

ORDINANCE FOR THE AWARD OF SMALL PUBLIC CONTRACTS

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CHAPTER ONE GENERAL PROVISIONS

Article 1

- (1) The Ordinance shall establish the terms and conditions for awarding small public contracts.
- (2) Small public contracts shall be public contracts, which have the following values, net of value added tax as follows:
 1. for public works contracts – less than or equal to BGN 1 800 000, and where the place of performance of the public contract is outside the country – less than or equal to BGN 5 000 000 ;
 2. for public supply contracts- less than or equal to BGN 150 000, and where the place of performance of the public contract is outside the country – less than or equal to BGN 250 000 ;
 3. for public service contracts – less than or equal to BGN 90 000, and where the place of performance of the public contract is outside the country – less than or equal to BGN 250 000 ;
 4. for design contests –from BGN 10 000 to BGN 30 000 including.
- (3) The value of the small public contracts shall be determined under Article 15 of the Public Procurement Law (PPL).
- (4) Where contracting authorities covered under Article 7, Item 1 - 4 of the PPL subsidise by more than 50 per cent a small public works or service contract related to public works contract, the persons awarding the contract shall be obligated to observe the provisions of this Ordinance.

Article 2

- (1) The contracting authorities may not conduct a procedure for the award a small public contract,, nevertheless they shall be obligated to gather no less than 3 tenders, which include technical and financial offer, unless it is objectively impossible, when the contracts have the following values, net of value added tax:
 1. (Amend. – SG, 83/2007) for public works contracts – from BGN 45 000 to BGN 100 000 and where the place of performance of the public contract is outside the country – from BGN 500 000 to 1 500 000;
 2. (Amend. – SG, 83/2007) for public supply or service contracts – from BGN 15 000 to 30 000, and where the place of performance of the public contract is outside the country – from BGN 50 000 to 100 000;
 3. for design contests – from BGN 3 000 to 10 000.
- (2) The contracting authorities may not gather 3 tenders, when the contracts have the following values, net of value added tax:

1. (Amend. – SG, 83/2007) for public works contracts – less than BGN 45 000 and where the place of performance of the public contract is outside the country – less than BGN 500 000;
 2. (Amend. – SG, 83/2007) for public supply or service contracts – less than BGN 15 000 and where the place of performance of the public contract is outside the country – less than BGN 50 000;
- (3) In the cases under Para 1, Item 2 and Para 2, Item 2, the contracting authority may not conclude a written contract and prove the deal with the primary payment documents.

CHAPTER TWO TYPES OF PROCEDURE

Article 3

- (1) Small public contracts shall be awarded in accordance with the principles under Article 2 of the PPL by means of conduct of an open contest, public auction or negotiated procedure with invitation.
- (2) The contracting authorities shall make a decision on the award of a small public contract by an open contest unless the conditions for conduct of negotiated procedure with invitation are fulfilled or when the object of the public contract does not allow its award by public auction.
- (3) (new) The contracting authorities shall make a decision for the conduct a design contest for acquisition of a plan or a preliminary design, selected by a jury on the basis of an organized contest with or without awarding of prizes, generally in the field of landscape, architectural, structural, technological activities or data processing.

Article 4

- (1) An open contest shall be a procedure for the award of small public contracts whereby all interested persons may submit a tender.
- (2) A public auction shall be a procedure for the award of small public contracts for supplies, where the quality indicators and characteristics of the object of the public contract are exhaustively and precisely defined in the way that candidates may offer solely a price, lower than the initial auction price.
- (3) A negotiated procedure with invitation shall be a procedure for the award of small public contracts, where the contracting authority initiates negotiations for determination of the terms of the contract with one or more particular persons, selected by him/her.
- (4) Repealed.
- (5) Repealed.

CHAPTER THREE GENERAL RULES FOR AWARD OF SMALL PUBLIC CONTRACTS

Section I

Opening a Small Public Contract Award Procedure

Article 5

- (1) The contracting authority shall take a decision for opening a small public contract award procedure, with which it shall approve:
 1. the notice as well as the contract documents for participation in the procedure - in cases of open contest or public auction;
 2. the notice as well as the contest programme - in cases of a design contest;
 3. the invitation for participation in the procedure as well as the contract documents, if such are envisaged – in case of negotiated procedure with invitation.
- (2) The decision and the notice referred to in Para 1, Items 1 and 2 as well as the decision and the invitation referred to in Para 1, Item 3 shall be submitted to the Public Procurement Agency, called hereinafter “the Agency”, for entry into the Public Procurement Register on the terms and conditions of the Rules for the Implementation of the Public Procurement Law (RIPPL).

Article 6

- (1) The small public contract notice shall be drawn up based on the standard form referred to Article 19, Para 7 of the PPL and shall be sent for publication on the web site of the State Gazette simultaneously with its sending for entry into the Public Procurement Register.
- (2) In the notice the contracting authority may envisage a requirement to establish a legal person where the tenderer which has been selected as supplier, contractor or service provider is a group of natural and/or legal persons; the newly established legal person is bound by the tender submitted by the group.
- (3) The contracting authorities reserve the right to participate in public contract award procedures to specialized enterprises or sheltered workshops, provided the object of the contract is included in a list approved by the Council of Ministers or the contract is fulfilled in the context of employment protection programmes for people with disabilities. The contracting authority includes this requirement in the notice for opening of procedure for the award of small public contract.
- (4) In the notice the contracting authority may furthermore establish additional requirements for the performance of the small public contract, related to environmental protection, unemployment and creation of jobs for persons with disabilities, while complying with the requirements referred to in Article 9. In these cases, when preparing the tender, the tenderers are obligated to present also the way for meeting the additional requirements.

Article 7

- (1) The contracting authority may select the supplier, contractor or service provider of public contract under an open contest using an electronic auction where the technical specifications of the small public contract can be defined precisely.
- (2) The electronic auction shall not be applied for small service and works contracts with an object intellectual activity.
- (3) The contracting authority shall indicate the use of electronic auction in the notice for small public contract.
- (4) The electronic auction shall not be applied if it prevents, restricts or violates competition, and it also cannot change the public contract object included in the published notice and in the specifications.
- (5) The application of an electronic auction shall be conducted under the terms and conditions, provided in Art. 31-34 of the Rules for the Implementation of the Public procurement law.

Article 8

- (1) The contract documents for participation must contain:
 1. the decision for opening of the procedure for the award of small public contract;
 2. the notice or the invitation for the small public contract;
 3. a complete description of the object of public contract, including such information about lots;
 4. technical specifications, determined according to Art. 30-33 of the PPL;
 5. the investment project designs, where they are required in a public works contract;
 6. the indicators, their relative weight and the methods for complex evaluation of the tender, where the criterion of the most economically advantageous tender applies;
 7. a standard form for the tender as well as guidelines for drawing up of the tender;
 8. standard form of the tender, as well as guidelines for its preparation]
 9. a draft of a contract;
- (2) The method referred to in Para 1, item 6 shall contain precise directions for determining the evaluation under each indicator and the complex evaluation of the tender, including the relative weighting which the contracting authority gives to each of the indicators chosen to determine the most economically advantageous tender. The relative weighting of the different indicators can be expressed by providing maximum values within the framework of the general evaluation.
- (3) The price of the contract documents may not exceed the actual costs of the preparation thereof.
- (4) The contract documents shall be available for purchase until expiry of the time limit for the submission of tenders or requests to participate. The persons have the right to examine the documents on the spot, before they purchase it.
- (5) Upon request from an interested person, accompanied with a proof of payment for the value of the contract documents, the contracting authority shall be obligated to send them on the account of the person who made the request.

Article 9

No terms or requirements offering an advantage or unjustifiably restricting the participation of any parties in the small public contracts may be included by contracting authorities in the decision, notice, or contract documents.

Article 10

- (1) Up to seven days before expiry of the time limit fixed for the receipt of tenders any tenderer may request in writing additional information relating to the documents for participation from the contracting authority. The contracting authority shall be obligated to reply within three days after receipt of the request.
- (2) The contracting authority shall dispatch the additional information referred to in Paragraph 1 simultaneously to all persons that have purchased the contract documents and that have indicated a mailing address, without identifying the inquiring person in the reply thereof. Any such additional information shall furthermore be attached to the contract documents which are to be purchased by other persons.

Section II Tenders

Article 11

- (1) In drawing up a tender, each tenderer must strictly observe the terms and conditions announced by the contracting authority.
- (2) Before expiry of the time limit fixed for the receipt of tenders, each tenderer in a procedure may modify, supplement or withdraw the tender thereof.

Article 12

- (1) Each tenderer in a public award procedure shall have the right to submit a single tender.
- (2) Where the criterion of the most economically advantageous tender applies in the evaluation of the tenders and the contracting authority has allowed the possibility for the presentation of variants, the tenderer may submit several variants in the tender thereof.
- (3) (new) Only variants meeting the minimum requirements as laid down by the contracting authority shall be taken into consideration.
- (4) No party that has given its consent and is named as a subcontractor on the tender of another tenderer, may submit a separate tender.

Article 13

- (1) Each tender must contain:
 1. a document for the actual state or a document for registration of a foreign person in accordance with the national legislation, and if a natural person – copy of the identity document;
 2. evidence of economic and financial standing under Article 50 of the PPL and for technical capabilities and/or qualification under Article 51 of the PPL, as specified by the contracting authority in the contract notice;
 3. a declaration on non-existence of the circumstances covered under Article 47, Paragraphs 1 and 5 of the PPL ;
 4. a declaration on non-existence of the circumstances covered under Article 47, Para 2 of the PPL, as indicated in the notice by the contracting authority;
 5. the subcontractors that will participate in the performance of the public contract and the share of the participation thereof, where the tenderer envisages subcontractors;
 6. time-limit for the performance of the public contract;
 7. price tendered;
 8. a declaration to the effect that the price tendered complies with the minimum labour cost requirement, in the cases where the public contract is of works
 9. period of tender validity;
 10. documentary proof of provision of a participation guarantee, if required in the notice;
 11. any other information indicated in the notice or in the contract documents;.
 12. a list of the documents contained in the tender, signed by the tenderer.
- (2) Repealed.

- (3) Where the tenderer envisages participation of subcontractors, the documents referred to in Items 1, 3 and 4 of Paragraph 1 shall be submitted for each subcontractor.
- (4) Where the tenderer in the procedure is a group of persons which is not a legal person, the documents referred to in Items 1 - 4 of Paragraph 1 shall be submitted by each natural or legal person included in the said group.
- (5) Where the tenderer in the procedure is a foreign natural or legal person or a group of such persons, the tender shall be submitted in the Bulgarian language, and the documentary proof of registration referred to in Item 1 of Paragraph 1 shall be produced in a legalized translation, whereas the documents referred to in Items 2-4 of Paragraph 1, which are in a foreign language, shall be produced both in the original and in a translation. Where the tenderer is a group of persons, the documents shall be produced for each natural or legal person included in the said group.
- (6) Where the place for performance of the public contract is outside the country, the tender and the documents attached to it shall be presented in the official language of the corresponding country.

Article 14

- (1) The tender shall be submitted in a sealed opaque envelope by a tenderer or by an authorized representative thereof, in person or by registered mail with advice of delivery. On the said envelope, the tenderer shall indicate a mailing address, a telephone number and, if possible, a fax number and an e-mail address and, where the tender is for lots, the lots to which the said tender applies.
- (2) The price tendered shall be submitted in a separate sealed opaque envelope, inscribed "Price Tendered" and inserted into the envelope containing the tender.
- (3) Upon receipt of any tender, the consecutive number, date and hour of receipt shall be marked on the envelope, and the said particulars shall be entered in an incoming register wherefor a document shall be issued to the bearer.
- (4) The contracting authority shall reject and shall immediately return to the tenderers any tenders submitted after expiry of the time limit for the receipt or in envelopes which are transparent, unsealed or physically unsound. These circumstances shall be noted in the register referred to in Paragraph 3.
- (5) (new) A tender may furthermore be submitted by electronic means under the terms and procedures established by the Law for the Electronic Document and Electronic Signature. In such case, the tenderer shall be obligated to submit to the contracting authority all documents which do not exist in electronic format according to the procedure established by Paragraph 1 before expiry of the time limit for the receipt of tenders.
- (6) (new) The tenders submitted by electronic means shall be received and kept under the terms and procedures provided for in the Rules for the Implementation of the PP Law.

Article 15

- (1) The period of tender validity shall be the period during which the tenderer shall be bound by the terms of the tender thereby submitted.
- (2) The contracting authority shall fix the period referred to in Paragraph 1 in calendar days.
- (3) The contracting authority may require from the ranked tenderers to extend the period of tender validity thereof until the point of conclusion of the public contract.

Section III
Examination, Evaluation and Ranking of Tenders

Article 16

- (1) The preparation and the conduct of the procedures for the award of the small public contracts shall be done by the contracting authority.
- (2) The contracting authority shall be responsible for the acceptance and the keeping of the tenders and projects.
- (3) The contracting authority shall be obliged to keep the whole documentation connected with each small public contract award procedure at least four years after its final performance or after the termination of the procedure.

Article 17

- (1) All of the actions of the contracting authority to the candidates shall be in writing.
- (2) The exchange of information may be performed by post, by fax, by electronic means under the terms and provisions of the Law for the Electronic Document and the Electronic Signature or by combination of these means, by selection of the contracting authority. The selected communication means must be generally accessible.
- (3) (new) The decisions of the contracting authority, which are liable to notification to the candidates, shall be handed in person after a signature or shall be sent by post with a registered letter with a return receipt, by fax or by electronic means under the terms and provisions of the Law for the Electronic Document and the Electronic Signature.
- (4) (new) The amount and keeping of the information in the course of the conduct of the small public award procedure shall be performed in a way, which guarantees the integrity, accuracy and confidentiality of the tenders and projects.

Article 18

- (1) The contracting authority shall appoint a commission for the conduct of a small public procedure, designating the composition of the said commission and substitute members.
- (2) Any such commission shall consist of at least three members, of whom one shall mandatory be a qualified lawyer and the remaining members shall be persons possessing the professional expertise and practical experience required in accordance with the object and complexity of the public contract.
- (3) The contracting authority may furthermore recruit external experts as members of or consultants to the commission.
- (4) The remunerations of the members of the commission and all expenses arising in connection with the work of the said commission shall be for the account of the contracting authority.

Article 19

- (1) The contracting authority shall appoint for members or consultants of the commission persons who have declared that:
 1. they have no material interest in the awarding of the public contract to a particular candidate or tenderer;

2. they are not “connected persons” within the meaning of the Commerce Law, to any candidate or tenderer in the procedure or any subcontractors named by him, or to any members of the management or supervisory bodies thereof.
- (2) The members of the commission and the consultants shall be obligated to respect the confidential nature of any information as may come to the knowledge in connection with the work thereof on the commission.
- (3) The members of the commission and the consultants shall submit declarations on conformity with the circumstances referred to in Paragraph 1 and on compliance with the requirements referred to in Paragraph 2 to the contracting authority upon the appointment thereof and at each stage of the procedure upon occurrence of any intervening change in the circumstances as declared.

Article 20

- (1) The commission shall take decisions by a majority of the members thereof. Should any member of the commission dissent from a decision adopted, the said member shall sign the protocol with a dissenting opinion and shall set forth the reasoning thereof in writing.
- (2) Any member of the commission who is unable to perform the duties thereof due to objective reasons or who is removed because of the presence of circumstances under Art. 19, Para 1, shall be replaced by a substitute member, and when this is not possible, the contracting authority shall issue an order designating a new member.
- (3) (new) When because of the presence of circumstances under Article 19, Para 1 a member of the commission for award of a small public contract has been removed, his/her evaluation of the tenders shall not be taken into consideration.

Article 21

- (1) The commission shall propose exclusion from the procedure of any tenderer:
 1. that has failed to submit any of the documents required under Article 13;
 2. whereto the circumstances covered under Article 47, Paragraphs 1 and 5 of the PPL apply and those indicated in the notice covered under Article 47, Para 2 of the PPL are present;
 3. that has submitted a tender which is incomplete and non-responsive to the terms and conditions as announced in advance by the contracting authority;
 4. that has submitted a tender or request to participate which does not satisfy the requirements established by Article 14, Para 2.
- (2) In the course of the procedure, the tenderers shall be obligated to notify the contracting authority of any intervening changes in the circumstances covered under Article 47, Paragraphs 1 and 5 of the PPL and those indicated in the notice covered under Article 47, Para 2 within seven days after the occurrence of any such change.

Article 22

- (1) The contracting authority shall select the supplier, contractor or service provider of the public contract on the basis of evaluation of the tenders under one of the following criteria specified in the notice:
 1. the lowest price tendered;
 2. the most economically advantageous tender.

- (2) (new) When the criterion chosen is the most economically advantageous tender, the contracting authority shall be obligated to specify the indicators, the relative weighting which it gives to each of the indicators and the method of evaluation under each indicator. Where weighting is not possible for demonstrable reasons, the contract authority shall indicate the indicators in descending order of importance.
- (3) (new) The criteria covered under Paragraph 1 shall apply solely in respect of the tenders of tenderers which are not excluded from the procedure on the grounds provided for and which satisfy the requirements of economic and financial standing, professional qualifications and technical knowledge or ability as declared by the contracting authority.
- (4) (new) Where the criterion for evaluation of the tenders is that of the most economically advantageous tender and the contracting authority has indicated in the contract notice that variants are authorized, all variants submitted, which meet the requirements, shall be subject to evaluation. In these cases, only the highest ranked variant submitted by a tenderer shall be included in the ranking.

Article 23

The procedure for the award of a small public contract is completed with:

1. conclusion of a contract with the selected contractor or
2. decision for its termination.

Article 24

- (1) The contracting authority shall terminate a procedure for the award of a small publiccontract with reasoned decision in the cases where:
 1. no tenders or requests to participate in a public auction have been submitted, or no tenderers or candidates have been admitted to participation;
 2. none of the tenders or requests for participation in a public auction is responsive to the terms and conditions as announced in advance by the contracting authority;
 3. all tenders, which are responsive to the terms and conditions as announced in advance by the contracting authority, exceed the financial resources which the said authority can ensure;
 4. the first or the second ranked tenderers successively decline to conclude a public contract;
 5. the necessity to conduct the procedure is eliminated as a result of a material change in circumstances, including an impossibility to ensure financing for the performance of the public contract for any reasons which the contracting authority could not have foreseen;
 6. irregularities have been established in the opening and conduct of the procedure which cannot be corrected without change of the terms where under the procedure has been announced;
 7. due to the presence of one of the grounds under Article 32 no small public contract is concluded.
- (2) Within three days after the issue of the decision referred to in Paragraph 1, the contracting authority shall be obligated to dispatch a copy of the said decision to the tenderers, as well as to the executive director of the agency.

- (3) In the cases referred to in Item 3 of Paragraph 1, the contracting authority shall mandatorily include in the decision the lowest price tendered and may not conclude a contract of the same subject at a price equal to or greater than the price specified in the decision upon conduct of a successive procedure within the same year.
- (4) Upon termination of the small public award procedure under Items 3, 5 and 6 of Paragraph 1, the contracting authority shall reimburse the tenderers for the expenses incurred thereby on purchase of the contract documents within fourteen days after the decision referred to in Paragraph 1.
- (5) A small public award procedure through a public auction may not be terminated on the grounds of Para 1, Item 3.
- (6) (new – SG 83/2007) In the cases under Para 1, Item 1, when no offer is submitted, the contracting entities under Art. 7, Para 2 PPL may not conduct a procedure for the award of a small public procurement contract, but they are obligated to gather no less than 3 offers which contain both technical and financial offer.

Article 25

The contracting authority may initiate a new small public contract award procedure with the same object only where the originally announced procedure has been terminated and no appeal has been lodged against the decision for termination, or where an appeal has been lodged against the said decision and the dispute has been settled.

Section IV Guarantees

Article 26

- (1) Each tenderer shall provide a guarantee for participation in the small public award procedure, and the tenderer that has been selected as supplier, contractor or service provider, shall provide a performance guarantee upon signature of the contract.
- (2) The contracting authority shall determine the terms and the amount of the participation guarantee as a fixed sum of money which may not exceed 1 per cent of the value of the public contract.
- (3) The contracting authority shall determine the terms and the amount of the contract performance guarantee as a percentage of the value of the small public contract, which may not exceed 5 per cent of the value of the said contract.
- (4) The contracting authority shall also require other performance guarantees in the cases specified by a Law .
- (5) Repealed.

Article 27

- (1) Guarantees shall be provided in one of the following forms:
 1. a cash deposit;
 2. a bank guarantee.
- (2) The tenderer or the selected supplier, contractor or service provider shall be free to choose a form of the participation guarantee, respectively the performance guarantee.

Article 28

- (1) The contracting authority shall release the participation guarantees provided by any excluded or ranked tenderers within three working days after expiry of the time limit for the lodging of an appeal against the decision of the contracting authority on selection of a supplier, contractor or service provider .
- (2) Repealed;
- (3) Upon termination of the small public award procedure, the guarantees provided by all tenderers shall be released within three working days after expiry of the time limit for the lodging of an appeal against the decision on termination.
- (4) The contracting authority shall release the guarantees referred to in Paragraph 1 without owing interest for the period during which the said guarantees were in the legal possession thereof.

Article 29

The contracting authority shall have the right to retain possession of the participation guarantee when the tenderer in a small public award procedure:

1. withdraws the tender or the request to participate in a public auction after expiry of the time limit fixed for the receipt of tenders or requests to participate;
2. lodges an appeal against the decision of the contracting authority on selection of a supplier, contractor or service provider - until settlement of the dispute;
3. (amended – SG, 93/2004) is selected as supplier, contractor or service provider but fails to fulfil the obligation thereof to conclude a public contract;
4. in other cases, provided by this Ordinance.

Article 30

The terms and time limits for retention or release of the performance guarantee shall be regulated in the small public contract.

Section V Small Public Contract

Article 31

- (1) The contracting authority shall conclude a written small public contract with the tenderer that has been selected as supplier, contractor or service provider of the public contract as a result of the conducted procedure.
- (2) The small public contract shall mandatorily include all proposals contained in the tender of the tenderer, on the basis of which he has been selected as contractor.
- (3) The contracting authority shall conclude the contract referred to in Paragraph 1 within fifteen days after the expiry of the period for review of the decision on selection of a supplier, contractor or service provider of the small public contract, in the cases when no complaint has been lodged or lodged, but an imposition of an interim measure has not been requested.
- (4) (new) When a claim has been lodged against the decision for the selection of contractor and imposition of an interim measure has been requested, the contracting authority shall conclude a contract within a fifteen-day period from the entry into force of the ruling which rejects the request for imposition of interim measures.
- (5) It shall be inadmissible to conclude small public contracts of indefinite duration.

Article 32

- (1) The small public contract shall not be concluded with a tenderer, selected as supplier, contractor or service provider that, upon signature of the said contract:
 1. fails to present documentary proof of registration in compliance with the requirement established by Article 6, Para 2;
 2. fails to fulfil the obligation under Article 47, Para 9 and Article 48, Para 2 of the PPL;
 3. fails to provide the determined performance guarantee.
- (2) In the cases, under Para 1 the contracting authority may select as supplier, contractor or service provider the second highest ranked tenderer as supplier, contractor or service provider and conclude a contract therewith or terminate the procedure.

Article 33

- (1) The parties to a small public contract may not amend the said contract, besides the cases provided for in article 43, Para 2 of the PPL.
- (2) The contracting authority may terminate a small public contract if not in a position to perform the obligations thereof as a result of any circumstances which have occurred after the conclusion of the said contract. In such a case, the contracting authority shall be liable to the supplier, contractor or service provider for damages for the detriment incurred by signature of the contract.

Article 34

- (1) The contracting authority shall be obligated to dispatch information on each small public contract as concluded to the Agency for entry into the Public Procurement Register not later than seven days after conclusion of any such contract.
- (2) The information referred to in Paragraph 1 must be based on the standard form referred to in Article 19, Para 7 of the PPL.
- (3) The information under Paragraph 1, the disclosure of which conflicts with a law shall not be entered into the Public Procurement Register. In such a case, the contracting authority shall provide reasons for this before the Agency.
- (4) (new) The information which, according to the standard form referred to in Article 19, Para 7 of the PPL, is not intended for publication, shall be used for statistical purposes.
- (5) (new) The contracting authority shall be obligated to send generalized information based on the standard form, approved by the executive director of the Public procurement agency, at the end of each quarter for conclusion of all small public contracts, performed under the terms and conditions of Article 2.

CHAPTER FOUR

OPEN CONTEST

Section I

Opening of the Procedure and Submission of Tenders

Article 35

- (1) (Amend. SG No 59 from 2005, entered into force since 19.07.2005) When conducting an open contest the contracting authority shall dispatch the notice for the small public procurement contract simultaneously to the State Gazette for publication on its web site and to the Agency for entering into the Public Procurement Register at least 33 days before the deadline for receipt the tenders.
- (2) The time limit under Para. 1 may be shortened up to 22 days, where the prior information notice has been sent for publication between 52 days and 12 months before the date of dispatch of the notice under Para 1 and contains the information available by the date of its dispatch.
- (3) (new) The time limit under Para 1 may be reduced by seven days if the notice has been filled in online or it has been entered directly in the Register in XML format by an authorized user identified by electronic signature.
- (4) (new) The time limit under Para 1 can be reduced by another five days if from the date of publication of the notice in electronic form, the contracting authority provides full access by electronic means to the contract documents and if the notice includes an Internet address where the information can be accessed on. This reduction of the time limit may be applied together with the reduction of the time limit under Para 3.

Article 36

- (1) When fixing the deadline for the receipt of the tenders, the contracting authority must take into account the volume of the documentation for participation in the procedure and the time necessity for drawing up the tenders.
- (2) The contracting authority shall extend the time limit for receipt of tenders with no more than 30 days, when a request has been received that the initially set time limit is insufficient due to necessity for:
 1. on-spot inspection of the additional documents;
 2. inspection of the place of performance.
- (3) The contracting authority may extend the time limit for receipt of tenders with no more than 30 days when within the time limit set for receipt of tender, no tenders have been received.
- (4) The change of the time limit for receipt of tenders must be published on the web site of the State Gazette and entered into the Register. When the extended time limit is fixed in days, it shall start from the date of publication.

Section II

Examination, Evaluation and Ranking of Tenders

Article 37

- (1) The commission for the conduct of the open contest shall be appointed by the contracting authority after the expiry of the time limit for the receipt of tenders and shall be announced on the day set of opening the tenders.
- (2) The contracting authority shall determine the time limit for finalizing the work of the commission, which shall not exceed the term of validity of the tenders.

Article 38

- (1) The commission shall start work after the list of tenderers and the submitted tenders is made available to it.
- (2) The commission shall open the tenders by the order of their submission and shall check their compliance with the list under Art.13, Para 1, item 12.
- (3) When opening the tenders, at least three members of the commission shall sign the envelope with the price tendered and where the criterion for evaluation is the economically most advantageous tender they shall also sign all the proposals of the tenderers that will be evaluated by the commission according to the announced criteria.
- (4) The tenderers in the procedure or their authorized representatives may be present at the actions of the commission under Para 2 and 3.
- (5) The commission shall check for the compliance of the tenders with the conditions initially announced by the contracting authority.
- (6) The commission may check, at any time, the information specified by the tenderers, to require clarifications regarding the certificates and documents presented under Art. 50-53 of the PPL, as well as to request within a specified time limit a written presentation of further evidence for the circumstances presented in the tender.
- (7) Repealed.

Article 39

- (1) Where a tenderer offers a price, which is more than 30% lower than the average price of the rest of the tenders in the particular public contract, the commission shall require from him/her a detailed written justification of the offered price. The commission shall define a reasonable time limit for presenting the justification, which may not be less than 3 working days after receiving the requirement for this.
- (2) The commission may accept the written justification under Para 1 and not reject the tender when objective circumstances have been pointed out, connected with:
 1. original solution for implementation of the public procurement contract;
 2. the proposed technical solution;
 3. presence of exclusively favourable conditions for the tenderer;
 4. the cost-effectiveness while implementing the public procurement contract.
 5. receipt of State aid.
- (3) In cases where the tenderer has not presented in due time the written justification or the commission estimates that the circumstances pointed out are not objective, the commission shall propose to the contracting authority to reject the tender.

- (4) (new) When the commission establishes that the offer of a tenderer is with an exceptionally low price due to the receipt of State aid, for which no legal proof has been presented within the time limit set, it shall propose the tender to be rejected.

Article 40

- (1) The commission shall examine the admitted tenders and shall evaluate them against the initially selected criterion indicated in the notice.
- (2) Where the contracting authority has allowed the possibility to present variants in the tender, the commission may not reject a tender on the sole ground, that the selection of such variant would lead to the award of a service contract instead of a supply contract or vice versa.
- (3) The commission shall rank the tenderers according to results of the examination and evaluation of the tenders.

Article 41

- (1) The commission shall draw up a protocol for the examination, evaluation and ranking of the tenders that shall contain:
1. members of the commission and list of the consultants;
 2. list of tenderers and tenders proposed for rejection from the procedure as well as the motives for the proposal for their rejection;
 3. the opinion of the consultants;
 4. the results from the examination and the evaluation of the admitted tenders, including a short description of the proposals of the candidates and the rating under each indicator, where the criterion for evaluation is the economically most advantageous tender;
 5. the ranking of the tenderers whose tenders are admitted for examination and evaluation;
 6. date of drawing up the protocol.
- (2) The protocol of the commission shall be signed by all members and shall be forwarded to the contracting authority accompanied by all documents.
- (3) With presenting the protocol to the contracting authority the commission shall consider its work done.

Article 42

- (1) The contracting authority shall announce with a motivated decision the ranking of the tenderers and shall nominate the selected candidate for contractor within a period of five working days after finalizing the work of the commission.
- (2) In the decision under Para 1 the contracting authority shall also indicate the tenderers and tenders rejected from the procedure, as well as the motives for their rejection.

- (3) The contracting authority shall send the decision under Para 1 to the tenderers in 3-days period after its issue.
- (4) On written request from a tenderer, the contracting authority shall be obligated in 3-days period to provide him/her with access to the protocol under Article 41, Para 1. The contracting authority may refuse access to some information, included in the protocol in case that its presenting contradicts a statutory act or prevents, restricts or violates competition.
- (5) On written request from a tenderer, the contracting authority shall be obligated within a three-day period from the receipt of the request to provide a copy of the protocol under the conditions of Para 4.

Article 43

- (1) The contracting authority shall conclude a small public procurement contract with the tenderer ranked by the commission on the first place and selected for contractor.
- (2) If the tenderer selected for contractor refuses to conclude the contract, the contracting authority may terminate the procedure, or select for contractor the tenderer ranked second and conclude the contract with him/her.

CHAPTER FIVE PUBLIC AUCTION

Section I

Opening of the Procedure and Submission of Requests to Participate

Article 44

- (1) In the award of a small public contract through a public auction, the notice, approved by the contracting authority, shall also contain:
 1. the starting auction price;
 2. the step, through which the starting auction price, initially announced by the contracting authority, is decreased and which shall be fixed as an amount in between 1 and 10 per cent of the value of the starting auction price;
 3. place, date and the starting time for the conduct of the auction.

Article 45

- (1) When conducting a public auction the contracting authority shall dispatch the notice for the small public contract simultaneously to the State Gazette for publication on its web site and to the Agency for entry into the Public Procurement Register at least 20 days before the deadline for the receipt of the requests to participate.
- (2) The time limit under Para 1 may be reduced by seven days if the notice has been filled in online or it has been entered directly in the Register in XML format by an authorized user identified by electronic signature.

- (3) The contracting authority may extend the time limit for the receipt of requests to participate by no more than 30 days when no requests have been received within the time limit set for the receipt of requests to participate.
- (4) The change of the time limit for the receipt of requests to participate must be published in the State Gazette and entered into the Register. When the extended time limit is set in days, it shall start from the date of publication.

Section II

Conduct of the auction

Article 46

- (1) To participate in the public auction the candidates shall submit a request to participate which shall be accompanied by:
 1. certificate for actual standing or document for registration of the foreign person according to its national legislation, when a natural person – copy of document for identification.
 2. declaration of the non-existence of the circumstances under Art. 47, Para 1 and 5 of the PPL;
 3. declaration of the non-existence of the circumstances under Art. 47, Para 2 of the PPL, indicated by the contracting authority in the notice for small public contract;
 4. document for provided participation guarantee, when such is required according to the notice.

Article 47

- (1) The commission for the conduct of the public auction shall be appointed by the contracting authority after the expiry of the time limit for the receipt of requests to participate and shall be announced on the day of the conduct of the procedure.
- (2) On the date and in the time, fixed for the conduct of the auction, the chairman of the commission shall check the presence of its members and shall announce the opening of the auction.
- (3) The persons, who represent the candidates who have submitted requests to participate, shall appear before the commission and shall establish their identity by presenting their identification documents and letter of attorney – in the cases of authorization.
- (4) If on the date and the time, fixed for the conduct of the auction, a representative of any of the candidates is not present, the commission shall reject him/her from participation and the guarantee, deposited by him/her shall be kept.

Article 48

- (1) After the opening of the auction, the commission shall check the content of the submitted requests to participate.

- (2) The chairman of the commission shall announce the candidates admitted to participation in the auction as well as the candidates who are not admitted because:
 1. one of the documents under Art. 46 has not been presented;
 2. the presence of a circumstance referred to in Article 47, Para 1 and 5 of the PPL and the circumstances indicated in Art. 47, Para 2.

Article 49

- (1) Before the start of the auction the chairman of the commission shall invite successively, in the order of the submission of the requests to participate, all of the admitted candidates to confirm orally the starting auction price.
- (2) In cases where an admitted candidate refuses to confirm the starting auction price, he/she shall be not admitted to further participation in the procedure, and the guarantee deposited by him/her shall be kept.
- (3) In cases where only one candidate is admitted, he/she shall be declared a winner of the auction on the starting auction price, if he/she has confirmed it in accordance with the conditions referred to in Para 1, and if he/she refuses to offer a lower price.

Article 50

- (1) The auction shall start with the announcement of the chairman of the commission of the starting auction price and the step for reduction and shall be conducted by the candidates announcing successive sums, each one being a step lower than the previous one, distinguished by the chairman of the commission by a sound signal. The sequence, in which the candidates shall announce their offers, shall be determined by drawing a lot.
- (2) In cases where the candidates confirm the starting auction price, but none of them announces the next price by amount, the auction shall continue between them without a step for reduction. If none of the candidates announces a price, lower than the starting one, the procedure shall be closed and the guarantees, deposited by them for participation in the auction, shall be kept.
- (3) In cases where a candidate refuses to announce a price, which is lower than the previous one with one step, the chairman shall invite the next candidate in turn to announce the same price. The candidate, who has missed a particular price, shall continue his/her participation, unless he/she explicitly announces that he/she declines from further participation in the auction, which shall be entered into the protocol of the open auction procedure.
- (4) In cases where none of the candidates announces a price, which is lower than the last reached price, the chairman shall announce three times its amount, and before the third announcement he/she shall give a reminder, that it is the last one. When there is no other offer, the chairman shall announce the end of the auction by a sound signal, shall declare the candidate that has offered the lowest price and shall close the auction.
- (5) Repealed.

Article 51

- (1) (Amend. SG No 93 of 2004) The commission shall draw up a protocol of the auction held, which shall be signed by the members of the commission and by the representatives of all of the admitted candidates. The circumstances referred to in Article 48, Para 2, as well as the last offers of the admitted candidates shall be indicated in the protocol. In case of refusal by a candidate to sign the protocol, this circumstance shall be verified by the members of the auction commission.
- (2) The commission shall present the protocol to the contracting authority in a period of three working days from the conduct of the auction.
- (3) Within a five working days from the receipt of the protocol of the auction held, the contracting authority shall announce with a motivated decision the ranking of the candidates and shall nominate for contractor the candidate, who first offered the lowest price.
- (3) In the decision under Para 3, the contracting authority shall also indicate the rejected from participation in the procedure candidates, as well as the motives for their rejection.
- (4) The contracting authority shall dispatch the decision under Para 1 to the candidates in within a period of three days after its issue.

Article 52

- (1) The contracting authority shall conclude small public procurement contract with the candidate who won the auction.
- (2) If the candidate who won the auction refuses to conclude the contract, the contracting authority may terminate the procedure or may nominate for winner of the auction the next candidate who offered the lowest price and shall conclude the contract with him/her.

CHAPTER SIX NEGOTIATION WITH INVITATION

Section I

Opening of the Procedure

Article 53

- (1) The contracting authorities may award small public procurement contracts through a negotiated procedure of with invitation only in cases, where:
 1. the open contest has been terminated as provided by Article 24, Para 1, Items 1 and 2 and the initially announced conditions have not been substantially changed;
 2. in the cases under Art. 24, Para 1, Item 3 they invite for participation in the procedure also the tenderers who have presented tenders and meet the requirements indicated in the notice for open contest;

3. the nature of the service does not allow the technical specifications to be defined exactly enough, in order to award the procurement under the conditions of the open contest;
4. because of the occurrence for a *force majeure* the terms under Article 35 cannot be kept;
5. in the field of works research, experimental and development work is to be performed, which is not with profitable purpose, or purpose of compensation of the expenses for that activity;
6. the awarding of the public procurement contract to another person would lead to violation of the copyright, or other rights of intellectual property; or of exclusive rights acquired by virtue of a law or an administrative act;
7. the goods, subject of supply have been produced with the purpose of research, experimental, scientific or development activity, and are in a restricted quantity which do not allow forming of a market price or compensation of the expenses for that activity;
8. supplementary supplies are needed from the same supplier, intended for partial change, or for increase of the supplies, upon which the change of the supplier will force the contracting authority to acquire goods with different technical characteristics, and thus will lead to incompatibility, or technical difficulties for the exploitation and the maintenance;
9. the service contract is awarded following a design contest held and invitations for participation in the negotiations are sent to all ranked participants in compliance with the conditions of the contest;
10. because of unforeseen circumstances it is necessary to award supplementary service or works contract to the same contractor under the following conditions:
 - a) the supplementary service or works may not be technically, or economically separated from the subject of the main contract without substantial difficulties for the contracting authority, or although they may be separated, they are substantially needed for the implementation of the public procurement contract;
 - b) the total value of the additional service or works is not greater than 50% of the value of the main contract;
11. it is needed to repeat a similar service, or works by the same contractor not later than 3 years from the award of the first public procurement contract, under the following conditions:
 - a) the first contract has been awarded following an open contest and the possibility for such award is indicated in the contract notice;
 - b) the total value of the this contract has been included when defining the value of the first contract;
 - c) the new contract corresponds to the main project for the implementation of which the first contract has been awarded;
12. the subject of the contract is the supply of goods determined by a list, proposed by the State commission for commodity markets and market-places and approved by the Council of Ministers in the Rules of Implementation of the PPL;
13. the subject of the contract is services under Art. 5, Para 1, Item 2 of the PPL;

14. Repealed.
15. Repealed.
- (2) In the cases, referred to in Para 1, items 8 and 11, the supplementary contract may not be longer than three years.
- (3) (new) In the cases under Para 1, Item 12 the contract shall be concluded under the Law for the Commodity Markets and Market-places.

Article 54

- (1) In the decision for the award of the public procurement contract through negotiations with invitation, the contracting authority shall motivate the choice of this procedure and shall approve the invitation, and when it is envisaged, also the documents for participation. The decision shall also specify the persons, to which the invitation shall be sent.
- (2) The contracting authority shall determine the subject of the public procurement contract, as well as the requirements for its implementation, the date and place for the conduct of the negotiation in the invitation for participation.
- (3) In the invitation the contracting authority may also stipulate requirements for the presentation of:
 1. evidence for economic and financial standing under Art. 50 of the PPL;
 2. evidence of technical capabilities and/or qualifications of the candidate under Art. 51 of the PPL;
 3. requirement for the submission of initial tender, if necessary;

Article 55

The invitation for participation in the negotiations with invitation shall be dispatched to the persons, defined in the decision and to the Agency, except for the cases under Art. 53, Para1, Item 12.

Section II

Conduct of the negotiation and selection of contractor

Article 56

- (1) The commission for the conduct of the procedure shall be appointed by the contracting authority after the dispatch of the invitation for participation in the negotiation.
- (2) For participation in the procedure of negotiations with invitation, the candidates, invited by the contracting authority shall submit the following:
 1. a certificate for actual state or a registration document – for the foreign persons, in accordance with their national legislation, and for natural persons – a copy of the identity document;

2. a declaration for the non-existence of the circumstances referred to in Article 47, Para 1 and 5 of the PPL;
 3. the subcontractors, which shall participate in the implementation of the contract, as well as the share of their participation, where the participation of subcontractors is envisaged.
- (3) When the candidate envisages the participation of subcontractors, the declaration under Para 2, Item 2 shall be presented for every one of them.
 - (4) When a candidate in the procedure is an association which is not a legal person, the declaration under Para 2, Item 2 shall be presented by every participant in the association.

Article 57

- (1) The commission shall hold the negotiation with the every candidate for determination of the contract clauses in accordance with the requirements of the contracting authority, defined in the invitation for participation.
- (2) When the candidates invited by the contracting authority are more than one, the proposals made and the agreements reached with each candidate shall be included in a separate protocol, which shall be signed by the members of the commission and by the candidate.
- (3) After holding the negotiations with all the invited candidates, the commission shall prepare a report to the contracting authority, where it shall propose ranking of the candidates.
- (4) The selection of the contractor as well as the conclusion of the contract shall be performed as provided by Article 42 and Article 43.

Chapter Seven

Stock deal

Article 58. Repealed.

CHAPTER EIGHT

DESIGN CONTEST

Article 59

- (1) The provisions of this chapter shall be applied to the conduct of a design contest:
 1. organized as part of a procedure for the award of small public service procurement contract;
 2. with the award of prizes and/or payments to the participants in the design contest.
- (2) A design contest shall be conducted for the acquisition of:

1. a spatial-development concept for preparation of a spatial-development scheme, a spatial-development plan, a land-distribution plan, or a forest-management design;
2. a conceptual design for the preparation of designs, incl landscape, architectural, structural, technological, utility-system designs, as well as designs for works of art and for restoration and renovation of cultural property;
3. designs in the sphere of data processing;
4. other designs.

Article 60

- (1) The contest programme shall contain:
 1. the project task as well as instructions for its implementation;
 2. all the technical data, needed for the project's implementation;
 3. the criteria for evaluation of the project, their relative weight and the way for defining complex evaluation of the project.
- (2) The price of the contest programme may not be higher than the real expenses for its elaboration.

Article 61

- (1) The contracting authority shall dispatch a notice for holding a design contest simultaneously to the State Gazette for publication on its web site and to the Agency for entry into the Public Procurement Register at least 33 days before the time limit for receipt of the projects.
- (2) The time limit under Para 1 may be reduced by seven days when the notice has been filled in online and it has been entered directly in the Register in an XML form by an authorized user who is identified by an electronic signature.
- (3) The time limit under Para 1 may be reduced by five days if from the date of the publication of the notice in electronic form, the contracting authority provides full access by electronic means to the design contest programme and if the notice includes and internet address where it can be found. This reduction of the time limit may be applied together with the reduction of the time limit under Para 3.
- (4) The design contest notice must be elaborated according to the standard form under Art. 19, Para 7 of the PPL.

Article 62

- (1) For the examination and the ranking of the projects, the contracting authority shall assign a jury that shall be comprised of at least three members.
- (2) The members of the jury must meet the requirements referred to in Article 19.
- (3) In cases where the participants in the contest are required to possess a certain professional qualification, or competence, at least one third of the members of the jury must have the same, or equal qualification or competence.

Article 63

- (1) The contracting authority shall assign an official, who shall accept the contest projects.
- (2) The person referred to in Para.1 shall be obliged to keep in secret the circumstances, which have become known to him/her in reference to the contest projects, and he/she shall present a declaration in writing certifying this.
- (3) The submitted contest projects shall be numbered in succession of their submission and a number list shall be made and their corresponding participants' names. The list shall be placed in an envelope, which shall be sealed, and kept till the date of the announcement of the contest results.
- (4) The tenderers shall present the information and evidence for their professional qualification and competence in a separate opaque envelope, which shall be opened after the ranking of the projects.

Article 64

- (1) The jury shall examine the projects, and shall draw up a protocol for ranking in compliance with the criteria announced in the notice.
- (2) The jury shall reject from ranking those tenderers in the contest, who do not meet the requirements for professional qualification and capacity, indicated in the notice.
- (3) Within a five-day period from the completion of the work of the jury, the contracting authority shall announce with a decision the ranking of the participants in the contest in compliance with the protocol of the jury, as well as the prizes or the other payments.
- (4) The contracting authority shall send information about the conducted contest to the Agency for entry in the Public Procurement Register not later than seven days after the taking of the decision under Para 3.

CHAPTER NINE

ADMINISTRATIVE PENAL PROVISIONS

Article 65

For a violation of the present Ordinance, the guilty persons shall be punished as provided by Article 32 of the Law on the Administrative Violations and Punishments.

Article 66

- (1) The statements for the established violation of the present Ordinance shall be issued by officials of the Agency for the State Financial Inspection within six months as from the date on which the perpetrator became known but not later than three years after its commission.
- (2) The penal statements shall be issued by the Minister of Finance or by officials authorized by the Minister.

- (3) The establishment of violations, the issuing, appealing and the enforcement of the penal statements shall follow the provisions of the Law on the Administrative Violations and Punishments.

Transitional and Final Provisions

§ 1. The small public procurement contract award procedures, the decisions for the conduct of which have been taken before the entry into force of the present Ordinance, shall be conducted in accordance with the former rules.

§ 2. For all unsettled issues in the present Ordinance, the provisions of the Public Procurement Law shall be applied.

§ 3. The present Ordinance is adopted on the legal ground of Article 14, Para 5 PPL.

§ 4. Instructions on the implementation of the present Ordinance shall be issued by the Executive Director of the Public Procurement Agency.

Transitional and Final provisions

TO DECREE No 153 FROM 12 JULY 2005 FOR THE AMENDMENT OF THE
NORMATIVE ACTS OF THE COUNCIL OF MINISTERS (PUBL., SG 59/2005)

§ 3. The decree shall enter into force from the date of its publication in the State Gazette.

Transitional and Final provisions

§ 65. The procedures for the award of small public procurement contracts the decision for opening of which were taken before the entry into force of the Ordinance shall be concluded under the present order.

§ 66. The decree shall be approved on the grounds of § 150, Para 1 of the Transitional and Final Provisions of the Law for the Amendment of the Public Procurement law (Publ., SG 37/2006).

§ 67. The decree shall enter into force from 1 July 2006.