before ranking the bids, invite all other bidders whose bids were evaluated as acceptable, to state whether they offer goods of domestic origin and to supply evidence thereon.

Advantage under paragraphs 1 through 4 of this Article, granted in public procurement procedures the participants of which are the bidders from signatory states of the Central

Europe Free Trade Agreement (CEFTA 2006) shall be applied mutatis mutandis with the provisions of that agreement.

Advantage under paragraphs 1 through 4 of this Article, granted in public procurement procedures the participants of which are the bidders from signatory states of the Stabilization and Association Agreement between the European Communities and their Member States, on one side, and the Republic of Serbia, on the other side, shall be applied mutatis mutandis with the provisions of that agreement.

The Ministry in charge of economy shall regulate in detail the manner of proving compliance with requirements referred to in paragraphs 2 and 4 of this Article.

The manner of applying the advantage expressed in price, in the procedures wherein the criterion is economically most advantageous bid is more closely regulated by the Government.

15. Bid in Public Procurement Procedure

Manner of Bid Submission

Article 87

Bidder submits the bid directly, by mail or electronic means.

Bidder submits the bid in a sealed envelope or box, sealed in such manner that during bid opening it can be determined with certainty that it is being opened for the first time.

Bidder may submit only one bid.

Bidder which independently submitted bid may not participate at the same time in a joint bid, or act as subcontractor; also the same person may not participate in multiple joint bids.

Contracting authority shall refuse all bids submitted contrary to prohibition referred to in paragraph 4 of this Article.

Within the time limit for submission of the bid, the bidder may amend, supplement, or cancel its bid in the manner specified in tender documents.

Costs of Bid Preparation

Article 88

Bidder may include in its bid the total amount and the structure of costs of bid preparation.

Costs of preparation and submission of the bid are borne exclusively by the bidder who may not seek reimbursed from the contracting authority.

Where public procurement procedure was cancelled due to reasons related to the contracting authority, the contracting authority shall reimburse the bidder for the expenses of sample or model production, if these were made in compliance with the technical specifications of the contracting authority, and for the expenses for acquiring collateral, provided that the bidder requested reimbursement of these expenses in its bid.

Submitting Electronic Bid

Article 89

Electronic bid is a bid or a part of a bid which the bidder submits to the contracting authority in electronic format, and which fulfils all requirements in accordance with the law governing electronic signature, electronic document, and electronic business. Electronic bid shall have a timestamp.

Where only a part of the bid is delivered in electronic form, it must make an unambiguous whole with the other parts of the same bidder's bid.

Bidder may submit the bid in electronic form, provided that the contracting authority defined such possibility in tender documents.

Information system of the contracting authority shall provide technologically independent reception of bids and shall be available to all interested parties free of charge.

Means (devices) for reception of electronic bids, assisted by technological devices and appropriate procedures, shall secure that:

- 1) Electronic bids are signed in accordance with the legislation that govern the manner of their protection;
- 2) Electronic signature is authorized by qualifying confirmation;
- 3) Electronic bid has a timestamp, i.e. that the date, hour and minute of the receipt of the bid may be correctly determined;
- 4) Before the moment for bid opening, defined in advance, no one has access to data from bids;
- 5) It can be easily detected if there has been a violation of prohibition of access to data from bids;
- 6) Only persons authorized by contracting authority may set and change the date and hour of bid opening;
- 7) Only authorized persons have access to data from bids, and only so through their simultaneous action if there are several of them.

Information system of the contracting authority shall facilitate the archiving of electronic bids in accordance with the regulations governing electronic business and regulations governing documentation and archives.

Provisions of this Article apply mutatis mutandis to the submission of electronic bids.

Bid Validity Period

Article 90

Contracting authority determines the bid validity period and such period shall be stated in the bid, but may not be shorter than 30 days from the day of opening of bids.

Where the bid validity period expired, contracting authority shall in writing request the bidder to extend the period of bid validity.

Bidder which accepts the request for extension of the bid validity period may not change the bid.

Bids with Variants

Article 91

Where the criterion for selection is the economically most advantageous bid, the contracting authority may allow submission of bids with variants.

Contracting authority shall explicitly state in its invitation to submit bid and in tender documents whether it is allowed to submit bids with variants, because otherwise it is presumed that submission of bids with variants is not allowed.

Where submission of bids with variants is allowed, the contracting authority shall define in tender documents which requirements all variants must fulfill in order to be acceptable.

If submission of bids with variants is allowed, the contracting authority may not reject a variant of the bid just because its acceptance would transform the contract on public procurement of goods into the contract on public procurement of services, or vice versa.

Uncommonly Low Price

Article 92

Contracting authority may reject a bid due to its uncommonly low price.

For the purpose of this Law, uncommonly low price is the offered price which substantially deviates from comparable market price thus raising doubts in feasibility of implementing the public procurement pursuant to the offered conditions.

Where contracting authority assesses that a bid contains abnormally low price, it shall demand the bidder a detailed explanation of all constituent elements of the bid it considers relevant, in particular those concerning the cost effectiveness of the construction method, production or selected technical solutions, in view of exceptionally favorable circumstances for implementing contract available to the bidder, or in view of the originality of products, services or works proposed by the bidder.

In the case under paragraph 3 of this Article, the contracting authority shall set an appropriate deadline for bidder's response.

After having received requested explanation, the contracting authority shall check the relevant constituent elements of the bid referred to in paragraph 3 of this Article.

Contracting authority shall in particular check the fulfillment of bidder's or candidate's obligations arising from the applicable legislation on safety at work, employment and working conditions, environmental protection and protection of intellectual rights, and may demand that the bidder provides adequate evidence.

Additional Explanations, Control and Permitted Corrections

Article 93

Contracting authority may request from bidders additional explanations that shall be useful in the course of examining, evaluating and comparing bids, and may also conduct control (insight) at the bidder or its subcontractor.

Contracting authority may request from the selected bidder in the procedure of competitive dialogue to confirm the obligations accepted in the bid.

Contracting authority may not demand, allow, or offer, alterations to the elements of bid relevant for applying the criterion for awarding contract, or a change that would make an inappropriate or unacceptable bid into an appropriate or acceptable one, unless otherwise follows from the nature of public procurement procedure.

Subject to the bidder's consent, the contracting authority may correct arithmetic errors noticed in the course of examining the bid after the concluded opening of bids.

In case of difference between the unit and the total price, the unit price shall prevail.

Where bidder disagrees with the correction of arithmetic errors, the contracting authority shall reject its bid as unacceptable.

16. Time Limits in Public Procurement Procedure

Setting Deadline for Submission of Bids

Article 94

Deadline for submission of bids shall be adequate to the time needed for preparation of an acceptable

Setting the deadline under paragraph 1 of this Article shall mean the setting of date and hour up to which the bids may be submitted.

Time Limit for Submission of Bids in Open Procedure and of Application in Restrictive and Qualifying Procedures and in Competitive Dialogue

Article 95

Time limit for submission of bids in open procedure, i.e. applications in restrictive and qualifying procedures and in competitive dialogue may not be shorter than:

- 1) 35 days from the day of publishing invitation to submit bids, where the estimated value of public procurement exceeds the amount referred to in Article 57 of this Law;
- 2) 30 days from the day of publishing of the invitation to submit bids, where the estimated value of public procurement does not exceed the amount referred to in Article 57 of this Law;

Time limit for submission of bids in open procedure, i.e. applications in the restrictive and qualification procedure and in competitive dialogue may not be shorter than:

- 1) 20 days from the day the invitation to submit bids was published, if the estimated value of public procurement exceeds the amount referred to in Article 57 of this Law and if the

contracting authority published a prior notification within a term not shorter than 35 days, and no longer than 12 months prior to publication of the invitation.

2) 15 days from the day of publishing of the invitation to submit bids, where the estimated value of public procurement does not exceed the amount referred to in Article 57 of this Law and where the contracting authority published a prior notification within a term not shorter than 35 days, and no longer than 12 months prior to publishing of the invitation.

Time Limit for Submission of Bids in Restrictive and Qualifying Procedures

Article 96

Time limit for submission of bids in restrictive procedure may not be shorter than 20 days from the day on which contracting authority sent the invitation to candidates.

Time limit for submission of bids in qualifying procedure may not be shorter than eight days from the day when the contracting authority sent the invitation to candidates.

Time Limit for Submission of Bids in Negotiating Procedure with Publication of Invitation to Submit Bids

Article 97

Time limit for submission of bids in negotiating procedure with publication of the invitation to submit bids may not be shorter than 25 days from the day of publishing of the invitation.

If the contracting authority conducts negotiating procedure referred to in Article 35, paragraph 1, item 1) of this Law and decides to invite exclusively and all bidders who participated in open, restrictive or qualifying procedure or competitive dialogue to supplement their bids, so as to make them acceptable, it shall set a time limit suitable to time needed to supplement a bid.

Time Limit for Submission of Final Bids in Competitive Dialogue

Article 98

Time limit for submission of final bids in competitive dialogue may not be shorter than 20 days from the day of sending the invitation to chosen candidates.

Time Limit for Submission of Bids in Low-Value Public Procurement Procedure

Article 99

Time limit for submission of bids in low-value public procurement procedure may not be shorter than eight days from the day of publishing of the invitation to submit bids.

Time Limit for Submission of Initial Bids in the Dynamic Procurement System

Article 100

Time limit for submission of initial bids during the dynamic procurement system is 15 days from the day of publishing of the invitation to submit bids.

Calculation of Time Limits

Article 101

Time limit for submission of bids is calculated from the day of publishing of the invitation to submit bids on the Public Procurement Portal, i.e. from the day of sending of invitation to submit bids.

17. Receiving and Opening Bids

Receiving Bids

Article 102

When receiving a bid, the contracting authority shall note down on envelope or box containing the bid the time of receipt and file the number and date of the bid according to the order of receipt. If the bid was delivered directly, the contracting authority hands over to the bidder the confirmation of receipt of the bid.

For electronically submitted bid, the contracting authority shall ensure that the information system sends confirmation of receipt immediately after receiving the bid.

It is prohibited to provide information on received bids, and the contracting authority shall keep the bids in such a way that they do not come into possession of unauthorized persons.

Opening of Bids

Article 103

Opening of bids is performed immediately after the expiry of the term for submission of bids, i.e. on the same day.

Opening of bids is public and any interested person may be present.

Only authorized representatives of bidders may be actively involved in the procedure of bids' opening.

Contracting authority shall exclude the public in the procedure of bids' opening, if that is necessary to protect data which represent trade secret in terms of the law governing the protection of trade secrets, or which represent secret data in terms of the law governing data secrecy.

In the case referred to in paragraph 4 of this Article, the contracting authority renders a decision to determine the reasons for exclusion of public and whether such exclusion of public also refers to representatives of the bidder, as well.

Minutes on Opening of Bids

Article 104

Contracting authority shall take minutes on the procedure of bid opening, in which it enters the following data in the following sequence:

- 1) Date and time of the beginning of bids' opening;
- 2) Subject matter and estimated value of public procurement in total and separately for each lot;
- 3) Names of the public procurement committee members participating in the procedure of bids' opening;
- 4) Names of bidders' representatives present at the bids' opening;
- 5) Names of other present persons;
- 6) Numbers under which a bid was filed;
- 7) Name of a bidder, i.e. code of a bidder;
- 8) Offered price and possible discounts offered by a bidder;
- 9) Data from a bid which are defined as elements of the criterion and which can be presented numerically;
- 10) Identified shortcomings of a bid;
- 11) Possible objections of bidders' representatives concerning the bids' opening procedure.

Bidder's representative participating in the bid opening procedure is entitled to, during the bids' opening, to examine the data from the bid which is entered in the minutes on bids' opening.

Contracting authority may not perform expert evaluation of a bid during the bids' opening.

If an untimely bid is submitted, the contracting authority shall, upon completion of the opening procedure, return it to the bidder unopened, with an indication that it has been submitted untimely.

During this procedure, the contracting authority shall ensure protection of confidential information from a bid in accordance with Article 14 of this Law.

The minutes on bids' opening are signed by members of the committee and representatives of bidders who take a copy of the minutes.

Contracting authority shall deliver the minutes to bidders who did not participate in the bids' opening procedure within a term of three days from the day of opening.

Provisions of this Article also apply mutatis mutandis to the procedure of applications' opening.

18. Awarding the Contract

Report on Expert Evaluation of Bids

Article 105

Public procurement committee shall draft written report on expert evaluation of bids.

The report referred to in paragraph 1 of this Article shall particularly contain the following data:*

- 1) Subject matter of public procurement;
- 2) Estimated value of public procurement in aggregate and separately for each lot;
- 3) Basic data on bidders;
- 4) Rejected bids, reasons for their rejection and price offered in those bids;
- 5) Where a bid has been rejected due to its abnormally low price, detailed explanation - the manner in which that price was determined;
- 6) Manner of applying the methodology for weighting points allocation;
- 7) Name of the bidder to whom the contract is awarded, and where the bidder stated the procurement shall be carried out with the assistance of a subcontractor, name of the subcontractor as well.

Provisions of this Article apply mutatis mutandis to the report on expert evaluation of applications.

Essential Deficiencies in Bid

Article 106

Contracting authority shall refuse a bid if:

- 1) Bidder fails to prove it fulfils mandatory requirements for participation;
- 2) Bidder fails to prove it fulfils additional requirements;
- 3) Bidder fails to provide the requested collateral;
- 4) Offered period of validity of the bid is shorter than the stipulated one;
- 5) Bid contains other deficiencies due to which is not possible to determine the actual contents of the bid, or to compare it with other bids.

Conditions for Awarding the Contract

Article 107

Contracting authority shall refuse all unacceptable bids after examining and evaluating the bids in public procurement procedure.

Contracting authority shall rank acceptable bids by applying the criterion for awarding the contract defined in the invitation to submit a bid and in the tender documentation.

After having performed expert evaluation of bids, based on the report of the committee, the contracting authority renders a decision on awarding the contract, if it has received at least one acceptable bid.

Contracting authority may award the contract to bidder whose bid contains offered price higher than the estimated value of public procurement, where it is not higher than comparable market price and where prices offered in all adequate bids are higher than the estimated value of public procurement.

In the case referred to under paragraph 4 of this Article, the contracting authority shall, after rendering the decision, deliver a reasoned report to the Public Procurement Office and the State Audit Institution.

Contracting authority renders a decision on recognizing qualification, i.e. on concluding a framework agreement, pursuant to requirements set forth by this Law.

Decision on Awarding the Contract

Article 108

Based on the report of expert evaluation of bids, the contracting authority shall render a decision on awarding the contract within a term defined in the invitation to submit bids.

Term under paragraph 1 of this Article shall not be longer than 25 days from the day of bids' opening, except in especially justified cases, such as are the volume or complexity of bids, or complexity of methodology of weighting points allocation, in which cases the term may be 40 days from the day of bids' opening.

In low-value public procurement procedure, the term under paragraph 1 of this Article shall not be longer than ten days.

Decision on awarding contract shall be reasoned and shall particularly contain data from the report on expert evaluation of bids and instruction on legal remedy.

The contracting authority shall publish the decision on awarding the contract on the Public Procurement Portal and on its web page within a term of three days from the day of rendering.

If certain data from the decision constitute a business secret in terms of the law governing trade secret protection or constitute secret data in terms of the law governing data secrecy, such data from the decision shall not be published.

In the case referred to in paragraph 6 of this Article the decision is delivered in the original form to the Public Procurement Office and the State Audit Institution.

Provisions of this Article apply mutatis mutandis to the decision on concluding a framework agreement, decision on recognizing qualification and the decision on cancelling the procedure.

Decision on Cancelling Public Procurement Procedure

Article 109

Contracting authority renders a decision on cancelling public procurement procedure on the grounds of the report on expert evaluation of bids, if the requirements were not met for awarding contract or for decision on concluding the framework agreement, or if requirements were not met for rendering decision on recognizing qualification.

Contracting authority may cancel public procurement procedure for objective and provable reasons which could not have been foreseen at the time of initiation of the procedure and which make it impossible for initiated procedure to be completed or due to which contracting authority's need for the relevant procurement ceased, for which reasons it shall not be repeated during the same budget year or within the next six months.

Contracting authority shall explain in writing its decision to cancel the public procurement procedure, particularly stating the reasons for cancelling the procedure and instruction on legal remedy and to publish it on the Public Procurement Portal and on its web page within three days from the day of rendering such a decision.

Contracting authority shall, within a term of five days from the day of finality of the decision on cancelling public procurement procedure, publish a notification on cancellation of the public procurement procedure which contains the data referred to in Appendix 3L.

Contracting authority shall decide on expenses of bid preparation referred to in Article 88, paragraph 3 of this Law, in the decision on cancelling public procurement procedure.

Final decision on cancelling the procedure represent an enforceable document for the purpose of expenses of bid preparation under Article 88, paragraph 3 of this Law.

If certain data from the decision constitute a business secret in terms of the law governing trade secret protection or constitute secret data in terms of the law governing data secrecy, such data from the decision are not be published.

In the case referred to in paragraph 7 of this Article the decision is delivered in the original form to the Public Procurement Office and the State Audit Institution.

Insight into Documents

Article 110

Bidder, candidate, i.e. applicant are entitled to insight into documents on conducted public procurement procedure after rendering of the decision on recognition of qualification, decision on conclusion of the framework agreement, or decision on awarding the contract, or decision on cancellation of the procedure, whereof they may file a written request to the contracting authority.

Contracting authority shall enable the person under paragraph 1 of this Article to have insight into and copy documents from the procedure, at the expense of such person, within a term of two days from the day of receipt of written request, under obligation to protect data in accordance with Article 14 of this Law.

Informing Bidders

Article 111

Within a term of five days since rendering decision, the contracting authority may hold a separate meeting with each bidder, where members of public procurement committee shall explain the manner of conducting the procedure, defining requirements for participation, manner of determining specification of public procurement subject matter, manner of determining elements of the criterion, and methodology for weighting points allocation, reasons for bid rejection, ranking of bids, etc.

If majority of bids are refused in public procurement procedure whose estimated value is higher than the amount defined in Article 57 of this Law, contracting authority shall organize notification of bidders. If only two bids were submitted and one out of the two was refused, it shall not be deemed that most bids were refused.

During notification, bidders may ask questions and give their proposals on how to improve the procedure.

Minutes are taken about notification of bidders and conversation with bidders.

During notification of bidders, the contracting authority shall protect data in accordance with Article 14 of this Law.

19. Public Procurement Contract

Conditions for Conclusion of Public Procurement Contract

Article 112

Contracting authority may conclude public procurement contract, i.e. framework agreement, after rendering decision to award contract or decision to conclude framework agreement and if, within deadline defined by this Law, no request for the protection of rights was filed, or if such request for the protection of rights was rejected or refused.

Contracting authority may conclude public procurement contract even before the expiry of the time limit for filing request for the protection of rights:

- 1) Based on a framework agreement;
- 2) In the case of applying negotiating procedure under Article 36, paragraph 1 item 3) of this Law;
- 3) In the case of applying dynamic procurement system;
- 4) In the case of low-value public procurement procedure under Article 39, paragraph 6 of this Law;
- 5) Where only one bid was submitted, except in negotiating procedure without publication of the invitation to submit bids.

Deadline for Concluding Contract

Article 113

Contracting authority shall deliver the public procurement contract to the bidder to whom the contract was awarded within a term of eight days from the day of expiry of time limit for filing the request for the protection of rights.

Where contracting authority fails to deliver signed contract to bidder within the time limit under paragraph 1 of this Article, the bidder is not under obligation to sign the contract which shall not be considered as withdrawal of bid and the bidder shall not sustain any consequences due to that, except in case of duly filed request for the protection of rights.

Where the bidder to whom contract was awarded refuses to sign the public procurement contract, the contracting authority may conclude the contract with the first following most advantageous bidder.

Where in case under paragraph 3 of this Article, due to the methodology for awarding weighting points, it is necessary to determine who is the first following most advantageous bidder, the contracting authority shall again perform expert re-evaluation of bids and make the decision on awarding the contract.

Electronic Format of Contract

Article 114

Public procurement contract may be concluded in electronic format in accordance with the law governing electronic document and electronic signature.

Amendments during the Term of the Contract

Article 115

Contracting authority may, after conclusion of a public procurement contract without conducting public procurement procedure, increase volume of the public procurement subject matter, provided that the contract value may be increased up to a maximum of 5% of the total value of the contract originally concluded, whereby the total value of the contract increase may not be higher than the value referred to in Article 39, paragraph 1 of this Law, i.e. Article 124a for contracting authorities in the areas of water management, energy, transport and postal services, under the condition that such possibility is clearly and precisely stated in tender documentation and public procurement contract.

After conclusion of public procurement contract, the contracting authority may allow change of price and other essential elements of the contract due to objective reasons which shall be clearly and precisely defined in tender documentation, public procurement contract, i.e. prescribed by special regulations. Harmonization of price with clearly predefined parameters in the contract and tender documentation is not considered to be a change of price.

Limits referred to in paragraph 1 of this Article do not relate to surpluses of works if they are contracted.

Subject matter of public procurement may not be changed by means of amendment to public procurement contract referred to in paragraphs 1 and 2 of this Article.

In the case referred to in para. 1 and 2 of this Article the contracting authority shall adopt a decision on amendment to the contract containing data in accordance with Appendix 3M and

to publish it on the Public Procurement Portal and deliver report to the Public Procurement Office and the State Audit Institution within three days from the day of adoption thereof.

Notification on Concluded Public Procurement Contract

Article 116

Contracting authority shall publish a notification on concluded public procurement contract or framework agreement within a term of five days from the day of conclusion of the contract, or the framework agreement.

Contracting authority may quarterly, within a term of 15 days following the end of the quarter, publish notifications on public procurement contracts concluded pursuant to the framework agreement or in the dynamic procurement system.

IV. PUBLIC PROCUREMENT IN THE AREAS OF WATER MANAGEMENT, ENERGY, TRANSPORT AND POSTAL SERVICES

Contracting Authority

Article 117

Contracting authority in the areas of water management, energy, transport and postal services is:

- 1) Contracting authority referred to in Article 2 of this Law that performs activities in the areas of water management, energy, transport and postal services, when conducting procurement for the purpose of performing these activities;
- 2) Person who performs activities in the areas of water management, energy, transport and postal services, pursuant to exclusive or special rights, when conducting procurement for the purpose of performing these activities;
- 3) Public enterprise which performs activity in the areas of water management, energy, transport and postal services, when conducting procurement for the purpose of performing these activities.

Exclusive or special right that has been granted on the basis of objective criteria, in a transparent manner in the procedure wherein public disclosure was made, by applying the regulations on public procurement, public-private partnership and concessions or other procedure wherein objective criteria are applied and transparency and public disclosure are ensured, shall not be considered exclusive or special right in terms of paragraph 1, item 2) of this Article.

Public enterprise in terms of paragraph 1, item 3) of this Article, is any enterprise over which contracting authority may exercise, directly or indirectly, a prevailing influence by virtue of ownership over it, financial participation in it or the rules which govern it. A prevailing influence by the contracting authority is considered to exist in any of the following cases wherein the contracting authority, directly or indirectly:

- (1) Holds the majority of the enterprise subscribed capital;

- (2) Controls the majority of the votes relating to the enterprise's stocks;
- (3) May appoint more than a half of the members of the supervisory body, administrative or managing body of such enterprise.

Requirements, manner and procedure of public procurement not specifically regulated by this chapter is subject to other provisions of this Law.

Activities in Area of Water Management

Article 118

For the purpose of this Law, activities in the area of water management are:

- 1) Construction or management of facilities and networks in order to provide services to consumers related to production, transport or distribution of potable water;
- 2) Supplying these networks with potable water;
- 3) Hydraulic engineering projects, irrigation or land drainage, provided that more than 20% of the total quantity of water generated by these projects, irrigation or land drainage is used as potable water;
- 4) Filtration and drainage of waste water.

Providing potable water to networks which provide services to consumers through a contracting authority referred to in Article 117, paragraph 1, item 2) of this Law is not be considered to an activity in the area of water management in terms of this Law, if:

- 1) Contracting authority referred to in Article 117, paragraph 1, item 2) of this Law produces potable water for performing activities other than activities in water management, energy, transport or postal services;
- 2) Supplying of public network depends solely on own production of the contracting authority referred to in Article 117, paragraph 1, item 2) of this Law, and if that supply does not exceed 30% of the total production of potable water of that contracting authority, taking into account the average for the last three years including the current year.

Activities in the Area of Energy

Article 119

For the purposes of this Law, activities in the area of energy are:

- 1) Exploration or extraction of oil and natural gas, exploration or mining coal and other mineral raw materials and other solid fuels;
- 2) Construction or management of facilities and networks in order to provide services to users related to production, transport, transmission or distribution of electricity, natural gas and heating energy;
- 3) Supplying these networks with electric and heating energy and natural gas.

Supplying electric energy to networks that provide services to users via a contracting authority referred to in Article 117, paragraph 1, item 2) of this Law is not considered to be activity in the area of energy in terms of this Law, if:

1) Contracting authority referred to in Article 117, paragraph 1, item 2) of this Law produces electric energy in the aim of performing activity other than activity of water management, energy, transport or postal services;

2) Supplying of public network depends only on own production of the contracting authority referred to in Article 117, paragraph 1, item 2) of this Law, and if that supply does not exceed 30% of total electric energy production of that contracting authority, taking into account the average for the last three years, including the current year.

Supplying natural gas or heating energy to networks that provide services to users through the contracting authority referred to in Article 117, paragraph 1, item 2) of this Law is not considered to be activity in the area of energy in terms of this Law if:

1) Production of natural gas or heating energy by the contracting authority referred to in Article 117, paragraph 1, item 2) of this Law is an inevitable consequence of performance of activities which are not activities in water management, energy, transport or postal services;

2) Supplying public network is intended solely for economic exploitation of that production and does not exceed 20% of total annual income of the contracting authority referred to in Article 117, paragraph 1, item 2) of this Law, taking into consideration the previous three years and the current year.

Activities in the Area of Transport

Article 120

For the purpose of this Law, activities in the area of transport are:

1) Construction, maintenance and management of airports and river ports for the purpose of air and river transport;

2) Construction, maintenance and management of networks, as well as provision of services to users in the areas of railway transport, urban and suburban passenger transport on roads, conducted by trams, trolley-buses and buses.

A network is deemed to exist in the area of transport where the service is provided under conditions defined by the competent body, such as conditions on directions of provision of services, capacities of transport vehicles, frequency, and the like.

Providing services of bus transport is not an activity in the area of transport in terms of this Law, if other economic operators may freely conduct those activities in the relevant market.

Activities in the Area of Postal Services

Article 121

Activities in the area of postal service are provision of reserved and unreserved postal services in terms of the law governing postal services.

Activities in the area of postal services in terms of this Law are also the provision of other services which do not include postal services under conditions defined by this Article.

Other services are:

- 1) Services of managing postal service (services prior to and after delivery);
- 2) Services related to mail with no designated address which does not constitute mail in terms of the law governing postal services;
- 3) Philatelist services;
- 4) Logistics services which represent combination of physical delivery and/or storage and other non-postal services.

Public Procurements in the Areas of Water Management, Energy, Transport and Postal Services to which this Law does not apply

Article 122

The provisions of this Law do not apply to:

- 1) Procurements exempt from its application by Art. 7 and 7a of this Law;
- 2) Procurements that contracting authorities conduct for the purposes of performing activities in water management, energy, transport and postal services abroad, provided that it does not include the use of facilities and network within the Republic of Serbia;
- 3) The situation when contracting authority involved in the activity referred to in Article 118, paragraph 1, item 1) or 2) of this Law purchases potable water;
- 4) The situation when contracting authority involved in the activity referred to in Article 119, paragraph 1 of this Law procures:
 - (1) Energy or
 - (2) Fuel for energy production;
- 5) The situation when contracting authority procures from linked persons, or when a person which was established by contracting authorities exclusively for performing activities in water management, energy, transport or postal services procures from a person linked to one of the contracting authorities, provided that at least 80% of average revenue of the linked person in the last three years originates from the person with which it is linked;
- 6) The situation when a person established by multiple contracting authorities procures from its founders for the purposes of performing activity in water management, energy, transport or postal services;
- 7) The situation when a group of companies made up of contracting authorities in terms of the law governing companies, procures from a member of the group of companies solely for the purposes of performing activity in water management, energy, transport or postal services;

8) The situation when contracting authority procures from a group of companies whose integral part it is, provided that the group of companies was established with the aim of performing activity in water management, energy, transport and postal services, that it was established for at least a three year period, and that its founding act stipulates that contracting parties remain within it for at least three years.

Procedures

Article 123

The awarding of contract is performed in open, restrictive or qualifying procedure, or in negotiating procedure with publication of the invitation to submit bids.

The awarding of the contract may also be performed in other public procurement procedures, provided that the requirements defined in this Law for that are fulfilled.

Special Rules for Qualifying Procedure

Article 124

In its decision on recognition of qualification, the contracting authority also determines the period for which the qualification is recognized to candidates, which may not be longer than four years.

Contracting authority may update requirements for recognizing qualifications as necessary, and invite all candidates to submit applications in accordance with updated requirements.

In the case referred to in paragraph 2 of this Article, the contracting authority may not set additional requirements of any nature to certain candidates only, and may not request other proofs of requirements if the candidates have already proved the existing or the new requirements.

Contracting authority may also use the list of candidates of other contracting authorities, if it finds that those fulfill its demands.

In the case under paragraph 4 of this Article, the qualification of candidates is recognized for so long as the list of candidates remains valid.

Special Rules for Low-Value Public Procurement

Article 124a

Low-value public procurement in the areas of water management, energy, transport and postal services, in terms of this Law, is the procurement whose estimated value does not exceed 10,000,000 dinars, or in case of procurements of the same kind the total estimated value on an annual basis does not exceed 10,000,000 dinars.

Condition of Reciprocity

Article 125

If the bidders offer products originating from a country with which the Republic of Serbia has not concluded an agreement that would provide domestic bidders equal access to the

market of that country, such a bid may be rejected if the share of products originating from that state exceeds 50% of the aggregate value of products from that bid.

For the purposes of this Article, the software used in equipment of electronic communications network is considered to be a product.

Equal Bids

Article 126

If two bids or multiple numbers of bids are equal, according to the criterion set under Article 85 of this Law, the contracting authority gives advantage to bids that cannot be refused on the basis of Article 125 of this Law.

Equal bids regarding the price, in terms of paragraph 1 of this Article, are deemed to be bids prices in which the price difference is no more than 3%.

Contracting authority shall not give advantage to a bid in accordance with paragraph 1 of this Article, if choice of such bid would obligate the contracting authority to procure a product with technical characteristics different than those belonging to the existing products.

V. PUBLIC PROCUREMENTS IN THE FIELD OF DEFENSE AND SECURITY

Public Procurements in the Field of Defense and Security

Article 127

Public procurements in the field of defense and security are the procurements of:

- 1) Weapons and military equipment including any of its integral parts, components and sets;
- 2) Security sensitive equipment including any of its integral parts, components and sets;
- 3) Goods, services or works directly related to sensitive military or security equipment or facilities under items 1) and 2) of this paragraph within any given period or in the entire service life;
- 4) Services and works solely for defense purposes;
- 5) Security sensitive works and security sensitive services.

Military equipment is equipment specially made or adjusted for military purposes, intended for use as weapons, ammunition or military material.

Sensitive security equipment, services and works are goods, services and works for security purposes, which include, request, and contain, secret information.

When conducting procurements under paragraph 1 of this Article, the contracting authority shall prevent any conflict of interests, to ensure competition whenever it is possible, and to ensure that the contracted price is no higher than the comparable market price.

On the basis of delivered procurement plan, the Government renders a decision to conduct the procedures and notifies thereof the competent committee of the National Assembly.

The Government regulates conditions, manner and procedure of public procurement in the field of defense and security and defines the list of goods, services and works referred to in paragraph 1 of this Article.

Public Procurements in the Area of Defense and Security exempt from this Law

Article 128

Provisions of this Law and bylaw referred to in Article 127, paragraph 6 of this Law do not apply to the procurements:

- 1) Under Article 127 of this Law, where contracts were awarded in compliance with international agreements of the Republic of Serbia concluded with another state or international organization;
- 2) That are necessary and exclusively aimed to the needs of intelligence activities;
- 3) Performed abroad, when military or police forces are deployed outside of the territory of the Republic of Serbia, if operative needs demand that the contracts are concluded with legal persons or state bodies in the area of operations;
- 4) Within the cooperation programs based on research and development of a new product implemented jointly by the Republic of Serbia and one or multiple states or international organizations, if applicable to the subsequent phases of the entire or partial service life of such product;
- 5) Where application of public procurement procedure would result in disclosure of Information deemed as key for security, pursuant to a Government's decision.

In the case under paragraph 1, item 4) of this Article, the competent ministry, i.e. competent state body shall submit a report to the Government on implementation of the cooperation program.

Special Rules of Procedure in Public Procurements in the Area of Defense and Security

Article 129

Public procurement contract is awarded in restrictive or negotiating procedure with publishing invitation to submit bids, and in other public procurement procedures provided that the requirements set forth by this Law or bylaw referred to in Article 127, paragraph 6 of this Law are met.

In case of conducting restrictive procedure, Article 33, paragraph 5 of this Law does not apply.

In case of conducting negotiating procedure without publishing invitation to submit bids, the contracting authority does not obtain the opinion of the Public Procurement Office on the justifiability of applying the negotiated procedure.

Negotiating procedure referred to in Article 36, paragraph 1, items 4) and 5) of this Law may be conducted if no more than three years lapsed since the originally concluded contract, except in exceptional cases which are determined depending on the service life of equipment, installations or systems and technical difficulties which would be caused by a change of supplier.

Framework agreement subject matter of which is public procurement in the field of defense and security may not last longer than five years, except in exceptional cases which are determined depending on the service life of equipment, installations or systems and technical difficulties which would be caused by a change of supplier.

The subject matter of framework agreement may also be the works carried out exclusively for defense purposes and sensitive security works.

Application of the Law by Subcontractors

Article 130

Bidder may in his bid include the subcontractors hired for implementation of public procurement, or may state that he shall choose the subcontractors after the public procurement contract is concluded.

Provisions of this law apply to suppliers when choosing third parties as subcontractors, after conclusion of public procurement contract or framework agreement, if the contracting authority requested that supplier performs certain share of procurement through a subcontractor.

Subcontractors, as such included in the bid, or subcontractors that are part of a group of bidders who submitted a joint bid, and persons linked to them, are not considered to be third parties in terms of paragraph 1 of this Article.

When submitting bid, a list of persons not considered to be third parties in terms of paragraph 3 of this Article, as well as any subsequent changes, is attached.

Reports on Conducted Procurements in Field of Defense and Security

Article 131

Contracting authority submits an annual report to the Government and the competent committee of the National Assembly up to the 31 March of the current year, for the preceding year, on the conducted procurements under Articles 127 and 128 of this Law.

Report under paragraph 1 of this Article contains in particular the data on the subject matter of procurement, the manner in which the procedure was conducted, submitted bids, criterion for selection of the most advantageous bid, concluded contract, and supplier.

The Government regulates in more detail the format and contents of the report under paragraph 1 of this Article.

**Va PUBLIC PROCUREMENTS INTENDED FOR ELIMINATION
OF CONSEQUENCES OF NATURAL DISASTERS AND
TECHNICAL AND TECHNOLOGICAL ACCIDENTS CRASHES**

Notion of Natural Disaster and Technical and Technological Accident - Crash

Article 131a

Natural disaster is an event of hydro meteorological, geological or biological origin, caused by action of natural forces, such as: earthquake, flood, flash flood, storm, heavy rains, atmospheric discharges, hailstorm, drought, rock fall or landslides, snow drifts and avalanche, extreme air temperatures, accumulation of ice in watercourse, epidemics of contagious diseases, epidemics of livestock contagious diseases and occurrence of pests and other large-scale natural phenomena that may endanger the health and life of people or cause damage of bigger proportions, in accordance with the law governing emergency situations.

Technical and technological hazard - accident is a sudden and uncontrolled event or series of events that got out of control when managing certain work instruments and when handling hazardous substances in production, utilization, transport, traffic, processing, storage and disposal, such as: fire, explosion, equipment failure, traffic accident in road, river, rail and air traffic, accident in mines and tunnels, stoppage of operation of cableways for transport of people, demolition of dams, failure of electrical power plants, oil and natural gas plants, accidents in handling radioactive and nuclear substances the consequences of which threaten the safety and lives of people, material goods and the environment, in accordance with the law governing emergency situations.

Subject Matter and Method of Determining Subject Matter of Public Procurement

Article 131b

Public procurements conducted in order to eliminate the consequences of natural disasters and technical and technological hazards - accidents and other disasters (hereinafter: disasters and accidents), are procurements of goods, services or works in construction, reconstruction, adaptation or rehabilitation of facilities damaged in disaster or accident, as well as other procurements with a view to preventing prolonged harmful effect of disaster and accident, determined by the program of state assistance and recovery of the area affected by the disaster or accident, adopted by the Government (hereinafter: state recovery program), in accordance with the regulations governing protection and elimination of the consequences of disasters and accidents.

Measures and criteria for providing assistance, i.e. criteria, measures and procedure for recovery and rehabilitation of the consequences of disasters or accidents according to the area and territory are stipulated in the state recovery program.

The following are considered to be facilities referred to in paragraph 1 of this Article: family residential facilities, residential and residential-business facilities, flats in residential and residential- business facilities; electrical power facilities for generation, transmission and distribution of electrical energy; ore production and supply facilities; natural gas infrastructure facilities; roads and public railway infrastructure; telecommunication facilities, i.e. networks, systems and instruments, including also electronic communications infrastructure facilities (cable ducts); utility infrastructure facilities; special purpose facilities and publicly owned facilities for public use; facilities of cultural property and cultural infrastructure.*

Special Rules for Public Procurement Procedure Conducted in order to Eliminate Consequences of Disasters and Accidents

Article 131c

Public procurements referred to in Article 132b, paragraph 1 of this Law are conducted in open procedure.

Provisions of this Law relating to public procurement plan, prior notice, manner of proving mandatory and additional requirements for participation in public procurement procedure, time limits for bids submission and time limits for decision-making by the Republic Commission for the Protection of Rights in Public Procurement Procedures are not applied in the public procurement procedure referred to in paragraph 1 of this Article.

Deadline for Bids Submission and Manner of Proving Fulfillment of Requirements

Article 131e

Deadline for bids submission in the public procurement procedure referred to in Article 132v, paragraph 1 of this Law may not be shorter than ten days from the day of publishing of the invitation to submit bids on the Public Procurements Portal.

In the course of public procurement procedure referred to in paragraph 1 of this Article fulfillment of mandatory and additional requirements for participation in public procurement procedure is proved by submission of statement whereby the bidder under full material and criminal responsibility confirms that he fulfills the requirements.

Protection of Rights

Article 131f

Request for the protection of rights shall not stay the activities of contracting authority in the procedure referred to in Article 132v, paragraph 1 of this Law.

Contracting authority may conclude public procurement contract even before expiry of the deadline for submission of the request for protection of rights.

The Republic Commission for the Protection of Rights in Public Procurement Procedures shall issue a decision on the request for the protection of rights within a term of five days from the day of receipt of duly completed request.

The Republic Commission for the Protection of Rights in Public Procurement Procedures shall decide on the appeal against the conclusion of the contracting authority within a term of three days from the day of receipt of the appeal.

The Republic Commission for the Protection of Rights in Public Procurement Procedures shall deliver the decision referred to in paragraphs 3 and 4 of this Article to the contracting authority, applicant and the selected bidder, within a term of two days from the day of adoption.

Application of other Public Procurement Procedures

Article 131g

Contracting authority may decide to conduct public procurement of goods, services or works with a view to eliminate the consequences of disasters or accidents determined by the state recovery program, instead of in open procedure, by applying other type of public procurement procedure, if the requirements for its application prescribed by this Law are met.

In the case referred to in paragraph 1 of this Article the provisions of this Law that relate to public procurement plan, manner of proving mandatory and additional requirements for participation in public procurement procedure and to obtainment of the Public Procurement Office's opinion on the justifiability of the negotiating procedure without publishing invitation to submit bids, do not apply.

Fulfillment of mandatory and additional requirements for participation in public procurement procedure referred to in paragraph 1 of this Article, is proved by submitting a statement whereby a bidder under full material and criminal responsibility confirms that it fulfills the requirements.

Procurements with a view to Eliminate the Consequences of Disasters and Accidents to which Law does not Apply

Article 131h

Procurements with a view to eliminating the consequences of disasters and accidents to which this Law does not apply are procurements performed in order to ensure basic living conditions during and immediately after the occurrence of disaster and accident, in accordance with Article 7, paragraph 1, item 3) of this Law.

Procurements referred to in paragraph 1 of this Article are procurements of goods, services or works relating to:

- 1) Evacuation, i.e. relocation of people and animals, as well as material and cultural property, government bodies, companies and other legal entities, from endangered territory to a danger free territory, i.e. to the one that provides conditions for living and protection;
- 2) Providing emergency accommodation and emergency accommodation in suitable facilities; providing health care to sick persons or those injured in natural disaster;
- 3) Supplying of foodstuffs, drinking water, clothing, footwear, medicines and other items, i.e. means, to endangered and affected population, reunification of separated families, psychological support and creation of other living conditions;
- 4) Implementation of sanitary and hygienic conditions and sanitary and technical measures on the terrain, in a dwelling and buildings, with a view to preventing outbreaks of contagious diseases, epidemics and other harmful consequences for population and material property;
- 5) Removal, identification and immediate burial of killed, i.e. deceased, removal of animal corpses, pest control, decontamination and remediation of facilities and terrain;
- 6) Conducting appropriate actions and procedures for scanning the ruins, finding persons buried under rubble, securing the damaged and relocated parts of structures of buildings and facilities in order to prevent subsequent collapse, rescuing the buried under rubble, i.e. their removal outside of the zone of collapse, measures of first aid and emergency medical assistance, as well as other measures contributing to protection and rescue from rubble;

7) Undertaking measures for preserving resources essential to survival of facilities for water supply, maintaining the required volume of agricultural and other production and survival of plant and animal fund through provision and preservation of the required quantities and types of resources necessary for the lives of the inhabitants, as well as cultural and historical, material and other essential resources;

8) Providing transportation and crossing over rivers and lakes, finding and pulling out the victims and drowned, removing water from flooded facilities and surfaces around facilities;

9) Undertaking urgent measures in order to prevent or delay water outflow from the riverbed in populated areas and flooding of residential facilities (placing bags of sand, cleaning of drainage canals etc.);

10) Undertaking other similar activities in order to ensure protection of life and health of vulnerable populations and animals, as well as for protection of material and cultural resources, in accordance with the regulations on protection against natural disasters and other accidents.

VI. PUBLIC PROCUREMENT RECORDS AND REPORTS

Records and Reports on Public Procurements

Article 132

Contracting authority shall collect and keep records of data concerning public procurement procedures and awarded public procurement contracts.

Contracting authority delivers in electronic format to the Public Procurement Office quarterly report on:

- 1) Conducted public procurement procedures;
- 2) Conducted public procurement procedures to which the contracting authority did not apply the provisions of this Law;
- 3) Conducted negotiating procedures without publication of invitation to submit bids;
- 4) Costs of preparation of bids in public procurement procedures;
- 5) Concluded public procurement contracts;
- 6) Unit prices of goods, services and most frequent works;
- 7) Amended public procurement contracts;
- 8) Cancelled public procurement procedures;
- 9) Public procurement procedures in which a request for the protection of rights was filed and cancelled procedures;
- 10) Implementation of public procurement contract.

The Public Procurement Office defines in detail the contents of reports on public procurements and the manner of keeping records on public procurements.

Contracting authority delivers reports referred to in paragraph 1 of this Article no later than on the 10th day of the month that follows the trimester.

The Public Procurement Office shall prepare aggregate quarterly report on conducted procedures and concluded public procurement contracts on the basis of the delivered quarterly reports of contracting authorities, and to post it on the Public Procurement Portal and its internet page within a term of a month after the expiration of time limit referred to in paragraph 4 of this Article.

Reports on Public Procurements

Article 133

The Public Procurement Office may request from the contracting authority a report with additional information on each individual public procurement contract or public procurement procedure.

Contracting authority shall submit the requested information to the Public Procurement Office without undue delay, and no later than eight days from the receipt of request of the Public Procurement Office.

The Public Procurement Office shall prepare semi-annual and annual report on public procurements on the basis of individual quarterly reports of the contracting authorities.

The Public Procurement Office shall publish semi-annual report on public procurement on the Public Procurement Portal and its internet page by 30 September, and the annual report by 31 March of the current year, for the previous year.

The report under paragraph 4 of this Article shall be submitted to the Government prior to its publishing.

In the report referred to in paragraph 4 of this Article, the Public Procurement Office gives a proposal for general and individual measures for improvement of the public procurement system.

Employees of the Public Procurement Office may perform additional paid activity, in accordance with the law governing rights and duties of civil servants, only on the basis of previous written consent of the committee of the National Assembly in charge of finance.

VII. PUBLIC PROCUREMENT OFFICER AND PUBLIC PROCUREMENT OFFICE

Public Procurement Officer

Article 134

Contracting authority shall define, in its bylaw that regulates job classification, a position within which the tasks of public procurement shall be carried out.

Contracting authority whose overall annual value of planned public procurements exceeds the fivefold amount referred to in Article 39, paragraph 1 of this Law, shall have at least one public procurement officer.

A public procurement officer is a person trained to perform public procurement tasks.

The Public Procurement Office determines the manner and the program of professional training and manner of taking the qualifying exam for public procurement officer.

Contracting authority shall make it possible for person performing public procurement tasks to pass the qualifying exam for public procurement officer within three months from the day of employment, or the day when the conditions are met.

Public Procurement Office

Article 135

The Public Procurement Office is a special organization that monitors the application of this Law, adopts bylaws and performs professional activities in the field of public procurement, monitors the conducting of public procurement procedures, controls the implementation of certain procedures, runs the Public Procurement Portal, prepares reports on public procurements, proposes measures for improvement of the public procurement system, provides professional assistance to contracting authorities and bidders, contributes to the creation of conditions for cost efficient, effective and transparent usage of public funds in public procurement procedure.

Functioning and organization of the Public Procurement Office is governed by legislation on civil service, unless this Law provides otherwise.

Activities of the Public Procurement Office

Article 136

The Public Procurement Office performs the following activities:

- 1) Monitors the application of this Law;
- 2) Adopts bylaws in the area of public procurement;
- 3) Participates in drafting regulations in the area of public procurement;
- 4) Issues opinions on interpretation and application of provisions under this Law;
- 5) Examines the fulfillment of requirements for conducting negotiating procedure under Article 36 of this Law and for competitive dialogue;
- 6) Proposes a list of contracting authorities to the Government, according to data from reports and records on public procurements it possesses;
- 7) *(Deleted)*
- 8) Appoints civil supervisor;

- 9) Prepares framework agreement templates;
- 10) *(Deleted)*
- 11) Prescribes standard forms of public procurement ads;
- 12) *(Deleted)*
- 13) Prescribes the manner of keeping records and drafting public procurement reports;
- 14) Compiles quarterly and annual report on public procurements;
- 15) Prescribes the manner and program of professional training and the manner of taking the qualifying exam for a public procurement officer, and keeps the register of public procurement officers;
- 16) Manages the Public Procurement Portal;
- 17) Takes measures aimed at development and upgrading of the public procurement system;
- 18) Files request for protection of rights;
- 19) Informs the State Audit Institution and Budgetary Inspection when it identifies irregularities in conducting public procurement procedures and delivering public procurement reports;
- 20) Initiates misdemeanor procedure when learns in any way of a violation of this Law which may constitute grounds for misdemeanor liability;
- 21) Initiates the procedure for annulment of a public procurement contract;
- 22) Prepares templates for decisions and other documents that the contracting authority renders in public procurement procedure;
- 23) Collects statistical and other data on conducted procedures, concluded public procurement contracts and the overall efficiency of the public procurement system;
- 24) Publishes and distributes relevant professional literature;
- 25) Collects information on public procurements in other states;
- 26) Prepares plans and normative acts and, with consent of the Government, performs other activities related to negotiations on accession to the European Union in the domain of public procurement;
- 27) Cooperates with foreign institutions and experts in the field of public procurement;
- 28) Cooperates with other government bodies and organizations, bodies of a territorial autonomy and local government;
- 29) Performs other activities in accordance with the law.

In performing the Public Procurement Office's monitoring role in the application of this Law, all government bodies and organizations, offices and bodies of territorial autonomy and local government, contracting authorities and bidders, i.e. applicants, shall provide the demanded information and documents in their possession or under their control to the Public Procurement Office, within the given deadline by the Public Procurement Office.

The Public Procurement Office submit a special annual report on the monitoring of the application of this Law to the Government and the committee of the National Assembly in charge of finance, by April 30 of the current year, for the previous year.

Director of the Public Procurement Office

Article 137

The Public Procurement Office has a director appointed by the Government from among the ranks of public procurement experts, after having conducted public competition.

A person having college degree in the areas of law, economy or technical sciences from the second level studies (academic studies ending with a diploma - master, specialist academic studies, specialist professional studies), or college degree which the law equates with the academic title of master at the basic studies in the duration of at least four years, and having at least five years of work experience in public procurements tasks and who fulfils other requirements prescribed for the work in civil service bodies may be appointed for a director of the Public Procurement Office.

Director of the Public Procurement Office adopts a bylaw that regulates the job classification.

VIII. PROTECTION OF RIGHTS IN PUBLIC PROCUREMENT PROCEDURE

1. Republic Commission for the Protection of Rights in Public Procurement

Procedures

Article 138

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 public procurement procedures.

The Republic Commission has a status of legal person.

The seat of the Republic Commission is in Belgrade.

The Republic Commission has a seal, in accordance with the law.

The funds for operation of the Republic Commission are provided from the budget of the Republic of Serbia.

Jurisdiction

Article 139

Within its jurisdiction, the Republic Commission:

- 1) Decides on request for the protection of rights;
- 2) Decides on concluding of contract in the case referred to in Article 30, paragraph 3 of this Law;
- 3) Decides on appeal filed against the conclusion of contracting authority;
- 4) Decides on contracting authority's proposal that submitted request for the protection of rights does not prevent rendering of the decision, i.e. conclusion of the contract or framework agreement;
- 5) Decides on the proposal of the applicant who filed request for the protection of rights to prohibit the conclusion or performance of a public procurement contract;
- 6) Decides on expenses of the procedure for protection of rights and expenses for the preparation of bid;
- 7) Monitors and controls implementation of decisions it renders;
- 8) Imposes fines to contracting authority and the responsible person of the contraction authority;
- 9) Annuls public procurement contract;
- 10) Conducts misdemeanor proceedings in the first instance;
- 11) Initiates procedure for annulment of public procurement contract;
- 12) Cooperates with foreign institutions and experts in the field of public procurement;
- 13) Performs other tasks too, in accordance with law.

Composition and Appointment of the Republic Commission

Article 140

The Republic Commission has a president and eight members.

The National Assembly appoints and removes from office the president and members of the Republic Commission upon proposal of the committee of the National Assembly in charge of finance (hereinafter: the competent Committee) after the conducted public competition.

President and members of the Republic Commission shall be appointed to a five-year period.

The same person may be appointed as president of the Republic Commission twice.

The same person may be appointed as member of the Republic Commission no more than twice, provided that this person was not appointed as President of the Republic Commission.

The competent Committee initiates the procedure for determining proposal for the appointment of president and the members of the Republic Commission no later than six months prior to the expiry of their mandate, and the appointment procedure shall be completed no later than a month prior to the expiry of the mandate.

President of the Republic Commission represents the Republic Commission, manages its work and performs other activities in accordance with the law.

In the absence of the president of the Republic Commission, the Republic Commission shall be represented by the deputy president of the Republic Commission, appointed from the ranks of the members by the president of the Republic Commission.

Conditions for Appointment

Article 141

A person who meets requirements for the appointment of judge in basic court, except the condition concerning the Judiciary Academy, and has five years of work experience in the area of public procurement may be appointed as president of the Republic Commission.

President of the Republic Commission has a salary equal to the salary of President of the Higher Court.

A person who meets requirements for the appointment of judge in basic court, except the condition concerning the Judiciary Academy, and has three years of work experience in the area of public procurement may be appointed as member of the Republic Commission.

A person having college degree in the areas of legal, economic or technical and technological sciences from the second level studies (academic studies ending with a diploma - master, specialist academic studies, specialist professional studies), or college education which the law equates with the academic title of the master at the basic studies in the duration of at least four years, and having at least five years of work experience in public procurement tasks, acquired certificate for public procurement officer, and who fulfils other requirements prescribed for the work in civil service may also be appointed as member of the Republic Commission.

At least five members of the Republic Commission are chosen among the persons fulfilling conditions referred to in paragraph 3 of this Article.

Member of the Republic Commission has a salary equal to the salary of a judge in the Higher Court.

Service of the Republic Commission

Article 142

The Republic Commission shall have its Service that performs professional, general-legal, financial-material and administrative-technical activities necessary for the operation of the Republic Commission. The Service is managed by the Secretary, who is appointed and removed from office by the President of the Republic Commission.

A person having college degree in the scientific field of legal science at the second level studies, i.e. college degree which the law equates with the academic title of master at the

basic studies in the duration of at least four years and having at least five years of working experience in law-related jobs may be appointed as the Secretary of the Republic Commission.

Secretary and employees in the Service are subject to legislation governing employment in civil service.

The Republic Commission regulates internal organization and job classification in the Service.

List of Experts in Public Procurement

Article 143

The Republic Commission establishes and maintains the list of expert witnesses who, in accordance with requirements of this Law, participate in the work of the Republic Commission.

A person registered into the registry of permanent expert witnesses may be entered into the list of expert witnesses

Prevention of Conflict of Interest and Recusal

Article 144

President, i.e. member of the Republic Commission may not perform any other public duty, have any position in a political party, or engage in any other office, service, work, duty or activity that might impact his independence in work and performance, or that might decrease his reputation or the reputation of the office of the president or member of the Republic Commission.

President or member of the Republic Commission may not decide in the procedure for protection of rights if there are any reasons that may lead into doubting his impartiality.

President or member of the Republic Commission may not decide in the procedure for protection of rights if he has a relationship with a party to the procedure corresponding to the relationship between representative of the contracting authority and the bidder referred to in Article 29 of this Law.

A party in the procedure is entitled to demand recusal of a member of the Republic Commission due to reasons referred to in paragraphs 2 and 3 of this Article.

President of the Republic Commission decide on the request for recusal.

President, i.e. member of the Republic Commission may not be hired by the bidder who has been a party to a procedure in which he conducted the case, over the period of two years following the termination of his office, where the estimated value of procurement in such case exceeded the amount under Article 57 of this Law.

Inability to Work and Absence of Member of the Republic Commission

Article 144a

In case of inability to work or absence from work of the president or member of the Republic Commission, for a period longer than 60 days, the competent Committee may propose to the National Assembly, in order to replace the prevented or absent President or member of the Republic Commission, to appoint other person as acting president or member of the Republic Commission without conducting public competition until his return.

Person referred to in paragraph 1 of this Article shall fulfill the appropriate requirements for appointment referred to in Article 141 of this Law.

Removal from Office of Members of Republic Commission

Article 145

President or member of the Republic Commission shall be removed from office before expiry of his mandate, if:

- 1) Convicted of a crime to an unconditional sentence of at least six months of imprisonment and if the crime for which he was convicted makes him unfit to hold office;
- 2) He has permanently lost work capacity;
- 3) Established that he holds office in contravention of Article 144 of this Law;
- 4) Established that he performs duties unprofessionally and negligently;
- 5) Established that he does not meet appointment requirements under Article 141 of this Law;
- 6) He resigns.

Any person may file an initiative for removal from office of president or member of the Republic Commission to the competent Committee.

The competent Committee submits to the National Assembly a reasoned proposal for removal from office of president or member of the Republic Commission together with evidence for removal from office.

President, i.e. member of the Republic Commission shall be given an opportunity to give his view on the reasons for his dismissal in the National Assembly.

If the president, i.e. member of the Republic Commission is removed from office, a new President, i.e. member of the Republic Commission is appointed within a term of 90 days from the day of removal from office.

In case of removal from office of president of the Republic Commission, the office of the president shall be held by the deputy president referred to in Article 140, paragraph 8 of this Law, until the appointment of a new President.

Manner of Operation of the Republic Commission

Article 146

The Republic Commission works and makes decisions in panels of three members.

Each panel comprises of at least two members appointed in accordance with Article 141, paragraph 3 of this Law, one of whom is the chairman of the panel.

All members of the panel need to be present in the panel meeting for valid decision making.

In case of absence of a member of panel, he may be replaced by the president of the Republic Commission or member of the Republic Commission from another panel, designated by the president of the Republic Commission.

*Members of the panel may, at their own initiative, decide to include an expert witness in the work of the panel, where they find it necessary for the proper establishing of facts and making a decision.

A person who has a relationship with a party to the procedure that corresponds to relationship between representative of the contracting authority and the bidder, as referred to in Article 29 of this Law, may not be appointed for the expert witness.

Reimbursement of expenses and remuneration to the expert witness is paid by the party that hired him, in accordance with the pricelist set by the Republic Commission.

Expert witness has no voting right in decision-making.

The Republic Commission issues general legal opinions concerning the application of legislation falling under its competences, in the general session with participation of the president and all members of the Republic Commission.

The general session is convened by the president of the Republic Commission, as necessary, upon request submitted by four members, or when among the panels contradiction arises regarding the application of legislation.

The manner of operation of the Republic Commission is regulated in more detail by the Rules of Procedure of the Republic Commission.

The Republic Commission adopts its Rules of Procedure by a two-third majority of votes of members and president of the Republic Commission.

Accountability

Article 147

The Republic Commission is accountable for its work to the National Assembly.

The Republic Commission delivers to the National Assembly an annual report on its work by 31 March of the current year for the previous year, wherein it specifically lists:

- 1) Partially or completely annulled procedures;
- 2) Procedures in which it made a decision that the filed request for the protection of rights does, or does not, suspend further activities in public procurement procedure;
- 3) Contracting authorities that failed to deliver requested documentation and reports;

- 4) Controls it performed at the contracting authorities, the results of such controls and the measures taken to remedy the identified irregularities;
- 5) Contracting authorities who failed to observe the instructions of the Republic Commission and have not remedied irregularities;
- 6) Irregularities that frequently occur in public procurement procedures and activities it has undertaken to remedy the found irregularities;
- 7) Contracts it has annulled;
- 8) Contracting authorities and their officers who were imposed with fines;
- 9) Initiated misdemeanor procedure;
- 10) Decisions it made in the misdemeanor procedure;
- 11) Decisions of the Administrative Court and the Higher Misdemeanor Court related to the decisions of the Republic Commission;
- 12) Other activities it has undertaken to protect the rights;
- 13) Procedures in which it did not act within the deadlines prescribed by this Law, and the reasons for the tardiness ;
- 14) Statistics relevant for monitoring the trends in the protection of rights;
- 15) Difficulties it faces in its work.

Where the competent Committee receives petition by either the contracting authority or bidder, or by another interested person who deems his rights were seriously violated in a procedure before the Republic Commission, or if it in another way learns information that indicate unprofessional or negligent performance of duty by members of this body, the competent Committee may request the Republic Commission to submit, within a specified deadline, a report on each individual case in which it has decided.

In the case under paragraph 3 of this Article, the Republic Commission shall deliver to the competent Committee, within the given deadline, the entire documentation on particular case, whereas the member of the Republic Commission panel who decided in that case may be invited to address the competent Committee and present orally the position of the Republic Commission regarding the case and the decision made.

2. Procedure for the Protection of Rights

Who may file for Protection of Rights

Article 148

Request for the protection of rights may be filed by a bidder, applicant, candidate, i.e. interested person, who has interest in awarding contract, i.e. framework agreement in the particular public procurement procedure and who has suffered or could suffer damage due to the conduct of the contracting authority contrary to the provisions of this Law (hereinafter: the claimant).

Request for the protection of rights may be submitted by the Public Procurement Office, the State Audit Institution, public attorney and civil supervisor.

Bodies and organizations referred to in paragraph 2 of this Article are not under obligation to file a request for the protection of rights at the request of person referred to in paragraph 1 of this Article, if that person did not exercise the right to file the request.

In case of filing request for the protection of rights referred to in paragraph 2 of this Article, the same provisions of this Law that apply in case of request filed by claimant under paragraph 1 of this Article apply mutatis mutandis, except for provisions of Article 156, paragraph 1 of this Law.

The provisions of the law governing administrative proceedings apply mutatis mutandis to the issues of the protection of rights not defined by this Law.

Time Limits and Manner of Submission of Request for the Protection of Rights

Article 149

Request for the protection of rights is filed to the contracting authority, and a copy is simultaneously delivered to the Republic Commission.

Request for the protection of rights may be filed throughout the entire public procurement procedure, against any action of the contracting authority, unless otherwise specified by this Law.

Request for the protection of rights that challenges the type of procedure, the content of the invitation to submit bids or of the tender documentation shall be considered timely if received by the contracting authority seven days before the expiry of the time limit for the submission of bids at latest, and in low-value public procurement procedure and qualifying procedure if received by the contracting authority three days before the expiry of the time limit for the submission of bids, regardless of the manner of delivery and provided that the claimant, in accordance with Article 63, paragraph 2 of this Law, has indicated possible deficiencies and irregularities to contracting authority, and the contracting authority has failed to eliminate them.

Request for the protection of rights that challenges actions undertaken by contracting authority before the expiry of the time limit for the submission of bids, and after the expiry of the time limit referred to in paragraph 3 of this Law, shall be considered timely if filed until the expiry of the time limit for the submission of bids at latest.

Provisions of paragraphs 3 and 4 of this Article do not apply in case of negotiating procedure without publishing invitation to submit bids, if the claimant or a person linked to him has not participated in that procedure.

After adopting the decision on awarding contract, decision on concluding framework agreement, decision on recognizing qualification and decision on cancelling the procedure, term for filing the request for protection of rights is ten days from the day of publishing of the decision on the Public Procurement Portal, and five days in low-value public procurement procedure and when adopting decision on awarding contract based on framework agreement in accordance with Article 40a of this Law.

Actions of the contracting authority undertaken in public procurement procedure may not be challenged by a request for the protection of rights if the claimant knew or could have known the reasons for its filing before the expiry of the term for filing the request referred to in paragraphs 3 and 4 of this Article, and the claimant has failed to file it before the expiry of that term.

If the request for the protection of rights has been filed again by the same claimant in the same public procurement procedure, in such request the actions of contracting authority for which the claimant knew or could have known when filing the previous request may not be challenged.

Request for the protection of rights does not stay further activities of the contracting authority in public procurement procedure in accordance with the provisions of Article 150 of this Law.

Contracting authority publishes notification about the submitted request for the protection of rights, on the Public Procurement Portal and on its internet page no later than within a term of two days from the day of receiving the request for the protection of rights, containing data referred to in Appendix 3N.

Consequences of Submitted Request for the Protection of Rights and Provisional Measures

Article 150

In case of filed request for the protection of rights the contracting authority may not adopt a decision on awarding contract, decision on concluding framework agreement, decision on recognizing qualification and decision on cancelling the procedure, nor can it conclude a public procurement contract before adopting decision on the submitted request for the protection of rights, except in case of negotiating procedure referred to in Article 36, paragraph 1, item 3) of this Law.

Responsible person of the contracting authority may adopt decision that the contracting authority undertakes activities referred to in paragraph 1 of this Article before adopting decision on the submitted request for the protection of rights, where staying the activities of the contracting authority in public procurement procedure, i.e. in implementation of public procurement contract would cause great difficulties in work or operation of the contracting authority that are disproportionate to the public procurement value, and which must contain reasons.

The Republic Commission may, upon proposal of contracting authority, allow the contracting authority to undertake activities referred to in paragraph 1 of this Article before adopting the decision on filed request for the protection of rights, where staying the activities of the contracting authority in public procurement procedure, i.e. in implementation of the public procurement contract would significantly jeopardize the interests of the Republic of Serbia.

If request for the protection of rights has been filed after conclusion of the contract in accordance with Article 112, paragraph 2 of this Law, the contracting authority may not implement the public procurement contract until the adoption of decision on filed request for the protection of rights, except if requirements referred to in paragraphs 2 and 3 of this Article are met and if the contracting authority or the Republic Commission, upon proposal of the contracting authority, does not decide otherwise.

If the contracting authority considers that requirements referred to in paragraph 3 of this Article exist, it shall immediately upon receipt, without prior checking, deliver the request for the protection of rights and full documentation of the public procurement procedure to the Republic Commission with a reasoned proposal for adoption of the decision of the Republic Commission.

If the Republic Commission determines that the requirements are met, it issues a decision to accept the contracting authority's proposal referred to in paragraph 5 of this Article, within a term of five days from the day of the receipt of proposal and full documentation.

Contracting authority, without delay, delivers the decision referred to in paragraph 2 of this Article to the Republic Commission and publishes it on the Public Procurement Portal and on its internet page.

If the request for the protection of rights has been filed in case of conducting the negotiating procedure referred to in Article 36, paragraph 1, item 3) of this Law, the claimant may propose that the Republic Commission renders a decision to prohibit the contracting authority to conclude, i.e. implement the public procurement contract.

The Republic Commission shall, within a term of five days, render a decision to adopt the claimant's proposal referred to in paragraph 8 of this Article, provided that it determines that the conclusion, i.e. implementation of the public procurement contract without prior checking of the regularity of the procedure could cause substantial damage to public funds.

If the Republic Commission issues the decision referred to in paragraph 9 of this Article, the contracting authority may not conclude, i.e. implement the public procurement contract.

Contracting authority may decide to stay further activities in the request for the protection of rights was submitted, whereby it shall state in the notification about the submitted request for the protection of rights that it stays further activities in the public procurement procedure.

The provisions of this Article apply mutatis mutandis also to the framework agreement.

Content of Request for Protection of Rights

Article 151

Request for protection of rights contains:

- 1) Name and address of the claimant and contact person;
- 2) Name and address of the contracting authority;
- 3) Information on the public procurement that is the subject of the request, or on decision of the contracting authority;
- 4) Violations of legislation regulating the public procurement procedure;
- 5) Facts and evidence substantiating the violations;
- 6) Proof of paid fee referred to in Article 156 of this Law;
- 7) Claimant's signature.

If the submitted request for the protection of rights does not contain all mandatory elements referred to in paragraph 1 of this Article, the contracting authority shall reject such request by means of a conclusion.

Contracting authority delivers the conclusion referred to in paragraph 2 of this Article to the claimant and the Republic Commission within a term of three days from the day of adoption.

Claimant may file an appeal to the Republic Commission against conclusion of contracting authority referred to in paragraph 2 of this Article within a term of three days from the day of receipt of the conclusion, while simultaneously delivering a copy of the appeal to the contracting authority.

Prior Verification of Request for the Protection of Rights

Article 152

Upon receipt of request for protection of rights, the contracting authority verifies whether the request was filed within the time limit and whether it was lodged by person authorized to do so.

Where the request for protection of rights is untimely or filed by a not authorized person, the contracting authority shall issue a conclusion rejecting such request.

Contracting authority delivers the conclusion referred to in paragraph 2 of this Article to the claimant and the Republic Commission within a term of three days from the day of adoption.

Claimant may file an appeal to the Republic Commission against the conclusion referred to in paragraph 2 of this Article, within a term of three days from the day of receipt of that conclusion, while simultaneously delivering a copy of the appeal to the contracting authority.

Upon receipt of the appeal, the contracting authority shall, within a term of three days, deliver the required documentation from the public procurement procedure to the Republic Commission with a view to deciding upon appeal.

Actions of Contracting Authority after Preliminary Examination of Request for the Protection of Rights

Article 153

After preliminary examination, within a term of five days from the day of receipt of a duly completed request for protection of rights, the contracting authority shall:

- 1) Issue a decision to accept the request for protection of rights;
- 2) Deliver a response to the Republic Commission wherein it shall answer all allegations contained in the request for the protection of rights, and deliver full documentation from the public procurement procedure, with a view to deciding upon request for the protection of rights.

Contracting authority shall deliver the decision referred to in paragraph 1, item 1) of this Article to claimant, bidders and the Republic Commission, within a term of three days from the day of adoption.

If the contracting authority has not adopted by means of a decision referred to in paragraph 1, item 1) of this Article all allegations of the request for the protection of rights, the claimant may, by means of a written declaration, continue the procedure before the Republic Commission within a term of three days from the day of decision receipt, whereof he simultaneously notifies the contracting authority.

In the case referred to in paragraph 3 of this Article, the contracting authority shall, within a term of three days from the day of receipt of the claimant's written declaration, deliver full documentation from the public procurement procedure to the Republic Commission.

In the case referred to in paragraph 1, item 2) of this Article, the contracting authority shall notify the claimant in writing, within a term of three days from the day of request sending to the Republic Commission.

After receiving written notice on withdrawal of the request for protection of rights, the contracting authority, i.e. the Republic Commission shall issue a conclusion to terminate procedure for the protection of rights.

Procedure before the Republic Commission

Article 154

Upon receipt of the claimant's written declaration for continuation of procedure before the Republic Commission or contracting authority's response referred to in Article 153 of this Law, the Republic Commission establishes whether:

- 1) The request for protection of rights, i.e. written declaration has been filed within the time limit;
- 2) The claimant is authorized to proceed;
- 3) The request contains all mandatory elements referred to in Article 151 of this Law.

The Republic Commission shall issue a conclusion to reject the request for protection of rights if it determines that some of the requirements referred to in paragraph 1, items 1) to 3) of this Article have not been met.

Prior to rendering its decisions, the Republic Commission may demand additional documentation, data, explanations and opinions from contracting authority, claimant or other participants in the procedure, the Public Procurement Office and other persons, and to get insight into other documents of the parties involved in public procurement procedure, as well as to collect other data for the purpose of adopting the decision.

All persons and bodies referred to in paragraph 4 of this Article shall act within time line set by the Republic Commission in its request for obtaining documentation, data, clarifications and opinion.

In case that the bidder or the contracting authority failed to deliver the requested documentation, data, clarifications and opinion within the deadline referred to in paragraph 5 of this Article, the Republic Commission shall adopt a decision according to the state of available evidence in the case, i.e. the suspicion resulting from the lack of cited evidence shall be taken at the expense of the defaulting party.

Holding Oral Hearing

Article 155

Parties to the procedure may propose holding of oral hearing, if the complexity of factual or legal situation requires so.

Claimant may propose holding of oral hearing in the request for the protection of rights, and the contracting authority in its response to the request.

The Republic Commission decides on proposal for holding oral hearing.

Oral hearing is public and is held in the premises of the Republic Commission.

The public shall be excluded from the process, if necessary to protect business secret in terms of the law governing protection of business secret, or to protect data in terms of the law governing data secrecy.

Minutes are kept during oral hearing.

Fees and Procedure Expenses

Article 156

Claimant of the request for protection of rights shall pay a fee to a specified account of the budget of the Republic of Serbia, in the amount of:

- 1) RSD 60,000 in low-value public procurement procedure and negotiating procedure without publishing invitation to bid;
- 2) RSD 120,000 if the request for protection of rights is filed before opening of bids and if the estimated value does not exceed RSD 120,000,000;
- 3) RSD 250,000 if the request for protection of rights is filed before opening of bids and if the estimated value exceeds RSD 120,000,000;
- 4) RSD 120,000 if the request for protection of rights is filed after opening of bids and if the estimated value does not exceed RSD 120,000,000;
- 5) RSD 120,000 if the request for protection of rights is filed after opening of bids and if the sum of the estimated values of all disputed lots does not exceed RSD 120,000,000, provided that procurement is formulated in lots;
- 6) 0.1% of the estimated value of public procurement, i.e. price offered by the bidder to whom the contract was awarded, if the request for protection of rights is filed after opening of bids and if that value exceeds RSD 120,000,000;
- 7) 0.1% of the sum of the estimated values of all disputed lots of public procurement, i.e. price offered by the bidders to whom contracts were awarded, if the request for the protection of rights is filed after opening of bids and if that value exceeds RSD 120,000,000.

Each party to the procedure bears expenses resulting from its actions.

If request for the protection of rights is well-founded, contracting authority must compensate the expenses incurred in the process of protection of rights to the claimant, upon his written request.

If request for the protection of rights is not well-founded, the claimant shall compensate the expenses incurred in the process of protection of rights to the contracting authority, upon its written request.

If request for the protection of rights is partially accepted, the Republic Commission decides whether each party shall bear their own expenses or whether the expenses shall be divided proportionately to the accepted request for protection of rights.

The parties shall precisely state in their request the expenses whose compensation they seek.

Compensation of expenses may be requested up to the moment of adoption of decision by the contracting authority, i.e. the Republic Commission, on the submitted request for protection of rights.

Republic Commission makes the decision on expenses. Decision of the Republic Commission is an enforceable document.

Decision of the Republic Commission

Article 157

The Republic Commission decides within the limits of filed request for the protection of rights and shall address all allegations of the claimant, as well as violations which the claimant has been unaware of, and which have influenced the contracting authority's decision in public procurement procedure.

The Republic Commission also examines *ex officio* whether the legal requirements for application of certain public procurement procedure are met, whether the provisions of the law were violated due to which the public procurement contract may be annulled or the contract is considered null and void, as well as whether there are reasons due to which the public procurement procedure may not be finalized in a lawful manner.

In the case referred to in paragraph 2 of this Article, the Republic Commission may continue the procedure even if the claimant withdraws its request for the protection of rights.

The Republic Commission shall analyze evidence which it deems relevant for adopting a correct and lawful decision on the submitted request for the protection of rights.

By its conclusion, the Republic Commission:

- 1) Refuses request for protection of rights, i.e. written declaration on continuation of procedure before the Republic Commission;
- 2) Terminates the procedure on the grounds of written notice on withdrawal of request for the protection of rights, received before the adoption of decision;
- 3) Refuses the appeal as inadmissible, untimely, or lodged by an unauthorized person;

4) Refuses request for initiation of misdemeanor proceedings.

By its decision, the Republic Commission:

1) Accepts request for the protection of rights as well-founded, wholly or partially annuls the public procurement procedure;

2) Refuses request for the protection of rights as unfounded;

3) Confirms or annuls the conclusion of the contracting authority;

4) *(deleted)*

5) Accepts or refuses proposal of the contracting authority referred to in Article 30, paragraph 3 of this Law;

6) Accepts or refuses proposal referred to in Article 150, paragraph 5 and Article 150, paragraph 8 of this Law;

7) Imposes fines;

8) Annuls the contract;

9) Decides in misdemeanor proceedings.

The Republic Commission shall provide reasons for its decision and may order the contracting authority to take certain actions within a term not longer than 25 days for the sake of correct and lawful completion of the relevant public procurement procedure.

Time Limit for Adopting and Delivering Decision

Article 158

The Republic Commission shall issue a decision on the request for the protection of rights within a term of 20 days from the day of the receipt of full documentation needed to establish the facts and to decide.

Republic Commission shall decide upon appeal against the conclusion of the contracting authority within a term of eight days from the day of receiving the appeal.

Time limit referred to in paragraph 1 of this Article, exceptionally, in particularly justifiable cases, may be extended for 15 days, whereof the claimant and the contracting authority are notified, together with explanation for extension of the time limit.

The Republic Commission shall deliver the decision referred to in para. 1 and 2 of this Article to contracting authority, claimant and the selected bidder, within a term of five days from the day of adoption.

Immediately after being delivered to parties in the procedure, the decision of the Republic Commission is published on the internet page of the Republic Commission and on the Public Procurement Portal.

Contracting authority shall notify all participants in the procedure of the adopted decision of the Republic Commission.

Right to Administrative Dispute

Article 159

No appeal may be lodged against decision of the Republic Commission.

Administrative dispute may be initiated against decision of the Republic Commission within a term of 30 days from the day of the receipt of the decision.

Administrative dispute may also be initiated in case where the Republic Commission has not adopted and delivered a decision within time limits set forth by Article 158 of this Law.

Initiation of administrative dispute does not postpone the enforcement of the decision of the Republic Commission.

3. Special Competences of the Republic Commission

Delivering Reports and Documentation

Article 160

Contracting authority shall act pursuant to instructions of the Republic Commission contained in its decision within the term prescribed by that decision.

The Republic Commission may demand from the contracting authority to submit a report, documentation and statements of the representative of the contracting authority about the implementation of the decision of the Republic Commission.

Contracting authority shall submit the report, documentation and statements referred to in the previous paragraph within the time limit defined by the Republic Commission.

Control at Contracting Authority's Premises

Article 161

Members of the Republic Commission may conduct control of the execution of the Republic Commission's decision.

The Republic Commission notifies the contracting authority about the conducting of control, no later than three days before the start of control.

In case of reasonable doubt of the risk of removal or changing the evidence located at the contracting authority, an unannounced control may be conducted at the contracting authority's premises.

Control at the contracting authority's premises is performed by at least two members of the Republic Commission's panel which has been deciding in the procedure regarding which the control is conducted.

Minutes are kept on the conducted control at the contracting authority's premises.

Member of the Republic Commission who conducts the control is authorized to:

- 1) Inspect and copy the documentation related to the subject matter of the subject public procurement;
- 2) Seal the business premises and documents during control;
- 3) Take statements from representatives of the contracting authority and other employees working at the contracting authority, and where special written statement is necessary, he shall set a deadline for submission of statement to the Republic Commission.

Contracting authority's representatives are entitled to be present during control and to give their objections which are recorded in the minutes of the control.

Fine

Article 162

The Republic Commission shall render a decision to impose a fine to contracting authority in the amount ranging from RSD 80,000 to RSD 1,000,000, and to the responsible person of the contracting authority in the amount ranging from RSD 20,000 to RSD 80,000, if the contracting authority:

- 1) Upon filed request for the protection of rights, fails to act in the manner and within the deadline set by Article 153, paragraph 1 of this Law;
- 2) Fails to supply additional documentation, data, clarifications and opinions pursuant to request of the Republic Commission and within the deadline set by the Republic Commission;
- 3) Fails to send a report and statements of the contracting authority's representative about the executed decision of the Republic Commission;
- 4) Fails to enable control in accordance with Article 161 of this Law;
- 5) Did not act pursuant to the decision of the Republic Commission.

The fine referred to in paragraph 1 of this Article is imposed by the panel of the Republic Commission that decides on the request for protection of rights.

The Republic Commission publishes the decision referred to in paragraph 1 of this Article on its internet page.

Annulment of Contract

Article 163

The Republic Commission may, on its own initiative, or upon request of the claimant or an interested party, annul the public procurement contract if it determines that contracting authority:

- 1) Concluded the public procurement contract by applying the negotiating procedure without prior invitation to submit bids, in absence of requirements prescribed for such procedure by

this Law and without publishing notification on the initiation of the procedure and the decision on awarding contract;

2) Concluded the public procurement contract before expiry of the time limit for filing the request for protection of rights;

3) Concluded the public procurement contract after the filing of request for the protection of rights and before the decision of the Republic Commission;

4) Concluded the public procurement contract acting in contravention with the decision of the Republic Commission under Article 150 of this Law;

5) Concluded public procurement contract by violating provisions and conditions of the framework agreement.

Request for annulment of contract is submitted together with the request for protection of rights or within a term of 30 days from the day of learning the reason for annulment, and no later than a year after the contract has been concluded.

By annulment the public procurement contract is terminated, and the contracting parties shall return what they have received on the basis of such contract.

If what has been received on the basis of the annulled public procurement contract cannot be returned, or if the nature of what has been received contradicts its return, the contracting authority shall pay to *bona fide* supplier for the supplied goods, provided services or performed works.

If the annulment of the public procurement contract would have disproportionate consequences for the work or operation of the contracting authority or the interests of the Republic of Serbia, the Republic Commission shall not annul the public procurement contract, but may reduce the duration of contract, or impose a fine referred to in Article 162 of this Law.

The Republic Commission shall file a complaint for determining nullity of the public procurement contract when it learns in any manner that the concluded public procurement contract is null and void.

Ban on Abuse of Request for Protection of Rights

Article 164

It is banned to file a request for protection of rights for purposes other than those for which that right has been recognized.

The Republic Commission shall impose a fine referred to in Article 162 of this Law to the claimant whom it finds to have abused the request for protection of rights.

Misdemeanor Proceedings

Article 165

The Republic Commission conducts misdemeanor proceedings in the first instance for misdemeanors provided for by this Law.

Misdemeanor proceedings are conducted by the panel of the Republic Commission in whose work those members of the Republic Commission who participated in the work of the panel which decided in the procedure for the protection of rights related to the same procurement procedure, may not participate.

Misdemeanor proceeding before the Republic Commission is initiated at the request of the Public Procurement Office, the State Audit Institution, another authorized body, or *ex officio*, immediately after learning of the misdemeanor.

Appeal may be lodged to the Higher Misdemeanor Court against the first instance decision.

Proposal to Remove Responsible Person from Office

Article 166

The Republic Commission may submit a proposal for removal from office the manager or responsible person of the contracting authority for whom it establishes that, in spite of imposed fines in the procedure for the protection of rights or in misdemeanor proceeding, fails to act pursuant to decisions of the Republic Commission, or continues to seriously violate the provisions of this Law.

The proposal for removal from office is submitted to the body in charge of supervision over work, i.e. operation of the contracting authority.

4. Special Authorization of Organization authorized for Protection of Competition

Article 167

Organization authorized for protection of competition may ban a bidder or an interested party from participating in public procurement procedure, where it determines that the bidder or the interested party violated competition in public procurement procedure within the meaning of the law governing competition protection.

The measure referred to in paragraph 1 of this Article may last up to two years.

The decision referred to in paragraph 1 of this Article may be challenged in administrative dispute to be initiated within a term of 30 days from the day of receipt of the decision.

IX. NULLITY OF CONTRACTS

Null and Void Public Procurement Contracts

Article 168

Public procurement contracts are null and void:

- 1) If concluded without conducted prior public procurement procedure which the contracting authority has been obliged to conduct according to the provisions of this Law;
- 2) If concluded in contravention of the provisions of this Law governing prevention of corruption and conflict of interest;

- 3) If the contracting authority authorizes a third party, who is not a contracting authority, to conclude the contract in order to avoid the application of this Law;
- 4) If they represent amendments and additions to the original contract concluded in contravention of the provisions of this Law;
- 5) If concluded contrary to the decision of the Republic Commission.

X. PENAL PROVISIONS

Misdemeanors of Contracting Authority

Article 169

Contracting authority shall be fined from RSD 100,000 to RSD 1,000,000 for a misdemeanor, if:

- 1) It fails to protect data on a bid and the bidder (Article 14);
- 2) It fails to keep records of all phases in public procurement procedure, fails to keep records on concluded public procurement contracts, or fails to keep documentation from public procurement procedure (Article 16);
- 3) It fails to perform communication in the manner prescribed by this Law or fails to publish internal bylaw and internal plan for preventing corruption in public procurement (Art. 20, 21 and 22);
- 4) It fails to publish or fails to deliver invitation to submit bids, tender documentation, amendments and additions to tender documentation, or response to the request for clarification of tender documentation and other ads (Art. 57, 62 and 63);
- 5) It fails to observe the provisions on setting and using technical specifications and standards (Articles 70-74);
- 6) It makes a decision on awarding contract without meeting the requirements for applying exemption (Article 107, paragraph 4);
- 7) It fails to render a decision within the deadline referred to in Article 108, paragraph 2 of this Law;
- 8) After having cancelled the public procurement procedure due to reasons foreseen in Article 109, paragraph 2 of this Law, it re-initiates public procurement procedure in the same budget Year, i.e. within the subsequent six months;
- 9) It fails to enable the bidder or applicant to have insight into documentation on the conducted public procurement procedure (Article 110);
- 10) It fails to deliver a report to the Public Procurement Office (Art. 132 and 133);
- 11) It does not have an employed public procurement officer, or if it fails to enable a person employed on tasks of public procurement to acquire certificate for public procurement officer (Article 134).

For the misdemeanor referred to in paragraph 1 of this Article a responsible person of the contracting authority shall also be punished with a fine ranging from RSD 30,000 to RSD 80,000.

Contracting authority shall be punished for a misdemeanor with a fine ranging from RSD 200,000 to RSD 1,500,000, if:

- 1) It procures goods, services or works without applying this Law when there were no reasons for exemption of application of this Law (Art. 7, 7a, 122 and 128);
- 2) It fails to reject bid offered by persons involved in planning of public procurement, preparing tender documentation or its certain parts, or if those persons collaborated with the bidder (Article 23);
- 3) It concludes public procurement contract in case when conflict of interest exists (Articles 29 and 30);
- 4) It conducts public procurement procedure which is not open or restrictive, without meeting necessary requirements for such procedure (Articles 34-39);
- 5) It fails to adopt public procurement plan, fails to publish public procurement plan or if it fails to observe the rules on drafting public procurement plan (Article 51);
- 6) It initiates public procurement procedure without meeting necessary conditions for the initiation of the procedure (Article 52);
- 7) (*Deleted*);
- 8) It concludes the contract without fulfilled requirements (Article 112);
- 9) It amends the public procurement contract contrary to the provisions of Article 115 of this Law;
- 10) After filed request for the protection of rights, it renders a decision, i.e. concludes a contract, or if contrary to the decision of the Republic Commission, it concludes or implements the public procurement contract (Article 150);
- 11) It fails to reimburse expenses of the procedure for the protection of rights to the claimant pursuant to decision of the Republic Commission (Article 156, paragraph 3);
- 12) It fails to act according to instructions contained in the decision of the Republic Commission within the time limit set in that decision (Article 157).

For misdemeanor referred to in paragraph 3 of this Article the responsible person of the contracting authority shall also be punished with a fine ranging from RSD 80,000 to RSD 150,000.

Bidder's Misdemeanors

Article 170

Bidder, i.e. applicant shall be punished for a misdemeanor with a fine ranging from RSD 100,000 to RSD 1,000,000, if:

- 1) He fails to protect confidential data about the contracting authority (Article 15);
- 2) He acts contrary to the provisions of Article 25 of this Law;
- 3) He fails to notify the contracting authority on the alterations of data, or if it supplies inaccurate data on fulfillment of requirements for participation in the procedure, or gives incorrect information concerning his professional references (Article 77);
- 4) He hires a person in the role of a subcontractor who was not stated in the bid or in public procurement contract in contravention to the provisions of this Law (Article 80);
- 5) Based on the decision by the Republic Commission, he fails to reimburse the expenses of procedure for protection of rights to the contracting authority (Article 156, paragraph 4).

For the misdemeanor referred to in paragraph 1 of this Article a responsible person of the bidder shall also be imposed with a fine ranging from RSD 30,000 to RSD 80,000.

For the misdemeanor referred to in paragraph 1 of this Article, a sole trader, as bidder, i.e. applicant, shall be imposed with a fine ranging from RSD 30,000 to RSD 200,000.

For the misdemeanor referred to in paragraph 1 of this Article, a natural person, as the bidder, i.e. applicant, shall be imposed with a fine ranging from RSD 30,000 to RSD 80,000.

For the misdemeanor referred to in paragraph 1, item 2) of this Article, a person commissioned to work shall be imposed with a fine ranging from RSD 50,000 to RSD 150,000.

Statute of Limitations

Article 171

Statute of limitations for prosecuting misdemeanors occurs upon expiry of three years from the day of committed misdemeanor, referred to in Art. 169 and 170 of this Law.

XI. TRANSITORY AND FINAL PROVISIONS

Initiated Public Procurement Procedures

Article 172

Public procurement procedures initiated before the day this Law started applying are governed by legislation in force at the time they were commenced.

Decisions on recognizing qualification made in restrictive and qualifying procedure in compliance with regulations that were in force up to the entry into force of this Law, cease to apply, at the latest, six months from the day this Law enters into force.

Initiated Procedures for Protection of Rights

Article 173

The procedures for the protection of rights initiated before this Law began applying are governed by the regulations under which they were initiated.

Harmonization of Activities of the Administration for Joint Services

Article 174

Within a term of six months from the day of entry into force of this Law, the Government shall provide adequate working conditions for the Administration for Joint Services in accordance with its competences set forth by this Law, and especially concerning staff and technical capacities.

The Administration for Joint Services commences to perform tasks of a body for centralized public procurements within a term of eight months from the day of entry into force of this Law.

Harmonization of Activities of the Public Procurement Office and the Republic Commission

Article 175

Within a term of six months from the day of entry into force of this Law, the Government shall provide adequate conditions for harmonization of activities of the Public Procurement Office and the Republic Commission in accordance with their competences under this Law.

The Government shall ensure unhindered running of the Public Procurement Portal within a term of two months from the day of entry into force of this Law.

On the day this Law enters into force, the Republic Commission proceeds with its tasks in compliance with the provisions of the Public Procurement Law ("Official Herald of RS", No. 116/08) until the day of this Law starts applying.

Mandates of the president and members of the Republic Commission appointed pursuant to the Public Procurement Law ("Official Herald of RS", No. 116/08), cease on the day this Law starts applying.

President and members of the Republic Commission shall be appointed in accordance with the provisions of this Law within a term of 90 days from the day this Law enters into force.

President and members of the Republic Commission appointed pursuant to the provisions of this Law enter office on the day of commencement of application of this Law.

Adoption of Bylaws

Article 176

Bylaws which are adopted pursuant to authorizations under this Law shall be adopted within a term of three months from the day this Law enters into force.

Bylaws referred to in Article 21, paragraph 6 and Article 22, paragraph 2 of this Law shall be adopted within a term of nine months from the day this Law enters into force.

Repealing Previous Law and Bylaws

Article 177

As of the day of commencement of application of this Law, the Public Procurement Law ("Official Herald of RS", No. 116/08) and bylaws adopted pursuant to that law cease to be in force.

As of the day of commencement of application of this Law, Article 5, paragraphs 1 and 5 of the Law on Stimulating the Construction Industry of the Republic of Serbia in the Environment of the Economic Crisis ("Official Herald of RS", Nos. 45/10, 99/11, and 121/12) cease to be in force.

Entry into Force and Commencement of Application

Article 178

This Law enters into force on the eighth day from the day of publication in the "Official Herald of the Republic of Serbia", and is applied as of 1 April 2013, with exception of the provisions of Article 78 of this Law which are applicable as of 1 September 2013.

INDEPENDENT ARTICLES OF THE LAW ON AMENDMENTS AND ADDITION TO THE PUBLIC PROCUREMENT LAW

("Off. Herald of RS", No. 14/2015)

Article 2

The public procurement procedures initiated until the day of entry into force of this Law are governed by the regulations under which they have been initiated.

Article 3

The procedures for protection of rights initiated until the day of entry into force of this Law are governed by the regulations under which they have been initiated.

Article 4

This Law enters into force on the eighth day from the day of publication in the "Official Herald of the Republic of Serbia".

INDEPENDENT ARTICLES OF THE LAW ON AMENDMENTS AND ADDITIONS TO THE PUBLIC PROCUREMENT LAW

("Off. Herald of RS", No. 68/2015)

TRANSITIONAL AND FINAL PROVISIONS

Article 86

Bylaws that are adopted in accordance with the provisions of the Public Procurement Law ("Official Herald of RS", Nos. 124/12 and 14/15), shall be harmonized with the provisions of this Law within a term of 60 days from the day of its entry into force.

Until the adoption of bylaws pursuant to authorizations under this Law, bylaws which are not contrary to this Law and which were adopted pursuant to the Public Procurement Law ("Official Herald of RS", Nos. 124/12 and 14/15) shall be applied.

Article 87

Contracting authority shall adopt and publish on its internet page the internal bylaw for preventing corruption in public procurement referred to in Article 21, paragraph 7 of the Public Procurement Law ("Official Herald of RS", Nos. 124/12 and 14/15) within a term of three months from the day of entry into force of this Law.

Contracting authority shall publish on its internet page the internal bylaw referred to in Article 22 of the Public Procurement Law ("Official Herald of RS", Nos. 124/12 and 14/15) within a term of 60 days from the entry into force of this Law.

Article 88

The public procurement procedures initiated until the day of entry into force of this Law are governed by regulations under which they have been initiated.

Article 89

The procedures for protection of rights are governed by regulations under which public procurement procedures have been initiated to which the protection of rights relates.

Article 90

Two new members of the Republic Commission shall be elected within a term of 90 days from the day of entry into force of this Law.

Article 91

As of the day of entry into force of this Law the provisions of Art. 12-18 of the Law on the Elimination of Consequences of Floods in the Republic of Serbia ("Official Herald of RS", No. 75/14) cease to be in force.

Article 92

This Law enters into force on the eighth day from the day of publication in the "Official Herald of the Republic of Serbia", with exception of the provisions of Article 24 of this Law that are applicable as of 1 January 2016.

Appendix 1

SUBJECT MATTER OF PUBLIC PROCUREMENT OF SERVICES

Category	Subject matter
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1. Maintenance and repair services;
2. Land transport services (excluding railway transport services), including transport services in armored vehicles and courier services (other than postal transport);
3. Services of air transport of passengers and cargo (other than postal transport);
4. Land and air postal transport (other than railway transport services);
5. Electronic communication services;
6. Financial services:
 - Insurance services;
 - Banking and investment services (other than financial services referred to in Article 7 of this Law);
7. Computer and other related services;
8. Services of research and development;
9. Accounting, auditing and bookkeeping services;
10. Services in the field of market research and public surveys;
11. Management consulting services and other related services (other than arbitration, settlement and related services);
12. Architectural services; engineering services; services of urban planning and landscape architecture; services of technical testing and analyses; services of energy audit and energy services;
13. Advertising services;
14. Services of cleaning of buildings and real estate management services;
15. Publishing and printing services on a part-time or contractual basis;
16. Waste removal, sanitary and other related services;
17. Hotel and restaurant services;
18. Railway transport services;
19. River transport services;
20. Additional and auxiliary transport services;

21. Legal services (other than legal services referred to in Article 7 of this Law);
22. Personnel recruitment services;
23. Investigative and security services (other than security services provided by transport in armored vehicles);
24. Education services and vocational training services;
25. Health care and social services;
26. Recreational, cultural and sports services;
27. Other services.

Appendix 2

SERVICES REFERRED TO IN ARTICLE 39a

Category	Subject matter
No.	
1.	Health care and social services;
2.	Legal services (other than procurement of legal services referred to in Article 7 of this Law);
3.	Hotel and restaurant services;
4.	Education services and vocational training services;
5.	Recreational, cultural and sports services.

Appendix 3

CONTENT OF PROCUREMENT AD

A

Prior Notice

1. Name, address and internet page of the contracting authority;
2. Type of contracting authority;
3. For goods and services, description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;
4. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, or name and designation from the Common Procurement Vocabulary;
5. Estimated date of publication of the invitation to submit bids and for conclusion of the contract;
6. Number of the contracts that the contracting authority intends to conclude;

7. Special note if the public procurement contract is reserved for institutions, organizations or commercial entities for vocational training, professional rehabilitation and employment of disabled persons;
8. Special note if a framework agreement is to be concluded;
9. *(Deleted)*

B

Invitation to submit Bids (open, restrictive, qualifying and negotiating procedure with publication of an invitation to submit bids)

1. Name, address and internet page of the contracting authority;
2. Type of contracting authority;
3. Type of public procurement procedure;
4. For goods and services, description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;
5. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;
6. Number of lots, if the subject matter of procurement is shaped in multiple lots;
7. Special note if the public procurement contract is reserved for institutions, organizations or commercial entities for vocational training, professional rehabilitation and employment of disabled persons;
8. In case of a negotiating procedure, the reason for application and the basis under law;
9. If a framework agreement is concluded, the duration of such framework agreement;
10. In case of submitting the electronic bid, application of electronic auction or dynamic procurement system - basic information about the information system of the contracting authority and necessary technical conditions for participation;
11. In case of application of a dynamic procurement system, duration of the system;
12. In case of obligation to submit a bid with a subcontractor, the percentage of procurement value performed by the subcontractor;
13. Criterion, elements of the criterion for awarding the contract;
14. Manner of obtaining tender documents, i.e. internet address where tender documentation is available;
15. Manner of submission of bid and deadline;

16. Location, time and manner of opening of bids;
17. Conditions under which the bidders' representatives may participate in the procedure of opening of bids;
18. Deadline for rendering decision;
19. Contact person.

C

Invitation to submit Bids (First phase of the restrictive procedure, qualification procedure and competitive dialogue)

1. Name, address and internet page of the contracting authority;
2. Type of contracting authority;
3. Type of public procurement procedure;
4. Description of requirements of the contracting authority in case of competitive dialogue;
5. For goods and services, description of the subject matter of public procurement, name and designation from the Common Procurement Vocabulary;
6. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;
7. Number of lots, if the subject of procurement is shaped in multiple lots;
8. Special note if the qualification is reserved for institutions, organizations or commercial entities for the purpose of vocational training, professional rehabilitation and employment of disabled persons;
9. In case of submission of an electronic bid - basic information about the information system of the contracting authority and the necessary technical requirements for participation;
10. In case of qualifying procedure - time period for which the qualification of candidates is recognized;
11. Manner of obtaining tender documentation, i.e. internet address where tender documentation is available;
12. Manner of bid submission and deadline;
13. Location, time and manner of opening of bids;
14. Conditions under which the bidders' representatives may participate in the procedure of opening of bids;

15. Deadline for rendering the decision;

16. Contact person.

D

Dynamic Procurement System Notification

1. Name, address and internet page of the contracting authority;

2. Type of the contracting authority;

3. Note that it is about the system of permanent electronic procurement;

4. For goods and services, description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;

5. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;

6. Term of duration of the system;

7. Basic information about the information system of the contracting authority and the necessary technical conditions for participation;

8. Electronic address where the tender documents are available;

9. Manner of submission of the initial bid and deadline;

10. Contact person.

E

Invitation to participate in Design Contest

1. Name, address and internet page of the contracting authority;

2. Type of the contracting authority;

3. Description and requirement regarding design or project;

4. Manner and deadline for submission of design or project;

5. Special note if participation is reserved for a certain profession;

6. Criterion for grading design or project;

7. Names of jury members;

8. Whether jury decision binds the contacting authority;

9. If awarded, number and value of awards;
10. Whether contract shall be concluded with the winner;
11. Deadline for rendering decision of the contracting authority;
12. Contact person.

F

Notification of Qualification Recognition (First phase of restrictive and qualifying procedure)

1. Name, address and internet page of the contracting authority;
2. Type of the contracting authority;
3. For goods and services, description of subject matter of procurement, name and designation from the Common Procurement Vocabulary;
4. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;
5. Date of update of the candidate list and deadline for the submission of bids;
6. List of candidates;
7. Invitation to submit bids;
8. Manner of obtaining tender documents, i.e. address of the internet page where tender documentation was published;
9. Contact person.

G

Notification of Initiation of Procedure (Negotiating procedure without publication of an invitation to submit bids)

1. Name, address and internet page of the contracting authority;
2. Type of the contracting authority;
3. For goods and services, description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;
4. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;

5. Number and date of conclusion of the originally concluded contract in case of negotiating procedure referred to in Article 36, paragraph 1, items 4) and 5) of this Law;
6. Basis for applying negotiating procedure and information justifying their application;
7. Name and address of persons to whom the contracting authority shall send the invitation to submit bids.

H

Notification on the Extension of the Deadline for Submission of Bids, i.e. Applications

1. Name, address and internet page of the contracting authority;
2. Type of the contracting authority;
3. Type of public procurement procedure;
4. For goods and services: description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;
5. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;
6. Date of publishing invitation for submission of bids/applications;
7. Date of publishing notice on the extension of the deadline;
8. Reason for the extension of the deadline;
9. Time and place for submission of bids (new deadline);
10. Time and place of opening of bids.

I

Notification on Concluded Framework Agreement

1. Name, address and internet page of the contracting authority;
2. Type of contracting authority;
3. For goods and services, description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;
4. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;
5. Number of suppliers that the agreement was concluded with;

6. Date of conclusion and period of validity of the framework agreement.

J

Notification on Concluded Contract

1. Name, address and internet page of the contracting authority;
2. Type of contracting authority;
3. For goods and services, description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;
4. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, or name and designation from the Common Procurement Vocabulary;
5. Contracted value;
6. Criterion for awarding contract;
7. Number of received bids;
8. Lowest and highest price offered;
10. Lowest and highest offered price of acceptable bids;
11. Part or value of the contract to be executed through a subcontractor;
12. Date of issuance of the decision on awarding the contract;
13. Date of conclusion of contract;
14. Basic information on supplier;
15. Period of contract validity;
16. Circumstances constituting basis for amending the contract.

K

Notification on Results of Contest

1. Name, address and internet page of the contracting authority;
2. Type of contracting authority;
3. Description and request in relation to the project or design;
4. Total number of participants;
5. Number of foreign participants;

6. Contest winner;
7. Awards.

L

Notification on Cancellation of Public Procurement Procedure

1. Name, address and internet page of the contracting authority;
2. Type of contracting authority;
3. For goods and services, description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;
4. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;
5. Estimated value of public procurement;
6. Number of submitted bids and information on bidders;
7. Reason for procedure cancellation;
8. Information on when the procedure is to be carried out again.

M

Information in Decision on Amendments to Public Procurement Contract

1. Name and address of the contracting authority;
2. Type of contracting authority;
3. For goods and services, description of subject matter of procurement, name and designation from the Common Procurement Vocabulary;
4. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, or name and designation from the Common Procurement Vocabulary;
5. Original contract value;
6. Amended contract value;
7. Objective reasons for amending the contract, along with an excerpt from the tender documentation or corresponding regulation that constitutes the basis for such amendment.

N

Notification on Filed Request for Protection of Rights

1. Name, address and internet page of the contracting authority;
2. Type of contracting authority;
3. Type of public procurement procedure;
4. For goods and services: description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;
5. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;
6. Phase of public procurement procedure wherein the request for protection of rights has been filed;
7. Information whether contracting authority stops further activities in public procurement procedure.

O

Notification on Annulment of Public Procurement Procedure

1. Name, address and internet page of the contracting authority;
2. Type of contracting authority;
3. Type of public procurement procedure;
4. For goods and services: description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;
5. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;
6. Grounds for annulment of procedure.